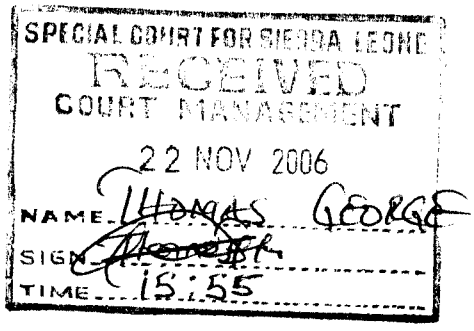
(737)

SCSL-04-14-T
(19893 — 20136)

19893

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

Before:	Hon Justice Bankole Thompson, Presiding Hon Justice Pierre Boutet Hon Justice Benjamin Mutanga Itoe
Registrar:	Mr Lovemore G Munlo SC
Date filed:	22 November 2006



THE PROSECUTOR **Against** **Samuel Hinga Norman**
Moinina Fofana
Allieu Kondewa

Case No. SCSL-04-14-T

CONFIDENTIAL

PROSECUTION FINAL TRIAL BRIEF

Office of the Prosecutor:
Dr Christopher Staker
Mr James C. Johnson
Mr Joseph F. Kamara
Mr Kevin Tavener
Mr Mohamed Bangura
Dr Nina Jørgensen

Defence Counsel for Samuel Hinga Norman
Dr Bu-Buakei Jabbi
Mr Alusine Sani Sesay
Mr John Wesley Hall

Defence Counsel for Moinina Fofana
Mr Victor Koppe
Mr Arrow Bockarie
Mr Michiel Pestman
Mr Steven Powles

Defence Counsel for Allieu Kondewa
Mr Charles Margai
Mr Ansu Lansana
Mr Yada Williams
Ms Susan Wright

PART I

I. INTRODUCTION

1. At the end of this trial, the Trial Chamber is now called upon to weigh up the totality of the evidence in the case and to determine whether the charges in the Amended Consolidated Indictment ("**Indictment**") against Samuel Hinga Norman ("**Norman**"), Moinina Fofana ("**Fofana**") and Alieu Kondewa ("**Kondewa**") have been proved beyond a reasonable doubt.

2. It is a fundamental principle of the legal system of the Special Court, enshrined in Article 17(3) of the Statute and Rule 87(A) of the Rules of Procedure and Evidence ("**Rules**"), that an Accused shall be presumed innocent until proven guilty, the burden being on the Prosecution to establish guilt beyond a reasonable doubt. This principle is consistent with universally recognised international standards. Proof beyond a reasonable doubt means a high degree of probability; it does not mean certainty or proof beyond any shadow of a doubt.[1] It has been acknowledged that

> "The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence 'of course it is possible, but not in the least probable', the case is proved beyond a reasonable doubt, but nothing short of that will suffice".[2]

3. It is an equally fundamental principle that the overriding duty of the Trial Chamber is to establish the ***truth***.[3] The purpose of the Rules is to promote a fair and flexible trial, and a Chamber should not be hindered by technical rules in its search for the truth.[4] In common law jury trials, judges traditionally encourage the jury members to appeal to

---

[1] *Prosecutor v. Delalić et. al,* IT-96-21-T, "Judgement", ("***Delalić* Trial Judgment**"), Trial Chamber, 16 November 1998, para. 600; *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, "Judgement", ("***Blagojević and Jokić* Trial Judgment**") Trial Chamber, 17 January 2005, para. 18, footnote 46.

[2] *Delalić* Trial Judgement, para. 600, quoting *Miller v. Minister of Pensions* [1947] 1 All ER 372, 373-374.

[3] *Prosecutor v. Ntakirutimana and Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, "Reasons on the Decision for Request for Admission of Additional Evidence", ("***Ntakirutimana* Decision on Admission of Evidence**") Trial Chamber, 8 September 2004, para. 6 (referrring to "the obligation [of the Chamber] to search for the truth").

[4] *Prosecutor v. Brđanin and Talić*, IT-99-36-T, "Order on the Standards Governing the Admission of Evidence", ("***Brđanin and Talić* Order on Standards Governing Admission of Evidence**") Trial Chamber, 15 February 2002, para. 10; *Prosecutor v. Aleksovski*, IT-95-14/1-AR73, "Decision on Prosecutor's Appeal on Admission of Evidence", ("***Aleksovski* Appeal Decision on Evidence**") Appeals Chamber, 16 February 1999, para. 19.

their common sense when arriving at their decision. The approach should be no different merely because the triers of fact are professional judges rather than lay citizens of the community. The question whether it has ultimately been proved that something did or did not occur should be determined by an assessment of the evidence based on one's ordinary life experiences. The question is, looking at the evidence as a whole, and based on one's ordinary life experiences, which hypotheses are plausible and realistic, and which hypotheses are simply contrary to common sense.

4. Cases before international criminal courts are of their nature very large, involving voluminous amounts of evidence dealing with large scale and widespread conduct over wide geographical areas and relatively long periods of time. Of their nature, cases before international criminal courts are concerned with events that occurred in times of great upheaval. It cannot be expected that there will be clear and direct evidence in relation to every material issue in the case. In establishing the truth, it is necessary to look at all of the evidence relevant to a particular issue in the light of all of the evidence in the case as a whole.

5. An Accused is not of course required to present any evidence at all in his or her defence. If none of the Accused in a case elects to present evidence, the Trial Chamber will have to seek to determine the truth, and will have to decide whether guilt has been proven beyond a reasonable doubt, based on the Prosecution evidence alone. However, where one or more Accused do exercise the right to present evidence, the Trial Chamber's enquiry into the truth, and its verdict, will be based on all of the evidence in the case, considered as a whole. At the stage of reaching the final verdict in the case, there is no distinction between Prosecution evidence and Defence evidence. All evidence that is admitted by the Trial Chamber is part of a single corpus of evidence before the Trial Chamber. Thus, as has been repeatedly affirmed, "a witness, either for the Prosecution or Defence, once he or she has taken the Solemn Declaration pursuant to Rule 90(B) of the Rules of Procedure and Evidence, is a witness of truth before the International Tribunal and, inasmuch as he or she is required to contribute to the establishment of the truth, not strictly a witness for either Party."[5]

---

[5] *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-PT, "Decision on Prosecutor's Motion on Trial Procedure", ("***Kordić and Čerkez* Decision on Trial Procedure**") Trial Chamber, 19 March 1999; see also *Prosecutor v. Kupreškić et al.*,

6. In practice, it may frequently occur that certain evidence given by Prosecution witnesses is favourable to the Defence. Similarly, it can occur that evidence given by a Defence witness may be unfavourable to the Accused, and even inculpatory. It can occur that evidence given by a witness called by one Accused may be favourable or unfavourable to a co-accused. However, once the witness has given evidence, all of the evidence of that witness becomes evidence in the case as a whole. This means that evidence given by a witness called by one accused can be taken into account in relation to all accused. There is no "compartmentalisation" of the evidence. Indeed, if there were, this could result in the establishment of different "truths" in relation to each of the Accused. The law is not divorced from common sense. There is one truth, and the role of the Trial Chamber is to establish it, in accordance with procedures that have been designed and developed in order to be as conducive as possible to the establishment of the truth consistently with the rights of the Defence.
7. The presumption of innocence means that the Defence bears no burden of disproving any allegation made by the Prosecution. However, as in any criminal justice system, the fact that the verdict will be based on all of the evidence as a whole will mean in practice that the Defence evidence, and any Defence theories of the case, will play a significant role in shaping the issues in the case.
8. In this case, it is submitted that there are many important issues that are not seriously in dispute. Based on all of the evidence in the case as a whole, the Prosecution submits that it cannot be seriously in contention:

    (1) that at all times material to the Indictment, there was an armed conflict in Sierra Leone in which the Civil Defence Forces ("**CDF**") fought against the Revolutionary United Front ("**RUF**") and later the Armed Forces Revolutionary Counsel ("**AFRC**") forces;

    (2) that the CDF was an armed force comprising various tribally-based traditional hunters, which included Kamajors;

    (3) that members of the CDF were at all material times required to abide by international humanitarian law and the laws and customs of war;

IT-95-16-T. "Decision on Communications Between Parties and their Witnesses", Trial Chamber, 21 September 1998.

(4) that crimes within the jurisdiction of the Special Court were committed by members of the CDF;

(5) that these crimes were committed in the territory of Sierra Leone;

(6) that a nexus existed between these crimes and the armed conflict; and

(7) that these crimes occurred in the context of the armed conflict.

9. Furthermore, in relation to the three Accused in this case, it cannot be seriously in contention that at all times material to the Indictment:

(1) Norman was the National Coordinator of the CDF;

(2) Fofana was the National Director of War of the CDF;

(3) Allieu Kondewa was the High Priest of the CDF.

10. The Prosecution submits that the main issues in contention in this case concern the individual criminal liability of each of the Accused for the crimes referred to.

11. The Prosecution case is that the three Accused were the leaders of the CDF, throughout the relevant time period, and they acted as a united command unit, a team, sometimes referred to as the Holy Trinity.[6] No one in the CDF exercised greater authority than they did. Norman was the most senior of the Accused within the CDF. Given Norman's pre-eminence in the CDF, a significant portion of the evidence in the trial focussed on his acts and words. Norman was a charismatic leader and witnesses recalled with some clarity his behaviour and status. However, Kondewa and Fofana were also essential to the operation of the CDF, and contributed significantly to the CDF.

12. The CDF were fighting a war in Sierra Leone; that fact had an impact on the manner in which the war was conducted. Materials were not easily obtained with the lack of supplies was a constant handicap in the preparation of the war. As supplies were of prime importance, whoever controlled the supply of such items was in a powerful position; that is, control of the organisation could, and was, exercised through the mechanism of supply. Fofana, under instructions from Norman and Kondewa, exercised that control.

13. The Prosecution case is that the three Accused shared a common plan, purpose or design, together with others in the CDF, to use any means necessary to defeat the opposing RUF

[6] TF2-011, Transcript 8 June 2005, Closed Session, p. 31; TF2-014, Transcript 11 March 2005, p. 24.

and AFRC forces, to gain complete control over the population of Sierra Leone, and the complete elimination of the RUF and AFRC, its supporters, sympathisers, and anyone who did not actively resist the RUF and AFRC occupation of Sierra Leone. The means included the commission of crimes against civilians, including women and children, who were suspected of having supported, sympathised with, or simply failed to actively resist the RUF and AFRC forces, as well as the commission of crimes against captured enemy combatants. These crimes included unlawful killings, the infliction of physical violence and mental suffering, looting and burning, terrorising the civilian population and imposing collective punishments, and the use of child soldiers. In execution of this common plan, purpose or design, each of the Accused was involved, at the least, in the planning, instigating and ordering of such crimes. Furthermore, each of the Accused was in a position of superior authority to the members of the CDF who committed these crimes, for the purposes of Article 6(3) of the Statute, and failed to prevent the commission of the crimes or to punish the perpetrators, notwithstanding their knowledge that such crimes were about to be committed or had been committed.

14. The Prosecution does not dispute that the CDF was fighting "for the return of the constitutionally-elected government." The Prosecution does not suggest that the CDF as such was a joint criminal enterprise, or that every member of the CDF was a participant in a joint criminal enterprise, or that every member of the CDF committed crimes. However, the "justness" of the cause for which a person acts does not justify the commission of crimes in furtherance of that cause. It would be incorrect to suggest that in an armed conflict between two opposing forces, it is only the side whose cause is "unjust" that is required to abide by international humanitarian law and the laws and customs of war. It is fundamental that international humanitarian law and the laws and customs of war apply equally to all parties in an armed conflict, regardless of the cause for which they are fighting.

15. The Prosecution similarly does not dispute that members of the forces opposing the CDF also committed a range of serious crimes under international humanitarian law. However, it is well established in international criminal law that there is no defence of "*tu quoque*"—that is, the commission of serious violations of international humanitarian law by one side in an armed conflict can never be a justification for the commission of crimes

by the other side.[7] Even if, as the witness Peter Penfold suggested, the CDF were fighting "fire with fire",[8] that does not make these crimes any less criminal.

16. Given the nature of this case, there is inevitably much overlap in the evidence relevant to each of the different counts and geographical locations, the evidence relevant to the individual criminal responsibility of each of the Accused, and the evidence relevant to each different mode of liability under Article 6 of the Statute. In analysing the evidence in support of each of the elements of each crime in relation to each of the Accused there is accordingly a degree of repetition. For convenience and brevity, not every piece of evidence relevant to each Accused is recited against each individually in this brief. For example, material cited in respect of Norman is not always repeated in those sections dealing with the Fofana and Kondewa. It is therefore emphasised again that in relation to each issue, the evidence has to be considered in the context of all of the evidence in the case as a whole.

II. BRIEF HISTORY

17. The organisation called the CDF, was an armed faction which assisted in countering the threat of the RUF and later the AFRC on behalf of the government of Sierra Leone which had been exiled following a coup on the 25 May 1997. The history of the organisation was outlined during the course of the trial, in particular how it evolved from a tribal-based organisation to one dominated and controlled by the three Accused. In this brief, as throughout the trial, the terms CDF and Kamajors are both used, it being established, as discussed below, that the Kamajors were recruited from the Mende tribe and it is the east and south-east area where the Kamajors were the major operatives. It is also in that general area where most of the crimes were committed.

18. The CDF, at the relevant time was led by Norman assisted by Kondewa and Fofana and, in the initial stages of the organised resistance to the coup, supported by members of the hunting society called the Kamajors who filled the ranks of the CDF. Over time, and indeed a relatively short period of time, the manner by which people were recruited to the CDF changed, as did their direct loyalties and obligations. The CDF, of which the

[7] *Prosecutor v. Kupreškić et al.*, "Decision on Evidence of the Good Character of the Accused and the Defence of Tu Quoque", IT-95-16-T, Trial Chamber, 17 February 1999.
[8] Peter Penfold, Transcript 9 February 2006, pp. 25-26.

Mende-based Kamajors were the majority component, owed its loyalty and obligations to the three Accused men. It is clear that Norman had absolute power in the CDF during the relevant period; however he could not have established and exercised that power without the efforts of Kondewa and Fofana. There were no other persons within the CDF to whom the combatants owed a greater loyalty or whose orders they followed with such diligence.

19. Following the AFRC coup in May 1997 and the flight of government officials out of Sierra Leone to Guinea, including President Kabbah, Norman, while in exile in Liberia, was directed by the President to organize, in particular, the south and eastern wings of the CDF, namely, the Kamajors, who were in disarray and in need of leadership. =

20. In a meeting at Bo-Waterside, and in the presence of Fofana, and Kondewa, Norman assumed leadership and pledged loyalty to the movement. Meetings were held at which the three Accused coordinated, directed and commanded military operations, in and around the Pujehun District. As part of a valid military strategy, it was necessary to improve the strength, logistics, and strategies of the Kamajors. As can be observed from the evidence presented to the Tribunal, the CDF developed into a viable military organisation, in response to the nature of the conflict in which it was involved.

21. Prior to the coup, the Kamajors assisted the Sierra Leone Army by providing local knowledge of the terrain and locations. After the coup, the CDF, including the Kamajors developed an offensive capacity which it previously did not possess. In order to achieve that transformation, there had to be an introduction of military training, logistics and planning which was not present before the coup. Having regard to the evidence, there are many instances where the CDF launched planned, coordinated attacks (although there were tactical challenges) against selected targets. On the evidence, the transformation from providing scouts to the Sierra Leone Army to being an effective fighting body came about through the re-structuring efforts of Norman, Kondewa and Fofana.

