

348. The third category concerns cases involving a common design to pursue one course of conduct where one of the perpetrators commits an act which, while outside the common design, was nevertheless a natural and foreseeable consequence of the effecting of that common purpose.

### **Elements required for a Joint Criminal Enterprise**

349. The following elements must be demonstrated beyond a reasonable doubt for criminal liability to arise:

- a) Plurality of persons;
- b) The existence of a common plan design or purpose which amounts to or involves the commission of a crime;
- c) Participation of the accused in the common design involving the perpetration of one of the crimes as alleged in the indictment.

350. The participation need not involve the commission of a specific crime but may take the form of assistance in, or contribution to, the execution of the common plan or purpose. A person participates in a joint criminal enterprise by: personally committing the agreed crime as principal offender; by assisting the principal offender in committing the agreed crime as a co-perpetrator (by undertaking acts that facilitate the commission of the offence by the principal offender); or by acting in furtherance of a particular system in which the crime is committed.<sup>528</sup>

351. For joint criminal liability an accused must have carried out acts that substantially assisted or significantly affected the furtherance of the goals of the enterprise with knowledge that his acts or omissions facilitated the crimes committed through the enterprise in order to be criminally liable as a participant in a joint criminal enterprise.<sup>529</sup>

352. The Prosecution must establish the existence of an arrangement or understanding amounting to an agreement between two or more persons that a

<sup>528</sup> Vasiljevic (Trial Chamber) November 29 2002 para 67.

<sup>529</sup> Kvočka et al (Trial Chamber) November 2001 para 312.

particular crime is committed. The arrangement or understanding need not be express and it may be inferred from all the circumstances.<sup>530</sup>

353. The level of participation in joint criminal enterprise must be significant. The Trial Chamber in *Kvočka*<sup>531</sup> defined “significant” as an act or omission that makes an enterprise efficient or effective, e.g. participation that enables the system to run more smoothly or without disruption. Physical or direct perpetration of a serious crime that advances the goal of the criminal enterprise would constitute a significant contribution. The level of participation attributed to the accused and whether the participation is deemed significant will depend on variety of factors including the size of the criminal enterprise, the functions performed, the position of the accused, the amount of time spent participating after acquiring knowledge of the criminality of the system, the seriousness and scope of the crimes committed and the efficiency, zealousness gratuitous cruelty exhibited in performing the actors function.

354. The responsibility for crimes outside the common purpose occurs if it was foreseeable that such a crime might be perpetrated and the accused willingly took the risk.<sup>532</sup>

355. The *mens rea* required for joint criminal enterprise is dependent upon which of the three forms is alleged. The basic form requires that the accused had the intent to perpetrate a specific crime that was within the common purpose, an intent that was only shared by the co-perpetrators. The accused must have voluntarily participated and intended the criminal result. The extended form requires that the accused intended to participate in and further the common purpose of the joint criminal enterprise, and that the crime that was beyond the common purpose was a natural and foreseeable consequence and the accused willingly took the risk that it would occur.<sup>533</sup>

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<sup>530</sup> Vasiljevic (Trial Chamber) ICTY November 29 2002 para. 66

<sup>531</sup> Kvočka et al (Trial Chamber) ICTY November 2 2001 para 309

<sup>532</sup> Tadic (AC), para. 77.

<sup>533</sup> Kvočka et al (Trial Chamber) ICTY November 2 2001 para 86

356. It is however important to consider the joint criminal enterprise as alleged in this Indictment. While the Prosecution has not explicitly stated it, it appears that the prosecution is alleging criminal liability pursuant to the third category of joint criminal enterprise -- covering a situation where a group of persons act according to a common purpose, and in the course of this, someone in the group commits a crime that was not part of the common purpose.

357. The common plan alleged by the Prosecution “was to use any means necessary to defeat the RUF/AFRC forces and to gain and exercise control over the territory of Sierra Leone. This included giving complete control over the population of Sierra Leone and the complete elimination of the RUF/ AFRC its supporters, sympathizers and anyone who did not actively resist the RUF/AFRC occupation of Sierra Leone”. Each Accused is alleged to have acted individually and in concert with subordinates to carry out the said plan, purpose or design.<sup>534</sup>

358. The common plan “to gain and exercise control over the territory of Sierra Leone” is not criminal itself. Nor does this enterprise amount to a crime provided for in the Statute.<sup>535</sup> As the Prosecution alleges, the CDF was a criminal organisation and the three Accused and their subordinates were all part of this joint criminal enterprise – effectively making every action of the CDF criminal. This flies in the face of the accepted evidence that the purpose of the CDF was to defend communities and to liberate the country from the RUF and AFRC.

359. The Defence would also submit that it is important to note that the Prosecution has broadened the scope of an already exceedingly broad form of criminal liability. In citing the three forms of joint criminal enterprise, the ICTY stated that for the third form (where a crime occurs that was not a part of the common purpose), the standard of proof is that crime was a “*natural and foreseeable consequence*” of the common purpose.<sup>536</sup> The Prosecution in this instance attempts to broaden this even further by stating that the crime was “*reasonably foreseeable*”<sup>537</sup>. The Defence submits that

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<sup>534</sup> Paragraph 19 Indictment

<sup>535</sup> A joint criminal enterprise requires the existence of a common plan, design or purpose which amounts to or involves the *commission of a crime provided for in the Statute*.

<sup>536</sup> Tadic 15 July 1999 Appeals Chamber, Kvočka et al 2 November 2001 (Trial Chamber)

<sup>537</sup> Indictment, para. 20.

there is no basis for the Prosecution reformulating the law and further that it is an unacceptable further broadening of the potential culpability of criminal defendants – very little would appear to fall outside the scope of a joint criminal enterprise.<sup>538</sup>

360. The Defence submits that Hinga Norman did not act individually and in concert with subordinates within a common purpose, plan or design. In addition to the CDF lacking the requisite criminal purpose, the violations as alleged in the Indictment to the extent that they did occur are attributable to individual Kamajors and commanders who did not follow stated rules. These were isolated events and not the result of a general policy or plan on the part of the Accused and “subordinates”.

## **The Counts**

### **Counts 1 and 2**

#### **The majority of the alleged perpetrators are unknown**

370. The Defence would first submit that respect to Counts 1 and 2, the bulk of the evidence does not establish the identity of any of the alleged perpetrators of murder.

