

front that the adult combatants. Child combatants were present at this meeting. "They had their own line. They had their own que and they were listening at the meeting."⁶⁰⁴

6. Norman's 6.3 Liability Under Counts 1-8

341. There is evidence that Norman, as the National Coordinator of the CDF, was the principal force in establishing, organizing, supporting, providing logistical support to, and promoting the CDF. As Deputy Minister of Defence he was able to enhance the capability and effectiveness of the CDF as a fighting force. He was the leader and commander of the Kamajors. He gave the order to launch attacks with the intention that subordinates would commit unlawful killings, physical violence, lootings and burnings, and that children would be enlisted to assist in the war effort.
342. Furthermore, on the evidence, viewed as a whole, the only reasonable inference is that Norman participated in the enterprise with the awareness that such crimes were a foreseeable consequence of its execution.
343. Norman as the National Coordinator of the CDF exercised effective command and control over the CDF.⁶⁰⁵ The CDF was a disciplined military force; it may not have resembled a traditional army but it was adapted to the circumstances of the war in which it was engaged. Under the direction of its leadership it was able to attack in a coordinated manner; it was not the situation that the various Kamajor units randomly arrived at the same town at the same time to attack the rebel forces.
344. According to a military expert, at "the strategic and operational level, [the CDF] command was highly effective."⁶⁰⁶ The CDF had a recognizable military structure and there was coherence between the strategic, operational and tactical levels.⁶⁰⁷ It could and did achieve successful military outcomes.
345. Hinga Norman was the ultimate power, in a military sense in the CDF.⁶⁰⁸ He was also head of the Kamajors. Witness TF2-005 gave evidence that Hinga Norman was the leader of the Kamajors and the highest Kamajor authority in the war. Within the

⁶⁰⁴ TF2-017, Transcript 19 November 04, Closed Session at p 87-90.

⁶⁰⁵ TF2-005, TF2-008, TF2-014, TF2-017, TF2-068, TF2-079, TF2-190, TF2-201, TF2-222, TF2-223

⁶⁰⁶ TF2-EW1, Transcript 14 June 2005, p. 30.

⁶⁰⁷ TF2-EW1, Transcript 14 June 2005, p. 39.

⁶⁰⁸ TF2-EW1, Transcript 14 June 2005, p. 40.

structure of the Civil Defence Forces, Hinga Norman had the highest authority.⁶⁰⁹ Further, as Witness TF2-042 testified, Norman gave the orders to the Kamajors when they were in Kenema before ECOMOG arrived.⁶¹⁰ There was a meeting at the Kenema Police Station, some time before, when Norman was introduced as head of the Kamajors.⁶¹¹ In the light of Norman's testimony it cannot be in doubt that he was the head of the CDF, which included the Kamajors. As such, it is inconsistent and indeed incompatible with the evidence that as the leader he did not control the Kamajors.

346. Witness TF2-008 gave evidence that Norman, Fofana and Kondewa, were the executive of the Kamajor Society. "They have the executive power of the Kamajor society. These people....nobody can take a decision in the absence of this group. Whatever happened, they come together because they are the leaders and the Kamajors look up to them."⁶¹² He also testified that the final authority to send people to the war front was with Norman.⁶¹³ War Council decisions were sent to Norman in his capacity as National Coordinator for his approval, then to the National Director of War Moinina Fofana, who channeled it to the National Director of Operations, J.S. Koroma, to the four Regional Operations Commanders.⁶¹⁴

347. Witness TF2-014 testified that he was appointed by Norman as National Deputy Director of Operations, and he was to take instructions from Norman, general and specific, and transmit them to the people at the war front. Secondly, he collected reports from the war front, compiled them, submitted them to the National Coordinator, Norman, through the Director of War, Moinina Fofana.⁶¹⁵

348. The evidence further reveals that the War Council was an administrative wing of the CDF. Everything had to go through the National Coordinator for his approval. Anything that did not have his approval was not carried out. Norman was above the War Council.⁶¹⁶ At a meeting held in Bo, after the attack, Norman said, "whatever Kamajors

⁶⁰⁹ TF2-005, Transcript 16 February 2005, Closed Session, pp. 28-30.

⁶¹⁰ TF2-042, Transcript 17 September 2004, p. 97.

⁶¹¹ TF2-042, Transcript 17 September 2004, p. 97.

⁶¹² TF2-008, Transcript 16 November 2004, p. 51.

⁶¹³ TF2-008, Transcript 16 November 2004, p. 58.

⁶¹⁴ TF2-008, Transcript

⁶¹⁵ TF2-014, Transcript 10 March 2004, p. 30.

⁶¹⁶ TF2-008, Transcript 17 November 17 2004, p. 77.

do or atrocity committed I am responsible.”⁶¹⁷ Under cross-examination, witness TF2-008 reinforced the fact that the commanders would only take instructions from Norman, Fofana and Kondewa.⁶¹⁸ So integral was Norman to the formulation and execution of the CDF policies in both Sierra Leone and outside that he would represent their interests in meetings with members of the international community and during several peace and disarmament negotiations.⁶¹⁹

349. After March 1998, the First Accused sidelined the War Council, which he had already effectively marginalized, and operated the affairs of the Kamajors without making reference to that body. The First Accused later formed his own command structure without the approval of the War Council. The structures formed by him were new District Administrators and Directorates in the places of Regional Commanders and Battalion Commanders.⁶²⁰

350. On the basis of the evidence there can be no doubt that Norman exercised effective control over his subordinates and was in a position to prevent or punish offences.

351. The evidence shows that many of the crimes were ordered directly by Norman. Where he did not directly order them, the Prosecution submits that he knew or had reason to know about their commission. Witness TF2-190 testified that he was the leader of the Death Squad which was responsible for security in and around Talia, Base Zero. The Death Squad was also involved in attacking the junta. The witness used to receive orders from “Pa Norman and not any other person else.”⁶²¹ In 1998 he was at a meeting in which the First Accused spoke of an all-out attack. The First Accused gave the witness instructions that his group was to hold the Bo-Koribundo highway. The witness said that the ammunition was given by a Mr Lome, to Joe Tamidey, by orders of Norman.⁶²²

⁶¹⁷ TF2-008, Transcript 17 November 17 2004, p. 118.

⁶¹⁸ TF2-008, Transcript 17 November 2004, p. 49.

⁶¹⁹ *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-T-447, “Decision on Prosecution’s Request to Admit Into Evidence Certain Documents Pursuant to Rules 92bis and 89(C)”, Trial Chamber, 14 July 2005, Annex para. 160, 222.

⁶²⁰ *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-T-447, “Decision on Prosecution’s Request to Admit Into Evidence Certain Documents Pursuant to Rules 92bis and 89(C)”, Trial Chamber, 14 July 2005, Annex para. 160, 222.

⁶²¹ TF2-190, Transcript 10 February 2005, p. 34.

⁶²² TF2-190, Transcript 10 February 2005, p. 48.

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352. Witness TF2-223 testified that he was a deputy to one of the commanders that attacked Kenema. "I was taking command from Chief Hinga Norman and the others."⁶²¹ The witness referred to a meeting of the commanders wherein their unit was given the task of capturing SS Camp, which was 5 miles from Kenema.⁶²² Ngaojia, his commander, told the witness that the orders came from Norman.⁶²³ The witness further testified that Norman came on many occasions to the SS Camp and he would bring morale boosters such as drinks. Norman would hold meetings with the commanders. Norman gave him an occurrence book to monitor day-to-day events and keep a record. Norman would look at the occurrence book that recorded events that happened at SS camp.⁶²⁴
353. Furthermore, the evidence of witnesses TF2-012, TF2-032, TF2-TF2-157, TF2-159, TF2-162, and TF2-198 directly implicates Norman under the theory of superior responsibility. These testimonies mirrored each other in the light of the witnesses being physically present in two meetings at Koribundo, in which the Accused himself acceded to responsibility for giving orders for the attack and the actions of the Kamajors.
354. As the person holding ultimate power in the CDF, Norman had central and effective control of the Kamajor militia, and had the necessary and reasonable measures to prevent atrocities by them, which he failed to do.⁶²⁵
355. Witness TF2-005 testified that he was present when the War Council denounced the looting, killings and raping of innocent civilians by the Kamajors to the Accused but no reply was heard from him.⁶²⁶ The witness also said that he was present when a report was referred to Dr. Jibao, concerning a woman shot by a Kamajor militia. Jibao referred the matter to the Accused and nothing was heard surrounding the findings for the murder.⁶²⁷
356. Witness TF2-079 testified that he gave Fofana a written situation report from Tongo and the environs prepared to inform Chief Norman about the way the war was being pursued.⁶²⁸ The First Accused knew at all relevant times that the Kamajors were looting

⁶²¹ TF2-223, Transcript 28 September 2004, Closed Session, p. 34.

⁶²² TF2-223, Ibid., p. 55.

⁶²³ TF2-223, Ibid., p. 108.

⁶²⁴ TF2-223, Ibid., pp. 118-121.

⁶²⁵ TF2-008, TF2-011, TF2-014, TF2-201, and TF2-222

⁶²⁶ TF2-005, Transcript 15 February 2005, Closed Session, pp. 87-88.

⁶²⁷ TF2-005, Ibid., p. 95.

⁶²⁸ TF2-079, Transcript 26 May 2005, pp. 25-27; Exhibit P86: CDF Situation Report, 16 November 1997.

property belonging to civilians and burning their houses, but he took no action to stop or prevent these crimes.⁶³¹ He was aware of reports of looting and burning in and around Base Zero and that the complaints were particularly against the notorious Death Squad, but he failed to take necessary and reasonable measures to prevent the offences.⁶³² There were very similar incidents in all crime bases. Indeed, the evidence before the court is that the First Accused actively encouraged the continued perpetration of these crimes in that he refused to allow the perpetrators to be punished by the appropriate organs within the command structure.⁶³³

7. Norman's Defence Case

357. Norman maintained that there was no CDF umbrella organization at Talia until the NCC created it in 1999.⁶³⁴ Yet defence witness Peter Penfold said that the CDF as an organisation came into place when the President went on the air (BBC) and Norman was appointed CDF coordinator; before that time there were individual civilian militia.⁶³⁵ It could be said of Mr. Penfold, in light of his outburst in court, that he was a person strongly biased towards Norman.
358. Norman said that the designation "Civil Defence Forces" was not used before March 1998. This is contradicted by Prosecution evidence. For example, Exhibit 27, dated 30 December 1997, is headed Civil Defence Forces of Sierra Leone (C.D.F. S/L) and signed by Norman as National Coordinator.
359. According to Norman, after March 18th 1998, there was either a UNAMSIL group or an ECOMOG group in control of wherever the hunters were operating.⁶³⁶ Joe Demby said that General Shelpidi, not Colonel (later General) Khobe was the head of ECOMOG when that force came to Sierra Leone.⁶³⁷ Colonel Khobe was the head of Nigerian forces, which were present in Sierra Leone before the coup. He later became the head of

⁶³¹ TF2-068, Transcript 17 November 2004, Closed Session, pp. 88-89; *See also* TF2-017, Transcript 22 November 2004, Closed Session, p. 77, where he stated that "[n]o Kamajor had ever done something for which they were punished."

⁶³² TF2-008, Transcript 16 November 2004, p. 41.

⁶³³ TF2-005, TF2-008, TF2-014, TF2-079, TF2-201, TF2-222, & TF2-223

⁶³⁴ Accused Sam Hinga Norman, Transcript 6 February 2006, p. 29 (lines 6-11).

⁶³⁵ Peter Penfold, Transcript 9 February 2006, p. 37 (lines 17-29) to p. 38 (line 1).

⁶³⁶ Accused Sam Hinga Norman, Transcript 26 January 2006, pp. 83-84.

⁶³⁷ Albert Joe Edward Demby, Transcript 13 February 2006, p. 75.

the Sierra Leone army; one must be careful not to be confused with the chronology of events.

360. The Defence has suggested that ECOMOG were generally in charge of the Kamajors, yet Norman himself agreed that there were no ECOMOG troops when the Kamajors attacked Koribundu,⁶³⁸ nor could he tell whether there were ECOMOG troops with the Kamajors when Tongo Field was attacked.⁶³⁹ In the case of the Bo and Kenema attacks, the evidence from both the Prosecution⁶⁴⁰ and the Defence⁶⁴¹ is that ECOMOG came in at least five days after the Kamajors had attacked and captured those cities.
361. Norman agreed that he was the person who gave final approval of the appointment of battalion commanders and above until the establishment of the National Co-ordinating Committee; that is until 29 January 1999. Before then, Norman had final approval of appointments at or above the level of battalion commander upon the advice of the War Council.⁶⁴² By letter dated 30 December 1997 entitled: "Civil Defence Force of Sierra Leone (CDF S/L) Headquarters", Norman signed as the National Coordinator under the heading of Civil Defence Forces of Sierra Leone.⁶⁴³ Norman said that he provided the information to the people producing the calendar (CDF 2001 Calendar) and that it was correctly recorded.⁶⁴⁴ Norman approved the publication of the calendar.
362. Norman said that Moinina Fofana became the National Director of War, after the formation of the National Co-ordinating Committee.⁶⁴⁵ The Prosecution led evidence that contradicts this assertion. Exhibit 159, Fofana's letter of appointment as Director of War, is dated 18 January 1998 and signed by Norman himself. The National Co-ordinating Committee was formed in January 1999.
363. Norman testified that he did receive reports from the frontline.⁶⁴⁶ Norman said that the director of appointment and promotion appointed the commander to attack Koribundo.

⁶³⁸ Accused Sam Hinga Norman, Transcript, 6 February 2006, at p. 14.

⁶³⁹ Ibid.

⁶⁴⁰ TF2-033, 20 September 2004, p. 27.

⁶⁴¹ Mohammed Bhonie Koroma, Transcript, 22 May 2006, p. 23.

⁶⁴² Accused Sam Hinga Norman, Transcript 6 February 2006, p. 42.

⁶⁴³ Transcript 6 February 2006, p. 43 (lines 20-29) to p. 44 (lines 1-12); Exhibit P27: Sam Hinga Norman Letter Appointing Ibrahim F. Kanneh as Member of the War Council dated 30 December 1997.

⁶⁴⁴ Accused Sam Hinga Norman, Transcript 6 February 2006, p. 54 (lines 16-22); Exhibit P112: CDF Calendar 2001, p. 0830.

⁶⁴⁵ Accused Sam Hinga Norman, Transcript 6 February 2006, p. 83 (lines 23-26).

⁶⁴⁶ Accused Sam Hinga Norman, Transcript 6 February 2006, p. 94 (lines 9-26).

He said he did not have anything to do with his appointment but he approved it.⁶⁴⁷ Norman said that at Talia, there was no higher authority than him.⁶⁴⁸ Norman said that he would not do anything with the initiators except through Allieu Kondewa and with his authority.⁶⁴⁹ Norman denied ever arranging for guns and ammunition at Talia, despite a defence witness M.T. Collier saying that Norman sent guns and ammunition; also Haruna Collier,⁶⁵⁰ Mohamed Kaineh⁶⁵¹ and Mustapha Lumeh⁶⁵².