22. Unfortunately, as part of their combined effort in achieving the transformation, the three Accused introduced into the culture of the CDF, and particularly the Kamajors, the enforced obligation that the military victory was to be achieved at all cost, by any means, against anyone considered to be a 'rebel.' The three Accused also gave to the combatants under their command and control a very broad definition of rebel. The fusion of those

two issues directly led to the offences now before the court.

23. In the early stages of the war, Norman promised government help and asked for a base for operations. Talia or Base Zero, in Yawbeko Chiefdom, was chosen and allocated for Kamajor operations and training. Norman arrived at Base Zero in a helicopter along with arms and ammunitions and some Liberian soldiers, sometimes referred to as Special Forces. Norman's position as Deputy Defence Minister, combined with his appointment as National Coordinator, ensured his seniority and position of authority in the CDF.

24. Many traditional hunters as well as other Mendes who were not traditional hunters, upon hearing of the new base for Kamajor operations, converged in and around Base Zero, for logistical support, military training and direction. Base Zero was not a large village; however, thousands of Kamajors eventually were based in the vicinity. Norman, Fofana and Kondewa lived in close proximity to one another, if not at times in the same lodging. The physical situation was such that it is not feasible that they were not aware of the activities in and around Base Zero; the Accused saw each other every day as they were themselves the command unit of the CDF.

25. The CDF was an umbrella organisation, which included a number of other tribal groups; however, the majority of the CDF, especially in the areas where the offences occurred were Kamajors, from the Mende tribe. Norman and Fofana planned and coordinated the training of Kamajors; indeed, Fofana was in charge when Norman left Base Zero. Kondewa performed rituals for the success of the military ventures and initiated young men into the movement. Although most of the initiates were young men, there was no age restriction; not all initiates became combatants, such as the elderly. One of the benefits, if not the principal benefit, of being initiated was that the person acquired the belief that they were immune from bullets. That 'gift' was a powerful attraction to become initiated and to eventually become a combatant.

26. It was not obligatory, as noted, that upon a person becoming initiated that he was dispatched and deployed into battlefield positions. However, one needed to be initiated in order to be sent to the front lines. As Kondewa, and his assisting initiators, were the source of this magical power, he wielded considerable influence over the initiates and was in a position to control their behaviour. As there was no formal payment system within the CDF, going to the front line was a means by which one could be paid, through

the simple expedient of looting. Norman told the Kamajors that anything they captured belonged to them.[9] Although those orders from Norman conflicted with the original Kamajor rules, it is apparent from the evidence that when there was a conflict between the Kamajors orders, which were more in the nature of guidelines, Norman's orders prevailed.

27. The Kamajors were a group of traditional local hunters before the emergence of Kondewa who modified existing secret ceremonies. This resulted in the shifting of loyalties away from the traditional chiefs and to the CDF triumvirate, in order to obtain the intangible benefit of becoming 'bullet-proof'. As witnesses testified before the Court, both those called by the Prosecution and by the Defence, they believed that the ceremonies devised by Kondewa were capable of making someone impervious to bullets (although the mechanism of how that was achieved remains elusive). The desire to have such protection in war, especially when armed only with single-barrel shotguns and machetes and fighting against those armed with automatic weapons, was a powerful motivator and a means by which control could be exercised over the believers.
28. Evidence has shown that it was at Base Zero, that Norman, Fofana and Kondewa together, planned, coordinated, directed, trained and commanded the attacks on Bo, Koribundo and Tongo. Witnesses have testified to the meetings, where military operations were planned and directed. Norman, as well, provided logistics and arms to support the attacks.
29. When one considers the evidence, how battles were fought and towns captured, it cannot be suggested with any degree of conviction that the CDF was not controlled by a central body. Again, by the evidence, the one controlling the CDF, in every sense, was Norman. At the same time, in that position he needed loyal persons to assist him, to enforce his orders and to keep him informed. Any military organisation needs subordinate commanders. Even if one was not aware of the particularities of the war in Sierra Leone, one would as a matter of logic and common sense be satisfied that there was a leader of the CDF and that the leader had subordinate commanders. Kondewa and Fofana had authority and knowledge and were able to and did fulfill that role. This is established by direct evidence and it is the only reasonable inference which can be drawn.

[9] TF2-223, Transcript 28 September 2004, Closed Session, p. 21

30. The Accused men resolved to use any means necessary to defeat the RUF/AFRC forces so as to gain and exercise control over the territory of Sierra Leone. That resolution can be inferred from the evidence which includes the words and actions of each of the Accused men, acting as a unified team. These events all occurred in Sierra Leone, in a country that had limited access to resources and modern weaponry. The war was conducted at a low technology level, with machetes being used to commit numerous offences, especially the killing of civilians. The CDF combatants were not highly trained soldiers, but they were organized and they followed the directions given to them by their superiors. It cannot be said that the circumstances of the war, the lack of resources and the unsophisticated nature of the CDF combatants, brought about the offences in the Indictment. The offences occurred because of the deliberate directions of the three Accused men who sought to achieve victory at all costs.
31. Witness TF2-223 exemplified this approach when he testified that when Norman was asked whether the corpses in Zimmi should be buried, Norman replied: "there is nothing like civilians in rebel-held territory."[10] This position was a constant theme in Norman's orders and was acted upon by the combatants. The same witness also spoke about ICRC booklets being given to people training to be Kamajors at Zimmi; Norman contradicted the instructions in the booklets.[11]
32. Before addressing the law, the evidence and how the two are applied in this trial, some suggestions are made in relation to the assessment of witnesses and exhibits.

III. CONSIDERATIONS WHEN ASSESSING THE LAW AND EVIDENCE

INTRODUCTION

32. Article 17(3) of the Statute, which reflects fundamental international standards, provides that the Accused shall be presumed innocent until proven guilty. The Prosecution bears the burden of establishing the guilt of the Accused, and, in accordance with Rule 87(A) of the Rules, must do so beyond reasonable doubt.
33. Rule 89(A) of the Rules provides that proceedings before the Special Court are governed by the rules contained in Rules 89-98, and that the Chambers are not bound by national

[10] TF2-223, Transcript 28 September 2004, Closed Session, p. 32.
[11] Ibid., pp. 35-36.

rules of evidence. Rule 89(B) adds that in cases not otherwise provided for in those Rules, 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." In addition, Rule 89(C) provides that "A Chamber may admit any relevant evidence." This provision ensures that the administration of justice will not be brought into disrepute by artificial or technical rules of evidence.[12]

34. In cases not otherwise provided by the Rules, the Trial Chamber thus has a discretion in the evaluation of the evidence, and can take the approach it considers most appropriate for the assessment of evidence, and determine the credibility of witnesses and the weight to be afforded to the evidence proffered by the parties based on all of the relevant evidence admitted at trial.[13] However, like any judicial discretion, this discretion must be exercised judicially. There has now developed a body of case law in international criminal courts dealing with the principles applicable to the exercise of this discretion.

CONTRADICTIONS WITHIN A WITNESS'S EVIDENCE, OR BETWEEN THE EVIDENCE OF DIFFERENT WITNESSES

35. The Trial Chamber has a discretion to accept a witness's evidence notwithstanding inconsistencies with the witness's prior statements or the evidence of other witnesses.[14] In assessing the evidence, the Trial Chamber may accept some parts of a witness's evidence and reject other parts.[15]

36. In particular, where the evidence of a witness relates to events that occurred years before the trial, the Trial Chamber should *not* treat "minor discrepancies between the evidence

---

[12] *Prosecutor v. Fofana,* SCSL-04-14-T-371, 'Appeal against Decision refusing Bail', ("***Fofana* Appeal Decision on Bail**"), Appeals Chamber, 11 March 2005.

[13] *Prosecutor v. Kupreškić et al.* , IT-95-16-A, "Appeal Judgement", ("***Kupreškić* Appeal Judgment**"), App. Ch., 23 October 2001, para. 334; *Prosecutor v. Rutaganda,* ICTR-96-3-A, "Judgement," ("***Rutaganda* Appeal Judgment**") Appeals Chamber, 26 May 2003., para. 207 ; *Prosecutor v. Sesay et al.,* SCSL-04-15-T, "Ruling on Gbao Application to Exclude Evidence of Prosecution Witness Mr. Koker", ("***Sesay* Ruling to Exclude Evidence**") Trial Chamber, 23 May 2005, para. 4; *Fofana* Appeal Decision on Bail, paras 22-24.

[14] *Prosecutor v. Delalić et al. (Čelebići case),* IT-96-21-A, "Judgement", ("***Čelebići* Appeal Judgment**") Appeals Chamber, 20 February 2001, para. 497; *Kupreškić* Appeal Judgment, paras 31 and 156; *Prosecutor v. Kajelijeli,* ICTR-98-44A-A, "Judgement," ("***Kajelijeli* Appeal Judgment**") Appeals Chamber, 23 May 2005, paras. 96-97; *Prosecutor v. Semanza,* ICTR-97-20-A, "Judgement", ("***Semanza* Appeal Judgment**") Appeals Chamber, 20 May 2005, para. 224; *Prosecutor v. Limaj et al.,* IT-03-66-T, "Judgement", ("***Limaj* Trial Judgment**") Trial Chamber, 30 November 2005, paras 12, 543.

[15] *Prosecutor v. Strugar,* IT-01-42-T, "Judgement", ("***Strugar* Trial Judgement**") Trial Chamber, 31 January 2005, para. 7; *Kupreškić* Appeal Judgment, paras 332-333; *Prosecutor v. Kunarac et al.,* IT-96-23, IT-96-23/1-A, "Appeal Judgement", ("***Kunarac* Appeal Judgment**") Appeal Chamber, 12 June 2002, para. 228.

of various witnesses, or between the evidence of a particular witness and a statement previously made by that witness, as discrediting their evidence where that witness had nevertheless recounted the essence of the incident charged in acceptable detail."[16] Lack of detailed memory on the part of a witness in relation to peripheral matters should not in general be regarded as necessarily discrediting the evidence.[17]

37. Thus, the Appeals Chamber of the ICTY has held that "[f]actors such as the passage of time between the events and the testimony of the witness, the possible influence of third persons, discrepancies, or the existence of stressful conditions at the time the events took place do not automatically exclude the Trial Chamber from relying on the evidence".[18]

38. The case law acknowledges in particular:

1) that "... where the witness is testifying in relation to repetitive, continuous or traumatic events, it is not always reasonable to expect witnesses to recall with precision the details, such as exact date or time, and/or sequence of the events to which they testify",[19] and that such circumstances may impair the ability of such witnesses to express themselves clearly or present a full account of their experiences in a judicial context.[20]
2) that "it lies in the nature of criminal proceedings that a witness may be asked different questions at trial than he was asked in prior interviews and that he may remember additional details when specifically asked in court";[21]
3) that "[a] witness may also forget some matter or become confused";[22]
4) that while there may be cases in which the trauma experienced by a witness may make that person unreliable as a witness, there is no recognized rule of evidence that traumatic circumstances render a witness's evidence unreliable, and, if the Trial Chamber is to treat a witness as unreliable due to "the traumatic context, it must demonstrate this *in concreto*

---

[16] ***Blagojević and Jokić* Trial Judgment**, para. 23, *Prosecutor v. Krnojelac*, IT-97-25-T, "Judgement", ("Krnojelac Trial Judgment") Trial Chamber, 15 March 2002, para. 69 (emphasis added).
[17] Ibid.
18 Kupreškić Appeal Judgment, *para. 31.*
[19] *Prosecutor v. Simić et al.*, IT-95-9-T, "Judgement", ("***Simić* Trial Judgment**") Trial Chamber, 17 October 2003, para. 22.
[20] *Čelebići* Trial Judgment, para. 595.
[21] *Prosecutor v. Naletilić and Martinović,* IT-98-34-T, "Judgement", ("*Naletilić* Trial Judgment") Trial Chamber, 31 March 2003, para 10; *Prosecutor v. Vasiljević,* IT-98-32-T, "Judgement", ("*Vasiljević* Trial Judgment") Trial Chamber, 29 November 2002, para. 21; *Strugar* Trial Judgment, para. 8.
[22] *Strugar* Trial Judgment, para. 8.

through a reasoned opinion adequately balancing all the relevant factors;[23] and

5) that where a witness is testifying about extremely traumatic events, any observation they made at the time may have been affected by stress and fear."[24]

39. These factors are taken into account when assessing the credibility of witnesses.[25]

40. In cases of *repeated* contradictions within a witness' testimony, the evidence can still be relied on if it has been sufficiently corroborated.[26]

CORROBORATION IS NOT REQUIRED

41. The Trial Chamber may rely on the testimony of a single witness as proof of a material fact;[27] corroboration is not required although it may go to weight,[28] and absence of corroboration may be particularly significant in the case of identification evidence.[29] The uncorroborated testimony of a single witness may be sufficient to establish the presence of the accused at the scene of a crime,[30] and indeed, the Appeals Chamber of the ICTY has confirmed that an accused may even be *convicted* on the basis of the evidence of a single witness, although such evidence must be assessed with the appropriate caution.[31]

ASSESSING THE CREDIBILITY AND RELIABILITY OF WITNESSES

42. In addition to the matters referred to above, in assessing the credibility and reliability of

---

[23] *Kunarac* Appeal Judgment, para. 324; see also *Prosecutor v. Kayishema,* ICTR-95-1-T, "Judgement and Sentence", ("***Kayishema* Trial Judgment**") Trial Chamber, 21 May 1999, paras 73-75.
[24] *Limaj* Trial Judgment, para. 15.
[25] *Simić* Trial Judgment, para. 22; *Strugar* Trial Judgment, para. 8; *Limaj* Trial Judgment paras 12, 543.
[26] *Prosecutor v. Halilović* , IT-01-48-T, "Judgement", ("***Halilović* Trial Judgment**") Trial Chamber, 16 November 2005, para. 17.
[27] Other, perhaps, than in the case of the testimony of a child witness not given under solemn declaration: *Kupreškić* Appeal Judgment, para. 33.
[28] *Prosecutor v. Tadić*, IT-94-1-A, "Judgement", ("***Tadić* Appeal Judgment**") Appeals Chamber, 15 July 1999, para. 65; *Čelebići* Appeal Judgment, para. 507; *Prosecutor v. Aleksovski*, IT-95-14/1-A, "Judgement", ("***Aleksovski* Appeal Judgment**") Appeals Chamber, 24 March 2000 , paras 62-63; *Kunarac* Appeal Judgement, paras. 268 (and paras. 264-271 generally); *Kupreškić* Appeal Judgment, para. 33; *Kajelijeli* Appeal Judgement, para. 170 (citing cases); *Prosecutor v. Rutaganda,* ICTR-96-3-T, T. Ch. I. 6, "Trial Judgement and Sentence", ("***Rutaganda* Trial Judgment**") Trial Chamber, December 1999, para. 18; *Čelebići* Trial Judgment, para. 594; *Prosecutor v. Akayesu,* ICTR-96-4-T, "Judgement," ("**Akayesu Trial Judgement**") Trial Chamber, 2 September 1998, paras. 132-136; *Kayishema and Ruzindana* Trial Judgement, para. 80; *Simić* Trial Judgment, para. 25; *Strugar* Trial Judgment, para. 9.
[29] *Kupreškić* Appeal Judgment, paras 34, 220.
[30] *Kajelijeli* Appeal Judgement, paras. 96-97.
[31] *Kordic and Prosecutor v. Kordić and Čerkez* , IT-95-14/2-A, "Judgement", ("*Kordić and Čerkez*") Appeals Chamber, 17 December 2004, para. 274 (emphasis added). *Halilović* Trial Judgment, para. 18.