371. The PTB only states that the “CDF attacks and unlawfully killed an unknown number of captured enemy combatants as well as civilians”<sup>539</sup> for each of the geographic locations set out in the Indictment. At the start of its case, it appears that the Prosecution was unable to provide the Defence with the name of one single alleged perpetrator of murder. The PTB is also unable to provide the name of a single “commander.”

372. The evidence shows that the prosecution does not in fact know who committed the majority alleged murders nor does the evidence demonstrate that any of these persons were the subordinates of Mr Norman. In the case of criminal liability under Article 6(3), an essential element to be pleaded and proved is that there was a superior-subordinate relationship. Mr Norman can only be found guilty of those

<sup>538</sup> “What is the limit to intended or foreseeable wrongdoing in a country wracked by ethnic cleansing and armed conflict?” Allison Marston Danner and Jenny S. Martinez, ‘Guilty Associations: Joint Criminal Enterprise, Command Responsibility, and the Development of International Criminal Law’, 93 Calif. L. Rev. 75, at 135.

<sup>539</sup> PTB Paragraphs 273, 281, 290, 298, 306.

crimes if the perpetrators are under his effective control. As the Prosecution has failed to identify who the perpetrators are, the counts of murder should be dismissed. Also the evidence wholly fails to establish any link between the Accused to any alleged command he gave to any commander to any discreet piece of evidence that this command was implemented. On that basis no liability under Article 6(3) has been established.

373. There is no evidence of any link between these unidentified Kamajors and the Accused. Where this is possibly a link it is too remote. As the ICTY has stated “great care must be taken lest an injustice be committed in holding individuals responsible for the acts of others in situations where the link of control is absent or too remote.”<sup>540</sup>

### Tongo

374. The Prosecution alleges in Paragraph 25 a) of the Indictment that “Between about 1 November 1997 and about 30 April 1998 at or near Tongo Field, and at or near the towns of Lalehun, Kamboma, Konia, Talama, Paguma and Sembehun,<sup>541</sup> the CDF attacked and unlawfully killed an unknown number of captured enemy combatants as well as civilians,<sup>542</sup> Further details provided in the Prosecution Pre-Trial Brief allege that these unlawful killing including Chief Aruna Konuwa, Chief Brima Conteh, and one Mohammed Mansarray alias “Joskie”.<sup>543</sup>

375. The Prosecution further alleges that within this same time frame and geographic regions, Kamajors screened the civilians and those identified as “Collaborators”, along with any captured enemy combatants and unlawfully killed them.<sup>544</sup>

376. The Defence would first submit that this is no evidence presented for the geographic location of Konia.

<sup>540</sup> Celebici Trial judgment, 16 November 1998 para 377-378.

<sup>541</sup> Note that two geographic locations, Panguma and Sembehun, were dropped from the indictment in the Decision on the Motions for Acquittal pursuant to Rule 98”, 21 October 2005 Doc 473

<sup>542</sup> Indictment 25a

<sup>543</sup> PTB para 273.

<sup>544</sup> Paragraph 24a Indictment.

377. The Prosecution states that the attacks on Tongo took place between 1 November 1997 and about 30 April 1998. With respect to the Prosecution's witnesses ability to put their testimony with this relevant timeframe, TF2-015 could not remember when the attack was<sup>545</sup>, TF2-048 only being able to recall that it was on a Wednesday<sup>546</sup>, TF2-035 stated it was in the dry season of 1997<sup>547</sup>, TF2-144<sup>548</sup> and TF2-053<sup>549</sup> recalling that it was the "fasting month". Even though the Prosecution's PTB alleges that it was on or about 14 January 1998 that the CDF attacked Tongo Field, five of the Prosecution witnesses testified that it was sometime either in November or December 1997.<sup>550</sup>

378. A number of witnesses testified that civilians gathered at the NDMC Headquarters and it here where the Prosecution alleged that a number of unlawful killings took place.

379. TF2-015 testified to a number of alleged killings, all perpetrated by unidentified Kamajors.<sup>551</sup> TF2-022 also testified to a number of killings, again by unidentified Kamajors.<sup>552</sup> TF2-022 testified to one instance of an unidentified commander ordering a kamajor to open fire on a group of civilians and another unidentified commander ordering them to stop.<sup>553</sup> In nearly every instance the witness testified that the civilians allegedly killed were targeted for a particular reason<sup>554</sup>. As previously stated identification and killing of specific individuals does not amount to a crime against humanity and therefore none of the alleged killings can be considered as such under Count 1.

<sup>545</sup> Transcript, TF2-015, 11 February 2005 5:1-6 Do you remember when the Kamajors came to Tongo? A. Yes. Q. Do you know what month or year the Kamajors came to Tongo? A. I cannot remember. I cannot remember the day they came to Tongo.

<sup>546</sup> 23 February 2005 pg 6 lines 15-17.

<sup>547</sup> 14 February 2005 pg 8 lines 10-20.

<sup>548</sup> Transcript, TF2-144, 24 February 2004 pg 56 lines 26-28, page 59 lines 6-12, page 60 line 23– page 61 line 4.

<sup>549</sup> Transcript, TF2-053, 1 March 2004 pg 74 lines 4-13.

<sup>550</sup> Transcript, TF2-022, 11 February 2005 pg 44 line 27– page 45 line 4, TF2-035, 14 February 2005 page 8 lines 10-20, page 10 lines 24-28, TF2-027, 18 February 2005 page 79 lines 14-25, page 85 lines 4-15, page 85 lines 27-29, TF2-047, 22 February 2005 page 44 lines 4-11, TF2-016, 1 March 2004 page 32 lines 20-26.

<sup>551</sup> Transcript, TF2-015, 11 February 2005 page 7 lines 23– page 8 line 17, page 8 line 25– page 9 line 28, Transcript, TF2-015, 11 February 2005 page 11 line 23 – page 13 line 15.

<sup>552</sup> Transcript, 11 February 2005 page 46 lines 14-29, 11 February 2005 page 50 line 19– page 53 line 3, 11 February 2005 page 59 lines 15-29, 11 February 2005 page 61 lines 8-20.

<sup>553</sup> Transcript, TF2-022, 11 February 2005 page 56 lines 19-28, page 57 lines 1-10, page 57 lines 13-26.

<sup>554</sup> This also hold true for the evidence of TF2-048 who stated that another unidentified Kamajor, after consulting a list containing names of Limbas, killed the witness's elder brother.