364. A number of witnesses spoke about the meeting in the barri after Koribundo had been taken by the Kamajors. Witness TF2-198⁶⁵³ spoke about how Norman left a message with the people to assemble at the barri because he would have a meeting on the way back from Pujehun; his meeting took place at the end of March 1998. There were a lot of civilians and Kamajors. Norman addressed the Kamajors and thanked them, but told them that they hadn't done the work he told them to do. He said that he only wanted to see three houses left in Koribondo: the mosque, the barri and the house where he would have to reside. Norman said, 'You people are afraid of killing? Why? The soldiers killed, nothing happened; *Kapras* killed nothing happened; rebels killed nothing happened. Really you've not done my work, you've disappointed me.'⁶⁵⁴ Witness TF2-157 had a similar recollection of that meeting;⁶⁵⁵ as did witnesses TF2-032,⁶⁵⁶ TF2-082,⁶⁵⁷ TF2-012,⁶⁵⁸ TF2-162⁶⁵⁹ as well as other witnesses. Norman was stating the policy of the CDF as developed and promulgated by himself with the support and encouragement of Fofana and Kondewa.

365. It was not after every attack that Norman accepted responsibility for the offences committed. It is submitted that Norman demonstrated, at Koribundo, his commitment to the policy of winning the conflict at all costs. The justification for the policy was that

⁶⁴⁷ Accused Sam Hinga Norman, Transcript 6 February 2006, p. 100 (lines 7-18).

⁶⁴⁸ Accused Sam Hinga Norman, Transcript 6 February 2006, p. 102 (lines 4-9).

⁶⁴⁹ Accused Sam Hinga Norman, Transcript 6 February 2006, p. 103 (lines 1-4).

⁶⁵⁰ Haruna Collier, Transcript 12 May 2006, pp. 35-37.

⁶⁵¹ Mohamed Kaineh, Transcript 19 May 2006, p. 36 (lines 23-26).

⁶⁵² Mustapha Lumeh, Transcript 5 May 2006 pp. 74-76.

⁶⁵³ TF2-162, Transcript 8 September 2004, pp. 29-31.

⁶⁵⁴ TF2-198, Transcript 15 June 2004, pp. 37-38.

⁶⁵⁵ TF2-157, Transcript 16 June 2004, pp. 20-21.

⁶⁵⁶ TF2-032, Transcript 13 September 2004, pp. 61-62.

⁶⁵⁷ TF2-082, Transcript 15 September 2004, pp. 48-49.

⁶⁵⁸ TF2-012 Transcript 21 June 2004, pp. 26-27

⁶⁵⁹ TF2-162, Transcript 8 September 2004 pp. 29-30.

the soldiers, Kapras, and rebels killed and destroyed without any consequences, and so should the Kamajors. The only people who could have opposed Norman in this commitment were Fofana and Kondewa; neither did so or expressed any reservation concerning the policy. The chiefs, though the War Council, had the potential to be a counter-balance to Norman however, as the evidence establishes, the War Council was ineffective and marginalized. There were no other persons within the CDF who could have contested this policy. Even Nallo, a very senior commander, followed orders except at those times when he devised a way not to fully discharge his obligations.

366. Norman admitted he had the final approval over promotions, another means by which control and discipline was maintained. Norman, in direct contradiction, said that no one came under his control; he was not a commander; yet Norman said that he was the highest authority at Base Zero.⁶⁶⁰ Whilst cross-examining witness TF2- 042 the accused (at that time acting on his own behalf) agreed that he made the proclamation in Kenema that he was the head of the Kamajors.⁶⁶¹
367. Norman denied knowing about the Death Squad.⁶⁶² In assessing Norman's evidence one could form the view that he was seeking to obfuscate a number of issues and that there were a number of intrinsic contradictions in his evidence. Norman was in charge of the CDF; even he did not nominate anyone who was in a superior position to himself within the organisation. The President was not in a better position than Norman to control the war, as was acknowledged; the President was in Guinea and the combatants followed Norman not President Kabbah.
368. The Court can draw from the evidence of Norman that he directed the war efforts of the CDF. Norman did not direct those efforts by himself; he had a small number of subordinate commanders who, although not in the same mould as say the British Army, fulfilled the tasks of general tasks officers. Fofana was the deputy, an essential element in maintaining continuity and discipline as well as being responsible for the essential supplies. Kondewa promoted an alternative source of discipline through the belief of the combatants in his capacity, directly or indirectly, to protect them on the battlefield.

⁶⁶⁰ Accused Sam Hinga Norman, Transcript 6 February 2006, p. 102 (lines 4-9).

⁶⁶¹ Transcript 17 September 2004, p. 118 (lines 18-19).

Accused Sam Hinga Norman, Transcript 7 February 2006, p. 39 (24-29) to 40.

⁶⁶² Accused Sam Hinga Norman, Transcript 6 February 2006, p. 34 (lines 15-16).

Nallo was a senior 'officer' however his role was more directed towards conveying and implementing the orders of the triumvirate formed by the three accused.

369. Demby confirmed that the National Co-ordination Committee dealt with the supply of rice and condiments from the government to the CDF – it did not have any role in conducting the war. It was an administrative body not a military body.⁶⁶³ Demby testified how he investigated many, many complaints against the CDF with Norman. He admitted that his one description of how civilians were killed at checkpoints covered ten events. Having investigated many killings of civilians at around ten checkpoints, the one explanation he provided purported to describe all the killings at all checkpoints manned by the CDF.⁶⁶⁴
370. Mohamed Turay Collier, the chief at Talia, said that when Norman came to Talia he told the crowd, "the President has accepted that I should come to join you to fight" ⁶⁶⁵ Norman brought with him guns and ammunition.⁶⁶⁶ Collier's evidence is contrary to Norman's in that Norman stated that he never arranged the distribution of arms and ammunition at Talia.⁶⁶⁷
371. Osman Vandí, alias Vanjawai, said that there was an allegation he killed someone. The War Council decided that he should be hanged. Vandí denied being involved in the attack on Koribundo, contrary to Norman. He also denied being convicted of having killed a woman, contrary to Norman.⁶⁶⁸ However, Vanjawai also denied seeing military training at Talia⁶⁶⁹ which is an issue that is, effectively, not in dispute. The Prosecution draws the Trial Chamber's attention to this clear contradiction between two key defence witnesses.
372. Mustapha Lumeh was the Director of logistics, Civil Defence Force. He said support came from Lunghi and Monrovia. Lumeh said that Fofana's role was to solve small disputes at Base Zero; Fofana was called the Director of War. Lumeh agreed that one of the ways in which the initiators prepared a person to go to war was to get a person in a

⁶⁶³ Albert Joe Edward Demby, Transcript 10 February 2006, p. 69 (lines 18-21).

⁶⁶⁴ Albert Joe Edward Demby, Transcript 16 February 2006, p. 41 (lines 2-6).

⁶⁶⁵ Mohamed Turay Collier, Transcript 16 February 2006, p. 81 (lines 13-15).

⁶⁶⁶ Mohamed Turay Collier, Transcript 16 February 2006, p. 81 (lines 19-28).

⁶⁶⁷ Accused Sam Hinga Norman, Transcript 6 February 2006, p. 19 (24-26).

⁶⁶⁸ Osman Vandí, Transcript 20 February 2006, p. 16 (lines 8-16).

⁶⁶⁹ Osman Vandí, Transcript 20 February 2006, p. 18 (lines 16-20).

good psychological mood for the battle ahead.⁶⁷⁰ Lumeh said that the War Council were policy makers and the execution of the war itself, the planning of the war itself was done by commanders in the field. Lumeh agreed that the Director of War is one of the persons who could give orders.⁶⁷¹ Lumeh knew nothing about the Death squad.

373. Evidence of the Death Squad came from a number of witnesses. That evidence included Witness TF2-008 who testified that there was a Death Squad and it was answerable to First, Second, and Third accused as well as its commander, Borbor Tucker ("Jegbeyama").⁶⁷² TF2-014 said that Norman used the Death Squad to molest active members of the War Council, to loot and to torture captives held at Base Zero.⁶⁷³ TF2-005 told the Court that the War Council was prevented by Norman from investigating complaints made against the Death Squad.⁶⁷⁴ TF2-190, said that as a member of the Death Squad he received orders from Pa Norman and not any person else.⁶⁷⁵ TF2-008, said he had received a complaint from Commander Nallo that the Death Squad were killing innocent civilians and looting properties whenever they were sent to war.⁶⁷⁶ Borbor Tucker said he was the commander of the Death Squad and answerable only to Chief Hinga Norman.⁶⁷⁷ TF2-011 testified that the Death Squad was answerable to the [CDF] national coordinator.⁶⁷⁸
374. Evidence about some of the activities occurring at Base Zero/Talia came from a number of witnesses. TF2-133, unchallenged by the Defence, who said that she had been captured by the Kamajors at York Island and taken to Base Zero alone; her mother was killed in the oil plantation.⁶⁷⁹ Witness TF2-188 said she and her mother were both taken to Talia as prisoners and her mother was killed in the presence of witnesses.⁶⁸⁰ She saw her mother's throat being slit and identified Kondewa in court as the person who ordered the death of her mother.

⁶⁷⁰ Mustapha Lumeh, Transcript 5 May 2006 p. 94 (lines 18-21).

⁶⁷¹ Mustapha Lumeh, Transcript 8 May 2006 p. 12 (lines 4-8).

⁶⁷² TF2-008, Transcript 16 November 2004, p. 60 (lines 25-29) to p. 61 (lines 16-18).

⁶⁷³ TF2-014, Transcript 14 March 2005, p. 41 (lines 22-29).

⁶⁷⁴ TF2-008, Transcript 15 February 2005, pp. 94-96.

⁶⁷⁵ TF2-190, Transcript 10 February 2005 p. 75, (lines 18-24).

⁶⁷⁶ TF2-008, Transcript 16 November 2004, p. 62-63.

⁶⁷⁷ TF2-190, Transcript 10 February 2005 p. 34, (lines 20-26).

⁶⁷⁸ TF2-011, Transcript 8 June 2005, Closed Session, p. 22 (lines 2-3).

⁶⁷⁹ TF2-133, Transcript 6 June 2005 pp. 4-6.

⁶⁸⁰ TF2-188, Transcript 31 May 2005, pp. 14.

375. TF2-109 was captured by Kamajors and taken to Talia ("Base Zero").⁶⁸¹ She described the killing there of her brother Lahai Lebbie. Kamajors placed a tyre around him and burnt the tyre.⁶⁸² TF2-109 also described the death, at Base Zero, of her uncle Baggie and another man called Ngo Jusu. Both were killed by the Kamajors.⁶⁸³
376. TF2-096 gave evidence of the murder by Kamajors of a soldier that had been brought to Base Zero from Koribundo to surrender.⁶⁸⁴ The next day TF2-096 heard that the soldier had been killed at the instruction of Norman.⁶⁸⁵ TF2-108 saw Jusu Shalley, Baggie Vayei, and Lahai Lebbie being killed by the Kamajors in Talia.⁶⁸⁶ In the case of Jusu Shalley she saw his stomach being split open with a cutlass.⁶⁸⁷ In the case of Baggie Vayei, she saw his body dismembered.
377. TF2-187 gave evidence that her uncle made a report about Kondewa's boys, as they were called, as a result of which her uncle was arrested; she saw him tied up and burning plastic poured over his body till he died.⁶⁸⁸ Witness TF2-189 saw her husband killed by the Kamajors at Talia, a man called Nulele, cut his throat and removed his head in front of civilians.⁶⁸⁹
378. Siaka Lahai was simply unhelpful and vague. Keikula Amara, alias Kamabotie, knew nothing about higher CDF structures. Mohamed Kaineh was not a very senior Kamajor. As with most defence witnesses, they claimed to know nothing about crimes committed by Kamajors.
379. Mohamed Bhonie Koroma said that on 15 February 1997 Kamajors attacked Kenema; he claimed that Kenema was captured without a shot being fired. He volunteered that he did not see any Kamajor burn a house, nor looting civilian property or killing anyone.⁶⁹⁰ He said that everyone was happy and dancing.

⁶⁸¹ TF2-109, Transcript 30 May 2005, p. 32 (lines 8-11).

⁶⁸² TF2-109, Transcript 30 May 2005, p. 34 (lines 16-18).

⁶⁸³ TF2-109, Transcript 30 May 2005, pp. 34-35.

⁶⁸⁴ TF2-096 Transcript 8 November 2004, p. 21 (lines 6-15).

⁶⁸⁵ TF2-096 Transcript 8 November 2004, p. 21 (lines 24-29) to 22 (lines 1-3).

⁶⁸⁶ TF2-108, Transcript 30 May 2005, p. 5 (lines 16-29) to p. 6 (lines 1-15).

⁶⁸⁷ TF2-108, Transcript 30 May 2005, pp. 8-9.

⁶⁸⁸ TF2-187, Transcript 1 June 2005, p. 13.

⁶⁸⁹ TF2-189, Transcript 3 June 2005, pp. 8-13.

⁶⁹⁰ Mohamed Bhonie Koroma, Transcript 22 May 2006, p. 19 (lines 23-29).

380. Brima Moriba, a Concerned Kamajor, did not know any other commanders;⁶⁹¹ nor anything about killings or looting by Kamajors.⁶⁹² No defence witness saw any prisoners, nor any child soldiers, nor knew anything about the complete structure of the CDF.

⁶⁹¹ Brima Moriba, Transcript 23 May 2006, p. 29.

⁶⁹² Brima Moriba, Transcript 23 May 2006, p. 46.

MOININA FOFANA:**FOFANA'S POSITION OF AUTHORITY**

381. The Second Accused Moinina Fofana, is believed to have been born in 1950, in Nongoba Bullom Chiefdom, Bonthe District, in the Republic of Sierra Leone.⁶⁹³
382. The Second Accused was at all times relevant to the Indictment in a high position of authority, invested with power and responsibility over his subordinates. In the function of Director of War of the CDF, the Second Accused was working side by side with Hinga Norman, the National Coordinator and Allieu Kondewa, the High Priest. Together the triumvirate orchestrated and planned war strategies and attacks and most importantly the commission of unlawful acts. All major decisions were taken in consultation with each other.⁶⁹⁴
383. Fofana was not simply a store-keeper. He was an important person with the CDF as he fulfilled the function of deputy to Norman, ensuring the continuity of Norman's authority. Fofana was perceived by the majority of witnesses as being an important person, someone from whom orders originated and were enforced.⁶⁹⁵
384. The Prosecution submits that the power and authority entrusted to the Second Accused, as a top leader of the CDF, is further confirmed by his own admission at Base Zero that he was in charge whenever Hinga Norman was not there.⁶⁹⁶ Witnesses TF2-021, TF2-079 reinforced that the prominent people at Base Zero were Hinga Norman, Moinina Fofana and Allieu Kondewa.⁶⁹⁷
385. The Prosecution has also adduced evidence that the Second Accused together with Allieu Kondewa was in charge of the CDF Headquarter offices established in Kenema and at Zimmi. Witness TF2-223 explained that the Second Accused was the highest authority in charge of the Kamajors' affairs in Kenema during the attack and for the

⁶⁹³ *Prosecutor v. Norman, Fofana, Kondewa*, "Indictment", 5 February 2004, para 2.

⁶⁹⁴ Exhibit P97: Military Expert Report, May 2005, p. C-4; TF2-014, Transcript 14 March 2005, p. 6.