witnesses, the Trial Chamber may have regard to matters such as the following:

1) the fact that witnesses who do not have a high level of education may have difficulties in identifying and testifying to exhibits such as maps, and may have difficulties in testifying to dates, times, distances, colours and motor vehicles;[32]
2) the fact that the inability of witnesses to identify correctly types of weapons or the nature of injuries inflicted on a victim may be due to the witness's lack of knowledge of weapons or physiology, rather than any unreliability as a witness;[33]
3) the fact that human memory degenerates over time[34] (and that peripheral details may be forgotten over time, even if memories of core details remain vivid);
4) the fact that witnesses may have difficulties in testifying through an interpreter, or that discrepancies in a witness statement given via an interpreter may be due to problems of interpretation;[35]
5) the fact that "a significant number of witnesses requested protective measures at trial, and expressed concerns for their lives and those of their family";[36]
6) the fact that there is no reason why a person suffering from post-traumatic stress syndrome (PTSD) cannot be a perfectly reliable witness;[37] survivors of such traumatic experiences cannot however be expected to recall the precise minutiae of events such as exact dates and times, and their inability to do so may in certain circumstances indicate truthfulness and lack of interference with the witness;[38]
7) the fact that discrepancies between a witness's testimony and the witness's prior statement(s) may be due to a variety of factors, and do not necessarily indicate that the witness is not credible or reliable, such other factors include failings on the part of the prosecution investigator, translation problems, and the fact that witness statements are not made under solemn declaration before a judicial officer; thus, the Trial Chamber may attach greater probative value to the witness's oral testimony in court which has been

---

[32] *Rutaganda* Trial Judgment, para. 23.
[33] Ibid, paras. 334-335.
[34] *Akayesu* Trial Judgement, paras 140, 454-455.
[35] *Rutaganda* Trial Judgment, paras 23, 334-335; *Akayesu* Trial Judgment, paras 145-154.
[36] *Limaj* Trial Judgment, para. 15.
[37] ***Kupreškić*** Appeal Judgement, para. 171; *Prosecutor v. Furundžija*, ICTY IT-95-17/1-T, "Judgement," ("***Furundžija* Trial Judgment**"), 10 December 1998, para. 109.
[38] *Furundžija* Trial Judgment, para. 113 (and see paras. 110 to 116 generally); *Akayesu* Trial Judgment, paras 142-144, 299.

subject to the test of cross examination;[39] and

8) the fact that cultural factors of loyalty and honour may also have affected the witnesses' evidence as to the events.[40]

HEARSAY EVIDENCE

43. Rule 89(C) gives the Chamber a broad discretion to admit relevant hearsay evidence,[41] that is, a statement of a person made otherwise than in the proceedings in which it is tendered, that is nevertheless tendered in those proceedings in order to establish the truth of what that person says.[42] This applies even when the evidence cannot be examined at its source or when it is not corroborated by direct evidence.[43] Proceedings in this legal system are conducted before professional judges who possess the necessary ability to begin by hearing hearsay evidence and then to evaluate it.[44] In the context of armed conflicts where thousands of people are displaced, detained or even killed, it can be expected that the witnesses will refer to events which others, and not they themselves, experienced, although such evidence must be considered on the basis of parity between the parties and on respect for the rights of the accused as expressed in internationally recognised standards.[45]

CIRCUMSTANTIAL EVIDENCE

44. Circumstantial evidence is admissible where it is in the interests of justice to admit it, [46] and is often used to establish the *mens rea* of an accused. If there is more than one conclusion which is reasonably open from the evidence, these conclusions must all be

---

[39] *Kayishema* Trial Judgment, paras 76-80; *Akayesu* Trial Judgment, para. 137; *Rutaganda* Trial Judgment, para. 19.
[40] *Limaj* Trial Judgment, para. 15.
[41] ***Aleksovski* Appeal Decision on Evidence,** para. 15; *Prosecutor v. Blaškić*, IT-95-14-T, "Decision on Standing Objection of the Defence to the Admission of Hearsay with no Inquiry as to its Reliability," (**"*Blaškić* Decision on Admission of Hearsay"**) Trial Chamber, 21 January 1998, para. 10; *Prosecutor v. Tadić*, IT-94-1-T "Decision on Defence Motion on Hearsay" (**Tadić Decision on Hearsay"**), 5 August 1996, paras. 7, 17 ; *Kordić and Čerkez* Appeal Judgment, paras 281, 282.
[42] ***Aleksovski* Appeal Decision on Evidence,** para. 15; ***Blaškić* Decision on Admission of Hearsay**, para. 10; **Tadić Decision on Hearsay**, paras 7, 17 ; *Kordić and Čerkez* Appeal Judgment, paras 281, 282.
[43] *Simić* Trial Judgment, para. 23.
[44] ***Aleksovski* Appeal Decision on Evidence**, para. 15; ***Blaškić* Decision on Admission of Hearsay**, para. 10; **Tadić Decision on Hearsay**, paras. 7, 17.
[45] ***Blaškić* Decision on Admission of Hearsay**, para. 4.
[46] *Simić* Trial Judgment, para. 27.

consistent with the guilt of an accused.[47]

INSIDER WITNESSES

45. In any trial in which an 'insider' provides evidence it is for the Tribunal of fact to assess what, if any, impact the conditions surrounding the witness have affected the reliability and credibility of the testimony. For instance, the witness Albert Nallo was a very senior member of the CDF; consequently, upon him making the decision to testify if it was appropriate, upon an objective assessment of his security position that he be provided with protection. In the difficult task of evaluating the evidence, due regard can be had to this "context of fear."[48]

46. "Insiders witnesses play a crucial role in the trials in international criminal courts and are recognised as a pivotal source of evidence. In *Prosecutor v. Hassan Ngeze and Barayagwiza,* the ICTY Trial Chamber considered that the testimony of an insider was in the "the interests of justice."[49] Thus, the fact that such insiders have commonly been granted guarantees of non-prosecution or mitigation is not considered as undermining the credibility of their testimonies.

PAYMENTS TO WITNESSES

47. During the course of the trial, an issue was raised in respect of the payment of money to witnesses; as these were payments made by the Special Court, in accordance with its standard practices that are applicable to both Prosecution and Defence witnesses alike, there can be no suggestion that the payments influence the testimony of the witnesses.

EXPERT WITNESSES

48. Neither the Statute nor the Rules oblige a Trial Chamber to require medical reports or other scientific evidence as proof of a material fact.[50] In relation to experts, it is for the

---

[47] *Halilović* Trial Judgment, para. 15; *Kordić and Čerkez* Appeal Judgment, para. 289; *Delalić* Appeal Judgment, para. 458; *Simić* Trial Judgment, para. 27.
[48] *Limaj* Trial Judgment, para. 15.
[49] *Prosecutor v. Hassan Ngeze and Barayagwiza*, ICTR-99-52-I "Decision on the Defence Request to Hear the Evidence of Witness Y by Deposition," Trial Chamber, 10 April 2003, para. 7.
[50] *Aleksovski* Appeal Judgment, para. 62.

Court to determine whether the factual basis for an expert opinion is truthful and that determination is made in the light of all the evidence given.[51] Furthermore, the weight to be attributed to expert evidence is to be determined by the Trial Chamber in light of all the evidence adduced.[52] According to the jurisprudence, the factors to consider when assessing the probative value of an expert's oral and written evidence are the professional competence of the expert, the methodologies used and the credibility of the findings made in light of these factors and other evidence accepted by the Trial Chamber.[53] The Prosecution stresses that "[...] the expert may validly present his submissions on the issue of subordination, which naturally falls within the field of expertise of a military expert, and that, in this context, a military expert may express his opinion on matters of law".[54].

DOCUMENTARY EVIDENCE

49. The weight to be attached to documents admitted into evidence is assessed when considering the entire evidence at the end of the trial.[55] If the original of a document is unavailable then copies may be relied upon.[56]

RELEVANCE OF THE EVIDENCE OF ONE ACCUSED IN RELATION TO OTHER ACCUSED

50. As a general principle, the Trial Chamber should consider all of the evidence in a case in relation to all of the accused in the case, so far as it is relevant. It is quite common in a joint trial for the evidence of one accused to be prejudicial to another accused. This does not mean that the evidence of each Accused cannot be taken into account in relation to each of the other accused. The ability of the Trial Chamber in such cases to consider the

---

[51] *Prosecutor* v. *Galić*, IT-98-29-T, "Decision on the Expert Witness Statements Submitted by the Defence", ("***Galić* Decision on Expert Witness**") Trial Chamber, 27 January 2003, p. 4; *Čelebići* Appeal Judgment, para. 594.

[52] ***Galić* Decision on Expert Witness**, p. 4; *Prosecutor* v. *Brđanin,* IT-99-36-T " Decision on Prosecution's Submission of Statement of Expert Witness Ewan Brown," Trial Chamber, 3 June 2003, p. 4.

[53] *Blagojević* Trial Judgment, para. 27endorsing *Vasiljević* Trial Chamber's view.

[54] *Prosecutor* v. *Hadžihasanović and Kubura*, IT-01-47-T, T "Decision on Report of Prosecution Expert Klaus Reinhardt", Trial Chamber 11 February 2004, p. 4.

55 Prosecutor v. Simić et al., IT-95-9-T, "Reasons for Decision on Admission of "Variant A&B" Document," Trial Chamber, 22 May 2002.

para. 12.

[56] *Fofana* Appeal Decision on Bail, para. 24.

evidence as a whole in relation to all of the Accused enables it to get to the truth of the matter in relation to all of the accused.[57]

51. Thus, a witness presented by one Accused can give evidence against a co-Accused.[58] Similarly, evidence brought to light in the cross-examination of a witness by one Accused can be taken into account to the prejudice of another Accused, although the other Accused will have the right to further examine that witness to clarify the matter.[59]

PART II LAW APPLICABLE TO THE CHARGES IN THE INDICTMENT AND EVIDENTIARY BASIS

I. CRIMES UNDER ARTICLE 2 OF THE STATUTE

1. CONTEXTUAL ELEMENTS

52. This Trial Chamber has previously defined the contextual elements that must be proved in relation to any crime against humanity as follows: (a) there must be an attack; (b) the acts of the accused must be part of the attack; (c) the attack must be widespread or systematic; (d); the attack must be directed against any civilian population; (e) the accused must know that his acts constitute part of a pattern of widespread or systematic crimes directed against a civilian population.[60]

53. An attack is not limited to the use of armed force, but encompasses any mistreatment of the civilian population.[61] The phrase "widespread" refers to the scale of the attack and the number of victims, while the phrase "systematic" refers to the organized nature of

---

[57] See, for instance, *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, "Decision on Request for Severance of Three Accused", ("Bagosora Decision") Trial Chamber, 27 March 2006, para. 5 referring to earlier relevant case law of the ICTY and ICTR.

[58] See *Prosecutor v. Kvočka et al.*, IT-98-30-PT, "Decision on the 'Request to the Trial Chamber to Issue a Decision on Use of Rule 90 H'", Trial Chamber, 11 January 2001, p. 3, in which the Trial Chamber rejected a defence motion seeking to limit Prosecution cross-examination of defence witnesses to questions relating to the accused who called that witness. The Trial Chamber considered "that a witness presented by an accused may give evidence against one of his co-accused, so that the co-accused has a right to cross-examine that witness, and further that to prohibit all cross-examination by a co-accused as requested in the Motion could exclude relevant evidence".

[59] *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, "Decision on the Defence Motion for the Re-Examination of Witness DE", Trial Chamber, 19 August 1998, para. 15.

[60] *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-T-473, "Decision on Motions for Judgment of Acquittal, Pursuant to Rule 98," ("*Norman* Decision on Motion for Acquittal") Trial Chamber, 21 October 2005, para. 55; *Prosecutor v. Brima, Kamara, Kanu,* SCSL-04-16-T-469, "Decision on Defence Motions for Acquittal Pursuant to Rule 98," ("*Brima* Decision on Motion for Acquittal") Trial Chamber, 31 March 2006, para. 42.

[61] *Limaj* Trial Judgment, para. 182.

the acts of violence and the improbability of their random occurrence.[62] The attack must be *either* widespread *or* systematic, i.e. the requirement is disjunctive.[63] It is the attack itself and not the individual acts of the accused that must be widespread or systematic.[64] When establishing that there was an attack against a particular civilian population, it is irrelevant whether the other side in a conflict also committed crimes against a civilian population.[65]

54. As for the necessary nexus between the act of the accused and the attack, the acts of the accused need only form part of the attack, viewed objectively,[66] by their nature or consequences,[67] and "all other conditions being met, a single or limited number of acts on his or her part would qualify as a crime against humanity, unless those acts may be said to be isolated or random."[68]

55. The civilian population must be the *primary* object of the attack.[69] This Trial Chamber has adopted a broad interpretation of the term "civilian population". Such an interpretation is consistent with recent jurisprudence.[70] The use of the word "population" does not imply that the entire population of the geographical entity in which the attack took place was subjected to that attack. Rather, it must be shown that that a sufficient number of individuals were targeted, or that they were targeted in such a

---

[62] *Norman* Decision on Motion for Acquittal, para. 56; *Blaškić* Appeal Judgment, para. 101.

[63] *Kunarac* Appeal Judgment, para. 95: The ICTY Appeals Chamber has stated: "the 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."; see also *Kordić and Čerkez* Appeal Judgment para. 93.

[64] *Blaškić* Appeal Judgment, para. 101.

[65] *Kunarac* Appeal Judgment, paras 87-88.

[66] *Limaj* Trial Judgment, para. 188.

[67] *Brđanin* Trial Judgment, para. 132.

[68] Ibid.

[69] *Norman* Decision on Motion for Acquittal, para. 57.

[70] See e.g. *Limaj* Trial Judgment, para. 186: "The terms "civilian population" must be interpreted broadly and refers to a population that is predominantly civilian in nature. A population may qualify as "civilian " even if non-civilians are among it, as long as it is predominantly civilian. The presence within a population of members of resistance armed groups, or former combatants who have laid down their arms, does not as such alter its civilian nature. As a result, the definition of a "civilian" is expansive and includes individuals who at one time performed acts of resistance, as well as persons who were *hors de combat* when the crime was committed. Relevant to the determination whether the presence of soldiers within a civilian population deprives the population of its civilian character are the number of soldiers as well as whether they are on leave. There is no requirement that the victims are linked to any particular side of the conflict."