380. TF2-035 testified to Kamajor commander called Keikula Kamagboty (“Kamabote”) ordered that the belongings and persons of a group of civilians be searched; also upon his orders, a group of 150 Limba, Temne, and Loko civilians were taken a short distance away and systematically hacked to death by a group of 30 unidentified Kamajors.<sup>555</sup> This testimony is not corroborated anywhere else. Also, as defence counsel noted in its cross examination, this evidence is suspicious in that an alleged massacre of this scale should have been noted somewhere, in newspapers, through memorial / remembrance services in Tongo, or through third party documented sources such as NGOs or UN monitors. There is no evidence that these alleged killings were reported by any other source than this witness. Further, the Prosecution chose to engage the services of a forensic expert who gave evidence pertaining to two graves containing a relatively small number of bodies<sup>556</sup>. If, as according to this witness, the victims of the alleged killings were still buried behind the NMDC building, then why did the Prosecution not provide a forensic report for this site?

381. The evidence demonstrates that “Kamabote” is alleged to have been responsible for the majority of the alleged deaths in Tongo. In addition to the evidence of TF2-035, this “Kamabote” is also alleged to have chopped a “Fatmata Kamara” to death.<sup>557</sup> TF2-053 also testified that Kamabote ordered two women to denounce rebels among the group assembled there; two women did so and, Kamabote shot dead the two men the women had identified.<sup>558</sup> She also said that Kamabote had killed her son at a checkpoint.<sup>559</sup> There is no evidence that Kamabote belonged to any particular group of Kamajors, or that he was taking instructions from any commander let alone that such a commander was acting pursuant to any directives of the Accused.

382. TF2-027 and TF2-047 each testified that BJK Sei was the commander in charge in Tongo and that Saika Laihi was his deputy.<sup>560</sup> However to say that there was

<sup>555</sup> Transcript, TF2-035, 14 February 2005 page 12 lines 21-25, page 13 lines 11-16, page 15 lines 3-17, page 16 lines 10-11, page 17 lines 11-15, page 18 lines 23-24, page 20 lines 1-20.

<sup>556</sup> Exhibit 101.

<sup>557</sup> Transcript, TF2-047, 22 February 2005 page 59 lines 11-27.

<sup>558</sup> Transcript, TF2-053 t, 1 March 2004 page 82 line 8– page 84 line 27.

<sup>559</sup> Transcript, TF2-053, 1 March 2004 page 88 line 22– page 89 line 10.

<sup>560</sup> Transcript, TF2-027, 18 February 2005 page 92 lines 22-23, page 92 line 26.

one commander in charge of Tongo is false as other witnesses testified that there were groups of Kamajors following various often contradictory orders from commanders, none of whom are identified.<sup>561</sup>

383. Witnesses also testified to seeing corpses of people that they recognised. But there is no evidence that they saw who killed them or how they were killed. TF2-027 testified to recognizing two corpses, Joski Mbona and one Fullah bread seller.<sup>562</sup> TF2-144 testified to seeing two corpses, one a man she knew called Joski and an unnamed woman.<sup>563</sup> This evidence cannot constitute evidence towards unlawful killings should be disregarded.

384. TF2-013 testified to the alleged killing of Chief Brima Conteh in Lalehun, the only one of three people specifically identified in the pre-trial brief as having been unlawfully killed. However, no time is given for when this death is alleged to have taken place.

385. According to TF2-016, a commander named Bimba Aruna ordered the killing of a “Aruna Konowa” who was arrested, brought to Lalehun, and killed.<sup>564</sup>

386. The bulk of these alleged killings were by unidentified Kamajors. The perpetrators are unknown. No evidence has been brought about the *mens rea* of these unidentified perpetrators. Accordingly there is no evidence regarding this requisite element for the crime of murder.

387. Where a kamajor is named (i.e. Kamabote) the evidence is that he was not acting in accordance with any instructions or under any command. Again, however, there is no evidence about the *mens rea* of this alleged perpetrator and again then the requisite element for murder is missing. Further there is no evidence that reports on Kamabote were ever taken to the Accused.

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<sup>561</sup> Transcript, TF2-022, 11 February 2005 page 71 lines 20-28, page 72 lines 17-20, page 73 lines 5-15.

<sup>562</sup> Transcript, TF2-027, 18 February 2005 page 108 lines 8-20, page 109 lines 2-7.

<sup>563</sup> Transcript, TF2-144, 24 February 2004 page 62 line 20– page 63 line 24.

<sup>564</sup> Transcript, TF2-016 1 March 2004 page 36 line 13– page 37 line 18, page 38 line 7-13, page 38 line 22– page 39 line 10.



## KENEMA

388. The Indictment alleges that “on or about 15 February 1998, at or near the District Headquarters town of Kenema and at nearby locations of SS Camp, and Blama, Kamajors unlawfully killed an unknown number of civilians and captured enemy combatants.”<sup>565</sup> The Prosecution Pre-Trial Brief further alleges that one “Kosia of Sumalia Street” was unlawfully killed by the CDF.<sup>566</sup>

389. It is further alleged that “on or about 15 February 1998, at or near Kenema Kamajors unlawfully killed an unknown number of Sierra Leone Police Officers”<sup>567</sup>. Included in these alleged deaths, the Prosecution alleges that the CDF unlawfully killed Sgt Fosonah, Momoh Samura and Cpl. Fandai.<sup>568</sup>

390. 9 prosecution witnesses testified to events alleged to have occurred in Kenema.

391. Again the majority of the evidence relates to unidentified Kamajors as the perpetrators with no evidence as to the *mens rea* of these perpetrators, hence a critical element for murder has not being demonstrated. TF2-033 testified that unidentified Kamajors killed an unarmed soldier.<sup>569</sup> TF2-151 testified to unidentified Kamajors killing an unnamed boy accusing him of being a junta.<sup>570</sup> TF2-154 states that unidentified Kamajors decapitated a Temne boy and killed a Mende man accused of being a former soldier.<sup>571</sup> TF2-152 testified to unidentified Kamajors killing 5 people.<sup>572</sup> TF2-040 testified that unidentified Kamajors killed unnamed police officers.<sup>573</sup> 4 witnesses testified that unidentified Kamajors killed seven named police

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<sup>565</sup> Indictment para 25 b.

<sup>566</sup> PTB para 281.

<sup>567</sup> Indictment para 25c.

<sup>568</sup> PTB para 282.