⁶⁹⁵ Exhibit P112: Description of Title, Position and Authority of Moinina Fofana, CDF Calendar, DD Month YYYY.

⁶⁹⁶ TF2-079, Transcript 26 May 2005, p. 25-26.

⁶⁹⁷ TF2-021, Transcript 2 November 2004, p 60; TF2-079, Transcript 26 May 2005, p 37.

months following.⁶⁹⁸ During his time in Kenema, Kamajors under his command committed a great number of atrocities.⁶⁹⁹

386. The Second Accused's authority is also evident from the fact that he was often quoted on the radio reporting about the activities of the Kamajors, such as, to where their front was moving, what they had captured etc. Witness TF2-079 said that there were many reports in this respect made by the Second Accused.⁷⁰⁰

Counts 1 & 2: Unlawful Killings

387. Fofana is charged with individual criminal responsibility under both Articles 6(1) and 6(3) of the Statute for the eight counts in the Indictment on the basis that international law permits cumulative charging under different modes of liability. Article 6(1) covers planning, instigating, ordering, committing or otherwise aiding and abetting in the planning, preparation or execution of a crime referred to in the Statute, while Article 6(3) states that the commission of a crime by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so, and failed to take measures to prevent the acts or punish the perpetrators.

388. With regard to his personal liability under Article 6.1, the Prosecution submits that it has adduced evidence that proves beyond reasonable doubt the Second Accused's individual criminal liability through planning, ordering, instigating, committing, aiding and abetting or his involvement in a joint criminal enterprise for the offence of unlawful killing charged under Counts 1 & 2 of the Indictment, for the locations of Bo, Koribondo, Kenema, Tongo, Bonthe, Base Zero and Moyamba.⁷⁰¹

389. The evidence indicates that prime leadership and effective control of the CDF was in the hands of Norman as National Coordinator, Fofana as Director of War, and Kondewa as

⁶⁹⁸ TF2-223, Transcript 30 September 2004, p. 41, 95, 100.

⁶⁹⁹ See TF2-042, TF2-033, TF2-152, TF2-154, TF2-039.

⁷⁰⁰ TF2-079, Transcript 26 May 2005, p 43.

⁷⁰¹ Tongo: TF2-013, TF2-015, TF2-016, TF2-022, TF2-027, TF2-035, TF2-047, TF2-048, TF2-144; Kenema: TF2-033, TF2-039, TF2-040, TF2-042, TF2-053, TF2-079, TF2-151, TF2-152, TF2-154, TF2-201, and TF2-223 Bo & Koribondo: TF2-001, TF2-006, TF2-012, TF2-014, TF2-017, TF2-030, TF2-032, TF2-056, TF2-057, TF2-058, TF2-067, TF2-088, TF2-119, TF2-140, TF2-156, TF2-157, TF2-159, TF2-162, TF2-198, TF2-201; Moyamba: TF2-014, TF2-073, TF2-165, TF2-166, TF2-167, TF2-168, TF2-173 and TF2-190; Bonthe: TF2-014, TF2-016, TF2-071, TF2-086, TF2-096, TF2-108, TF2-109, TF2-133, TF2-147, TF2-187, TF2-188, TF2-189

High Priest. All three accused persons were sitting members of the War Council. At meetings of the War Council, political and military issues were discussed, including military operations, welfare and discipline of the Kamajors.

390. The evidence also shows that the Second Accused's role in the CDF was instrumental in planning and implementing policy and strategy for prosecuting the war.⁷⁰² Witness TF2-014 testified that he was the one in charge of putting down on paper the war strategies formulated and dictated by the Second Accused.
391. The Second Accused's role in planning the attacks on Bo, Koribondo, Kenema and Tongo was vividly put to the court by Prosecution witnesses whose testimonies remain unchallenged. Witness TF2-005 gave evidence that it was the duty of the National Coordinator, Director of War and his deputy, director of operation and his deputy, and the High Priest to plan how the war was fought, which included the planning and ordering of the Black December operation.⁷⁰³ It was at Base Zero that these actors planned, coordinated, directed, trained and commanded the attacks on Tongo, Bo, Koribundo and Kenema.⁷⁰⁴ Witness TF2-005 gave evidence of the Second Accused being present in a meeting at Base Zero, together with Hinga Norman, Allieu Kondewa, Musa Junisa, Abu Konuwa and Vandi Songo where plans for the Tongo attack were discussed. In that Meeting, Hinga Norman was reported to have said "whoever takes Tongo and keeps it wins the war...and therefore Tongo should be taken at all costs."⁷⁰⁵ Further Hinga Norman said, "anybody found working with the junta there or mining for them should not be spared."⁷⁰⁶ The Second Accused also spoke to the Kamajor fighters, emphasizing the unlawful orders given by the First Accused.⁷⁰⁷
392. Witness TF2-222 testified that, in a planning meeting for the Tongo attack and Black December Operation, held at Base Zero in December 1997, Hinga Norman stated that no Junta Forces, their collaborators, and no prisoners of war or their houses must be spared in Tongo, since Tongo determines who wins the war.⁷⁰⁸ Fofana also spoke to the

⁷⁰² TF2-008, Transcript 16 November 2004, p 47; TF2-005, Transcript 16 February 2005, p. 54, 63; TF2-222, Transcript 17 February 2005, p. 87; TF2-079, Transcript 26 May 2005, p. 40.

⁷⁰³ TF2-005, Transcript 15 February 2005, Closed Session, p. 102.

⁷⁰⁴ TF2-005, TF2-008, TF2-011, TF2-014, TF2-079, TF2-082, TF2-190, TF2-201, TF2-222

⁷⁰⁵ TF2-005, Transcript 15 February 2005, Closed Session, p. 106 (line 12).

⁷⁰⁶ TF2-005-February 15, 05 at p.106

⁷⁰⁷ TF2-222, Transcript 17 February 2005, p. 119.

⁷⁰⁸ TF2-222, Transcript 17 February 2005, p.110, 112, 113, 115.

Kamajor fighters, emphasizing the unlawful orders given by the First Accused. His instructions were: "Now you have heard the National Co-ordinator, any commander failing to perform accordingly and losing your own grounds, just decide to kill yourself there and don't come and report to us."⁷⁰⁹ The Chief Priest Allieu Kondewa gave the last command. Kondewa said, "a rebel is a rebel; surrendered, nor surrendered. The time for their surrender has long since been exhausted, so we don't need any surrendered rebels."⁷¹⁰

393. Witness TF2-190 testified about a planning meeting that took place in 1998 at Base Zero in which an all-out attack on all areas occupied by the junta forces including the Bo-Koribondo axis was discussed. In this meeting the Second Accused took the stage after Hinga Norman and instructed the fighters present, "so any commander, if you are given an area to launch an attack and you fail to accomplish that mission, do not return to Base Zero."⁷¹¹ The Second Accused further ordered commanders to launch an attack on the soldiers and destroy them.⁷¹²

394. Another witness who was present at a meeting when the planning for the attack on Tongo was discussed described how Norman had convened the meeting, and was present together with Fofana, Kondewa, the chairman and some members of the War Council and some commanders. Norman wrote out the requirements for the commanders who were to go to Tongo and supplies were provided to the commanders.⁷¹³

395. TF2-201 testified that at the said meeting Hinga Norman said that they had to go for an all-round attack on Bo and Kenema together, and that they would have to join ECOMOG.⁷¹⁴ The witness was told by Norman to go to Kenema and set up a Kamajor Base. Hinga Norman and the Second Accused would direct the witness to supply ammunition to the commanders.⁷¹⁵

396. The Prosecution submits that there is vivid and compelling evidence that proves beyond reasonable doubt the role of Moinina Fofana in the unlawful killings for the Kenema

⁷⁰⁹ TF2-222, Transcript 17 February 2005, p. 119.

⁷¹⁰ TF2-222, Transcript 17 February 2005, p. 120.

⁷¹¹ TF2-190, Transcript 10 February 2005, p. 44.

⁷¹² TF2-190, Transcript 10 February 2005, pp. 83-84.

⁷¹³ TF2-201, Transcript 4 November 2004, pp. 106-7.

⁷¹⁴ TF2-201, Transcript 4 November 2004, p. 42.

⁷¹⁵ TF2-201, Transcript 4 November 2004, pp. 97-98.

crime base.⁷¹⁶ Evidence of the physical acts of killing, which constitute the actus reus for the offence is contained in the testimonies of witnesses TF2-033, TF2-039, TF2-040, TF2-042, TF2-053, TF2-079, TF2-151, TF2-152, TF2-154, TF2-201, and TF2-223. Witness TF2-041 testified that Kamajors said to him when he was captured in Blama, that they were taking him to the ground commander at Blama, and he was then told that Hinga Norman had instructed them to kill the Police, their wives and their children.⁷¹⁷ This piece of evidence was not challenged under cross-examination. The Prosecution submits that the attack on the police in Kenema District generally, including this incident at Blama, was part of orders the orders given by Hinga Norman at the meetings described above which were reinforced by the Second Accused.

397. It is open to the Trial Chamber to conclude that this directive to kill police officers on the part of the First Accused, in the presence of the Second Accused, was consistent with evidence of police killings in Kenema in pursuance of his command.⁷¹⁸
398. The Prosecution submits that evidence which go beyond the threshold for culpability against the Second Accused for planning unlawful killings under Counts 1 & 2 has been presented. The Second Accused directed the physical perpetrators to carry out the acts in furtherance of the plan and intended the crimes or knew that they would be a consequence of the implementation of the plan.
399. The Prosecution submits that in addition to showing responsibility for planning attacks on Bo, Koribondo, Kenema and Tongo, the evidence adduced also establishes culpability for orders given by the Second Accused, to commanders to carry out these attacks and to kill civilians, captured enemy combatant and “collaborators”, or alternatively that the Second Accused in collusion with the Third Accused actively supported and reinforced orders for unlawful killings given by Hinga Norman in these attacks.⁷¹⁹
400. 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.⁷²⁰ Furthermore, this witness testified that the Second Accused was present in Norman’s room at Base Zero when he

⁷¹⁶ TF2-223, TF2-201, TF2-222, TF2-079.

⁷¹⁷ TF2-041, Transcript 24 September 2004, p. 23.

⁷¹⁸ TF2-014.

⁷¹⁹ TF2-190, 10 February 05 at p 44, 83 and 84.; TF2-222, , 17 February 05 at p 119 & 120

⁷²⁰ TF2-014, Transcript 10 March 2005, pp. 20-21.

received orders from Norman to loot pharmacies and kill. "When you go down to Bo the Southern Pharmacy should be looted and bring all the medicines to me". Norman said you should kill PC Veronica Bagni of Valunia Chiefdom, the home town, chiefdom of Chief Hinga Norman, because 'that woman was against our movement.'⁷²¹ The Second Accused's tacit support of these crimes can again be inferred.

401. According to another witness, TF2-201 the planning for the attack on Bo and Kenema was done at Talia. The intention was to attack and kill the AFRC/RUF junta and likewise treat all sympathizers and collaborators.⁷²²
402. The Prosecution submits that there is evidence to could conclude that unlawful killings occurred in pursuance of the orders of the Accused.⁷²³ Witness TF2-014 stated that Norman's order to kill which was supported by the Second Accused was not only for PC Veronica Bagni of Valunia Chiefdom,⁷²⁴ but also Joe Kpundoh Boima III, Paramount chief of Bo Kakua, Toma Alias, chairlady of Bo Town council, because she used to collect the market dues, therefore she was a collaborator and Lansana Koroma who was there as Provincial Secretary.⁷²⁵
403. Witness TF2-082, further testified that on one occasion after the attack on Moribund the Second Accused, Hinga Norman and Allieu Kondewa came to see him and met him on the road outside of Koribundu. The Second Accused questioned him as to why he had not carried out standing orders to kill Sheku Gbao who was a rebel. Witness knew him as a driver. The witness explained that he didn't kill Gbao because he did not see him with a gun and nor was Gbao a rebel.⁷²⁶
404. Furthermore, Witness TF2-057 also testified to the Second Accused's effective command in Bo and to his criminal conduct. The witness related how his brother and other Temne people were killed as a result of the Second Accused's orders. The witness described how he and his brother were forcefully taken by Kamajors before the Second Accused at the CDF Headquarters in Bo. Witness explained that the Second Accused expressed in their presence that "he had nothing to do with Temnes because Foday

⁷²¹ TF2-014, Transcript 10 March 2005, pp. 71-72.

⁷²² P41, TF2-201

⁷²³ TF2-012, TF2-032, TF2-157, TF2-159, TF2-162 and TF2-198

⁷²⁴ TF2-014, Transcript 10 March 2005, pp. 71-72.

⁷²⁵ TF2-014, Transcript 10 March 2005, pp. 71-72.

⁷²⁶ TF2-082, Transcript 15 September 2004, p 40.

Sankoh was a Temne, and it was you [Temne] who brought the war in this country.”⁷²⁷ The witness explained that he understood that the Second Accused meant that “any Temne man who is brought forward to him, he wouldn’t have any regard for him. They would kill him.”⁷²⁸ The witness and his brother, who were Temne, were consequently locked up in a cell.⁷²⁹ The witness said that 15 days later the Second Accused ordered that his brother be taken out of the cell. The witness heard his brother shouting “Brother they are taking me away, they are taking me away.”⁷³⁰ The witness has never seen his brother since.⁷³¹ The witness further testified that the Second Accused ordered out two other men that were also in his cell. The witness observed from his cell as they were carried away and were hacked to death by the Kamajors on the premises of the CDF Headquarters.⁷³² The witness further testified that the Kamajors “killed most of the Temnes in Bo town.”⁷³³

405. Further evidence of criminal conduct was adduced by witness TF2-223. The witness testified that the Second Accused gave direct orders for the burning of collaborators in Kenema, which were accordingly executed.⁷³⁴ The orders to burn people were given to a unit called the Task Force Unit.⁷³⁵
406. Witness TF2-014 spoke of the Second Accused’s involvement in a mission to get rid of all rebels and their collaborators suspected to be based around the surrounding villages to Base Zero.⁷³⁶ The witness testified that the Second Accused designated two persons who knew the terrain, to accompany him and help witness carry out the operation to eliminate collaborators, at Dodo village in Jong Chiefdom, Bonthe District. The killings were carried out accordingly.⁷³⁷
407. Witness also stated he was ordered by the Second Accused and Hinga Norman to go to a village called Baoma Kpenge to pursue collaborators, as they had received information

⁷²⁷ TF2-057, Transcript 29 November 2004, p. 122; TF2-057, Transcript 30 November 2004, pp. 20-21.

⁷²⁸ TF2-057, Transcript 30 November 2004, p. 21.

⁷²⁹ TF2-057, Transcript 29 November 2004, pp. 120-121, 122-123.

⁷³⁰ TF2-057, Transcript 30 November 2004, p. 3.

⁷³¹ TF2-057, Transcript 30 November 2004, p. 3.

⁷³² TF2-057, Transcript 30 November 2004, pp. 5-6.

⁷³³ TF2-057, Transcript 30 November 2004, p. 22.

⁷³⁴ TF2-223, Transcript 28 September 2004, p. 101.

⁷³⁵ TF2-223, Transcript 28 September 2004, pp. 93-95.