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.[71] Furthermore, a crime against humanity may be committed against members of a civilian population (including military persons not taking part in hostilities) associated with the same political or military group as the perpetrators.[72]

56. The *mens rea* element is satisfied if the accused had knowledge of the general context in which his acts occurred and of the nexus between his acts and that context,[73] in addition to the requisite *mens rea* for the underlying offence or offences with which he is charged.[74] The accused need not have known the details of the attack, neither does he need to approve of the context in which his acts occurred or to share the purpose or goal behind the attack.[75] The accused needs only to have understood the "greater dimension of criminal conduct".[76] The accused's motives are irrelevant,[77] so that a crime against humanity may be committed for purely personal reasons.[78] It is also irrelevant whether the accused intended his acts to be directed against the targeted population or merely against his victim.[79]

2. EVIDENTIARY BASIS

---

[71] *Kunarac* Appeal Judgment, para. 90; *Limaj* Trial Judgment, para. 187.

[72] This approach is consistent with the jurisprudence of the courts established after the Second World War, which held in a number of cases that *military persons* could be the victims of crimes against humanity. *R.*, Germany, Supreme Court in the British Occupied Zone, Judgment, 27 July 1948, in *Entscheidungen*, I; *P.*, Germany, Supreme Court (*Oberster Gerichtshof*) in the British Occupied Zone, Judgment, 20 May 1948 in *Entscheidungen*, I; *H.case*, Germany, Supreme Court in the British Occupied Zone, Judgment, 18 October 1949, in *Entscheidungen*, II; these cases are quoted in Antonio Cassese, *International Criminal Law*, Oxford University Press, 2003, pp. 86-87. It is noteworthy that the military personnel victim of a crime against humanity can belong to *the same party* as the perpetrator. For example in R., members of the *German* NSDAP and NSKK were found guilty of crime against humanity, for their crime against a *German* non-commissioned officer in uniform and members of the NSDAP and of the SA. *R.*, Germany, Supreme Court in the British Occupied Zone, Judgment, 27 July 1948, in *Entscheidungen*, I. Also, in *P. and others*, members of *German troops* who had court martialled and sentenced three *German marines* to death for desertion were found guilty of complicity in a crime against humanity. *R.*, Germany, Supreme Court in the British Occupied Zone, Judgment, 27 July 1948, in *Entscheidungen*, I.

[73] *Kunarac* Appeal Judgment, para. 102.

[74] *Kunarac* Appeal Judgment, para. 102.

[75] *Kordić & Čerkez,* Appeal Judgment, para. 99; *Kunarac* Appeal Judgment, para. 103 (footnotes omitted); *Blaškić* Appeal Judgment, para. 124.

[76] *Prosecutor v. Bagilishema,* ICTR-95-1A-T, "Judgement", ("Trial Judgment") Trial Chamber, 7 June 2001, para. 94; *Limaj* Trial Judgment, para. 190.

[77] *Tadić* Appeal Judgment, paras 248-272; *Kunarac* Appeal Judgment, para. 103.

[78] *Kordić & Čerkez,* Appeal Judgment, para. 99; *Kunarac* Appeal Judgment, para. 103 (footnotes omitted); *Blaškić* Appeal Judgment, para. 124.

[79] *Kunarac* Appeal Judgment, para. 103.

The attacks

57. The Prosecution has demonstrated overwhelming evidence of a pattern of CDF attacks and campaigns spreading throughout Sierra Leone in identified geographic locations. The Kamajors, who were the dominant force within the CDF, had offensive and counter-offensive capacity within five of the twelve districts of Sierra Leone, namely, Bo, Kenema, Moyamba, Pujehun, and Bonthe. CDF campaigns were massive, frequent, large scale actions, directed against multiple victims. The civilian population was the primary object of the attack and civilians were terrorized and often executed based on the flimsiest of allegations.[80] Confronted with this alarming situation, international humanitarian organizations rightly recognized that the CDF was employing a strategy of attacks on the civilian population.[81] The attacks were intended to intimidate the civilian population into leaving their homes and villages, and punish civilians who did not fully support the CDF.[82]

Civilian population as primary object of the attack

58. The Prosecution does not dispute that the CDF was fighting against the RUF and the AFRC and therefore was involved in combat against these factions. However, for the attacks mentioned above and in the Indictment, the evidence shows that their purpose was to target *all* persons supposedly belonging to the RUF and AFRC, including the persons not taking part in hostilities, suspected to have supported, sympathized with or simply failed to actively resist the combined RUF/AFRC forces. These persons were termed "collaborators" or "rebels." As a matter of fact, the CDF leaders adopted a very broad definition of 'rebel' that included persons not taking part in hostilities and thus overlapped with the definition of "collaborators."[83] Such targeted persons included Police officers - i.e. civilians not participating to the hostilities and in charge of the law

[80] Exhibit 86: Situation Report Dated 16th November 1997 (Confidential); TF2-116, Transcript 9 November 2004, pp. 21-23.
[81] Exhibit 104: Report of the UN Secretary General Dated 9th June 1998; Exhibit 105 (A)(B): Report of the UN Secretary General Dated 12th August 1998.
[82] TF2-014, Transcript 10 March 2005, p. 37; TF2-082, Transcript 16 September 2004, pp. 7, 39, 48-49.
[83] TF2-014, Transcript, 10 March 2004, p. 37.

enforcement - because they had continued to work under the junta regime.[84] People who simply refused to leave the AFRC/RUF zones were also considered as "collaborators" or "rebels." Relatives, agents and friends of RUF or AFRC members were targeted as well and indifferently qualified as "collaborators" or "rebels." Other categories of civilians targeted included RUF and AFRC combatants "*hors de combat,*" in particular when captured, wounded or sick, and even ex-combatants of the same force as the three Accused. For example, the evidence indicates that SS camp, located 5 miles from Kenema became a place for summary executions of captured combatants and suspected collaborators.[85] The fact that the Civil Defence Force may have wanted to defend part of the civilian population of Sierra Leone does not change the fact that the CDF and the Kamajors militia were targeting and attacking another part of the civilian population of Sierra Leone. Indeed, as set out by the jurisprudence, the word "population" does not imply that the entire population of the geographical entity in which the attack took place was subjected to that attack. These civilians were not randomly selected, but designated as suspected "collaborators" or "rebels".

Pattern of Attack

59. The evidence shows that the attacks followed a clear pattern, spreading from Bonthe District throughout the country. While it is only necessary to prove that the crimes were systematic *or* widespread, the Prosecution contends that their widespread nature has been established in the body of the entire evidence with respect to all the major crime base locations namely, Koribondo, Bo, Kenema, Tongo, Blama, Moyamba and Bonthe and surrounding areas.[86]

60. The Prosecution led evidence to show that the attack on civilians were not random, and were not just committed by 'rogue elements.' On the contrary, the CDF adopted the tactic of attacks on the civilian population as an element of its overall military strategy.

---

[84] Ibid., 76.
[85] TF2-223, Transcript, 28 September 2004, Closed Session, p. 109-110.
[86] See generally TF2-001, TF2-005, TF2-006, TF2-007, TF2-008, TF2-013, TF2-014, TF2-015, TF2-017, TF2-030, TF2-033, TF2-035, TF2-040, TF2-041, TF2-042, TF2-056, TF2-058, TF2-057, TF2-067, TF2-068, TF2-071, TF2-088, TF2-108, TF2109, TF2-119, TF2-133, TF2-134, TF2-140, TF2-151, TF2-156, TF2-157, TF2-165, TF2-167, TF2-170, TF2-187, TF2-188, TF2-189, TF2-201, TF2-222 and TF2-223.

For example, Witness TF2-006, a farmer, was chased by Kamajors in Bo and saw them amputate the limbs of five persons (civilians) before he was personally attacked.[87]

61. TF2-073, a farmer from Sembehun, described how Kamajors came to his house, saying they were sent by their High Priest, Kondewa, and had come from Talia, Tihun, Gbangbatoke and other villages. The witness received a report of a brutal murder of two traders from a village called Kongonani, by local Kamajors, and attended a meeting where eight Kamajors confessed to killings.[88] TF2-151, a tailor from Kenema, witnessed the killing of a boy and was beaten up by Kamajors.[89] TF2-086 described how she was attacked and wounded by Kamajors in Bonthe.[90]

62. The danger posed by the CDF to the Koribundo and Tongo civilian populations was sufficiently dire that the civilian population was forced to choose between either protecting themselves against the CDF attacks or abandoning their homes. The latter was the rational and realistic option open to the civilians living in those areas. In the case of the Tongo civilians, hundreds were compulsorily removed from the township under gunpoint and forced on a long journey to Panguma, the Kamajor Headquarter, where they were presented to Kamajor Commander BJK Sei.[91]

63. The Prosecution submits that evidence of widespread and systematic attacks by the CDF, particularly the Kamjors has been demonstrated through documents of the United Nations tendered as exhibits by the Prosecution.[92] Exhibit 105 (A) noted the CDF accusation of human rights violations, looting, and confiscation of vehicles. This piece of evidence corroborates the evidence of the Prosecution witnesses on the crime of looting and terrorizing the civilian population.[93]

64. Exhibit 106, A UN Report, demonstrates the armed deployment of under age boys and continued initiation into the CDF. Exhibit 107, another UN Report, also noted the frequent reports that children were being sent into combat environment notwithstanding

---

[87] TF2-006, Transcript 9 February 2005, pp. 10-11.
[88] TF2-073, Transcript 2 March 2005, pp. 34, 46, 49.
[89] TF2-151, Transcript 22 September 2004, pp. 15-17.
[90] TF2-086, Transcript 8 November 2004, pp. 94-95.
[91] TF2-035, Transcript 14 February 2005, p. 12-14; Doris Kelfalla, Transcript 17 October 2006, pp 43-45.
[92] Exhibits P105-P108: Report of the UN Secretary General dated: 16th October 1998, 16th December 1998, 4th June 1999.
[93] TF2-014, TF2-017, TF2-022, TF2-032, TF2-033, TF2-053, TF2-071, TF2-073, TF2-082, TF2-144.

indications from ECOMOG commanders that they would not allow CDF children to serve under them.

65. UN Report, Exhibit 108 (A), contained a narrative of a woman from Moyamba district who provided detailed information on the attack on Bradford by Kamajors in which at least six civilians were believed to have lost their lives. This piece of information corroborates Prosecution evidence of witnesses TF2-014, TF2-167, and TF2-173.
66. Human Rights Watch also found credible reports of CDF, particularly Kamajors, directing attacks against unarmed civilians. Exhibit 110 (A), a HRW report, documented numerous abuses including killing and torture by members of the CDF as well as obstructing humanitarian assistance by demanding money or compensation at road blocks. Humanitarian Agency vehicles were commandeered by Kamajors and aid workers were occasionally detained. Many witnesses of abuses committed by Kamajors spoke of the grotesque nature of the killings, at times, including disembowelment followed by consumption of vital organs such as the heart. Kamajors specifically targeted RUF/AFRC and their civilian supporters. Exhibit 110, another HRW report, identified the CDF as one of the forces that were the principal perpetrators of Human Rights Abuses in Sierra Leone.
67. Exhibit 111 (C), entitled "From Combat to Community-Women and Girls of Sierra Leone" estimated number of child soldiers in each fighting force. The CDF is estimated to have had 17, 216 child soldiers and 1, 722 girl soldiers.

Specific Attacks

68. The Prosecution has led evidence to show that the CDF, particularly Kamajors knowingly conducted systematic attacks on civilians covering a wide geographic perimeter spanning five of the twelve districts of Sierra Leone. The evidence has shown that perceived collaborators were punished, terrorized and often executed, during the relevant period of the Indictment.

Tongo Attacks

69. The evidence demonstrates that the town of Tongo was attacked by Kamajors on at least three occasions but was only captured on the third attempt.[94] The commanders that led the third attack were Kailondo, who attacked from Tongola flank, Siaka Lahia who attacked from the Mavehun flank, Keikula Amara, who attacked from the Tongo Highway and Lansana Bockarie who was with the standby team at Gelema.[95]

70. According to Prosecution witness TF2-015, when Kamajors attacked Tongo, the civilians went to the NDMC HQ. The Kamajors were firing everywhere – three women were hit and the witness was struck in the stomach. The Kamajors ordered the civilians to go to Bumie and "some men were fired in amongst the people in the lines as we were going (to Bumie)." At Bumie, near a house, the men and the women were separated. According to the witness: "If they see anyone they want, they will just remove him from the line and took him and kill him." Five people were killed behind the house."[96]

71. The same witness gave evidence that at Kamboma the Kamajors said "anybody that passed by Kamboma should be killed...We pleaded to them. We told them we were civilians. They said no. They said that Kamajors had ordered them to kill anybody that passed through Kamboma." Fifteen people were put into two lines and the Kamajors started killing. The witness said that "[A]nybody that is fired, he rolled and goes to that swamp." They shot all the people in the line, except eight. The commander came and said "not to spoil cartridges, it's an ambush they are working on and they should use knives. I was struck on the back of the neck, fell down and I rolled and fell on other dead corpses."[97]

72. According to another Prosecution witness, TF2-027, when the Kamajors attacked civilians went to a big field at NDMC. The rebels left and the Kamajors came to the headquarters. The witness saw a Kamajor with a cutlass chopping at people who were lying on the field. Two were hacked.[98] Other Prosecution witnesses gave evidence of their horrific experiences in the hands of the Kamajors during the Tongo attack.[99]

---

[94] Siaka Lahai, Transcript 17 May 2006 p. 5.
[95] Ibid., pp. 7-8.
[96] TF2-015, Transcript 11 February 2005, pp. 6-8.
[97] Ibid., pp. 12-15.
[98] Ibid., p. 46.
[99] TF2- TF2-013, TF2-015, TF2-016, TF2-022, TF2-027, TF2-035, TF2-047, TF2-048, and TF2-144.

Koribundo Attacks

73. The Prosecution led evidence of Kamajor attacks on the town of Koribundo on the 13 February, 1998.[100] TF-082, Joe Timidie, Battalion Commander for the Koribundo attack, gave evidence of how he was instructed by Norman to capture Koribundo. He was told: "if he captures a rebel, he should kill the rebel and burn the place."[101] Timidie also testified that he attacked Koribindo and tried to stop other commanders on the ground from looting and burning the town but was told that the Pa (Norman) had ordered that the place be burnt and it is that order that they will obey.[102]
74. Prosecution witness TF2-159, testified that on a Sunday, during the Kamajor attack on Koribundo, he went to the Koribundo road junction, where he saw the Kamajors with five Limba people. The witness knew them as they used to sell palm wine. They were Sofiana, Sarrah, Momoh, Kamara and Karoma. The Kamajors said the five persons were junta. They were cut into pieces and some were shot with guns. Sarrah and Momoh had their heads cut off.[103]
75. On the following Monday, the witness left his hiding place in the bush, to go to the Kamajor headquarters in Koribundo, to see Joe Timedie. At headquarters he saw Kamajors singing, as they had captured eight people. There were five men and three women. The witness knew the women as the wives of soldiers – Amie, Jainaba and Esther. The witness said they "were singing on them, they were taking them to be killed." Witness followed the Kamajors along Blama Road, they were beating them and mutilating them and telling them they were going to be killed. Two of the women were killed by a stick ("right through them") and one by a gun (and by a cutlass, her head was cut off). The men, four were killed by a gun and one man by a cutlass to his neck. The witness saw them disembowel the women and place the entrails in a bucket. Their intestines were turned into a checkpoint.[104]

Bo Attacks

---

[100] TF2-008, TF2-012, TF2-032, TF2-082, TF2-157, TF2-159, TF2-162, TF2-176, TF2-190, TF2-198.
[101] TF2-082, Transcript 15 September 2004, pp. 8-10.
[102] Ibid., p. 35.
[103] TF2-159, Transcript 9 September 2004, p. 29-35.
[104] Ibid., pp. 35-38.