<sup>569</sup> Transcript, TF2-033, 20 September 2004 page 10 lines 2-23.

<sup>570</sup> Transcript, TF2-151, 22 September 2004 page 12 line 16– page 16 line 23.

<sup>571</sup> Transcript, TF2-154, 27 September 2004 page 48 line 4– page 50 line 3.

<sup>572</sup> Transcript, TF2-152, 27 September 2004 page 121 line 10– page 123 line 3.

<sup>573</sup> Transcript, TF2-040, 21 September 2004 page 26 line 23 – page 27 line 2

officers.<sup>574</sup> One kamajor is identified by name by TF2-041<sup>575</sup> however, there is no evidence to demonstrate the *mens rea* of this perpetrator.

392. There is no evidence which connects any of the unidentified Kamajors to a commander. There is also no evidence which then connects a commander to the Accused or any of the unidentified Kamajors directly to the Accused.

## BO

393. The Prosecution alleges that “in or about January and February 1998 in locations in Bo District including the District Headquarters Town of Bo, Koribundo, Fengehun Kamajors unlawfully killed an unknown number of civilians and captured enemy combatants.”<sup>576</sup> The Prosecution also alleges in its Pre-Trial Brief that the CDF unlawfully killed both captured enemy combatants and an unknown number of civilians including one Kafala<sup>577</sup>, Ambrose Kortu<sup>578</sup> and, one Abema<sup>579</sup>, a CDF combatant, who was killed for refusing to operate as ordered by CDF superior commanders.<sup>580</sup>

394. 10 Prosecution witnesses gave evidence relating to Bo.

395. The evidence of TF2-088 relates to Gumahun, Mandu, and Kpetewoma - all geographic locations not mentioned in the Indictment and therefore this evidence should be excluded. TF2-030 testified that unidentified Kamajors killed her husband because he was a Temne.<sup>581</sup> TF2-156 also testified to unidentified Kamajors capturing his brother, some others and himself and “chopping them”.<sup>582</sup> TF2-57 gave evidence to seeing Kamajors arrest a woman and then later seeing her severed head wrapped in

<sup>574</sup> Transcript TF2-042, 17 September 2004 page 102 lines 18-23; Transcript TF2-033, 20 September 2004 page 11 line 18–page 12 line 12; Transcript TF2-040, 21 September 2004 page 28 line 6– page 29 line 2; Transcript, TF2-039, 23 September 2004 page 107 line 6–page 112 line 21.

<sup>575</sup> Transcript, TF2-041, 24 September 2004 page 52 lines 15-23.

<sup>576</sup> The geographic locations of Kebi Town, Kpayama, Mongere were dropped from the Indictment in the Rule 98 Decision.

<sup>577</sup> No evidence was presented with respect to this allegation.

<sup>578</sup> No evidence was presented with respect to this allegation.

<sup>579</sup> No evidence was presented in support of this allegation.

<sup>580</sup> PTB para 290.

<sup>581</sup> Transcript, TF2-030, 25 November 2004 page 11 lines 6-19.

<sup>582</sup> Transcript, TF2-156, 25 November 2004 page 41 lines 8-15, page 41 lines 21-27, page 42 line 1– page 43 line 26, page 45 lines 19-21, page 46 line 14– page 47 line 5, page 48 line 13– page 49 line 21.

a scarf. This evidence should not be considered as it is too circumstantial to prove a murder allegation. TF2-067 said that an unidentified kamajor shot to death an unnamed Temne man in a park <sup>583</sup> as well as an unidentified kamajor killing a soldier at a checkpoint. <sup>584</sup> TF2-058 said unidentified Kamajors killed her husband. <sup>585</sup> Through hearsay and uncorroborated evidence TF2-056 said he saw the corpses of police officers. <sup>586</sup> This evidence should be completely disregarded as there is no indication as to who is alleged to have killed these police officers. This same witness also gave evidence that four Limbas from Tongo Field were killed by unidentified Kamajors. <sup>587</sup> TF2-001 also gave evidence of unidentified Kamajors shooting a man named "Freeman" <sup>588</sup> This same witness stated that on 6 February 1998, a group of unidentified Kamajors hacked to death "James Vandy". <sup>589</sup>

396. The Defence submits that with respect to Count 1 the evidence does not show that there was an "attack" of any kind. Further the evidence on its face demonstrates that the alleged killings were of particular individuals who were identified by profession or ethnic group. Again this is insufficient to demonstrate an attack. Therefore there is no crime against humanity and Count 1 should be dismissed.

397. Further, the only Kamajors who are identified are with respect to the testimony of TF2-007 who stated that certain Kamajors participated in the death of his father. <sup>590</sup> All other evidence alleges that it is unidentified Kamajors who were the perpetrators. Again there is no evidence of the *mens rea* of these perpetrators and therefore an essential element of the crime of murder has not been demonstrated.

<sup>583</sup> Transcript, TF2-067, 1 December 2004 page 4 line 19– page 5 line 15.

<sup>584</sup> Transcript, TF2-067, 1 December 2004 page 18 lines 12-27.

<sup>585</sup> Transcript, TF2-058, 3 December 2004 page 50 lines 10-22, page 51 lines 14-25, page 51 line 26– page 52 line 6, page 52 lines 7-9, page 53 line 23– page 54 line 11, page 54 line 16– page 55 line 13, page 55 line 14 – page 57 line 12, page 60 lines 2-1.

<sup>586</sup> Transcript, TF2 -056, 6 December 2004 page 68 lines 15-24, page 68 line 29– page 70 line 8.

<sup>587</sup> Transcript, TF2-056, 7 December 2004 page 75 line 16– page 76 line 8.

<sup>588</sup> Transcript, TF2-001, 14 February 2005 page 82 line 16– page 83 line 5.

<sup>589</sup> Transcript, TF2-001, 14 February 2005 page 85 line 17– page 87 line 4.

<sup>590</sup> Transcript, TF2-007, 2 December 2004 page 48 lines 6-8, page 49 lines 6-20, page 50 line 10– page 51 line 4.

## MOYAMBA

398. The Prosecution alleges that “between about October 1997 and December 1999 in locations in Moyamba district including Taiama, Ribbi, Kamajors killed an unknown number of civilians.”<sup>591</sup> The PTB also alleged that the CDF unlawfully killed an unknown number of civilians, including one Mr Thomas, former Treasury Clerk and Abubakkar “Waka” Bangura,<sup>592</sup> a businessman as well as captured enemy combatants.<sup>593</sup>

399. 7 Prosecution witnesses gave evidence relating to the Moyamba crime base.