⁷³⁶ TF2-014, Transcript 10 March 2004, pp. 40-41.

⁷³⁷ TF2-014, Transcript 10 March 2004, p. 41.

from one Kamajor commander based there that rebels had been infiltrating in the trade fair. At Baoma Kpenge a civilian was identified as being a collaborator and was consequently executed.⁷³⁸

408. The Prosecution submits that with regard to culpability through instigation, evidence has been adduced before the court which strongly inculpatates the Second Accused along with the First and Third Accused for the offence of Unlawful Killing of civilians, captured enemy combatants and “collaborators” at the locations of Bo, Koribundo, Kenema, Tongo, Bonthe, and Moyamba. The Prosecution submits that the Second Accused by his utterances of support often following Hinga Norman’s orders for attacks, he provided encouragement and motivated commanders for the perpetration of the unlawful orders. TF2-005 and TF2-222 both stated that in a planning meeting at Base Zero, the Second Accused after Norman had given orders for attack on Tongo in the Black December Operation, also spoke to the Kamajors fighters emphasizing the unlawful orders as follows: “Now you have heard the National Co-ordinator, any commander failing to perform accordingly and losing your own grounds, just decide to kill yourself there and don’t come and report to us.”⁷³⁹ The witness further testified that ammunition was provided to the troops by the Second Accused.⁷⁴⁰
409. Witness TF2-057 related how his brother and other Temne people were killed as a result of the Second Accused’s orders.⁷⁴¹ The witness further testified that the Kamajors “killed most of the Temnes in Bo town.”⁷⁴² The witness explained how non-Mende people were singled out and were hacked to death by Kamajors at check points mounted in the way out of Bo.⁷⁴³ The Prosecution submits that these killings can be imputed to the Second Accused, as a direct result of the comments and unlawful orders given by him at the CDF Headquarter. Alternatively, the Prosecution argues that at the very least these further killings were a foreseeable consequence of the Second Accused’s inducement and active encouragement of the practice of killing Temne people.

⁷³⁸ TF2-014, Transcript 10 March 2005, p. 49.

⁷³⁹ TF2-222, Transcript 17 February 2005, p. 119.

⁷⁴⁰ TF2-005 15 February, 05 at p 107.

⁷⁴¹ TF2-057, 29 November 2004, p. 122; TF2-057, Transcript 30 November 2004, pp. 20-21.

⁷⁴² TF2-057, Transcript 30 November 2004, p. 22.

⁷⁴³ TF2-057, 30 N November at pp 34, 35, 37, 38, 40, 44.

410. Witness TF2-014 testified about the Second Accused's direct involvement in the commission of murder. The witness said that one Alpha Dauda Kanu, a Kapra that he knew was killed in an oil palm plantation when going towards Mokosi. Kanu was killed by Dr Allieu Kondewa, Hinga Norman, and Moinina Fofana. "He was hacked to death, and we took off his skin." 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."⁷⁴⁴
411. 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 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's brothers appealing to them not to tell anyone what transpired.⁷⁴⁵
412. The Prosecution submits that by his presence at the scene of these killings and being positively associated with Hinga Norman and Allieu Kondewa, in particular with the incriminating statement made by Hinga Norman in the Kanu killing, the Second Accused knowingly puts himself in the position of an active perpetrator of these crimes or at the least as an accessory to their commission.
413. The Second Accused, as Director of War, was invested with the key role of distributing logistics to the fighters.⁷⁴⁶ As the military expert EW1 testified,⁷⁴⁷ one of the most important functions, in any guerilla type army like the CDF, was the logistics supplier, which role was assigned to Moinina Fofana, Hinga Norman's second-in-command.
414. Without munitions guerrilla groups cannot operate; without food they cannot live. It is through control of logistics that a guerrilla commander maintains control of his organization: a dispersed organization such as the CDF or RUF is liable to break up as individual commanders with strong egos strive for independence from central command.

⁷⁴⁴ TF2-014, Transcript 10 March 2005, p. 55.

⁷⁴⁵ TF2-014, Transcript 10 March 2005, p. 59.

⁷⁴⁶ See Exhibit 59.

⁷⁴⁷ EW1, 14 June 2005.

This is a natural tendency in loose-knit organizations; but control can be maintained by focusing the supply of munitions without which guerrilla groups cannot operate. It is no surprise that this important function was vested in Norman's second-in-command, the Director of War Moinina Fofana.⁷⁴⁸ As such and contrary to what the Defence alleged in its Motion, there is evidence to conclude that the Second Accused was far from being just a glorified "storekeeper"⁷⁴⁹ for arms and ammunition.

415. There is evidence that his contribution to the supplying of logistics to the troops was essential and substantial, especially in the view of the nature of the conflict where the control of supplies was a paramount consideration. The evidence shows that arms and ammunition were supplied by the Second Accused for the Tongo Attack, the Bo Attack and the Black December Operation.⁷⁵⁰

416. Witness TF2-223's testimony attests to the Second Accused's individual responsibility for the crimes of murder, collective punishment, and physical violence and mental suffering committed at SS Camp. Witness testifies that SS Camp was chosen for its location to be used as an execution camp for prisoners of war, rebels and suspected collaborators as there were too many killings already taking place in Kenema.⁷⁵¹ Witness also testifies that the Second Accused convened a meeting in which the task of capturing SS Camp was given. Ngaohjia told witness the orders came from Norman, but "dished out by Fofana."⁷⁵² Witness further related that when Kamajors took over SS Camp in Tiloma Village, (two months after the Kenema attack), the Second Accused introduced them to the terrain and briefed them on how to maintain security at the location. He thereafter "handed over the whole Camp" to the witness and Kamajors assigned to that area.⁷⁵³ The Second accused was aware of the crimes committed there as they were recorded in an occurrence book.⁷⁵⁴

417. The Prosecution further submits that the evidence shows that the Second Accused encouraged and approved of the killings of police officers and other civilians by the

⁷⁴⁸ Exhibit P97: Military Expert Report, May 2005, p. C-4.

⁷⁴⁹ Fofana Motion for Judgment for Acquittal, 4 August 2005, para 55

⁷⁵⁰ TF2-005, Transcript 15 February 2005, p. 106; TF2-017, Transcript 19 November 2004, p. 96; TF2-017, Transcript 19 November 2004, p. 84.

⁷⁵¹ TF2-223, Transcript 28 September 2004, Closed Session, pp. 109, 114.

⁷⁵² TF2-223, Transcript 28 September 2004, Closed Session, p. 55.

⁷⁵³ TF2-223, Transcript 28 September 2004, Closed Session, pp. 105-106.

⁷⁵⁴ TF2-223, Transcript 28 September 2004, Closed Session, pp. 118-119, 121, 123.

Kamajors in Kenema as he was reported to be, the highest authority in charge of the Kamajors affairs in Kenema at that time.⁷⁵⁵

418. The Second Accused actively and expressly supported the unlawful killings and burning of houses by the Kamajors that occurred in Tongo and during the Black December Operation. Witnesses TF2-222 and TF2-005 testified that Hinga Norman ordered the Kamajors, in a planning meeting for the Tongo attack and Operation Black December, that no Junta Forces, their collaborators, and no prisoners of war or their houses must be spared.⁷⁵⁶ The Second Accused also spoke to the fighters present, reinforcing Hinga Norman unlawful orders.⁷⁵⁷
419. The result of all this planning, ordering, instigation, aiding and abetting was widespread and indiscriminate killing of innocent civilians, relatives and sympathizers or suspected sympathizers of the AFRC/RUF junta in CDF Kamajor strongholds in the south and east of Sierra Leone called “collaborators” and captured enemy combatants.
420. Based on the foregoing, the Prosecution submits that evidence beyond reasonable doubt has been provided for the Trial Chamber to conclude that the Second Accused planned, instigated, committed, ordered and aided and abetted the crimes charged in the Indictment thus engaging his individual criminal responsibility under Article 6(1).
421. The evidence shows that the Second Accused as Director of War, in concert with the National Coordinator and the High Priest were at the centre in the implementation of the plans of the Kamajors.⁷⁵⁸
422. The Prosecution submits that on the basis of the evidence of a joint criminal enterprise as outlined, considered together with the evidence as a whole, it is submitted that the guilt of the Second Accused is established beyond a doubt. The only reasonable conclusion is that all of the crimes alleged in the Indictment were committed as part of a single joint criminal enterprise of which the Second Accused was a participant, and that accordingly the Second Accused is guilty of committing (as a participant in a joint criminal enterprise) all of the crimes alleged in the Indictment.

⁷⁵⁵ TF2-223, Transcript 30 September 2004, Closed Session, pp. 41, 95, 100.

⁷⁵⁶ TF2-222, Transcript 17 February 2005, pp. 110, 112-113, 115; TF2-005, Transcript 15 February 2005, pp. 105-106.

⁷⁵⁷ TF2-222, Transcript 17 February 2005, p. 119.

⁷⁵⁸ TF2-008, Transcript 16 November 2004, p. 82.

Counts 3 & 4: Physical Violence and Mental Suffering

423. Reference is made to the Second Accused's role as commander of the Kamajors on the basis of which evidence in relation to his culpability for unlawful killings has been led. The Prosecution submits that the Trial Chamber should conclude on the basis of the evidence that the Second Accused, Moinina Fofana planned, instigated, ordered, committed or aided and abetted the infliction of physical or mental harm and suffering.

424. The Prosecution submits that evidence has been presented from many witnesses who made specific mention of the Second Accused in relation to the offences charged under Counts 3 and 4, in particular, witnesses TF2-005, TF2-014, TF2-017, TF2-079, TF2-222. These witnesses gave evidence of direct orders from the First Accused for the attack on civilian collaborators of the AFRC/RUF supported and reinforced by comments or remarks of exhortation by the Second Accused.⁷⁵⁹

425. Witness TF2-014 gave evidence that the First Accused stated at Base Zero that "sympathisers, collaborators and those who refuse deliberately to leave the AFRC/RUF Zone" were enemies and ordered that they should be killed.⁷⁶⁰ There is clear, unambiguous and unchallenged evidence before the Court from Prosecution witnesses who indicate that the First Accused gave orders directly to subordinates for various attacks on locations across the Southern and Eastern Provinces, and that he specifically ordered subordinates to kill captured AFRC/RUF combatants, their agents, friends, families and sympathisers, otherwise known as "collaborators." These orders to kill captured enemy combatants and civilians carry with them the requisite mental element for the infliction of serious bodily harm and physical suffering on such victims. The testimonies of Witnesses TF2-005, TF2-014, TF2-017, TF2-079, TF2-222, TF2-223, referred to earlier apply. The Prosecution submits that the Second Accused is inculpated in each of the instances referred to above in that the remarks or comment he made provided substantial support to the commission of the offences by the perpetrators.

426. Many witnesses described how they suffered at the hands of the Kamajors and the

⁷⁵⁹ TF2-190, Transcript 10 February 2005, pp. 44, 83-84.; TF2-222, Transcript 17 February 2005 pp. 119-120.

⁷⁶⁰ TF2-014, Transcript 10 March 2005, p. 34.

evidence indicates the widespread nature of the attacks. There is clear, unchallenged evidence before the court by witness TF2-015 about gruesome killings in Kamboma from which the witness (the 65th victim) is the only survivor. The witness testified that he still bears visible scars of the machete blows he received during that attack, which he showed to the court.⁷⁶¹

427. TF2-041 testified still bearing scars at the back of his neck from a brutal attempt on his life. The witness described how Kamajors hunting for police officers in Blama, acting on the instructions of Hinga Norman, Moinina Fofana and Allieu Kondewa, chased and caught him where he tried to hide. TF2-041 was severely struck at the back of his neck with a knife. The blow was intended to kill him. The witness managed to survive the attack and escape into the bush. After his recovery and rescue witness spent no less than five months in hospital recovering from injuries sustained in this brutal attack.⁷⁶²

428. The Prosecution led evidence of mental suffering through the evidence of TF2-006 and TF2-007. 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.⁷⁶³ 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.⁷⁶⁴ 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. Jakineh wounded her wrist and stabbed her in the stomach with a stick. He then struck her on the neck with a machete.⁷⁶⁵ 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. His brother was accused of being a junta, and the two of them were tied up. The Accused was able to show the marks sustained from these wounds to the Court.⁷⁶⁶

⁷⁶¹ TF2-015, Transcript 11 February 2005, p. 16.

⁷⁶² TF2-041, Transcript 24 September 2004, pp. 27, 30-31.

⁷⁶³ TF2-006, Transcript 9 February 2005, pp. 11-12.

⁷⁶⁴ TF2-007, Transcript 2 December 2004, pp. 57-58.

⁷⁶⁵ TF2-086, Transcript 8 November 2004, pp. 93-96.

⁷⁶⁶ TF2-198, Transcript 15 June 2004, pp. 20-22.

429. 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 Kamajors and beaten. They also tied his arms around his back with a short rope, the effect of which was to leave the witness partially unable to use his hands after he was untied for over seven months.⁷⁶⁷
430. TF2-156, lost two teeth and a third was broken from an attack by Kamajors on himself and four others in Bo. He also bears scars, on his right foot, stomach, face, nose and lips from the attack, which were shown to the court. The other four people, two of whom were his brothers died from the attack. The witness spent two months in hospital getting cured.⁷⁶⁸ The incident relating to this attack was forensically established by the evidence of Witness TF2-EW3, a forensic pathologist, who conducted an exhumation of the remains of four males (three from one grave and the fourth from a separate grave) believed to be those of the victims of the attack from two gravesites in Bo. He also photographed Witness TF2-156 and tendered the picture in court as Exhibit 102,⁷⁶⁹ as that of the victim who survived the attack. The photo depicted scars consistent with the injury suffered by TF2-156.

Count 5: Pillage (Looting & Burning)

431. The Prosecution submits that there is evidence on the basis of the Trial Chamber should conclude that Fofana is criminally responsible by way of orders and expressed intention for looting and burning. The Prosecution notes that the Defence did not challenge the fact of a number of incidents of looting and burning in the evidence within the relevant period in the Indictment.
432. While witnesses TF2-001, TF2-144, TF2-152 and TF2-154 do not mention the Second Accused expressly, they 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 Second Accused is responsible under one or more of the relevant modes of participation.

⁷⁶⁷ TF2-151, Transcript 23 September 2004, pp. 33-35.

⁷⁶⁸ TF2-156, Transcript 25 November 2004, pp. 44-50.

⁷⁶⁹ TF2-EW3, Transcript 20 June 2005, pp. 22-23.