76. The Prosecution led evidence that the town of Bo was attacked on the 15 February 1998. Nineteen witnesses for the Prosecution gave evidence regarding the Kamajor attack on Bo.[105] TF2-001, a serving Police Officer, testified that on 15 February 1998, he was stationed in Bo.[106] The witness saw his colleague Freeman, a police corporal, shot by Kamajors when he was trying to climb a fence to get away from a group of Kamajors. He was hacked by the Kamajors and then dragged onto the road.[107] The witness returned to Bo town the next day and he saw Kamajors going towards new Gerihun to the Police barracks. The witness saw SI Vandy, of the Police Criminal Investigations Department (CID), walking in front of them. Vandy spoke to the Kamajors and he was hacked by a cutlass. The witness was about two hundred yards away. Vandy died and the Kamajors sung "Allahu Akbar."[108]
77. According to Nallo's evidence, when they attacked Bo town, the police were targeted. He said about the Police: "we killed them, those that we were able to see, we killed them."[109]
78. TF2-030 testified that on 22 February 1998, the witness was at home with her husband. The witness saw her husband surrounded by about fifteen Kamajors. Her husband ran away, about fifteen yards from the kitchen, to the swamp where he was chopped. The witness was in the parlour and the witness ran out to her husband who said to her: "Oh, my wife, they have killed me." Overnight her husband died.[110]
79. The Prosecution has led overwhelming evidence that Kamajors attacked the districts of Kenema,[111] Moyamba,[112] and Bonthe Town [113] in similar circumstances as those narrated above. Civilians were specifically targeted during the attacks.

Number of Victims

---

[105] TF2-001, TF2-005, TF2-006, TF2-007, TF2-008, TF2-011, TF2-014, TF2-017, TF2-030, TF2-056, TF2-057, TF2-067, TF2-088, TF2-119, TF2-140, TF2-156, TF2-190, TF2-201
[106] TF2-001, Transcript 14 February 2005, p. 70.
[107] Ibid., pp. 82-83.
[108] Ibid., pp. 85-87.
[109] TF2-014, Transcript 10 March 2005, p. 77.
[110] TF2-030, Transcript 25 November 2004, pp. 7-10.
[111] TF2-005, TF2-033, TF2-039, TF2-040, TF2-041, TF2-042, TF2-049, TF2-053, TF2-079, TF2-151, TF2-152, TF2-154, TF2-201, TF2-222, TF2-223.
[112] TF2-073, TF2-165, TF2-166, TF2-167, TF2-168, TF2-170, TF2-173, TF2-190.
[113] TF2-071, TF2-116, TF2-147.

80. The Prosecution submits that there is evidence, taken as a whole, from which it could be reasonably inferred that the totality of civilian casualty resulting from the Kamajor attacks was significantly high. For example, according to TF2-047, a Sanitary Officer in Tongo, on the day the Kamajors attacked he saw Kamajor Kamabote asked the crowd at the Tongo NDMC headquarters to point out rebels. Dr Blood was pointed out as a rebel who did not pay for rice. The witness said that Kamabote had Dr Blood sit down and he then chopped Dr. Blood on his neck.[114] The witness saw people with heads chopped off, disemboweled and he also said he saw Kamajors kill three people. Therefore he concluded that the Kamajors killed all the people.[115] A lady called Fatmata Kamara, was chopped to death with machete by Kamabote, for allegedly cooking for the Junta Forces.[116] The witness stated that he buried one hundred and fifty corpses. He also buried twenty five junta corpses that had been burnt with tyres at Olumatic.[117]

II. CRIMES UNDER ARTICLES 3 AND 4 OF THE STATUTE

81. The three Accused and all other members of the CDF armed faction engaged in fighting within Sierra Leone were required to comply with international humanitarian law and the laws and customs governing the conduct of armed conflict, including Common Article 3 to the Geneva Conventions of 1949, and Additional Protocol II. In the case of an armed conflict occurring in the territory of a High Contracting Party to the Geneva Convention or the Additional Protocol II, each Party to the conflict is bound to apply, as a minimum, the guarantees contained in Common Article 3 of the Geneva Conventions and Additional Protocol II.[118] In the present case, the State of Sierra Leone has been a High Contracting Party to the Geneva Conventions of 1949 and Additional Protocol II since 21 October 1986,[119] so it is indisputable that these legal instruments were in force during the period of the Indictment. The Appeals Chamber confirmed that the Trial Chamber

[114] TF2-047, Transcript 22 February 2005, pp. 51-52.
[115] Ibid., p. 58.
[116] Ibid, pp. 59-60.
[117] TF2-047, Transcript 22 February 2005, p. 66.
[118] Common Article 3 (1) to the Geneva Conventions and Article 1 (1) Additional Protocol I.
[119] *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-PT-117, "Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence," ("***Norman* Judicial Notice Decision**") Trial Chamber, 2 June 2004, Annex 1 (E).

correctly took judicial notice of the fact that an armed conflict took place on the territory of Sierra Leone from March 1991 to January 2002, a period that extends beyond that covered by the Indictment.[120] The Trial Chamber has also taken judicial notice of the fact that the CDF, RUF and AFRC were involved in armed conflict in Sierra Leone.[121] The evidence presented before the Court confirms this fact. Consequently, the CDF – as well as the other parties involved in the conflict in Sierra Leone- had to respect Common Article 3 of the Geneva Conventions of 1949 and Additional Protocol II. Furthermore, the guarantees contained in these provisions that appear in the Statute of the Special Court form part of customary international law, as does their criminalisation.[122]

GENERAL REQUIREMENTS

82. The existence of an armed conflict is a precondition to the applicability of Article 3 of the Statute. This Trial Chamber has ruled that "an armed conflict exists whenever there is resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state".[123] The Trial Chamber has taken judicial notice of the fact that the armed conflict in Sierra Leone occurred from March 1991 until January 2002.[124] The Appeals Chamber of the Special Court has found that it is immaterial whether the armed conflict is internal or international in nature; as recently noted by this Trial Chamber;[125] "the Court need only

---

[120] ***Norman* Judicial Notice Decision**, Annex 1 (A); *Prosecutor v. Fofana,* SCSL-04-14-T-398, 'Decision on Appeal against Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence', ("***Fofana* Appeal Decision on Judicial Notice**") Appeals Chamber, 16 May 2005, para. 40.
[121] ***Norman* Judicial Notice Decision**, Annex 1 (H); *Fofana* Appeal Decision on Judicial Notice, para. 40.
[122] Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules, Cambridge University Press, 2005, pp. 299-383 and 568-603.
[123] *Norman* Decision on Motion for Acquittal, para. 69. The Trial Chamber adopted the definition of an armed conflict of the ICTY Appeals Chamber in the *Tadić* case, see *Tadić* Jurisdiction Appeal Decision, para. 70. The ICTY Trial Chamber in the *Orić* case adopted the same definition, *Prosecutor v. Orić*, IT-03-68-T, "Judgement", ("***Orić* Trial Judgment**") Trial Chamber, 30 June 2006, para. 254.
[124] *Norman* Decision on Judicial Notice, Annex 1(A); *Norman* Decision Motion for Acquittal, para. 71.
[125] *Prosecutor v. Sesay, Kallon, Gbao*, "Decision on Defence Motion for Acquittal Pursuant to Rule 98," (*Sesay* Decision on Motion for Acquittal") Transcript, 25 October 2006, p.15.

be satisfied that an armed conflict existed and that the alleged violations were related to the armed conflict."[126]

83. As stated by this Trial Chamber, Common Article 3 applies to persons taking no active part in hostilities, which includes civilians, members of the armed forces who have laid down their arms, and those placed hors de combat by sickness, wounds, detention, or any other cause.[127] Additional Protocol II similarly protects all persons who do not take a direct part or who have ceased to take part in hostilities.[128] The accused must be aware of the civilian status of the victim.

84. A nexus between the acts of the accused and the armed conflict must be established, but this does not require a showing that the offence was committed while fighting was actually taking place or at the scene of combat. Furthermore, the armed conflict need not have been the cause of the commission of the crime but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed, or the purpose for which it was committed. The requirement would be fulfilled if the offence were committed in the aftermath of the fighting provided that it was committed in furtherance of or under the guise of the situation created by the fighting.[129]

85. Like Article 3 of the Statute, Article 4 reflects the fundamental distinction drawn in international humanitarian law between civilians and the military and the absolute prohibition of attacks against the former.[130] The Prosecution submits that the general requirements in relation to Article 3 apply.[131]

EVIDENTIARY BASIS

---

[126] *Prosecutor v. Fofana*, SCSL-04-14-PT-101, "Decision on Preliminary Motion on Lack of Jurisdiction Materiae, Nature of the Armed Conflict," ("***Fofana* Decision on Jurisdiction (Armed Conflict**")) Appeals Chamber, 25 May 2004, para. 25.

[127] *Čelebići* Appeal Judgment, paras. 124; *Norman* Decision on Motion for Acquittal, para. 70.

[128] *Norman* Decision on Motion for Acquittal, para. 70; *Akayesu* Trial Judgment, para. 629: "These phrases are so similar that, for the Chamber's purposes, they may be treated as synonymous."

[129] *Orić* Trial Judgment para. 256; *Brima* Decision on Motion for Acquittal, para. 44.

[130] See Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, S/2000/915, 4 October 2000, para. 16.

[131] *Brima* Decision on Motion for Acquittal, para. 46.

86. The Prosecution submits that it has established the required nexus under Articles 3 and 4 of the Statute. It has been shown that the crimes were closely related to the hostilities occurring in all parts of the areas controlled by the parties to the conflict.

87. The evidence demonstrates that the perpetrators were combatants, that is to say, that all perpetrators were Kamajor fighters. The evidence also demonstrates that the victims were non-combatants or persons hors de combat as set out in relation to the contextual elements for crimes against humanity above. Further, it has been established that the majority of the victims were suspected "Collaborators" which could include supporting the AFRC/RUF, or were targeted for their tribal affiliation.[132]

88. The evidence manifests that the criminal acts could be said to serve the ultimate goal of a military strategy of targeting civilians in order to induce them to leave, and to attack and terrorize and punish those suspected of not fully supporting the Kamajors in its conduct of the war.[133]

89. The liability of the three Accused arises in the context of their roles as National Coordinator (Chief Sam Hinga Norman) Director of war (Moinina Fofana) and High Priest (Allieu Kondewa). In these capacities and as described in Part III below, the Accused incur liability for the acts of the Kamajor fighters acting under their command and control.

CDF Strategic Command

90. Although the CDF did not have an ideological base, it had a clear top level strategic idea: to protect its homelands from the junta forces and regain control over territories occupied by the junta.

91. The CDF strategic command was located at Base Zero from the time of Norman's arrival in September 1997. Upon his arrival at Talia, an Advisory War Council was set up whose purpose was to provide strategic guidance to the CDF military command, be the link between the tribal chiefs and the CDF, and control recruitment and initiation into the CDF.[134] Having established the War Council, however, it had little if any power or

[132] TF2-030, Transcript 25 November 2004, p. 11; TF2-015, Transcript 11 February 2005, p. 66.
[133] TF2-079, Transcript 26 May 2005, p. 20.
[134] Exhibit P97: Expert Military Report, para. C-3.1.

influence over Norman and the military command of the CDF.[135] Where it tried to intervene by, for example, investigating complaints about individual Kamajors and recommending disciplinary action, it was pointedly ignored by Norman.[136]

92. The War Council was generally excluded from military planning. TF2-068 gave evidence that military planning was never part of the business of the War Council.[137]

93. Norman formed an inner core executive that dealt with military operations. Norman, Fofana and Kondewa were the executive of the Kamajor society, nobody took decisions in the absence of this group. Whatever happened they came together because they were the leaders and the Kamajors looked up to them.[138]

94. Fofana was in charge of all fighters; all the fighting groups. His role was to plan, execute the war and supply arms and ammunition to commanders.[139] Kondewa, as the High Priest, was the head of all Initiators. Initiation and immunization (bullet proofing) were key components in the military strategy of the CDF. No Kamajor went to war without the blessing of Kondewa.[140]

95. CDF National Coordinator Hinga Norman organized the military command to suit his own personality. Like many military commanders, he reserved the right to make all important decisions, and little authority was delegated to subordinates.[141] The key staff branches of his military outfit were: logistics headed by Director of War Moinina Fofana; recruitment and initiation, headed by Allieu Kondewa; and planning and execution of operations, conducted by the Director of Operations (in Southern Sierra Leone) Albert Nallo.[142]

96. The supply of logistics is elemental to the exercise of effective control and command over any form of military organization. It is through control of logistics that Norman as a commander was able to maintain control over his organization. It is no surprise therefore,

---

[135] Exhibit P97: Expert Military Report, para. C-3.1.
[136] TF2-008, Transcript 16 November 2004, pp. 76-77.
[137] TF2-068, Transcript 17 November 2004, p. 115.
[138] TF2-008, Transcript 16 November 2004, p. 51.
[139] Ibid., p. 47.
[140] Ibid., p. 49
[141] Exhibit P97, Expert Military Report, para. C-3.2.
[142] Ibid., para. C-3.

that the important function of logistics was vested in Norman's second-in-command, Moinina Fofana.[143]

Base Zero Operations

97. Base Zero was the name given to the town of Talia, in the Yawbeko Chiefdom after Norman's arrival in 1997. Between 1997 and 1998 it served as the headquarters and main base of the Kamajors. Norman in his evidence compared Base Zero to the seat of Generals and Field Marshals during war.[144]
98. It was at Base Zero that Norman instituted a training program which was undertaken by all those at the base. There was a formal training of two weeks. The trainees were divided into two groups: commanders and fighters. After the completion of the training, certificates of Merit signed by Norman, Fofana and Kondewa were awarded to the participants at the training field. [145] That field also served as a venue for important meetings when Norman had to address the fighters. At such meetings, Fofana and Kondewa were usually in attendance.[146] There were different meeting places (Walihuns) at Base Zero depending on the importance of the subject to be deliberated upon.[147]
99. There were two types of formal meetings conducted at Base Zero. The first was the general meeting, used to pass information to all Kamjors. The second was the commanders' meeting, used either for information sharing or for planning. General meetings were held on the training field; the fighters were organized in ranks facing a high platform from which Norman would address them. Allieu Kondewa would stand to his left and Moinina Fofana to his right, but neither sharing the platform with Norman.[148]

Military Planning and Operations

---

[143] Ibid., para. C-4.2.
[144] Accused Sam Hinga Norman, Transcript 26 January 2006, p. 17.
[145] Exhibit P26: Certificate of Training Given to Witness (Confidential), 10 February 1998.
[146] TF2-017, Transcript 19 November 2004, p. 88.
[147] TF2-008, Transcript 16 November 2004, p. 65.
[148] Exhibit P97: Expert Military Report, para. C4.6.