400. TF2-168 testified that unidentified Kamajors entered his farm in the bush and that a Kamajor named “Kakpata” ordered an unidentified Kamajor to shoot his wife.<sup>594</sup> TF2-165 testified that a group of unidentified Kamajors, under the command of one Mr Ngobeh, arrested and killed a suspected collaborator called Mr Thomas.<sup>595</sup> He also testified that unidentified Kamajors brought three men to Shenge Park and burnt one of them to death.<sup>596</sup> TF2-167 testified that on 23 March 1998, a group of four unidentified armed Kamajors came to witness’s house and shot his grandson.<sup>597</sup> TF2-170 testified that a Kamajor named Kakpata shot a Alusine Kabbah dead.<sup>598</sup>

401. The Prosecution led evidence on 5 alleged unlawful killings in Moyamba. Against this evidence hardly reaches the scale of an attack to be a crime against humanity. Further again the evidence is that unidentified Kamajors were the perpetrators and only one instance is a kamajor named (“Kakpata”). In all cases no evidence as to the *mens rea* of these perpetrators has been led. With respect to Kakpata there is no evidence to establish his *mens rea*, and no evidence that he was in any particular grouping of Kamajors or that he had a command, or that there was any

<sup>591</sup> The geographic locations of Sembehun, Bylogo, and Gbangbatoke were dropped from the indictment in the Rule 98 Decision.

<sup>592</sup> No evidence was presented in support of this allegation.

<sup>593</sup> PTB para 298.

<sup>594</sup> Transcript, TF2-168, 3 March 2005 page 59 line 28– page 65 line 29, page 67 line 8– page 68 line 6.

<sup>595</sup> Transcript, TF2-165, 7 March 2005 page 9 lines 13-25, page 10 line 22– page 12 line 17.

<sup>596</sup> Transcript, TF2-165, 7 March 2005 page 14 line 13– page 15 line 15, page 16 lines 9-24.

<sup>597</sup> Transcript, TF2-167, 8 March 2005 page 28 line 9– page 30 line 24, page 31 lines 2-17, page 32 lines 22-27.

<sup>598</sup> Transcript TF2-170, 7 March 2005 page 51 line 16– page 52 line 16, page 53 lines 1-12, page 54 line 14– page 57 line 6, page 57 line 24– page 58 line 25, page 59 lines 1-27.

nexus at all to the Accused. The same hold true with respect to Mr Ngobeh, identified as a commander by TF2-165. There is no evidence that this commander received any orders or directions or logistics etc from the Accused or that he was in attendance at any meetings alleged to have occurred at Base Zero.

## BONTHE

402. The Prosecution allegations that “between about October 1997 and December 1999 in locations in Bonthe District including Talia (Base Zero), Mobayeh, and Bonthe Town Kamajors unlawfully killed an unknown number of civilians.”<sup>599</sup> The Prosecution further alleges in its PTB, that the CDF unlawfully killed a number of civilians including Jusu Sally, Lahai Lebbie, and Pa Bargie<sup>600</sup> as well as captured enemy combatants.<sup>601</sup>

403. 12 Prosecution witnesses testified to events in Bonthe.

404. 3 Prosecution witnesses gave evidence of a fisherman being shot by a kamajor commander named “Baigeh”.<sup>602</sup> TF2-147 testified that a fisherman called Kondor Bantiamor was killed by unidentified Kamajors.<sup>603</sup> This same witness also testified that “Samuka Kamara” was killed by unidentified Kamajors.<sup>604</sup> TF2-071 testified to the allegedly killing of a “Musu Fai” by unidentified Kamajors.<sup>605</sup> TF2-071 testified that unidentified Kamajors stabbed to death a pregnant woman called Jebbeh<sup>606</sup>. TF2-071 testified to a killing in Bolloh village<sup>607</sup>, but the Defence submits that this evidence should be disregarded as this location is not cited in the Indictment.

405. TF2-096 said a captured soldier was killed by unidentified Kamajors but the witness didn’t know when it was (the “rainy season”)<sup>608</sup>. Three individuals identified as Jusu Shalley, Baggie Vaiey, and Lahai Lebbie were killed, according to TF2-108

<sup>599</sup> Indictment para 25 f.

<sup>600</sup> No evidence was presented in support of this allegation.

<sup>601</sup> PTB para 306.

<sup>602</sup> Transcript TF2-116, 9 November 2004 page 12 lines 10-24, Transcript TF2-147, 10 November 2004 page 36 line 12 – page 37 line 2; Transcript TF2-071, 11 November 2004 page 77 lines 13-17.

<sup>603</sup> Transcript, TF2-147, 10 November 2004 page 43 lines 10-28.

<sup>604</sup> Transcript, TF2-147, 10 November 2004 page 40 line 2– page 41 line 10.

<sup>605</sup> TF2-071, 11 November 2004 page 71 lines 1-12.

<sup>606</sup> Transcript, TF2-071, 11 November 2004 page 71 lines 13-21.

<sup>607</sup> Transcript, TF2-071, 11 November 2004 page 73 lines 10-18.

<sup>608</sup> Transcript, TF2-096 8 November 2004 page 21 line 2– page 22 line 3.

by unidentified Kamajors in Talia.<sup>609</sup> TF2-187 testified that three pregnant women were killed by “Kondewa’s boys.”<sup>610</sup> TF2-189 testified that a kamajor named Nulele killed her husband.<sup>611</sup>

406. When witness’s husband attempted to retrieve her from Talia, he was captured by Nulele, taken to Kondewa, then lead by a group of singing Kamajors to a tree where Nulele asked him to say goodbye and to choose death by the gun or the knife; the husband did not choose, and Nulele cut his throat and removed his head; his corpse was taken to the bush:

407. Against the Defence submits that the level of alleged killings is clearly not an “attack” within the meaning of crimes against humanity and therefore Count 1 should be dismissed. Also, again the majority of crimes are perpetrated by unidentified Kamajors with no evidence as to their *mens rea*, nor any connection to the Accused, or any of his actions. Where the alleged perpetrator is identified there is still no evidence of the perpetrator’s *mens rea*.