433. The Prosecution submits that there is evidence of a direct nexus between the acts of the Second Accused and the offences as charged. Witness TF2-005 gave evidence that the First Accused ordered an attack on Tongo which would determine the winner of the war.⁷⁷⁰ At this time the First Accused authorized and ordered the commandeering of properties.⁷⁷¹ Direct criminal responsibility for looting and burning for the Bo crime base were made manifest in the testimonies of several witnesses.⁷⁷²
434. The hand of command of the Second Accused was apparent in the evidence that Norman gave direct orders to burn down houses and loot big shops and pharmacies in Bo.⁷⁷³ There is evidence that the First Accused with Kamajor elders said at a parade in Bo, that the Kamajors deceived him as he was told they had burnt down the barracks, but now there were still barracks left.⁷⁷⁴ There is evidence that Norman encouraged the Kamajors by releasing them after they had been apprehended for alleged killings, lootings and burnings of houses.⁷⁷⁵ The witnesses who testify to the ordering of these acts by Norman not only place the Second Accused at these meetings, but their evidence also states that Fofana always made comments or remarks designed to ensure that the orders of Norman were executed often under a veiled threat of fear: "Now you have heard the National Co-ordinator, any commander failing to perform accordingly and losing your own grounds, just decide to kill yourself there and don't come and report to us."⁷⁷⁶
435. Strong evidence of the Second Accused direct involvement in acts of looting is contained in the evidence of TF2-082 the commander appointed by Hinga Norman for the Koribondo attack, who after the attack on Koribondo was sent a letter by the Second

⁷⁷⁰ TF2-005, Transcript 17 February 2005, Closed Session, p. 110.

⁷⁷¹ TF2-014, Transcript 10 March 2005, p. 66 (lines 4-6), where witness stated, "[w]e got the Honda from the Jiamia Bongor Chiefdom from Africare. We commandeer it and took it from there, from the NGOs. That was done on an order."

⁷⁷² These are about Bo, not Koribondo. TF2-198, Transcript 15 June 2004, pp. 37-38; TF2-157, Transcript 16 June 2004, pp. 20-22.

⁷⁷³ TF2-017, Transcript 19 November 2004, Closed Session, p. 94; see also TF2-014, Transcript 10 March 2005, pp. 70-71, where witness relates First Accused saying: "[w]hen you go down to Bo the southern pharmacy should be looted and bring all the medicines to me."

⁷⁷⁴ TF2-001, Transcript 14 February 2005, p. 99.

⁷⁷⁵ See Evidence given by TF2-014, Transcript 10 March 2005, p. 64; TF2-021, Transcript 2 November 2004, p. 105, where witness insisted no punishment was meted out to him or other Kamajors for looting homes and killing civilians.

⁷⁷⁶ TF2-222, Transcript 17 February 2005, p. 119.

Accused exhorting him to the effect that ““whatever thing you captured-whoever you captured you should send them to him.”⁷⁷⁷ Furthermore, after the attack had succeeded 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 submits 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.

436. 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.⁷⁷⁸
437. 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 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.⁷⁷⁹ 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.
438. 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 the First and Second Accused.
439. 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

⁷⁷⁷ TF2-082, Transcript 15 September 2004, p. 40.

⁷⁷⁸ TF2-068, Transcript November 17 2004, p. 92.

⁷⁷⁹ TF2-223 – 28 September 2004, at page100-101

Headquarters. The three cars, with knowledge of their source, were given to Moinina Fofana, the Third Accused and Prince Brima.⁷⁸⁰

Counts 6 & 7: Terrorizing the Civilian Population and Collective Punishments

440. The Prosecution submits that the evidence indicates that the Second Accused, in concert with the First and Third Accused planned, instigated or otherwise aided and abetted in the planning, preparation, or execution of terrorizing and collectively punishing the civilian population. The evidence offered by Insiders, TF2-005, TF2-008, TF2-014, TF2-079, TF2-082, TF2-190, TF2-201, TF2-222 is compelling in this regard.
441. Evidence of physical acts of terrorizing the civilian population and collective punishment through means of violent threat of intimidation, physical violence, mental suffering and looting was presented through the testimony 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 (non-Insiders).
442. In his testimony, TF2-022 gave evidence that while in open field at the NDMC headquarters, the Kamajors had people in line. There were 20 people who the Kamajors said were captured SLA soldiers and four women who were the wives of soldiers. The witness knew one of the soldiers as Cobra. The Kamajors took these people to an open place, to an area called MP office, "they took them one after another and they hacked all of them." After they were hacked they were all dead.⁷⁸¹ He further testified that the day after the attack, the civilians were told to go to Kenema by the Kamajors. One CO had told them to leave and he left. Then another CO turned up and gave the order that they should be shot, and so the Kamajors open fire. The shooting had been random, without aiming, but as there were so many people they were struck by bullets. The firing stopped and the witness saw a Kamajor chop a person who had been hit by a bullet; that person died.⁷⁸² Hinga Norman was reported to have said in a planning meeting, "whoever takes Tongo and keeps it wins the war...and therefore Tongo should be taken at all costs."⁷⁸³ He further said, "anybody found working with the junta there or mining for them should

⁷⁸⁰ TF2-190, Transcript February 10, 2005, pp. 60-62.

⁷⁸¹ TF2-022, Transcript 11 February 2005, pp. 51-53.

⁷⁸² TF2-022, Transcript 11 February 2005, p.57.

⁷⁸³ TF2-005, Transcript 15 February 2005, p. 106.

not be spared.”⁷⁸⁴ The Second Accused also spoke to the Kamajor fighters, emphasizing the unlawful orders given by the First Accused.⁷⁸⁵

443. The evidence further indicates that a lady called Fatmata Kamara, was chopped to death with machete by Kamabote, for allegedly cooking for the Junta Forces. The witness buried seventy-five corpses in a day. The witness continued the burial of these corpses the subsequent day amounting to one hundred and fifty.⁷⁸⁶ At Olumatic, the witness saw 25 corpses of juntas. They were not buried but were burnt by tyres. He said he buried 40 corpses at the Methodist Primary School.⁷⁸⁷
444. The attack on Koribondo stands out as a compelling instance of a planned and executed act of collective punishment by the First Accused, actively supported by the Second and Third Accused. At the planning meeting in Base Zero, Norman’s orders to his commanders were clear: to burn down every house in Koribondo as a punishment for their support of the AFRC Junta forces there, except the mosque, the school and the court barri.⁷⁸⁸
445. Following the capture of the town Hinga Norman paid a visit there and in the company of the Second Accused, he addressed a meeting at the court barri where he blamed Kamajors for not carrying out his orders fully, and he took responsibility for the destruction of the town.⁷⁸⁹
446. The Prosecution submits that there is evidence that TF2-012, TF2-157, TF2-159, TF2-162 and TF2-198 attended a meeting called by the First Accused where he accepted responsibility for the atrocities the Kamajors wreaked on the civilian population of Koribundo. The meeting was not convened in order to attend to administrative matters of Koribundo or the welfare of the residents, but rather to showcase a stamp of conquest and ensure the dominance of the Kamajors over the civilian population of Koribundo.
447. Witness TF2-033 gave evidence that Jambawai, a Kamajor leader was chief coordinating officer. Jambawai said that the reason Kamajors were killing Police was “you were in the bush fighting (for) the RUF”. Witness was told that there had been spies taking their

⁷⁸⁴ TF2-005, Transcript 15 February 2005, Closed Session, p. 106 (line 12).

⁷⁸⁵ TF2-222, February 17, 05 at p 119.

⁷⁸⁶ TF2-047, Transcript 22 February 2005, p. 61.

⁷⁸⁷ TF2-047, Transcript 22 February 2005, p. 68.

⁷⁸⁸ TF2-008, Transcript 17 November 2004, p. 79.

⁷⁸⁹ TF2-159, Transcript 9 September 2004, pp. 52-57.

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names.⁷⁸⁸ On 15 February 1998 the Kamajors came into town, down Hangha Road. They were armed with guns, knives and cutlasses. The witness went to his barracks and he saw Sgt. Mason running, being chased by two Kamajors, armed with a gun and cutlass. The witness was about 30 metres away when he saw Mason shot and when he was on the ground and the other Kamajor chopped his hand and head.⁷⁸⁹ He further testified that from the veranda of a friend's house, the witness saw Corporal Fandai going to his home, with a bible. Two Kamajors approached him and told him they wanted to kill him. Fandai asked to pray and when he said "Lord if it is they will, let it be done."⁷⁹⁰ He was shot three times.

448. The evidence has shown, for example, that horrific crimes were committed by members of the CDF, largely Kamajors. Amongst others, witness TF2-188 gave evidence of how a Kamajor killed her mother; "She was tied up and hit with a stick."⁷⁹¹ Another example can be found in the testimony of a witness where he states that several houses had been burnt down by Kamajors.⁷⁹² TF2-189 witnessed that a Kamajor cut her husband's throat and remove his head.⁷⁹³ More evidence can be found in the tendered documents, where, amongst others, Human Rights Watch documented numerous abuses, including killings and torture, by members of the Civilian Defence Forces, frequently referred to in local dialects as "traditional hunters." Many witnesses testified of abuses committed by Kamajors spoke of the grotesque nature of killings, at times including disembowelment followed by consumption of vital organs, such as the heart.⁷⁹⁴

449. It is submitted that these acts of terrorism was perpetrated in furtherance or in execution of orders given earlier for attacks on locations such as Bo, Kenema, Tongo, and Koribondo.

Counts 8: Use of Child Soldiers

⁷⁸⁸ TF2-033, Transcript 20 September 2004, p. 30.

⁷⁸⁹ TF2-033, Transcript 20 September 2004, p. 12.

⁷⁹⁰ TF2-033, Transcript 20 September 2004, p. 15.

⁷⁹¹ TF2-188, 31 May 2005, p. 15-18.

⁷⁹² TF2-223, 28 September 2004, p. 79-86.

⁷⁹³ TF2-189, 3 June 2005, p. 12.

⁷⁹⁴ Exhibit P104, 105, 108, 110, 114, 117.

450. Child soldiers were sourced by the CDF by initiating or enlisting children under the age of 15 years into armed forces or groups and in addition, or in the alternative, using them to participate actively in hostilities.⁷⁹⁸ Prosecution witnesses TF2-004, TF2-021, TF2-140 gave unchallenged viva voce evidence of coercive recruitment and direct participation in active hostilities.
451. Witness TF2-014 gave unchallenged evidence that at Base Zero, where Fofana was ordinarily resident, there were Kamajors as young as six years of age.⁷⁹⁹ Witness knew a Kamajor called “Junior Spain,” who was between twelve to fifteen years old. Kamajors would go to war at an early age, so long as they had been initiated into the Kamajor society.⁸⁰⁰ Evidence of child enlistment and use of child soldiers was presented by the Prosecution through the testimony of witness TF2-021. The witness was in Ngeihun when the Kamajors attacked and he was captured by a Kamajor named German. There were seven boys, the oldest being 15, and 3 women. The Kamajors looted and then burnt the houses. Boys carried the property to Kenema.⁸⁰¹ At the Moa River, the Kamajors shot the three women. They were shot because they were the wives of rebels.⁸⁰² The witness was initiated, and German gave him a two pistol-grip gun, and he was shown how to use it.⁸⁰³ Then the witness would go on mission to attack surrounding villages and catch people – women.⁸⁰⁴
452. According to the evidence, in Koribundu, the witness arrived just after the attack, witness then spoke about going to the first checkpoint at Koribundu, and then onto HQ. He saw houses on fire and corpses of persons who had been beheaded. He was told the corpses were rebels.⁸⁰⁵ Kamajor Joe Timide had four boys as security, who were younger than the witness.⁸⁰⁶ Whilst at Bo, he met Moinina Fofana, his former commander, and Chief Norman was also there. Witness joined the security.⁸⁰⁷ On return

⁷⁹⁸ Consolidated Amended Indictment, March 5, 2004.

⁷⁹⁹ TF2-014, Transcript 11 March 2005, p. 15.

⁸⁰⁰ TF2-014, Transcript 11 March 2005, p. 16.

⁸⁰¹ TF2-021, Transcript 2 November 2004, p. 33.

⁸⁰² TF2-021, Transcript 2 November 2004, p. 35.

⁸⁰³ TF2-021, Transcript 2 November 2004, p. 43.

⁸⁰⁴ TF2-021, Transcript 2 November 2004, p. 44.

⁸⁰⁵ TF2-021, Transcript 2 November 2004, p. 78.

⁸⁰⁶ TF2-021, Transcript 2 November 2004, p. 83.

⁸⁰⁷ TF2-021, Transcript 2 November 2004, p. 86.

to Freetown, he stayed at 13 Spur Road, with Hinga Norman. There were a number of small boys younger than the witness, one 11 years old being guarded. Or were they acting *as guards*? The witness said, "shortly after we left Guinea, Chief Norman had a decision to say that all small boys were exempted from the war and, as such, he was trying to re-organize us in our numbers so that he could hand us over to programmes."⁸⁰⁸

453. Witness TF2-218 gave testimony directly implicating the First Accused in the offence of child enlistment and use of child soldiers. He testified that he was able to observe, while at Daru on a UN Mission, a significant number of CDF, all of whom were presented as being Kamajors, estimated as being about 100. The witness was informed, by the Colonel, that there were some three to four hundred Kamajors operating out of Daru at that time. The witness observed that a significant number of them appeared to be in their early teens. Those Kamajors in their early teens, he observed, were armed with cutlasses and knives, and a number of them were also carrying guns, long barreled guns.⁸⁰⁹ The witness spoke to a boy who said he was 13, was dressed in Kamajor outfit, he was bearing a weapon. The witness asked the boy what the Kamajors did with prisoners. The witness had not seen rebel prisoners in Daru or indeed anywhere on that visit. The boy made a gesture with his hand across his throat. And the other boys laughed when they observed this. Witness interpreted this slashing motion to indicate that they killed prisoners.⁸¹⁰

454. Witness also testified that he observed a small boy, certainly less than 10 years of age, who was dressed in Kamajor clothes and who was carrying a tall stick. He was informed that the boy was carrying an object known as the commander and that it was the responsibility of this boy to carry this stick in the lead as the Kamajors went into combat. Daru was an active combat zone. The entire barracks could be said to be in preparation for combat. There was some form of drilling taking place. The Kamajors appeared to be fully armed. Adults and the children were being drilled. The witness asked Colonel Abu Bakar why children were being used in combat. He said that the elders like to use them in combat because they obey orders.⁸¹¹

⁸⁰⁸ TF2-021, Transcript 2 November 2004, p. 96.

⁸⁰⁹ TF2-218, Transcript 7 June 2004, Closed Session, p. 14.

⁸¹⁰ TF2-218, Transcript 7 June 2004, Closed Session, p. 15.

⁸¹¹ TF2-218, Transcript 7 June 2004, Closed Session, p. 17.

455. Evidence was adduced before the court shows the Second Accused's individual criminal responsibility under this charge. Witness TF2-017 testified that the Second Accused was present at a meeting at Base Zero where Hinga Norman praised the child combatants for doing better on the battle front than the adult combatants. Child combatants were present at this meeting. "They had their own line. They had their own cue and they were listening at the meeting."⁸¹²
456. Witness TF2-140 was initiated into the Kamajor society as a child combatant. He testified that whilst at Bo, he met the Second Accused. The witness said that being a CDF member, he stayed near the Bo CDF Headquarters, in a house located right behind the one where the Second Accused was living.⁸¹³
457. Witness TF2-201, the Second Accused's Deputy, also testified that while at Talia he saw child combatants, one of which was 8 years old. He also said that child combatants were assigned to man checkpoints. Most of those children were armed with AK/47's.⁸¹⁴ Other evidence shows that child combatants between the age of 10 and 14 were used in the CDF and they were referred to as 'small hunters'. Witness TF2-079 testified that he saw children carrying "AK47's, grenades and some were having machetes." The witness saw them patrolling with the commanders of Base Zero and some were used as bodyguards. TF2-021, a child combatant testified that the 'big men at Base Zero were Papay Konde, Moinina Fofana, Hinga Norman'.⁸¹⁵
458. The Prosecution submits that the evidence of the Second Accused's presence at the meeting at Base Zero as one of the most senior members of the CDF, where child combatants were praised for their good work, not only shows notice or knowledge of the use of child combatants by the CDF, it also shows that the Second Accused tacitly encouraged these acts. Further evidence of knowledge can also be inferred from the fact that the Second Accused was based at Base Zero in late 1997 and early 1998 and that he made frequent visits thereafter.