100. The Prosecution has led evidence that military planning for what has been described as an 'all-out Offensive' was done at Base Zero, at a meeting in which all three accused were present together with field commanders.[149] TF2-005 gave evidence that it was at a passing out Parade in Base Zero when Norman addressed the trainees that the attack on Tongo would determine who the winner or loser of the war would be. "When they go to Tongo let them bear in mind that there is no place to keep captured or war prisoners like the junta, let alone their collaborators."[150] It is no surprise therefore when the Kamajor troops launched their attack on Tongo it occasioned mass unlawful killings of civilians.[151] Witness TF2-027, for example, described how civilians were seized, rounded up and killed and how some civilians were ordered to dig mass graves.[152]

100. The Prosecution also led evidence that the plan to attack Bo was orchestrated at Base Zero by Norman with the aid and support of Fofana and Kondewa. Witness TF2-014 stated that Moinina Fofana and Kondewa decided in a meeting at Base Zero that Mustapha Ngobeh must lead the attack on Bo.[153]

101. Witness TF2-014 further testified that as Director of Operations, he was ordered by the First Accused to kill every living thing and destroy all properties at Koribundo. The witness gave evidence that Norman labeled residents of Koribundo as spies and collaborators and that the witness should ensure that no one should be left alive and house should be burnt. Petrol was given for that operation.[154]

102. According to another witness, TF2-201, the planning for the attack on Bo and Kenema was done at Talia (Base Zero). The intention was to attack and kill the AFRC/RUF junta and treat all sympathizers and collaborators likewise.[155]

103. Witness TF2-008 testified that at a meeting at Base Zero, Norman instructed the commanders present, that when they proceeded to attack Koribundo, they should not leave any living thing and should burn down houses if there was resistance. Commanders should only spare the Mosque, the School, and the Barry. [156]

---

[149] TF2-017, Transcript 19 November 2004, p. 88.
[150] TF2-005, Transcript 17 February 2005, p. 110.
[151] TF2-047, Transcript 22 February 2005, p.53.
[152] TF2-027, Transcript 22 February 2005, pp. 54, 68.
[153] TF2-014, 14 March 2005, pp. 20-21.
[154] Ibid., p.78.
[155] P41, TF2-201
[156] TF2-008, Transcript 16 November 2004, p. 79

104. The Prosecution notes that detailed evidence has been provided of individual admissions of responsibility for acts of Kamajors on the part of the Kamajor leadership. This establishes a nexus between the acts of the Kamajors and the three Accused in all locations where hostilities occurred.[157]

COUNTS 1 AND 2 – MURDER (ARTICLE 2(A) OF THE STATUTE) AND MURDER (ARTICLE 3(A) OF THE STATUTE)

ELEMENTS

105. The elements of murder may be stated as follows: the *actus reus* exists if (1) the victim is dead; (2) the death of the victim resulted from an act or omission of the accused (or the individual for whose acts and omissions the accused bears criminal responsibility); and the *mens rea* exists if (3) the accused (or the individual for whose acts and omissions the accused bears criminal responsibility) directly intended to kill or to cause serious bodily harm in the reasonable knowledge that it would likely result in death[158] or in reckless disregard of human life.[159] "[P]roof 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 of the evidence presented."[160]

106. It has been established in the jurisprudence of the International Tribunals that "the *mens rea* is not confined to cases where the accused has a direct intent to kill or to cause serious bodily harm, but also extends to cases where the accused has what is often

---

[157] TF2-008, Transcript 16 November 2004, pp.116-117; TF2-014, Transcript 10 March 2005, p. 89; TF2-082, Transcript 15 September 2004 p. 50; TF2-198, Transcript 15 June 2004 p. 38; TF2-159, Transcript 9 September 2004 p. 56; TF2-190, Transcript 10 February, 2005, p. 50.
[158] *Norman* Decision on Motion for Acquittal, para. 72; *Strugar* Trial Judgment, paras. 235-236; *Kordić and Čerkez,* Appeal Judgment para. 37; *Brima* Decision on Motion for Acquittal, para. 74.
[159] *Blaškić* Trial Judgment, paras. 152, 181; *Čelebići* Trial Judgment, para. 423; *Prosecutor v Emmanuel Ndindabahizi*, ICTR-2001-71-1, "Judgment" Trial Chamber, 15 July 2004, para. 487.
[160] *Krnojelac* Trial Judgment, para. 326.

referred to as an indirect intent."[161] Therefore, "The necessary mental state exists when the accused knows that it is *probable* that his act or omission will cause death."[162]

107. The core elements of the offence of murder in relation to both Articles 2 and 3 of the Statute are the same.[163]

EVIDENTIARY BASIS

108. The Prosecution has presented evidence of unlawful killings at or near Tongo Field, Kenema, Bo, Moyamba and Bonthe.

109. ***Tongo Field***: Evidence of the physical acts of killing, which constitute the actus reus for the offence of unlawful killings for the Tongo crime base, is contained in the testimonies of witnesses TF2-013, TF2-015, TF2-016, TF2-022, TF2-027, TF2-035, TF2-047, TF2-048, and TF2-144. For example, Witness TF2-047 gave evidence that a Kamajor commander called Kamabote said to him, "you are the sanitary officer. I know you. Today you are going to bury a lot of corpses until you become tired."[164] The witness saw people being killed by the Kamajors and Kamabote told him to get a wheelbarrow and bury the corpses in a pit. Bodies were lying in the compound. The witness observed that some of them had their heads chopped off, and he never saw their heads.[165] 150 corpses were buried.[166]

110. Witness TF2-027, for example, described how civilians were seized, rounded up and killed and how some civilians were ordered to dig mass graves.[167] Witness TF2-015, a businessman, described how the Kamajors came to Tongo, lined civilians up, separated men and women and called five people out and shot them. The witness was told by Kamajors to follow the Kenema Road and together with a group of 65 civilians was taken to a house at Kamboma where eight men were shot and knives were used to kill

---

[161] *Strugar* Trial Judgment, para. 235.
[162] Ibid., para. 236.
[163] *Norman* Decision on Motion for Acquittal, para. 75; *Kordić and Čerkez* Trial Judgment, para. 236; *Čelebići* Trial Judgment, para. 422; *Krnojelac* Trial Judgment, para. 323. See also *Brima* Decision on Motion for Acquittal, para. 77.
[164] TF2-047, Transcript 22 February 2005, p.53.
[165] TF2-047, Ibid., p.58.
[166] TF2-047, Ibid., p.61.
[167] TF2-027, Ibid., pp. 54, 68.

the remaining men. The Kamajors stated that they "had been ordered to kill anyone that passed through Kamboma."[168]

111. Witness TF2-027 gave evidence that on the third day after the Kamajor attack on Tongo, the witness left for Yumbona. On the way to Yumbona the witness passed through and went to Konia. At Konia, the witness heard Kamajors say that a boy that has been killed was not a rebel. He also heard some Kamajors who came from the bush ask the other Kamajors if they should go and bury the 30 corpses under the Coffee Tree.[169]

112. Witness TF2-047[170] testified that Kamajor Kamabote asked the crowd at the Tongo NDMC HQ to point out rebels. Dr Blood was pointed out as a rebel who did not pay for rice. The witness said that Kamabote had Dr Blood sit down; he then chopped Dr. Blood on his neck. The same Witness saw people with heads chopped off, disemboweled. Witness said he saw Kamajors kill 3 people therefore he concluded that the Kamajors killed all the people.[171]

113. A lady called Fatmata Kamara was chopped to death with machete by Kamabote, for allegedly cooking for the Junta Forces. "I had three corpses in the wheelbarrow, which I went to bury. So when I came I met he has struck her dead." The same witness buried 150 corpses.[172] He buried 25 junta corpses burnt with tyres at Olumatic.[173] Another witness, TF2-015 stated that, "Some men were fired in amongst the people in the lines as we were going (to Bumie)." The Kamajors killed them. "They would look at you as you're in the line. They will just call you and kill you. They fired at them."[174]

114. Witness TF2-015 stated that at Kamboma they were taken behind a house. "They said anybody that passed by Kamboma should be killed...we pleaded to them...We told them we are civilians. They said no. They said that Kamajors had ordered them to kill anybody that passed through Kamboma. So they put us in two lines. They began by killing behind that house...anybody that is fired, he rolled and goes to that swamp."[175] They shot all the people in the line, except eight persons. The CO came and said not to

---

[168] TF2-015, Transcript 11 February 2005, pp. 12-15.
[169] TF2-047, Transcript 22 February 2005, p. 51.
[170] TF2-047, Ibid., p. 51.
[171] TF2-047, Ibid, p. 58.
[172] TF2-047, Ibid, p. 61.
[173] TF2-047, Ibid, p. 66.
[174] TF2-015, Transcript 11 February 2005, p. 8.
[175] TF2-015, Ibid, pp. 12-13.

spoil cartridges, that they were working on an ambush and should use knives.[176] The witness testified that he was struck on the back of the neck, fell down and rolled onto "other dead corpses."[177]

115. ***Kenema***: Witness TF2-223 described the shooting of Mohammed Tarawalie, a diamond merchant. A woman pointed out Tarawalie as someone who bought diamonds from the junta; he ran away but was caught by a Kamajor and was shot.[178] Other incidents included when a soldier by the name of Barbor Pain ran away. Witness TF2-223 went to his house and searched it and looted property. The solder's brother, Alusine, was found and he was taken outside, beaten and shot.[179] His father came out of a hiding, asking that his son not be shot. He too was shot. Both bodies were burnt, as no place to bury them.[180]

116. As another example, witness TF2-021 described capturing collaborators and tying them with FM rope; they were then taken to the Yamorto; they were taken there to be eaten. The person would be choked with a bayonet, "then he will die. 'When he die, then the heart, the liver, and other parts in his stomach we remove and the legs. Then the head, we find a stick and put it on it."[181]

117. ***Bo District***: As examples of killings in Bo District, Witness TF2-017 gave evidence that he was directed by the Accused to attack Kebi town, Bo, and he led a group of 38 Kapras and 270 Kamajors and launched an attack on the town, killing soldiers.[182] Witness TF2-007 testified that in 1998, he was arrested in the bush by Kamajors who took him to town where he witnessed the killing of his father.[183] Exhibit 37 is the document with the name of witness' town (Fengehun).[184] Witness TF2-088 testified that in April 1999, at a Kamajor checkpoint he saw a letter, which said that his son was to be killed immediately for his ash to be used in last initiation in Mongeray (Mongere)

---

[176] TF2-015, Ibid, p. 14 (lines 9-13).
[177] TF2-015, Ibid, p. 14 (lines 22-23).
[178] TF2-223, Transcript 28 September 2004, Closed Session, pp. 71-73.
[179] TF2-223, Ibid, p. 75.
[180] TF2-223, Ibid, pp. 76-77.
[181] TF2-021, Transcript 2 November 04, p. 76.
[182] TF2-017, Transcript 19 November 2004, Closed Session, p. 97.
[183] TF2-007, Transcript 2 December 2004, pp. 57-58.
[184] Exhibit P37: Place of Birth and Place of Residence of the Witness, 2 December 2004.

town in Hinga Norman's compound. The letter was addressed to a number of checkpoint commanders. On the 24th April 1999 the body was burned by Kamajors. [185]

118. Witness TF2-014 testified that as Director of Operations, he was ordered by the First Accused to kill every living thing and destroy all properties at Koribundo. The witness gave evidence that Norman labeled residents of Koribundo as spies and collaborators and that the witness should ensure that no one should be left alive and house should be burnt. Petrol was given for that operation. [186] The witness was given further instructions by the First Accused to kill any soldier who had surrendered. The witness sent a message to Norman regarding a plea made to spare a surrendered soldier. Norman sent four Kamajors to kill the surrendered soldier in response. The surrendered soldier's head was cut off. [187]

119. Witness TF2-042 saw Kamajors moving towards the Police football field, where they met two Police Officers. The officers were O.C.Kanu and Desmond Pratt. The Kamajors asked the O.C. Kanu his identity; he was the O.C SSD. He showed them his identity card and he was shot and they shot Desmond Pratt. Sgt Turay had come from his own quarters to speak on behalf of the other police officers and they shot him. They were shot dead. She saw the bodies of Sgt Mason, Couple Fandai, Sgt Sumura, Sgt Turay, O.C.Kanu and Desmond Pratt. Later she saw the corpse of Essai Mimor. Later a report was given to ECOMOG by the Police stating that 36 Police officers had been killed. [188]

120. ***Moyamba District***: Witnesses TF2-014, TF2-073, TF2-165, TF2-166, TF2-167, TF2-168, TF2-173 gave evidence of unlawful killings that occurred at the Moyamba crime base.

121. ***Bonthe***: Witnesses TF2-014, TF2-016, TF2-071, TF2-086, TF2-096, TF2-108, TF2-109, TF2-133, TF2-147, TF2-187, TF2-188, TF2-189 gave evidence of unlawful killings that occurred at the Bonthe crime base.

122. Witness TF2-014 testified that he knew Mustapha Fallon who was executed in the Poro Bush at Talia, in the presence of Hinga Norman, Moinina Fofana, Allieu Kondewa and

---

[185] TF2-088, Transcript 26 November 2004, pp. 49-50.
[186] TF2-014, Transcript 10 March 2005, p. 78.
[187] TF2-014, Ibid, p. 85-86.
[188] TF2-042, Transcript 17 September 2004, p. 104 to p. 109 (lines 5-7).

others. Mustapha Fallon who was also a Kamajor was killed because Allieu Kondewa wanted human sacrifice in order to guarantee the protection of the fighters. The brother of Mustapha Fallon pleaded for his life with Norman but to no avail. Hinga Norman gave three hundred thousand Leones to the deceased brothers appealing to them not to tell anyone what transpired. [189]

123. Witness TF2-014 gave further testimony about the direct commission of murder in his presence by the First Accused. Defence cross-examination was unable to undermine or dispute the occurrence. In his testimony, the witness said that he knew Alpha Dauda Kanu, a Kapra. He was killed in a palm oil plantation when going towards Mokusi. Kanu was killed by Dr Allieu Kondewa, Hinga Norman and Moinina Fofana. "He was hacked to death, and we took off his skin." The witness was present. Some of Kanu's body parts were taken and "They said that they are going to prepare a garment and a walking stick for Chief Hinga Norman and a fan, which is called a "controller", so as to use those things in order to become very powerful" [190]

124. Witness TF2-017 testified that in December 1997, the witness went with 40 Kapras to Base Zero. On the second day of training one of the Kapras was missing. The witness searched and found a corpse (Dauda Alpha Kanu) near a palm kernel plantation where he met Kondewa, two herbalists and four Kamajors guarding the place. Kondewa said to him that if he had any questions they should be directed towards Norman. The witness went with Norman back to the corpse. Norman pointed at the corpse and said, "The person that is lying down there, this is one of the things you should do for the war to come to an end." Norman pointed to the corpse and said, "that corpse that is lying down there, they will remove some parts from it, which the Karamokohs would use to make some concoctions and herbs when he wears that particular shirt so that he will become powerful". [191]

125. Witness TF2-071 gave evidence that the Chief of Mobayei (Mobayeh) Keinechawa, told him that Kamajors led by one Momoh Sitta had attacked the town of Mobayei and killed an old woman, Musu Fai and a pregnant woman, Jebbeh Kpaka who were unable to

[189] TF2-014, Transcript 10 March 2005, p. 59.
[190] TF2-014, Ibid, p. 55.
[191] TF2-017, Transcript 19 November 2004, Closed Session, pp. 58-77.

escape.[192] Witness TF2-109 testified that saw the killing of Lahai Lebbie, Baggie, Ngor Jusu. They were killed near Makosi (Makose), on the way to Talia. Lahai Lebbie was killed by the Kamajors-he was tied up and a tire was used to burn him.[193]

126. The Prosecution submits that the evidence of killings establishes the legal requirements for both murder as a crime against humanity and murder as a violation of Common Article 3 of the Geneva Conventions. The deaths of numerous victims resulted from the acts of the three Accused either directly or through the actions of the Kamajors for whose acts or omissions the three Accused were responsible. The Prosecution has presented detailed evidence of the composition and structure of the CDF. [194] Even the Defence through cross-examination confirmed the link between the CDF and the Kamajor militia, and how the movement had undergone systemic changes over the years. The circumstances of the killings demonstrate that the perpetrators intended to kill the victims or acted in the reasonable knowledge that such acts would result in the deaths of the victims. All of the victims were civilians or persons taking no active part in hostilities.