### **Counts 3 and 4**

408. Paragraph 26 of the Indictment charges the Accused with “Acts of Physical violence and infliction of mental harm and suffering”. Counts 3 charges inhumane acts as a crime against humanity, and Count 4 charges “Violence to life, health and physical or mental well-being of persons, in particular cruel treatment,” a Violation Of Article 3 Common to the Geneva Conventions and of Additional Protocol II punishable under Article 3 (a) of the Statute.

### **Physical violence and mental suffering**

409. A number of Prosecution witnesses gave testimony alleging physical violence and mental suffering with respect to the various crime pages: Tongo (TF2-015), Kenema (TF2-151, TF2-152, TF2-079), Blama (TF2-041), Koribundo (TF2-157, TF2-014), Bo (TF2-198, TF2-056, TF2-001, TF2-067, TF2-110), Bonthe District

<sup>609</sup> Transcript, TF2-108, 30 May 2005 page 5 line 6– page 6 line 14

<sup>610</sup> Transcript, TF2-187, 1 June 2005 page 17 lines 1– page 19 line 12.

<sup>611</sup> TF2-189, 3 June 2005 page 7 line 15– page 8 line 24

(TF2-086, TF2-147, TF2-017, TF2-134, TF2-173) and Moyamba (TF2-170, TF2-166).

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410. The Defence submits that the majority of these alleged crimes were perpetrated by unidentified Kamajors. As the prosecution must establish a sufficient nexus between the accused and the attack, this is impossible to do when the identity of the perpetrator is unknown.

411. As with Count 1 the Defence submits that the Prosecution has failed to demonstrate that there was an “attack” against a civilian population and therefore has failed to meet one of the necessary elements for a crime against humanity. The prosecution must prove under count 3 of the Indictment that there was a widespread or systematic attack on civilian population by the Kamajors.

412. The Defence submits that there were no “attacks” against civilians, certainly not on the level that is large enough or targeting a whole population to suffice to the level of an attack as set out in the jurisprudence.

#### **Count 5: Looting and Burning**

413. Count 5 of the indictment alleges that the Accused of his alleged position as a superior for looting and burning.

414. The elements of the crime of pillage are:

- The perpetrator appropriated certain property
- The perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use. (As indicated by the use of the term “private or personal use”, appropriations justified by military necessity cannot constitute the crime of pillaging.)
- The appropriation was without the consent of the owner
- The conduct took place in the context of and was associated with an armed conflict not of international character.

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- The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.<sup>612</sup>

415. In the traditional sense the concept of pillage implies an element of violence.<sup>613</sup>

416. The Defence submits that the crime of ‘burning’ does not fulfil the elements of pillage, since pillage requires appropriation, whereas burning does not. This argument is strengthened when Article 5.b. of the Statute of Special Court is considered. In the Defence view ‘burning’ has been inappropriately pleaded as pillaging and all evidence relating to burning should be not considered with respect to Count 5. Regardless the Defence will review the evidence presented in relation to burning as well under Count 5.

417. In order to establish the facts in relation to the allegations set forth in paragraph 27 of the Indictment the Prosecution relied on the testimony provided by various prosecution witnesses concerning alleged looting and burning in Kenema District and Town, Tongo Field and Surrounding areas, Bo District and Town, Koribondo, Moyamba District, Bonthe District and Town and Talia (Base Zero). The Defence would analyzed the evidence of both the prosecution and defence witnesses to demonstrate that the first accused was neither a direct participant nor was he in any alleged position as a superior.

#### **Kenema Town and District:**

418. Various Prosecution witnesses testified that unidentified Kamajors burnt down and looted their houses and other houses in Kenema. TF2-223 described a number of houses burnt in Blama road including the house of a lieutenant who was alleged to be a friend of the junta and the house of one “Kutayeh”. TF2-188 also alleged that Kamajors took away her and her mother’s property.

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<sup>612</sup> Dixon & Khan: Archbold International Criminal Courts, Practice, Procedure & Evidence (2002), p.327

<sup>613</sup> Celebici Judgment, para.591, p.209



419. In his evidence, Mohammed Kineh Swaray, testified that when they attacked Kenema, he observed that civilians were burning the houses where the juntas stayed when they burnt down the houses of the relatives of the Kamajors and civilians.<sup>614</sup> The witness further testified that when they observed that the civilians were burning houses, they called all of them and stopped them from burning houses. They told them they have not come to destroy Kenema so nobody should burn a house there.<sup>615</sup> Mohammed Bonie Koroma also testified that civilians burnt houses of rebel supporters in retaliation and he denied seeing Kamajors burning houses as alleged by TF2-154.<sup>616</sup>

420. In his evidence Ishmael Senesie Koroma, testified that while the juntas were pulling out of Kenema led by Mosquito, they caused a lot of destruction and looted shops completely and took all the vehicles to Kailahun.<sup>617</sup> This witness further testified that he operated with a vehicle belonging to ICRC which was given to him by ECOMOG and the vehicle was with witness until the Lome Peace Accord was signed when ICRC returned and Major Tony of ECOMOG requested the witness to hand over the vehicle. A document was prepared to that effect and the vehicle handed back to ICRC.<sup>618</sup> The witness denied under cross examination of being aware of Kamajors committing acts of looting and stated that it was a rule for them not to loot.<sup>619</sup> Arthur Koroma corroborated this evidence when he testified that when the AFRC junta forces were pulling out around mid February 1998, they launched "operation pay yourself" where they broke into all the major shops along the main street and looted vehicles and items in the shops.<sup>620</sup>

### **Tongo Field and Surroundings:**

421. In his evidence, TF2-144 testified that when they left Tongo and escorted by the Kamajors to Dodo to Kenema, he was later escorted by one commander to Tongo and upon arrival in his compound, witness discovered that all his zincs had been

<sup>614</sup> Transcripts of Mohammed Kineh Swaray, p.109, May 25 2006

<sup>615</sup> Ibid, p.110

<sup>616</sup> Transcripts of Mohammed Bonie Koroma, p. May 22 2006

<sup>617</sup> Transcripts of Ishmael Koroma, pp.12-13, Feb. 23 2006

<sup>618</sup> Ibid, pp.16-17, Feb. 23 2006

<sup>619</sup> Ibid, p.63, Feb. 23 2006

<sup>620</sup> Transcripts of Arthur Koroma, pp.34-35, May 3 2006.

removed and his three houses destroyed. This piece of evidence is unreliable because the witness was not there when the alleged looting took place and cannot identify the alleged perpetrators. The witness further said that in his house on Kailahun Street was invaded by Kamajors who took away his mattress where he hid \$10,000 (US).<sup>621</sup> This piece of evidence is equally not convincing as it is far fetched to believe that amount of money was in a mattress to begin with. TF2-053 also testified how his house was burnt down in Tongo including other houses. Again this evidence should be viewed with circumspection as there is evidence that Tongo was occupied by the juntas who carried out acts of looting and burning.