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⁸¹² TF2-017, Transcript 19 November 04, Closed Session at p 87-90.

⁸¹³ TF2-140, Transcript 14 September 2004, pp. 86-88, 114, 141.

⁸¹⁴ TF2-201, 5 November 04 Closed Session at pp 62-63.

⁸¹⁵ TF2-021, 2 Nov 04 at p 60.

459. The Second Accused was appointed Director of War by Hinga Norman at Base Zero at sometime in October-November 1997.⁸¹⁶ His official position was formalized by Hinga Norman in the Letter of Appointment dated 18th January 1998.⁸¹⁷ His position as Director of War and as one of the top leaders of the Kamajor Society was known by everyone in the CDF and that is how everyone treated and referred to the Second Accused.⁸¹⁸ Witnesses, including the military expert, also placed him second in command in the military chain, with specific duties and responsibilities entrusted upon him.⁸¹⁹ As such, the Prosecution submits that there is evidence to establish the Second Accused's *de jure* position of authority.
460. The Second Accused possessed both *de jure* and the *de facto* authority over the Kamajors. According to this evidence, among the powers he was invested with, the Second Accused had jurisdiction over: deploying forces to the war front; making appointments and promoting commanders; passing operational orders and instructions to subordinates; distributing arms and ammunition for battles; addressing Kamajor fighters in meetings before going into battle and reinforcing unlawful orders given by Hinga Norman and Allieu Kondewa. Finally, the Second Accused had the authority and liberty to independently give unlawful orders to subordinates for which he was never punished, or did not have to account for before a higher authority.
461. The evidence of Fofana's *de facto* authority over his subordinates is provided by witness TF2-005 who stated that that the Second Accused, in his position of Director of War, was the overall commander of commanders below him.⁸²⁰ Witnesses TF2-008, TF2-005, TF2-068 have testified that together with Hinga Norman and Allieu Kondewa, the Second Accused was in charge of the fighters and the deployment of forces on the

⁸¹⁶ TF2-005, Transcript 16 February 2005, pp. 54-55; TF2-222, Transcript 17 February 05, pp. 95-97.

⁸¹⁷ Exhibit P59:

⁸¹⁸ TF2-159, 9 September 04 at p 53, TF2-008, 16 November 04 at 47, TF2-190, 10 February 05 at 11-13, TF2 134, 3 June 05 at p 26.

⁸¹⁹ TF2-079, 26 May 05 at pp 42, 66, TF2-017, 19 November 04 at p 18, TF2-223, 28 September 04 at p 57, Military Expert Report, May 2005, Exhibit 97 at p C-5.

⁸²⁰ TF2-005, 15 February 04 at p 101.

ground.⁸²¹ Once a decision to attack a specific location was taken, the Director of War was in charge of deciding the number of Kamajors to be sent to the war front.⁸²²

462. Defence witness for the Second Accused Billoh Conteh, said that he was a close friend of Fofana before the war. However, at Base Zero, the witness said he did not approach Fofana because, in his words, “if he didn't give you an order to see him, you would not go there, except you stay from afar and you see him, but you not go there without his order”. That was, “because he had great power and authority.”⁸²³ Although Conteh said that he would not recognise Nallo, he said of Fofana, “All of us used to call him director. All Kamajors were afraid of him”⁸²⁴
463. Witness TF2-096 attended a meeting, in 1997, at Talia in which Norman spoke; Norman described Fofana as the Director of War. Norman would come and go from Talia, never spending more than a week there. Norman needed a loyal deputy in his absence to ensure continuity of commanders and that orders were followed. Fofana fulfilled that essential role.⁸²⁵
464. Another witness, TF2-201, described the delivery and distribution of arms and ammunition and food to Base Zero by Norman, in 1997. Norman went away to Liberia by helicopter and returned with more supplies, including ammunition and food. During the time the witness was in charge of the arms store, the key was with Fofana.⁸²⁶ Norman, and Fofana, would direct the witness to supply ammunition to the commanders. Norman would write his directions on paper and give them to Fofana⁸²⁷. The witness also noted that situation reports went directly to Norman. Although Fofana was illiterate he had the assistance of persons who were literate.
465. Witness TF2-017's testimony related that he was ordered by Moinina Fofana in January 1997 to deploy to Yele, in Gbonkboleken Chiefdom to carry out operations there as a commander, which he did.⁸²⁸ Witness TF2-014 testified that the Second Accused and

⁸²¹ TF2-005, 15 February 04 at p. 101; TF2-068 23 November 04 at p 11.

⁸²² TF2-005, 16 February 05, at p 10.

⁸²³ P46, 28 Sept 2006

⁸²⁴ P58, 28 Sep 2006

⁸²⁵ P18, 8 November 2004

⁸²⁶ P96, 4 November 2004

⁸²⁷ P98, 4 November 2004

⁸²⁸ TF2-017, 19 November 04 at pp. 42, 43, 45.

- Allieu Kondewa decided in a meeting at Base Zero that Mustapha Ngobeh must lead the attack on Bo.⁸²⁹
466. Witness TF2-223 testified that when Kamajors took over SS Camp in Tiloma Village (two months after the Kenema attack), the Second Accused introduced them to the terrain and briefed them on how to maintain security at the location. The Second Accused thereafter “handed over the whole Camp” to the witness and Kamajors assigned to that area.⁸³⁰
467. Throughout the evidence there is a preponderance of material relating to Norman, as Norman was the ‘big man’ in the organisation. However, he needed and received assistance from Kondewa and Fofana. For example, Witness TF2-223 stated that before SS Camp was attacked there was meeting of the commanders, including Fofana and Kondewa. Ngaohjia told the witness that the orders came from Norman, but “dished out by Fofana”. At the same time there was a renewal of initiation by AK.⁸³¹
468. Further evidence of the power to deploy fighters to the war front and of the power to make appointments was adduced by witness TF2-190. The witness testified that after he was initiated in the Kamajor society by Allieu Kondewa, he went to the war front and engaged in combat at Boama Kpengeh, under the instructions of the Second Accused and Musa Kortuwai.⁸³² After the battle, the witness was promoted by the Second Accused as the leader of the group that was going to capture Singihun⁸³³.
469. Witness TF2-014 also testified that Joseph Koroma was appointed National Director of Operations as a result of a common decision by the Second Accused, Hinga Norman and Allieu Kondewa.⁸³⁴
470. Witness TF2-223 testified that sometime after the attack on Kenema, the Second Accused and Allieu Kondewa appointed George Jambawai to take over the administration of the CDF Office in Kenema.⁸³⁵

⁸²⁹ TF2-014, 14 March, 05 at p. 24.

⁸³⁰ TF2-223 28 September at p 105, 106.

⁸³¹ P57, 28 September 2004

⁸³² TF2-190, 10 February 05 at p 4. This evidence is outside the timeframe of the Indictment but it has been adduced to show a pattern of the Second Accused’ authority over Kamajors fighters.

⁸³³ TF2-190, 10 February 05 at pp 5-6. This evidence is outside the timeframe of the Indictment (1995) but it has been adduced to show a pattern of the Second Accused’ authority over Kamajors fighters.

⁸³⁴ TF2-014, 11 March 05 at p 76.

⁸³⁵ TF2-223, 28 September 04 Closed Session at p 104.

471. The Second Accused's effective control over his subordinates is furthermore made clear by his power to pass down orders and instructions to Kamajor commanders individually and Kamajor fighters generally. The evidence shows indeed that Kamajor commanders only took instructions from Hinga Norman, the Second Accused and Allieu Kondewa.
472. Witness TF2-223 explained that the Second Accused, as the highest authority in charge of the Kamajors affairs in Kenema during the attack and for the months following, gave direct orders for the burning of collaborators in town. The orders were accordingly executed.⁸³⁶
473. Further illustrations of command responsibility and unlawful orders given by the Second Accused, were adduced by witness TF2-082. The witness testified that after the attack on Koribondo he received a letter from the Second Accused with instructions regarding captured people and looted property. The instructions from the Second Accused were that "whatever thing you captured-whoever you captured you should sent them to him."⁸³⁷
474. The Prosecution has also adduced evidence that the Second Accused on several occasions addressed troops in public meetings before going into battle. The Second Accused often spoke to fighters supporting and reinforcing unlawful orders passed down by Hinga Norman and Allieu Kondewa⁸³⁸. Such evidence further emphasizes the Second Accused's position of authority and effective command.
475. The evidence shows that the Second Accused knew that crimes were about to be committed by virtue of his presence at meetings where unlawful orders were made by his immediate superior Hinga Norman or Allieu Kondewa; or his presence at the crime scene.
476. Moreover, the Second Accused had knowledge of crimes committed by the Kamajors by virtue of the situational reports he received from the battle front. As witness TF2-068 testified, the wrongdoings of the Kamajors on the battlefield were reported to the Second Accused whose duty was to investigate the complaints.⁸³⁹ Witness TF2-201 reported that situation reports were almost invariably sent to the Second Accused before

⁸³⁶ TF2-223, 28 September 04 at pp 41, 95, 100, 101, 102.

⁸³⁷ TF2-082, Transcript 15 September 2004, p. 40.

⁸³⁸ See TF2-222, TF2-190.

⁸³⁹ TF2-068, 18 November 04 Closed Session at p. 74.

they reached Hinga Norman.⁸⁴⁰ Finally, the Second Accused knew of the crimes committed by the Kamajors as he himself has ordered their commission on occasion. From these examples, the requisite mens rea can be inferred.

477. There is evidence that Moinina Fofana was present when orders were given by Hinga Norman to execute rebel collaborators at Nongoba Bullum Chiefdom.⁸⁴¹
478. Witness TF2-222 said situational reports were coming back to Base Zero from the Koribundu and Tongo battle fronts. They were made to Allieu Kondewa then to the Second Accused and then to Hinga Norman.⁸⁴²
479. TF2-079 spoke of a situational report that he brought to Base Zero and handed over to the Second Accused. The report talked of a summary execution of a captured junta agent near Panguma.⁸⁴³ The witness said that there were other reports of similar incidents at the time in the area. Witness went on to say that each time they fought a battle, a situation report would be made. The Second Accused also knew of crimes committed around Base Zero. Witness TF2-068 related that he was present at Base Zero when the War Council denounced the looting, killings and raping of innocent civilians by the Kamajors to Hinga Norman but no reply was heard. The War Council further advised the Second Accused and Allieu Kondewa to control their men.⁸⁴⁴
480. Witnesses have testified that reports about the wrongdoings of the Death Squad were made to the Second Accused and were then transmitted to Hinga Norman. The reports stated that whenever the Death Squad went to the war front, they were killing innocent people and looting the property of civilians.⁸⁴⁵ Witness TF2-005 gave evidence that he and others were afraid of the Death Squad as they were known as a group of ruthless Kamajors. They were not answerable to anyone else but Hinga Norman, the Second Accused and Allieu Kondewa. Witness stated that the Death Squad was directly under the control of these three men and had nothing to do with anyone else.⁸⁴⁶
481. Witness TF2-014 testified that as National Deputy Director of Operations he had to collect reports from the war front, compile them and submit them to the National

⁸⁴⁰ TF2-201, 4 November 04 at p 110;

⁸⁴¹ TF2-014, 10 March 04 at p 49.

⁸⁴² TF2-222, 17 February at p 122.

⁸⁴³ TF2-079, 26 May at p 33-34.

⁸⁴⁴ TF2-068, November 17, 04 at p. 87, 88.

⁸⁴⁵ TF2-008, 16 November 04 at p 62; TF2-079, 26 May 05 at p 48.

⁸⁴⁶ TF2-005, 15 February 05 at p 95; TF2-008, 16 November 04 at p 61.

Coordinator, Sam Hinga Norman, through the Director of War, Moinina Fofana.⁸⁴⁷ The witness testified that he told Moinina Fofana and Hinga Norman about the killing of the Chiefdom speaker of Ribbi Chiefdom, by Kamajor commander Abu Bawote.⁸⁴⁸

482. There is evidence that the Second Accused knew about killings in Kenema, as he himself gave orders to the Task Force Unit for the burning of collaborators.⁸⁴⁹ He also told Kamajors that whatever they found on the war front belonged to them.⁸⁵⁰

483. The evidence indicates that SS camp, located 5 miles near Kenema became a place for summary executions of prisoners of war, rebels and suspected collaborators of which Moinina Fofana was aware.⁸⁵¹ The Second Accused knew of these crimes as they were being recorded on a daily basis in an occurrence book.⁸⁵²

484. The Prosecution submits that there is also evidence that the Second Accused had knowledge of the killing of the policemen and other crimes perpetrated by Kamajors in Kenema as he was reported to be, together with Allieu Kondewa, the highest authority in charge of the Kamajors affairs in Kenema at that time.⁸⁵³

485. The Second Accused's knowledge of the crimes committed in Bo is made clear by witness's TF2-057 testimony. The witness related that the Second Accused summoned his brother and witness to the CDF Headquarters in Bo. When the Second Accused learned that they were Temne they were locked up in a cell for weeks. His brother and two other detainees were later killed as a result of the Second Accused's orders.⁸⁵⁴ The witness further testified that the Kamajors "killed most of the Temnes in Bo town."⁸⁵⁵ The witness heard the Second Accused say what he understood to be an order for the killing of all Temne people in Bo.⁸⁵⁶

486. Witness TF2-082, a battalion commander testified that on one occasion after the attack on Koribondu he met with the Second Accused, Hinga Norman and Allieu Kondewa on the road outside of Koribondu. The Second Accused questioned him as to why he did

⁸⁴⁷ TF2-014, 11 March 2005, p. 54.

⁸⁴⁸ TF2-014, 11 March 2005, p. 30.

⁸⁴⁹ TF2-223, 28 September 2004, p. 93-95.

⁸⁵⁰ Ibid., p. 101.

⁸⁵¹ Ibid., pp. 111-115.

⁸⁵² Ibid., pp. 118, 121, 123.

⁸⁵³ TF2-223, 30 September 2004, pp. 41, 95, 100.

⁸⁵⁴ TF2-057, 29 November 2004, p. 122 and 30 November 2004, p. 20, 21.

⁸⁵⁵ TF2-057, Transcript 30 November 2004, p. 22.