127. The individual criminal responsibility of the three Accused under Article 6(1) and 6(3) of the Statute for the unlawful killings charged under Counts 1 and 2 will be detailed in Part II.

COUNT 3 AND 4 -INHUMANE ACTS (ARTICLE 2(I) OF THE STATUTE) AND CRUEL TREATMENT (ARTICLE 3(A) OF THE STATUTE)

ELEMENTS

128. This Trial Chamber has found that to sustain a conviction for inhumane acts, the Prosecution must prove: (1) the occurrence of an act or omission of similar seriousness to the other enumerated acts under [Article 2]; (2) the act or omission caused serious mental or physical suffering or injury or constituted a serious attack on human dignity; and (3) the act or omission was performed deliberately by the accused or a person or

[192] TF2-071, Transcript 11 November 2004, p. 70.
[193] TF2-109, Transcript 30 May 2005, p. 34.
[194] TF2-005, TF2-008, TF2-014, TF2-017, TF2-068, TF2-079, TF2-190, TF2-201, TF2-222

persons for whose acts and omissions he bears criminal responsibility.[195] The *mens rea* is satisfied where the offender, at the time of the act or omission, had the intention to inflict serious physical or mental suffering or to commit a serious attack on the human dignity of the victim, or where he knew that his act or omission was likely to cause serious physical or mental suffering or a serious attack upon human dignity and was reckless thereto.[196]

129. The category of "other inhumane acts" is a generic category which encompasses a series of criminal activities not explicitly enumerated. Conduct that has been held to amount to inhumane treatment includes beatings, torture, sexual violence, humiliation, harassment, psychological abuses, confinement in inhumane conditions, infliction of injuries other than killing,[197] mutilation and other types of severe bodily harm, beatings and other acts of violence,[198] contribution to an atmosphere of terror,[199] and serious physical and mental injury.[200]

130. The core elements of inhumane acts as a crime against humanity and of cruel treatment as a violation of Common Article 3 to the Geneva Conventions are the same.[201] This Trial Chamber has stated that cruel treatment may include treatment that does not meet the purposive requirement for the offence of torture.[202]

B. EVIDENTIARY BASIS

131. Witnesses TF2-005, TF2-014, TF2-017, TF2-079, TF2-222 gave evidence of direct orders for the attack on civilian collaborators of the AFRC/RUF. Evidence of physical violence or mental suffering in Kamboma emanates from the unchallenged evidence of witness TF2–015. The witness (the 65th victim) was the only survivor. The witness

---

[195] *Norman* Decision on Motion for Acquittal, para. 93, citing *Vasiljevic* Trial Judgment, para. 234.
[196] *Vasiljevic* Trial Judgment, para. 236, and see *Norman* Decision on Motion for Acquittal, para. 94.
[197] *Prosecutor v. Kvočka et al.*, IT-98-30/1-T, "Judgement" ("*Kvočka* Trial Judgment"), Trial Chamber, 2 November 2001, para. 209.
[198] *Tadić* Trial Judgment, para. 730; *Čelebići* Trial Judgment, para. 1034.
[199] *Čelebići* Trial Judgment, para. 1091.
[200] *Blaškić* Trial Judgment, para. 239.
[201] *Čelebići* Trial Judgment, paras 516-44, 424; *Prosecutor v. Jelisić*, IT-95-10-A, "Judgement", Appeals Chamber, ("***Jelisić* Appeal Judgment**") 5 July 2001, para. 52; *Blaškić* Trial Judgment, para. 186. See also *Norman* Decision on Motion for Acquittal, para. 95.
[202] *Norman* Decision on Motion for Acquittal, para. 95.

testified that he still bears visible scars of the machete blows he received during that attack, which he showed to the court.[203]

132. Many other witnesses described how they suffered at the hands of the Kamajors. Witness TF2-006 testified to inhumane acts when he said that during the Bo attack, Kamajors used a cutlass to amputate his fingers. The Court observed that four out of the five fingers were amputated.[204] Witness TF2-007 gave evidence that at Fengehun, he saw Kamajors tie his father with a rope and part of his right ear was cut.[205] Witness TF2-041 gave evidence that Kamajors during the Kenema attack put a knife to his neck and stabbed him all over. They left him believing he was dead.[206] Witness TF2-073 stated that as the Kamajors intensified their looting spree around the towns and villages surrounding Moyamba, his brother-in-Law was beaten severely by Kamajors and he later died as a result.[207] TF2-157 gave evidence that on a Sunday, during the Kamajor attack, he saw a lot of people mutilate two persons, 'mutilating them, individually and sequentially.' Those persons had cutlasses, dressed in Kamajor clothing. The persons killed were Sarah Binkolo and Sarah Lamina.[208]

133. Witness TF2-086 provided further evidence of physical violence and mental suffering when she gave evidence that she was caught by a Kamajor called Abu Jakineh whilst in Bonthe. The witness was wounded on the wrist. She was also stabbed in the stomach with a stick and then she was struck on the neck with a machete.[209] The Prosecution led further evidence of physical violence and mental suffering through the testimony of TF2-198. In that evidence, it was stated that the witness was identified by Kamajors that he was a resident of Koribundo, he was beaten and his brother was accused of being a junta, and the two of them were tied up. The witness was able to show the marks sustained from the wounds to the Court.[210]

134. Evidence of cruel or inhumane treatment was portrayed through the testimony of witness TF2-151 when he testified that whilst in Kenema, he was stripped and put into a cell by

---

[203] TF2-015, Transcript 11 February 2005, p. 16.
[204] TF2-006, Transcript 9 February 2005, pp. 11-12.
[205] TF2-007, Transcript 2 December 2004, p. 51.
[206] TF2-041, Transcript 24 September 2004, pp. 27, 30-31.
[207] TF2-073, Transcript 2 March 2005, pp. 38-39.
[208] TF2-157, Transcript 16 June 2004, p. 15.
[209] TF2-086, Transcript 8 November 2004, pp. 93-96.
[210] TF2-198, Transcript 15 June 2004, pp. 20-22.

Kamajors and beaten.[211] Reference may also be made to the testimony of Witnesses TF2-005, TF2-014, TF2-017, TF2-079, TF2-222, TF2-223.

135. The Prosecution submits that the evidence of the intentional infliction of serious physical and mental suffering establishes the legal requirements for both inhumane acts as a crime against humanity and cruel treatment as a violation of Common Article 3 to the Geneva Conventions. The acts described were of sufficient seriousness to constitute inhumane acts and resulted in serious mental or physical suffering or injury. The perpetrators intended to inflict such suffering or injury, or were aware that this would be the result of their actions, as is evidenced by the orders to attack civilian "collaborators".

136. The individual criminal responsibility of the three Accused under Article 6(1) and 6(3) of the Statute for the acts charged under Counts 3 and 4 will be detailed in Part II.

COUNT 5 – PILLAGE (ARTICLE 3(F) OF THE STATUTE)

ELEMENTS

137. In the RUF proceedings, this Trial Chamber modified its previous definition of pillage[212] and defined the elements as follows: 1) the accused unlawfully appropriated the property, 2) the owner of the property was a person not taking a direct part in the hostilities 3) the appropriation was without the consent of the owner 4) the accused intended to unlawfully appropriate the property 5) the accused knew or had reason to know that the owner was a person not taking a direct part in the hostilities.[213] It has been established by both Trial Chambers that the property need not have been appropriated for private or personal use.[214] Pillage extends to cases of organized and systematic seizure of property as well as acts of looting by individual soldiers for private gain.[215]

---

[211] TF2-151, Transcript 23 September 2004, p. 33-35.
[212] *Norman* Decision on Motion for Acquittal, para. 102. See also *Čelebići* Trial Judgment, para. 591.
[213] See also *Čelebići* Trial Judgment, para. 591.
[214] See *Brima* Decision on Motion for Acquittal, 242-243.
[215] *Norman* Decision on Motion for Acquittal, para. 102. See also *Čelebići* Trial Judgment, para. 591. It has been stated that "Pillage, also known as plunder or looting, is the same as stealing, which is an offence in peace or war. It must be distinguished from the lawful requisitioning of property for military, rather than private, purposes". UK Ministry of Defence, *The Manual of the Law of Armed Conflict*, Oxford, 2004, 15.23.1.

The property protected is not limited to civilian property and the offence includes cases where property is given to third persons and not only used by the perpetrator.[216]

138. Regarding the act of burning, the Prosecution submits that pillage under Article 3 of the Statute is derived from Article 4(2)(g) of Additional Protocol II to the Geneva Conventions. The ICTY in particular has emphasized the importance of international humanitarian law protecting property rights in times of armed conflict. As stated in the *Čelebići* case, "international law today imposes strict limitations on the measures which a party to an armed conflict may lawfully take in relation to the private and public property of an opposing party."[217] It is the Prosecution's position that destroying property by burning, as part of a series of acts involving ruthless plundering to remove anything of value followed by the total removal of the value of the buildings themselves, falls within the concept of "willful and unlawful appropriation of property."[218] Moreover, the violent nature of pillage reflects the broader range of appropriation of property, including property appropriated for the mere purpose of depriving the owner of that property. The focus of the offence is the loss to the victim who may no longer use or benefit from the property. In the aftermath of World War II, in the *H. Szabados* case, the accused was found guilty of pillage, that is the looting of personal belongings and other property of the civilians evicted from their home *prior to the destruction of the latter* under Article 440 of the French Code.[219] Furthermore, both Australian and Canadian military manuals define pillage as including the destruction of enemy private or public property.[220]

139. The burning of civilian dwellings not justified by military necessity is recognized as a violation of the laws and customs of war and therefore as being of a seriousness which raises it above the level of an offence under national law. ICTY jurisprudence uses the terminology of "plunder of private property" as opposed to pillage and the ICTY has a

---

[216] Knut Doermann, *Elements of War Crimes under the Rome Statute of the International Criminal Court, Cambridge University Press*, 2002, p.273, applying also to pp. 464-465.
[217] *Čelebići* Trial Judgment, para. 587.
[218] *Naletilić* Trial Judgment, para. 612.
[219] In UNWCC, *LRTWC*, vol. IX, pp. 60 ff.; 13 AD 261, quoted in Knut Doermann, *Elements of War Crimes under the Rome Statute of the International Criminal Court*, Cambridge University Press, 2002, p. 279.
[220] Australian Defence Force, *Law of Armed Conflicts-Commander's Guide*, paras. 743 and 1224 and Office of the Judge Advocate, The Law of Armed Conflict at the Operational and Tactical Level, p. 12-8, quoted in Knut Doermann, *Elements of War Crimes under the Rome Statute of the International Criminal Court*, Cambridge University Press, 2002, pp. 279-280.

separate and distinct crime of "wanton destruction of cities, towns or villages, or devastation not justified by military necessity." The ICTY Statute divides the concept of unlawful appropriation of property into several categories, all under the heading "violations of the laws or customs of war." The SCSL Statute, like the ICTR Statute, adopted narrower language for the section on war crimes. This crucial distinction in the construction of the ICTY and SCSL Statutes means that indictments under the two different statutes will vary as to what falls within the definition of plunder and pillage respectively. Therefore, it should be presumed that the most serious offences against property applicable to armed conflicts fall within the ambit of the Statute.

140. The Prosecution notes that the acts charged as "burning" fall within the scope of acts of terrorism charged under Count 6 and collective punishments under Count 7.

B. EVIDENTIARY BASIS

141. Witnesses TF2-151, TF2-154, TF2-223, and TF2-021 reported looting and burning incidents, carried out by Kamajors, in *Kenema*. Witnesses TF2-048, TF2-144, TF2-022, TF2-222 gave evidence on looting and burning in *Tongo,* likewise carried out by Kamajors. Witnesses TF2-119, TF2-030, TF2-156, TF2-088, TF2-057, TF2-067, TF2-058, TF2-056, TF2-190 and TF2-001 described looting and burning in *Bo*. Amongst others, witnesses TF2-198, TF2-157, TF2-176, TF2-012, TF2-162, TF2-159, TF2-032, TF2-0140, TF2-190 and TF2-082 testified about looting and burning activities carried out by Kamajors in *Koribundo*. Witness TF2-073 testified about lootings carried out by Kamajors in *Sembehun*. Furthermore, witnesses TF2-073, TF2-168, TF2-173, TF2-165, TF2-170, TF2-167, TF2-166 and TF2-014 told about looting and burning incidents in *Moyamba*. Witnesses TF2-096, TF2-086, TF2-116, TF2-147, TF2-071, TF2-008 and TF2-017 described similar incidents of lootings and burnings in *Bonthe*. Witness TF2-017 testified about lootings in *Talia*. Witnesses TF2-001, TF2-144, TF2-152 and TF2-154 all made statements of lootings and burnings in their townships, caused by Kamajors – the physical perpetrators - and therefore described the crime base for which the Accused are responsible under one or more of the relevant modes of liability.

142. There is compelling evidence for example, of the Second Accused direct involvement in acts of looting. Prosecution witness TF2-082 the commander appointed by Hinga Norman for the Koribondo attack, after the capture of Koribondo he was sent a letter by the Second Accused exhorting him to the effect that "whatever thing you captured-whoever you captured you should send them to him."[221] Furthermore, the Second Accused again sent Witness TF2-082 a letter, Exhibit 11, ordering him to "not to release" any "captured vehicles" but to send them to him Second Accused at Base Zero, ostensibly for safe keeping. The Prosecution will argue that the intention of the Second Accused based on his earlier exhortation to this commander, was clearly one of keeping the looted property rather than protecting them for return to their rightful owners.

143. TF2-068 testified further that a looted truck of coffee and a Mercedes Benz car also looted, which was suspected of carrying some diamonds, were brought to Base Zero by kamajor fighters and handed over to the Second and Third Accused, as seized property. The unloaded looted coffee and cocoa was placed in the Court Barri by the Second Accused. [222]

144. TF2-223 testified that, while they were in Kenema under the watch and control of the Second and Third Accused they looted certain tonnage of cocoa from the premises/warehouse of one ST SAAD. The testimony indicates that the Second Accused was aware of this incident in that the loot was taken from Witness and his colleagues which they never saw again. Further, they were ordered by Kondewa through Fofana not to venture in that area again.[223] At the least, there is no evidence that the Witness and others who conducted this looting raid were punished for this act by the Second or Third Accused Accused.

145. The incident contained in the evidence of TF2-073 wherein his Mercedes Benz car was looted from his home in Sembehun by Kamajors acting under the instructions of the Third Accused, Allieu Kondewa, and which was brought to Base Zero and used by Kondewa himself until the same was retrieved from him the Accused through the assistance of ECOMOG, it is submitted, was an incident well within the knowledge of

[221] TF2-082, Transcript 15 September 2004, p. 40.
[222] TF2-068, Transcript November 17 2004, p. 92.
[223] TF2-223, Transcript 28 September 2004, pp. 100-101.

the First and Second Accused, which it is further submitted they passively supported or condoned and ought properly to share responsibility for as accessories after the fact.