422. In his evidence, Siaka Lahai testified that when they entered Tongo, they met a lot of destruction, houses on fire and the juntas were breaking into houses.<sup>622</sup> This piece of evidence was corroborated by Keikula Amara who testified that in the evening while outside Panguma Town, they were seeing fire burning in all of Tongo and that the soldiers were putting people in their houses and setting their houses ablaze.<sup>623</sup>

#### **Bo Town and District:**

423. The allegations of looting and burning from TF2-008 which he alleged took place after the attack on Bo cannot be subscribed as acts of Kamajors as according to the witness he saw evidence of looting and burning but didn't know if was AFRC or Kamajors who were the perpetrators.<sup>624</sup> In his evidence TF2-017 alleged that at a meeting in Base Zero in Jan. 1998 Hinga Norman told them when attacking Bo to loot and burn houses and specifically loot pharmacies and get the medicines.<sup>625</sup> This witness further alleged that during the attack on Bo, his group went to a hotel whose owner allegedly hid rebels, broke in, looted then set it on fire. He also stated that he broke into a pharmacy on Tinkoko road and took medicines from the pharmacy on Bojon road. The accused while testifying refuted ever instructing anybody to loot or

<sup>621</sup> Transcripts of TF2-144, 25 February 2005, pg 11.

<sup>622</sup> Transcripts of Siaka Lahai, p.10, May 17 2006.

<sup>623</sup> Transcripts of Keikula Amara, pp. 31-33, May 18, 2006.

<sup>624</sup> Transcripts of TF2-008, p.108, Nov. 16, 2004.

<sup>625</sup> Transcripts of TF2-017, Closed Session, p. 94, 19 November 2004.

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burn down houses.<sup>626</sup> TF2-110 alleged that the Kamajors came to his house and took his family belongings and TF2-030 alleged that when Kamajors entered Bo they started looting and his landlady's shop was looted. TF2-156 also alleged that when Kamajors entered Bo they looted his things and looted his brother's house. This piece of evidence was contradicted by Defence witness Morris Ngobeh who testified that when the Kamajors entered Bo on Friday and Saturday the town was in the hands of the youths. On Sunday morning the Kamajors came to Bo and the burning stopped and everybody received the Kamajors joyously. The people were dancing for the rest of the day and continued till Monday.<sup>627</sup>

424. There is evidence before the Court that there was looting and burning by the civilians when the Kamajors entered Bo but this cannot be attributed to the Kamajors.<sup>628</sup> There is evidence that the juntas disguised as Kamajors and committed atrocities as Kamajors.<sup>629</sup>

425. Defence witness Morris Ngobeh testified that on the night of May 25 coup in 1997, the AFRC soldiers looted all the main shops in Bo Town<sup>630</sup> and that civilians reacted, particularly the youths, the following morning by demonstrating in the street saying that they did not approve of what happened and that during the demonstration they looted properties.<sup>631</sup> This witness further testified that youths burnt the house of Victor Foh, a very senior AFRC at Maria Street and MB Sesay's house situated along Fenton road and Kawusu street were burnt as well as the house of Joe Amara Bangali who was Finance Minister.<sup>632</sup>

426. In his evidence TF2-057 testified that he was in Bo when Kamajors came to his house in March 1998 and took away valuables but ECOMOG soldiers came and stopped them from taking it.<sup>633</sup> TF2-056 also alleged seeing four burnt houses in Bo at the police barracks the day the Kamajors came in March 1998<sup>634</sup>. This piece of

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<sup>626</sup> Transcripts of Hinga Norman. Pp 28, 38, 39, Jan 31 2006.

<sup>627</sup> Transcripts of Morris Ngobeh, p.9, Sept. 27 2006

<sup>628</sup> Ibid, p.9

<sup>629</sup> Transcripts of Dr. Joe Demby, p.29, Feb. 13 2006, Transcripts of Ishmael Koroma, pp. 14-15, Feb. 22 2006

<sup>630</sup> Transcripts of Morris Ngobeh, p.5, Sept. 27 2006

<sup>631</sup> Ibid, p. 5.

<sup>632</sup> Ibid, p.7

<sup>633</sup> Transcripts of TF2-057, p.116 29 November 2004.

<sup>634</sup> Transcripts of TF2-056, p.73, Dec. 6 2004

evidence lacks specificity because merely seeing burnt houses the day the Kamajors entered does not mean that the houses were burnt by Kamajors. The same witness further alleged that Kamajors came to his house and took his refrigerator, water filter and television set.<sup>635</sup>

### **Koribondo:**

427. Several prosecution witnesses testified about alleged looting and burning in Koribondo. TF2-157 testified that when he went to Koribondo in February 1998, he saw three houses burning and his own house was burnt down.<sup>636</sup> There is no evidence to suggest that this was done by Kamajors. Under cross examination, TF2-056 testified that when they were entering Koribondo, he observed burning of houses, while the enemy AFRC/RUF were pulling out.<sup>637</sup>

428. In his evidence, TF2-159 alleged seeing Kamajors destroying houses and taking property on the 14th February 1998 and in the evening the Kamajors started burning the town. On Blama road to the junction, the witness said he saw about 25 houses burnt including Daniel Habid's house.<sup>638</sup> This piece of evidence was challenged by the Accused, when he testified it is impossible that 25 houses were burnt because from the junction to the last house moving on to Blama direction, the houses on their left or right are no more than 15. The Accused further agreed that part of Mr Habib's house was damaged was that part of it was burnt as a result of the soldiers who were occupying the house and had stored some inflammables in it.<sup>639</sup> In her testimony, Wuiyatta Sheriff corroborated the evidence that soldiers set fire on her mother's house and others and denied that Kamajors burnt houses on Blama road.<sup>640</sup> Dauda Sheriff equally described meeting soldiers burning down houses<sup>641</sup> and Bobor Brima also testified how he arrived back to Koribondo to see many houses burnt.<sup>642</sup>

<sup>635</sup> Ibid, p.73

<sup>636</sup> Transcript, TF2-157, p.14, 16 June 2004.