⁸⁵⁶ TF2-057, 30 November 2004, p. 21.

not kill Sheko Gbao, a driver that the witness knew. The witness explained to him that he didn't kill him because he did not have a gun and was not a rebel.⁸⁵⁷

487. Witness Borbor Tucker testified 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.⁸⁵⁸

488. Witness TF2-017 testified that Kamajors were never punished for their wrongdoings. He said that as a commander he never punished Kamajors for looting and killing. He stated that "[n]o Kamajor had ever [*sic*] something for which they were punished."⁸⁵⁹

489. Evidence was further presented through the testimony of witness TF2-021 who insisted that no punishment was meted out to them for looting properties and the killings of innocent people.⁸⁶⁰

490. The Accused and Allieu Kondewa were reported to be the highest authority in charge of the Kamajors' affairs in Kenema during the attack and for sometime after.⁸⁶¹ The only reasonable conclusion on the evidence is that the Second Accused's failure to act in stopping the mass killings and physical and mental suffering⁸⁶² or to punish the perpetrators amounted to a failure to prevent or punish for the purposes of Article 6(3) of the Statute.

491. Based on the foregoing, the Prosecution submits that it has been proved beyond reasonable doubt that the Second Accused not only possessed a *de jure* position of authority in the CDF organization, he also exercised effective control over the Kamajors. Indeed, there is evidence that the Second Accused had an extremely high degree of authority over CDF subordinates in his position as Director of War and as one of the top three senior members of the CDF.

492. The Defence will make arguments that Moinina Fofana did not have the authority to, and was not in a position to prevent or stop unlawful acts committed by the Kamajors, but this is not consistent with the evidence. As demonstrated above, the evidence indicates

⁸⁵⁷ TF2-082, Transcript 15 September 2004, p 40.

⁸⁵⁸ TF2-190, Transcript February 10, 2005, pp. 60-62.

⁸⁵⁹ TF2-017, Transcript 22 November 2004, Closed Session, pp. 77-78.

⁸⁶⁰ TF2-021, Transcript 2 November 2004, p. 105.

⁸⁶¹ See TF2-042, TF2-033, TF2-152, TF2-154, TF2-039.

⁸⁶² TF2-223, Transcript 28 September 2004, pp. 109-114. See also witnesses TF2-052, TF2-154, TF2-151, TF2-142, TF2-033, TF2-040.

that the Second Accused was invested with a range of important responsibilities which allowed him to exercise effective command over subordinate commanders and Kamajor combatants generally.

493. However the evidence indicates that despite his material authority to do so and the ample notice and knowledge he had of the widespread and systematic crimes that were being committed by the Kamajors, the Second Accused chose not to do anything. The evidence indicates that no effort or attempt was made by the Second Accused to prevent these crimes or to punish subordinates for their perpetration. The evidence before the court shows indeed that the Second Accused actively and tacitly encouraged the continued perpetration of these crimes.
494. It would clearly be reasonable for the Trial Chamber to conclude that the Second Accused's silence in the face of the atrocities committed by the Kamajors does not represent, as the Defence alleges, a lack of authority and effective control.

Defence Case Analysis:

495. The Defence has raised various possible defences during the course of the trial. The Prosecution submits that the "greatest responsibility" argument, and any argument relating or suggesting *tu quoque* do not give rise to grounds for excluding responsibility.
496. It has repeatedly been held that *tu quoque*, or the argument that the adversary or other factions involved in a conflict in Sierra Leone committed similar or even more serious crimes,⁸⁶³ is no defence, since the rules of international humanitarian law are designed to safeguard fundamental human values and therefore must be complied with by each party

⁸⁶³ *Limaj* Trial Judgment, para. 193; *Kupreskic* Trial Judgment, paras 51, 515-520. *Prosecutor v. Hadžihasanović and Kubura*, Decision on Defence Motion for Clarification of the Oral Decision of 17 December 2003 Regarding the Scope of Cross-Examination Pursuant to Rule 90 (H) of the Rules, Case No. IT-01-47-T, T. Ch. II, 28 January 2004, p. 4; *Prosecutor v. Kupreškić et al*, Judgment, Case No. IT-95-16-T, T. Ch. II., 14 January 2000, paras. 515-520; *Prosecutor v. Kordić and Čerkez*, Judgment, Case No. IT-95-14/2-T, 26 February 2001, para. 520; *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, T. Ch. II., 17 February 1999, p. 3; *Prosecutor v. Kupreškić et al*, Decision on Defence Motion to Summon Witness, IT-95-16-T, T. Ch. II., 8 February 1999, p. 3.

regardless of the conduct of the other party or parties.⁸⁶⁴ Similarly, involvement in what might be described as a defensive operation is not a defence.⁸⁶⁵

497. The Defence witness for Fofana, Mohammed Fallon, gave a differing version of the circumstances surrounding the death of his brother Mustapha Fallon.⁸⁶⁶ The Prosecution submits that uncorroborated testimony of a single witness may be sufficient to establish the presence of the Accused at the scene of a crime.⁸⁶⁷ The Trial Chamber has the discretion to accept a witness's evidence notwithstanding inconsistencies with the witness's prior statements *or* the evidence of other witnesses.⁸⁶⁸
498. The Prosecution submits that upon a consideration of all the relevant evidence, coherence, and credibility of both witnesses, Nallo's testimony should be accorded greater weight than that of Mohammed Fallon. Nallo, as CDF Director of Operations South, was an important and integral part of the operations of the CDF. He was close enough and proximate not only to the decisions of the leadership but also their direct acts. His testimony regarding the death of Fallon is direct, that is, committed in his own presence. He even acknowledged his own participation.
499. It is imperative to note that the Accused persons agreed that Mustapha Fallon's family at Kati should be told that he was killed during the Koribundo attack.⁸⁶⁹ It is not surprising, therefore, that the misinformation put forward by the Accused persons in a bid to conceal their deeds turned out to be the exact evidence of the Defence Witness Mohammed Fallon.⁸⁷⁰ Further, according to Nallo's account, the human sacrifice was needed to make Kamajors invisible to enable them to capture Koribundo after several failed attempts.⁸⁷¹ Indeed after the incident, Koribundo was attacked by the Kamajors and captured.

⁸⁶⁴ *Prosecutor v. Kupreškić et al.*, Decision On Defence Motion to Summon Witness, IT-95-16-T, T. Ch. II., 8 February 1999, para. 15; *Prosecutor v. Kupreškić et al.*, Decision on Evidence of the Good Character of the Accused and the Defence of Tu Quoque, Case No. IT-95-16-T, T. Ch. II., 17 February 1999.

⁸⁶⁵ *Kordić and Čerkez* Trial Judgment, paras 448-452.

⁸⁶⁶ Mohammed Fallon, Transcript 27 September 2006, p. 30-31.

⁸⁶⁷ *Kajelijeli* Appeals Judgement, paras. 96-97.

⁸⁶⁸ *Čelebići* case Appeal Judgement, para. 497; *Kupreškić* Appeal Judgement, paras 31, 156; *Kajelijeli* Appeal Judgement, paras. 96, 102; *Semanza* Appeal Judgement, para. 224; *Limaj* Trial Judgment, paras 12, 543.

⁸⁶⁹ TF2-014, Transcript 10 March 2005, p. 58.

⁸⁷⁰ Mohammed Fallon, Transcript 27 September 2006, p. 30.

⁸⁷¹ TF2-014, Transcript 10 March 2005, p. 56.

500. When juxtaposed, the evidence of Nallo stands out as more believable and consistent with the surrounding facts.
501. Witness TF2-014 gave further testimony about the direct commission of murder in his presence by the three Accused persons. 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 Kondewa, Norman and 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."⁸⁷²
502. The Kondewa Defence called a witness, Moses Bangura that disputed the Prosecution's narrative surrounding the death of Alpha Dauda Kanu. However, Nallo's evidence was strengthened and corroborated by another Prosecution witness, TF2-017 when he testified that in December 1997 he went with forty Kapras to Base Zero. On the second day of training one of the Kapras was missing. The witness searched and found the corpse of 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: "that person that is lying down there, this is one of the things you should do for the war to come to an end...they will remove some parts from it, which the Kamajors would use to make some concoctions and herbs when he wears that particular shirt so that he will become powerful."⁸⁷³
503. Billoh Conteh denied going on any mission with Nallo or killing anyone in Dodo village. Conteh said that he was a close friend of Fofana before the war. However, in Base Zero, he did not approach Fofana as "if he didn't give you an order to see him, you would not go there, except you stay from afar and you see him, but you not go there without his

⁸⁷² TF2-014, Transcript 10 March 2005, p. 60.

⁸⁷³ TF2-017, Transcript 19 November 2004, Closed Session, pp. 58-62, 77.

order. That was, “because he had great power and authority.”⁸⁷⁴ Although Conneh said that he would not recognise Nallo, he said of Fofana, “All of us used to call him director. All Kamajors were afraid of him.”⁸⁷⁵

504. The Fofana defence will argue that it is clear from the evidence that Moinina Fofana does not belong to the category of those bearing the greatest responsibility, and that the Court should not have had jurisdiction over him.⁸⁷⁶ They will argue that the evidence points to other persons who bear greater responsibility than Fofana, including other members of the CDF and in particular, members of the RUF and AFRC against whom the CDF fought a legitimate armed opposition effort.
505. The issue of personal jurisdiction has previously been canvassed before the Trial Chamber by the Second Accused. In its “Decision on the Preliminary Defence Motion on the Lack of Personal Jurisdiction on behalf of Accused Fofana” (“Decision on Personal Jurisdiction”), the Trial Chamber found that “the Special Court has personal jurisdiction over the Accused”.⁸⁷⁷ The issue has therefore been settled, subject to any final appeal against conviction.
506. The Defence will argue that the Second Accused, had no influential role in the CDF. Despite the title and position he possessed, he had no real authority or effective control over subordinates. He was “nothing more than a glorified storekeeper and occasional conduit for messages to Mr. Norman [...] at most an amateur aide de camp.”⁸⁷⁸ The Defence will further state that the Second Accused was only reacting to Hinga Norman’s authority and he lacked power to go against his unlawful orders and compel a different result.
507. This may be the theory of the Fofana Defence. However, there is evidence that the Second Accused was at all times relevant to the Indictment in a high position of authority, invested with power and responsibility over his subordinates. In the function of Director of War of the CDF, the Second Accused was working side by side with Hinga Norman, the National Coordinator and Allieu Kondewa, the High Priest. There is

⁸⁷⁴ Billoh Conteh, Transcript 28 September 2006, p. 50 (lines 5-7).

⁸⁷⁵ Billoh Conteh, Transcript 28 September 2006, p. 58 (lines 21-22).

⁸⁷⁶ Fofana Motion for Acquittal

⁸⁷⁷ *Prosecutor v Norman, Fofana and Kondewa*, SCSL-04-14-PT, Decision on the Preliminary Defence Motion on the Lack of Personal Jurisdiction filed on behalf of Accused Fofana, 3 March 2004, para. 48.

⁸⁷⁸ Fofana Motion, para 44.

evidence that together they orchestrated and planned war strategies and attacks and most importantly the commission of unlawful acts. There is evidence that all major decisions were taken in consultation with each other.⁸⁷⁹

508. Furthermore, there is evidence that the Second Accused was at all times relevant to the Indictment in a high position of authority, invested with power and responsibility over his subordinates. In the function of Director of War of the CDF, the Second Accused was working side by side with Hinga Norman, the National Coordinator and Allieu Kondewa, the High Priest. There is evidence that together they orchestrated and planned war strategies and attacks and most importantly the commission of unlawful acts. There is evidence that all major decisions were taken in consultation with each other.⁸⁸⁰

509. The Prosecution has presented evidence that the Second Accused possessed both *de jure* and the *de facto* authority over the Kamajors. According to this evidence, among the powers he was invested with, the Second Accused enjoyed jurisdiction over: deploying forces to the war front; making appointments and promoting commanders; passing operational orders and instructions to subordinates; distributing arms and ammunition for battles; addressing Kamajor fighters in meetings before going into battle and reinforcing unlawful orders given by Hinga Norman and Allieu Kondewa. Finally, the Second Accused had the authority and liberty to independently give unlawful orders to subordinates for which he was never punished, or did not have to account for before a higher authority.

510. Moreover, the Second Accused had knowledge of crimes committed by the Kamajors by virtue of the situational reports he received from the battle front. As witness TF2-068 testified, the wrongdoings of the Kamajors on the battlefield were reported to the Second Accused whose duty was to investigate the complaints.⁸⁸¹ Witness TF2-201 reported that situation reports were almost invariably sent to the Second Accused before they reached Hinga Norman.⁸⁸² Finally, the Second Accused knew of the crimes committed by the Kamajors as he himself has ordered their commission on occasion. From these examples, the requisite *mens rea* can be inferred.

⁸⁷⁹ Military Expert Report, May 2005, Exhibit 97 at p C-4. See also TF2-014, March 14 05 at p. 6

⁸⁸⁰ Military Expert Report, May 2005, Exhibit P97 at p C-4. See also TF2-014, March 14 05 at p. 6

⁸⁸¹ TF2-068, 18 November 04 Closed Session at p. 74.

⁸⁸² TF2-201, 4 November 04 at p 110;

511. The Defence will argue that Moinina Fofana did not have the authority to prevent or stop unlawful acts committed by the Kamajors. As demonstrated above, the evidence indicates the Second Accused was invested with a range of important responsibilities. This authority allowed him to exercise effective command over both subordinate commanders and Kamajor combatants generally.
512. Evidence indicates that despite his material authority to do so and the ample notice and knowledge he had of the widespread and systematic atrocities being committed by the Kamajors, the Second Accused chose not to do anything. The evidence indicates that no effort or attempt was made by the Second Accused to prevent these crimes or to punish subordinates for their perpetration. The evidence before the court shows indeed that the Second Accused both actively and tacitly encouraged continued perpetration of these crimes.

I. ALLIEU KONDEWA: PERSONAL LIABILITY UNDER ART. 6.1 & ART. 6.3**Kondewa's Position of Authority:**

513. Allieu Kondewa is believed to have been born in the Bo District, in the Republic of Sierra Leone. Before his arrest he resided in Bumpeh Chiefdom, Bo District and he was a farmer and an herbalist.
514. Kondewa was nominated High Priest of the Kamajors, meaning he was the chief and head of all Kamajor initiators.⁸⁸³ As leader of all Initiators, he had command over all Kamajor initiates. No Kamajor would go to war without his blessings.⁸⁸⁴
515. Kondewa fulfilled an important role in the Kamajors. He was able, by means of secret rites and the promises such rites made, to shift the loyalty of the Kamajors from the chiefs to the triumvirate, namely, Norman, Fofana and Kondewa. Norman was a charismatic and dominant figure, but that alone was not sufficient, it is suggested, to have the Kamajors carry out the offences outlined in the Indictment. Kondewa was an intrinsic part of the executive group which controlled the Kamajors; he achieved that status and power through the implementation of the initiation ceremonies.
516. The process of initiation aided in creating cohesion within the CDF. This cohesion in a military organization is very important, because it fosters a sense of belonging. Initiation is correlated to confidence build up. In order to give fighters confidence that they are immunized against bullet wounds they usually receive additional immunization prior to an attack. Initiation is thus an important part of building the will to fight.⁸⁸⁵
517. Norman, Fofana and Kondewa were seen as the centre of administration of the affairs of the Kamajors and because of this, the Kamajors relied on these three men. They had the executive powers of the Kamajor society. No one made decisions in the absence of this group and the Kamajors looked up to them for leadership.⁸⁸⁶
518. In his capacity as the High Priest Kondewa made recommendations as to whether a particular fighter should go to war or not. The final authority to send the Kamajors to

⁸⁸³ TF2-008, Transcript 16 November 2004, pp. 38.