146. There is evidence from Witness Borbor Tucker that he acted on instructions given by Hinga Norman to remove three cars, located in the Special Security Division Headquarters. The three cars, with knowledge of their source, were given to Moinina Fofana, the Third Accused and Prince Brima.[224]

147. The Prosecution submits that the evidence of looting and burning establishes the legal requirements for pillage. The perpetrators unlawfully appropriated property belonging to persons known to be taking no active part in hostilities without the consent of those persons with the intention to deprive them permanently of the property. The fact that the looted property was sometimes distributed among the combatants and not used for personal use does not change this conclusion.

148. The ruthless destruction of property through burning similarly fulfils the legal requirements for pillage.

149. The individual criminal responsibility of the three Accused under Article 6(1) and 6(3) of the Statute for the acts of looting and burning under Count 5 will be detailed in Part II.

COUNT 6-ACTS OF TERRORISM (ARTICLE 3(D) OF THE STATUTE)

ELEMENTS

150. This Trial Chamber has found that the core elements of the crime of acts of terrorism are: (1) Acts or threats of violence directed against protected persons or their property; (2) The offender wilfully made protected persons or their property the object of those acts and threats of violence; (3) The acts or threats of violence were committed with the primary purpose of spreading terror among protected persons.[225]

151. The Trial Chamber has also held that the proscriptive ambit of Protocol II in respect of acts of terrorism extends beyond acts or threats of violence committed against protected

[224] TF2-190. Transcript February 10 2005, pp. 60-62.
[225] *Norman* Decision on Motion for Acquittal, para. 112. Trial Chamber II adopted the same definition, *Brima* Decision on Motion for Acquittal, para. 49.

persons to "acts directed against installations which would cause victims terror as a side-effect".[226]

152. Whether or not unlawful acts do in fact spread terror among the civilian population can be proved either directly or inferentially. It can be demonstrated by evidence of the psychological state of civilians at the relevant time,[227] including the civilian population's way of life during the period, and the short and long term psychological impact. Since actual infliction of terror is not a constitutive legal element of the crime of terror, there is no requirement to prove a causal connection between the unlawful acts of violence and the production of terror.[228] Terror may be taken to connote extreme fear.[229]

153. "Primary purpose" signifies the *mens rea* of the crime. The Prosecution must prove both that the accused accepted the likelihood that terror would result from the illegal acts (or, that he was aware of the possibility that terror would result) and that that was the result which he specifically intended.[230] The term "primary" does not mean that the infliction of terror needed to be the only objective of the acts or threats of violence, but only that it was the principal aim.[231]

B. EVIDENTIARY BASIS

154. The evidentiary basis for the crimes charged in Counts 1 to 5 taken as a whole provides the evidentiary basis for the campaign to terrorize the civilian population in the various locations specified in the Indictment. Terrorizing the civilian population through means of violent threats of intimidation, physical violence, mental suffering and looting was presented through the testimony, *inter alia*, of witnesses TF2-014, TF2-022, TF2-033, TF2-039, TF2-040, TF2-041, TF2-079, TF2-151, TF2-154, TF2-159, and TF2-176.

---

[226] *Norman* Decision on Motion for Acquittal, para. 111, citing ICRC, Commentary on the Additional Protocols, 1375.
[227] W. Fenwick, 'Attacking the Enemy Civilian as a Punishable Offence', *Duke Journal of Comparative and International Law*, Vol. 7, 1997, 539 at 562.
[228] *Galić* Trial Judgment, para. 134.
[229] Ibid., para. 137.
[230] Ibid., para. 136; See also Additional Protocol II to the Geneva Convention 12 August 1949, Article 13.
[231] *Blagojević* Trial Judgement, para. 591; *Galić* Trial Judgment, para. 136 where the Trial Chamber found that the crime of terror is a specific intent crime.

155. Graphic evidence of a campaign to terrorize the civilian population was provided by Witness TF2-159 who testified that on Sunday, during the Kamajor attack on Koribundo, the witness went to the Koribundo junction, where he saw the Kamajors with five Limba people. The witness knew them as they used to sell palm wine. They were Sofiana, Sarrah, Momoh, Kamara and Karoma. The Kamajors said the five persons were junta; they were cut into pieces and some were shot with guns. Two were killed with guns and 3 with cutlasses. Sarrah and Momoh had their heads cut off.[232] On the following Monday, he went to Koribundo again, from his hiding place in the bush, to go to the Kamajor HQ, to see Joe Timedie. At HQ he saw Kamajors singing, as they had captured 8 people. There were 5 men and 3 women; witness knew the women as the wives of soldiers – Amie, Jainaba and Esther. "They were singing on them, they were taking them to be killed." Witness followed the Kamajors along Blama Road; they were beating them and mutilating them and telling them they were going to be killed. Two of the women were killed by a stick ("right through them') and one by a gun (and by a cutlass, her head was cut off). The men, four were killed by a gun and one man by a cutlass to his neck. He saw them disembowel the women and place the entrails in a bucket. Their entrails were turned into a checkpoint.[233]

156. Witness TF2-027 testified that in November-December 1997, the Kamajors attacked Tongo from the Panguma end. The Kamajors were not successful so they retreated. There were more attacks by the Kamajors. One day the witness heard the sounds of explosions from different parts of the town. At Tongola the witness saw the Kamajors coming into town. The witness heard shots, heavy fire, coming from the headquarters. The Kamajors came around and put people at gunpoint and asked all the civilians to go to the headquarters, around 4.30pm. At the entrance to HQ the witness saw 30 to 40 corpses. Some had bullet wounds in the back of the head.[234] One of the Kamajor commanders BJK Sei ordered him to bury the corpses at the entrance to the security compound. 20 civilians were picked to dig a pit at the back of the compound. One of the corpses was Joski Mboma, who had been hacked in the back.[235]

---

[232] TF2-159, Transcript 9 September 2004, p. 32.
[233] Ibid., pp. 33-38.
[234] TF2-027, Transcript 18 February 2005, pp.79-87.
[235] Ibid., pp. 105-7.

157. Witnesses TF2-187 presented evidence that the Kamajors made preparation for Norman's visit. Kondewa's boys captured pregnant women and took them to the court barri. The women were tied up standing. When they heard the sound of the plane, the Kamajors slit the stomach of the women and then the cut off the head of the fetus. That was done one after another. The Kamajors put each of the heads on a separate stick. The three women died. The three sticks with the heads were tied together; when that was done it was like a flag and was placed at the junction. The junction was the junction to Mattru. When the women were killed at the barri, there were civilians present as well as Kamajors. Bombowai was present. When the pole was planted at the junction, Norman came by helicopter. Norman came out of the helicopter and the witness saw rice, medicine, bullets and arms taken from the helicopter. After the items were taken form the helicopter, the 'flag' was taken to the barri and the heads were removed. After the women had been killed, "then they smeared the blood on their bodies, on their faces and they took their corpses and buried them in one grave." The Kamajors then sang a song that they had got their medicine from pregnant women.[236]

158. The Prosecution submits that the evidence establishes the legal requirements for acts of terrorism. There can be no doubt that a violent campaign was conducted willfully against civilians, often identified as so-called collaborators. The primary purpose was to frighten and threaten civilians into submission and to spread fear that anyone who did not support the CDF would be deemed a collaborator.

159. The Prosecution presented expert forensic evidence before the Court to substantiate the charges of unlawful killings and physical violence for the Bo Crime base.[237] In his evidence, Bill Haglund, a recognized expert in forensic pathology detailed his findings in a report[238] consequent upon his forensic investigation and examination of the remains removed from graves in the Mahiboima District, City of Bo. The Prosecution submits that the expert's findings are consistent with the evidence adduced before the Court relating to the unlawful killings and physical violence and mental suffering charged for

[236] TF2-187, Transcript 2 June 2005, pp. 17-37.
[237] Bill Hugland, Transcript 20 June 2005.
[238] Exhibit P101: Excerpts from the Expert's Report OG William Haglund.

the Bo Crime base. Prosecution witness TF2-156 showed the Court scars of injuries to his neck, stomach, chest and right side of his face.[239]

160. The individual criminal responsibility of the three Accused under Article 6(1) and 6(3) of the Statute for the acts of terrorism under Counts 6 will be detailed in Part II.

PART III

Individual Criminal Responsibility of the Accused

Modes of Liability

161. The Prosecution submits that the evidence establishes the responsibility of the three Accused under Articles 6(1) and 6(3) of the Statute for the eight counts in the Indictment. The recognition in the Statute that individuals may be held criminally responsible for their participation in the commission of offences in any of several capacities is in clear conformity with general principles of criminal law.[240] The Statute does not make any legal distinction between the different modes of participation and the consequences of engaging in any of the mentioned forms of participation entails equal criminal liability.[241]

162. Additionally, the three Accused are charged with committing the crimes charged in the Indictment by their participation in a joint criminal enterprise. The jurisprudence of the International Tribunals indeed emphasizes that there are forms of participation that are not explicitly referred to in the Article, such as common purpose or joint criminal enterprise, but nevertheless are included within its meaning.[242]

---

[239] Exhibit P101, pp. 44-45.
[240] *Čelebići* Trial Judgment, para. 321.
[241] Antonio Cassese, *International Criminal Law*, Oxford University Press, 2003, at p. 180; The ICTY and ICTR adopt a purposive approach, wherein they sought to establish the object and purpose of the provisions of the Statute as opposed to narrow construction; see e.g. *Tadić* Appeal Judgment, para. 189.
[242] *Tadić* Appeal Judgment, para. 190; *Bagilishema* Trial Judgment, para. 27 and the accompanying footnote; *Kayishema* Trial Judgment, para. 203-204; *Čelebići* Trial Judgment, para. 328. *Tadić* Appeal Judgment, para. 190: "[The] Statute does not confine itself to providing for jurisdiction over those persons who plan, instigate, order, physically perpetrate a crime or otherwise aid and abet in its planning, preparation or execution. The Statute does not stop there. It does not exclude those modes of participating in the commission of crimes which occur where several persons having a common criminal purpose embark on criminal activity that is then carried out either jointly or by some members of this plurality of persons."

PLANNING, INSTIGATING, ORDERING, COMMITTING AND AIDING AND ABETTING: ARTICLE 6(1) OF THE STATUTE

163. The participation of each of the individuals accused need not cover cumulatively all the five different forms of participation in the commission of crimes stipulated in Article 6(1), but one or more of them will suffice.[243] The Prosecutor submits that a Trial Chamber may find an accused guilty if it determines that he or she participated in a crime through any action encompassed by the Statute, even if it differs from the particular theory supported by the Prosecution. The Trial Chamber, as the finder of fact and trier of law, is free to apply any theory it finds applicable to the facts of a case as long as it fits within the confines of Article 6(1). As a rule, there is no problem with notice to the accused.

Planning

164. In order to secure a conviction for planning a crime, the Prosecution must show that: (1) the accused, either alone or in concert with others, planned, designed or organised the commission of the actus reus of a crime which was subsequently perpetrated.[244] The criminal conduct designed constitutes one or more statutory crimes that are later perpetrated[245] by another person. [246] It can be an act or an omission;[247] (2) the planning was a factor substantially contributing to the criminal conduct; [248] and (3) the accused acted with direct intent, or was aware of the substantial likelihood that a crime would be committed in the execution of the plan'.[249]

---

[243] This is the position followed in various judgements of the two Tribunals, including, *Akayesu* Trial Judgment, para. 473; *Kayishema* Trial Judgment, para. 194-7; *Čelebići* Trial Judgment, para. 321.
[244] *Akayesu* Trial Judgment, para. 480.
[245] *Kordić and Čerkez* Appeals Judgment, para. 26 ; *Kordić and Čerkez* Trial Judgment, para 386; *Limaj* Trial Judgment, para. 513; *Akayesu* Trial Judgment, para. 473.
[246] *Bagilishema* Trial Judgment, para. 30.
[247] *Kordić and Čerkez* Appeal Judgment, para. 31.
[248] Ibid., para. 26; *Bagilishema* Trial Judgment, para. 30; *Stakić Rule* 98*bis Decision*, paras. 103-104.
[249] *Kordić and Čerkez* Appeal Judgment, paras. 26, 31.

165. It needs to be established that the Accused, directly or indirectly, intended the crime in question to be committed.[250] The required *mens rea* is that of intent or recklessness.[251] The accused may be held criminally responsible for "planning" crimes that are committed in the execution of his plan, even if those crimes were not part of the plan, provided that he was aware of the substantial likelihood of their being committed.[252]

166. There may be different levels of culpability for "planning", depending on different levels of command.[253] A superior commander, for example, may determine the overall strategy whereas the field commander may have substantial discretion in determining his or her own tactical plan in accordance with superior commander's operational requirements.

167. An accused may be held liable on the basis of planning alone, but may additionally be liable under other modes of liability where the evidence supports such a finding. In these circumstances, the accused's involvement in planning the crime at least constitutes an aggravating factor.[254]

i. Instigating

168. In order to secure a conviction for instigating a crime, the Prosecution must show that: (1) the actus reus of a crime was performed by a person other than the accused; (2) the accused prompted the person to commit an offence punishable under the Statute[255], in the sense that the conduct of the accused was a factor substantially contributing to the conduct of the other person[256]; and (3) the accused acted with direct intent, or was aware

---

[250] *Brđanin* Trial Judgment, para. 268.

[251] *Blaškić* Trial Judgment, para. 267: "To establish the *mens rea* of the superior who orders, plans or instigates, requires direct or indirect intent, it is necessary to prove his direct or indirect intent, the latter corresponding to the notion of recklessness in common law and the notion of *dolus eventualis* in civil law." In cases of specific intent crimes, however, the *mens rea* must be that of intent (e.g. conduct of the accused an of planning the crime of terror must be aimed primarily at spreading terror among civilians.)

[252] *Kordić and Čerkez* Appeal Judgment, para. 30; *Blaškić* Appeal Judgment, para. 42; *Tadić* Trial Judgment para. 692.

[253] *Kordić and Čerkez* Trial Judgment, para. 377: "Responsibility for planning may involve different levels of command and, accordingly, different levels of planning, from persons holding the higher positions of "overall architects" to field commanders. See also *Kupreškić* Trial Judgment, para. 862, where a commander that has been held criminally liable for passing orders from his superiors to his subordinates is also considered to have "assisted in the strategic planning of the whole attack."

[254] *Brđanin* Trial Judgement, para. 268.

[255] *Orić* Trial Judgment, para. 270.

[256] *Akayesku* Trial Judgment, para. 482; *Blaškić* Trial Judgment, para. 280; *Brđanin* Trial Judgement, para. 269; *Rutaganda* Trial Judgment, para. 38 ; *Prosecutor v. Strugar*, IT-01-42-T, "Decision on Defence Motion Requesting Judgment of Acquittal Pursuant to Rule 98 bis", Trial Chamber, 21 June 2004, para. 86; *Kvočka et al.* Trial Judgment, para. 252; *Naletilić and Martinović* Trial Judgment, para. 60; *Brđanin* Trial Judgment, para. 269.