⁸⁸⁴ TF2-008, Transcript 16 November 2004, p. 49.

⁸⁸⁵ TF2-EW1, Transcript 14 June 2005, p. 35.

⁸⁸⁶ TF2-008, Transcript 16 November 2004, p. 51.

war lay with Norman, Fofana and Kondewa. The National Coordinator, Director of War and the High Priest were at the centre in the implementation of the plans of the Kamajors.⁸⁸⁷

Kondewa's 6.1 under counts 1 and 2

519. Kondewa is charged with individual criminal responsibility under both Articles 6(1) and 6(3) of the Statute for the eight counts in the Indictment on the basis that international law permits cumulative charging under different modes of liability. Article 6(1) covers planning, instigating, ordering, committing or otherwise aiding and abetting in the planning, preparation or execution of a crime referred to in the Statute, while Article 6(3) states that the commission of a crime by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so, and failed to take measures to prevent the acts or punish the perpetrators.

520. The Prosecution has presented detailed and overwhelming evidence of the direct and indirect acts of Kondewa in the charge of unlawful killing. The Defence had through their witnesses merely made general denials as to the occurrence of the charges in the counts, asserting that by virtue of their position as chieftom speaker⁸⁸⁸ or town chief⁸⁸⁹, that if such incidents had occurred they should have known. Indeed it is incredulous that these Defence witnesses know nothing, saw nothing and heard nothing. Therefore the Trial Chamber will attach no weight or value to their evidence by virtue of its unreliability.

521. Turning to the individual criminal responsibility of Kondewa, the evidence demonstrates beyond reasonable doubt that Kondewa committed the *actus reus* of murder with the requisite *mens rea*. Consequently, Kondewa is liable for "committing" murder. This mode of liability is particularly relevant to the unlawful killings charged for the Talia, Bonthe crime base. For example, Witness TF2-014 testified that he knew Mustapha Fallon was executed in the Poro Bush at Talia, in the presence of Norman, Fofana,

⁸⁸⁷ TF2-008, Transcript 16 November 2004, pp. 56-59, 82.

⁸⁸⁸ Joseph Murana, Transcript 11 October 2006.

⁸⁸⁹ Joe Kpana Lewis, Transcript 10 October 2006.

Kondewa and others. Mustapha Fallon who was also a Kamajor was killed because Kondewa needed a human sacrifice to guarantee the protection of the fighters. The brother of Mustapha Fallon pleaded for his life with Norman but to no avail. Norman gave three hundred thousand Leones to the deceased brothers and ordered them not to tell anyone what had transpired.⁸⁹⁰

522. The Defence witness for Fofana, Mohammed Fallon, gave a differing version of the circumstances surrounding the death of his brother Mustapha Fallon.⁸⁹¹ The Prosecution submits that uncorroborated testimony of a single witness may be sufficient to establish the presence of the Accused at the scene of a crime.⁸⁹² The Trial Chamber has the discretion to accept a witness's evidence notwithstanding inconsistencies with the witness's prior statements *or* the evidence of other witnesses.⁸⁹³
523. The Prosecution submits that upon a consideration of all the relevant evidence, coherence, and credibility of both witnesses, Nallo's testimony should be accorded greater weight than that of Mohammed Fallon. Nallo, as CDF Director of Operations South, was an important and integral part of the operations of the CDF. He was close enough and proximate not only to the decisions of the leadership but also their direct acts. His testimony regarding the death of Fallon is direct, that is committed in his own presence. He even acknowledged his own participation.
524. It is imperative to note, that the Accused persons agreed that Mustapha Fallon's family at Kati should be told that he was killed during the Koribundo attack.⁸⁹⁴ It is not surprising, therefore, when the misinformation put forward by the Accused persons in a bid to conceal their deeds turned out to be the exact evidence of the Defence Witness Mohammed Fallon.⁸⁹⁵ Further, according to Nallo's account, the human sacrifice was needed to make Kamajors invisible to enable them to capture Koribundo after several failed attempts.⁸⁹⁶ Indeed after the incident, Koribundo was attacked by the Kamajors and captured.

⁸⁹⁰ TF2-014, Transcript 10 March 2005, p. 59.

⁸⁹¹ Mohammed Fallon, Transcript 27 September 2006, p. 30-31.

⁸⁹² *Kajelijeli* Appeals Judgement, paras. 96-97.

⁸⁹³ *Čelebići* case Appeal Judgement, para. 497; Kupreškić Appeal Judgement, paras 31, 156; *Kajelijeli* Appeal Judgement, paras. 96, 102; *Semanza* Appeal Judgement, para. 224; *Limaj* Trial Judgment, paras 12, 543.

⁸⁹⁴ TF2-014, Transcript 10 March 2005, p. 58.

⁸⁹⁵ Mohammed Fallon, Transcript 27 September 2006, p. 30.

⁸⁹⁶ TF2-014, Transcript 10 March 2005, p. 56.

525. When juxtaposed, the evidence of Nallo stands out as more believable and consistent with the surrounding facts.
526. Witness TF2-014 gave further testimony about the direct commission of murder in his presence by the three Accused persons. 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 Kondewa, Norman and 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."⁸⁹⁷
527. The Kondewa Defence called a witness, Moses Bangura that disputed the Prosecution's narrative surrounding the death of Alpha Dauda Kanu. However, Nallo's evidence was strengthened and corroborated by another Prosecution witness, TF2-017 when he testified that in December 1997 he went with forty Kapras to Base Zero. On the second day of training one of the Kapras was missing. The witness searched and found the corpse of 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: "that person that is lying down there, this is one of the things you should do for the war to come to an end...they will remove some parts from it, which the Kamajors would use to make some concoctions and herbs when he wears that particular shirt so that he will become powerful."⁸⁹⁸
528. In another episode of unlawful killing, the Prosecution evidence demonstrates that one day witness TF2-096 was collecting water from the well near Norman's house when she saw Kamajors singing. Kondewa was leading the group, in which two people were dancing. She saw Kondewa shoot a town commander. The town commander had been appointed by the rebels and that is why he was shot. The man Kondewa shot had been

⁸⁹⁷ TF2-014, Transcript 10 March 2005, p. 60.

⁸⁹⁸ TF2-017, Transcript 19 November 2004, Closed Session, pp. 58-62, 77.

holding a stick with a head on top. The next day, she saw two graves, and a Kamajor told her those were the graves of the two people who were dancing. The incident took place in 1997.⁸⁹⁹ Kondewa personally committed multiple acts of murder, and acts of murder were committed in the presence of Norman and Fofana with their approval and encouragement.⁹⁰⁰

529. Additionally, the Prosecution submits that Norman, Fofana and Kondewa planned, ordered or otherwise aided and abetted the killing of civilians at Tongo,⁹⁰¹ Koribundo,⁹⁰² Bo,⁹⁰³ Kenema,⁹⁰⁴ Moyamba⁹⁰⁵ and Bonthe.⁹⁰⁶

530. TF2-201 was present at meeting at Talia when the planning of the attack on Tongo was discussed; Norman had convened the meeting. Present were Norman, Fofana, Kondewa, some members of the War Council and some commanders.⁹⁰⁷ Norman wrote out the requirements of the commanders who were to go to Tongo. The supplies, ammunition, food and herbs, RPG bombs, 60 millimetre bombs, AK47 and shotgun cartridges, money, were provided to the commanders. The witness said that Kondewa prepared herbs to make the Kamajors bullet-proof.⁹⁰⁸

531. At the meeting to plan the attack on Tongo, Norman, Fofana and Kondewa, Abubakarr Konuwa and Vandi Songo were present. Everyone contributed to the meeting including Fofana and Kondewa. Norman said, at the meeting: "Whoever takes Tongo and keeps it wins the war...and therefore Tongo should be taken at all costs." Norman also said: "anybody found walking with the junta there or mining for them should not be spared."⁹⁰⁹

⁸⁹⁹ TF2-096, Transcript 8 November 2004, p. 25-27.

⁹⁰⁰ In the alternative, all three Accused at the very least aided and abetted murder at Base Zero by their actions, and in the case of Norman and Fofana by their presence and the persistent failure to prevent or punish murder committed by their subordinates.

⁹⁰¹ TF2-013, TF2-015, TF2-016, TF2-022, TF2-027, TF2-035, TF2-047, TF2-048, TF2-144.

⁹⁰² TF2-012, TF2-014 TF2-032 TF2-140, TF2-157, TF2-159, TF2-162.

⁹⁰³ TF2-001, TF2-006, TF2-012, TF2-014, TF2-017, TF2-030, TF2-032, TF2-056, TF2-057, TF2-058, TF2-067, TF2-088, TF2-119, TF2-140, TF2-156, TF2-157, TF2-159, TF2-162, TF2-198, TF2-201.

⁹⁰⁴ TF2-033, TF2-039, TF2-040, TF2-042, TF2-053, TF2-079, TF2-151, TF2-152, TF2-154, TF2-201, TF2-223.

⁹⁰⁵ TF2-014, TF2-073, TF2-165, TF2-166, TF2-167, TF2-168, TF2-173 and TF2-190

⁹⁰⁶ TF2-014, TF2-016, TF2-071, TF2-086, TF2-096, TF2-108, TF2-109, TF2-133, TF2-147, TF2-187, TF2-188, TF2-189.

⁹⁰⁷ TF2-201, Transcript 4 November 2004, Closed Session, p. 106.

⁹⁰⁸ TF2-201, Transcript 4 November 2004, Closed Session, p. 107.

⁹⁰⁹ Transcript 15 February 2005, pp. 105-107.

532. The evidence indicates that Norman intended to kill or inflict grievous bodily harm on civilians in Tongo in reckless disregard for human life.⁹¹⁰ Kondewa was actively supportive of this venture by his attendance and approval of conclusions reached at the meeting and his preparation of the herbs for the attack. Witness TF2-222 stated that Norman said, on the air, that people who did not move away from the strongholds of the junta should “be prepared to suffer any consequence that would meet them...you decided to stay in Sierra Leone you’ll be looked upon as a collaborator or an effective participant of the junta rule.”⁹¹¹
533. The Prosecution led evidence of ordering as a mode of liability for the count of unlawful killings. Prosecution witness TF2-201 testified that the planning and order for the attack on Bo and Kenema was done at Talia when Norman came from Liberia. Norman called the meeting, and present at the meeting were Norman, Fofana and Kondewa, the chairman of the War Council and other members of the Council.⁹¹² Kondewa’s presence in that meeting was not a coincidence.
534. The Prosecution submits that the only reasonable conclusion is that unlawful killings occurred in pursuance of those orders.⁹¹³
535. Many other witnesses testified to the acts of the Kamajors in killing civilians. Such acts could not have occurred, in view of their widespread nature, without any attempt of concealment, without, at the least, being condoned by the three accused men. 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.’”⁹¹⁴
536. Witness TF2-223 said at one time, after the CDF was in charge of the town that the CDF was headed by Fofana and Kondewa. The witness did not know when Fofana and Kondewa came to Kenema but he met them there on the Monday after the attack.⁹¹⁵

⁹¹⁰ TF2-005, TF2-079, TF2-201, TF2-222

⁹¹¹ TF2-222, Transcript 17 February 2005, p. 105.

⁹¹² TF2-201, Transcript 4 November 2004, Closed Session, p. 73-75.

⁹¹³ TF2-012, TF2-032, TF2-157, TF2-159, TF2-162, TF2-198.

⁹¹⁴ TF2-021, Transcript 2 November 2004, p. 76.

⁹¹⁵ TF2-223, Transcript 28 September 2004, Closed Session, pp. 98.

537. Perhaps the most persuasive evidence establishing the culpability of the three accused men is to be found in the testimony relating to the killing of unarmed Police officers. Such killings could only have taken place with the approval of the three accused; even if they did not know the specifics of the killings it is not possible they did not become aware of such killings. The evidence clearly establishes that the Police officers were killed whilst unarmed; indeed only the SSD contingent of the Police were armed during the conflict. The Police were killed on the orders of Norman, supported by Fofana and Kondewa.
538. 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 thirty six Police officers had been killed.⁹¹⁶
539. Evidence of Kondewa's direct role in the attack on Bo, was presented through the testimony of Witness TF2-008. He gave evidence that the War Council recommended to Norman that the Kamajors should now concentrate on taking Bo, and ignore Freetown. The planning and implementation was left in the hands of Norman, Fofana and Kondewa.⁹¹⁷ This piece of evidence taken in context with other facts, such as the direct orders to kill by Norman, in the presence of Kondewa and Kondewa's support, by bullet-proofing fighters, goes to show the meaningful role of Kondewa in the commission of the crimes by Kamajors in the course of the Bo attack.
540. 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.

⁹¹⁶ TF2-042, Transcript 17 September 2004, p. 104-109.

⁹¹⁷ TF2-008, Transcript 16 November 2004, p. 93-94.

Commanders should only spare the mosque, the school, and the barray.⁹¹⁸ The witness also gave evidence that in the middle of 1998, a meeting was convened in Bo Town Hall wherein some senior members of the CDF were present including Fofana, and Norman made a declaration to the effect that “I am personally responsible for the excesses and atrocities of the Kamajors.”⁹¹⁹

541. Witness TF2-073 gave evidence that in November of 1997, the Kamajors went on a rampage at Sembehun and looted a lot of properties from civilians and brought the loot back to their base in the town.⁹²⁰ The next day, a new contingent of Kamajors came to the house of the witness and surrounded him with guns. They said they were Kamajors from their high priest, the Third Accused, and that they were coming from Talia, Tihun, Gbangbatoke and other villages around. The Kamajors saw the Mercedes Benz of the witness and removed it. On a Sunday, in Bo, the witness saw the Third Accused relaxing at the back being driven in the witness’ car with a mounted flag, and an inscription on the car-“King Kindo.”⁹²¹ TF2-073 further gave evidence that the Kamajors went to Yakarji. They beat up his brother-in-law and asked him to show them where a Mazda van was hidden. The van had been secured in the woods in that village. So his brother-in-law had to lead them to the bush where the van was, after receiving a severe beating. His brother-in-law was so beaten that he died a few weeks later.⁹²²

542. Another witness TF2-170 gave evidence that that at Makabi-Loko, the CDF patrol commander, called Kakpata, ordered another member, Amadou Lavalie to kill one Pa Aluseini Kabbah. Lavalie did not carry out the order. The patrol commander, Kakpata, collected the gun from Lavalie and took a cartridge from his pocket and placed it into the gun. He cocked it and shot Aluseini Kabbah on the face, but the Pa did not fall. Then he put his arm for a second time in his pocket removed a cartridge and placed the cartridge into the gun and shot him. Then the Pa fell over. The next morning, witness and others returned and the Headman produced three people plus himself who knew that Pa Aluseini was killed and they buried Pa Aluseini in the bush.⁹²³

⁹¹⁸ TF2-008, Transcript 16 November 2004, p. 79.

⁹¹⁹ TF2-008, Transcript 16 November 2004, pp.116-117

⁹²⁰ TF2-073, 2 March 2005, pp. 30-33.

⁹²¹ TF2-073, 2 March 2005, p. 45.

⁹²² TF2-073, Transcript 2-3 March 2005, p. 39.

⁹²³ TF2-170, Transcript 7 March 2005, pp. 65-68.