<sup>637</sup> Transcript, TF2-056, p.83, Oct. 6 2005.

<sup>638</sup> Transcript, TF2-159, pg 26, 9 Sept 2004.

<sup>639</sup> Transcript, Hinga Norman, p.73-74, Jan. 30 2006.

<sup>640</sup> Transcript, Wuiyatta Sheriff, pg 22, May 9 2006.

<sup>641</sup> Transcript, Dauda Sheriff, pg 96, May 8 2006.

<sup>642</sup> Transcript, Bobor Brima, pg 69, May 9 2006.

From the totality of the evidence it is impossible to state that it was Kamajors who were involved in looting and burning.

429. In his evidence, the Accused refuted the allegation of TF2-032 that he counted 161 burnt houses stating it is not possible because there were no more than 100 houses in Koribundo at that time.

430. The accused further refuted TF2-190's allegation that he did not specifically confess acts of looting to him during the Koribondo attack of 13 Feb. 1998 where he allegedly looted 56 bundles of zincs from a store including fuel from a petrol station<sup>643</sup>.

### **Moyamba District**

431. Prosecution witness TF2-170 alleged that around March 1998 they were harassed by Kamajors who looted their property including that of his brother and looted property from traders. TF2-168 also alleged that on the 19th of March 1998 one Obai and his group went to Bradford and raided all houses and that all his property including rice was cleared. TF2-167 alleged that the Kamajors looted their clothing, groundnut, rice and palm oil which they put in the vehicle and took to Moyamba and that the entire Bradford was looted. TF2-166 also alleged how the CDF how all her father's property was take away and they lodged a complaint to the Resident Minister in the Chieftdom who called a meeting that the effect. It worthy to note that there was also a functioning government that was already in place and that is why a complaint was lodged to the Resident Minister, indicative of the fact that there was constitutive authority in place.

### **Counts 6 and 7**

432. In count 6, the Prosecution alleges that, at all times relevant to the Indictment, the CDF, largely Kamajors, committed the crimes alleged in Counts One through Five as part of a campaign to terrorise the civilian population of the specified geographic

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<sup>643</sup> Transcript Hinga Norman, pp 28-29, Jan 31 2006.

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locations.<sup>644</sup> The Prosecution further alleges that Mr Norman by his acts or omissions in relation to the allegations contained in Counts One through Five is individually criminally responsible for committing Acts of Terrorism, a War Crime.<sup>645</sup>

433. Count 7 alleges that all times relevant to the Indictment, the CDF, largely Kamajors committed the crimes alleged in Counts One through Five to punish the civilian population living in the specified geographic locations for their support of, or failure to resist, the combined RUF/AFRC forces.<sup>646</sup> The Prosecution alleges that Mr Norman by his acts or omissions in relation to the allegations contained in Counts One through Five, is individually criminally responsible for administering Collective Punishment, a War Crime.<sup>647</sup>

434. Counts Six and Seven have novel Counts as they have never been charged by a Prosecutor nor tried before an international tribunal before. There is no jurisprudence to guide the defence as to what exactly these counts entail. The elements of these crimes have also not been defined anymore. Of note is that fact that the Addendum of the Rome Statute establishing the International Criminal Court, which is regarded as the most up to date and comprehensive digest of international crimes.

435. The Defence submits that Counts 6 and 7 are not discernable crimes, there are no identified constituent elements that exist and their inclusion in the indictment violates the fundamental principle of *nullum crimen sine lege*.<sup>648</sup> On this basis Counts 6 and 7 should be dismissed.

### **Count 8: Use of Child Soldiers**

442. Count 8 of the Indictment charges the Accused with:

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<sup>644</sup> Indictment, para 28

<sup>645</sup> Ibid

<sup>646</sup> Ibid

<sup>647</sup> Ibid

<sup>648</sup> "No crime without law" – See Article 15 of the International Covenant on Civil and Political Rights: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time it was committed."

Enlisting children under the age of 15 years into armed forces or using them to participate actively in hostilities, an OTHER SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW, punishable under Article 4.c. of the Statute.

443. The definition of the criminal act of count 8 contains two elements, first 'enlistment', second 'using them to participate'.

444. It is first of all important to determine the intent and knowledge of the accused. There is no evidence before the court that shows that the accused had the requisite intent to enlist children or that he had knowledge that children were being enlisted to participate actively in hostilities. The accused testified that he was not connected with the enlistment of children in the conflict whether with the hunters as a national coordinator or with the army as the Deputy Minister of Defence in Sierra Leone and that he did not participate in any enlistment of children.<sup>649</sup> The accused denied the allegation of TF2-014 who alleged that one Junior Spain at Base Zero who was aged around 12-15 years and who with others of similar age or even lower age at Base Zero, were sent to war to take part in combat, so long as they had been initiated into the Kamajor society.<sup>650</sup>

445. Various defence witnesses including Ishmael Senesie Koroma, Muhamed Turay Collier, Lansana Bockarie denied that children under the age of 15 were fighting along side the Kamajors and that as commanders they didn't take children to war because it was not a fight for children.<sup>651</sup> Under cross examination Mustapha Lumeh was shown Exhibit 117B but he testified that the children who were with them were sent to the Catholic Organisation for Children and that they were not child soldiers.<sup>652</sup>

446. There are witnesses who testified why they were initiated. P.C Joseph Ali-Kavura Kongomoh II testified that during the January 6 1999 invasion until the end of the war, initiation went on and even he was initiated for protective reasons. The witness

<sup>649</sup> Transcript, Hinga Norman, p. 47 Feb 1 2006

<sup>650</sup> Transcript, Hinga Norman, pp 54-56, Jan 31 2006 and p 32 Feb 1 2006.

<sup>651</sup> Transcript Ishamael Senesie Koroma, pp. 59-60, Feb.23 2006, Transcripts of M.T. Collier, pp.66 & 91 Feb. 16 2006 Lansana Bockarie, p.18, June 1 2006.

<sup>652</sup> Transcript Mustapha Lumeh, pp.43-44, May 8 2006

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said he joined two of his children, one eight years and the other seven into the Kamajor society.<sup>653</sup> Witness further testified that he did that so they were immunized for fear of stray bullets.<sup>654</sup>

447. In his evidence, the accused testified that he knew children were involved in the war in Sierra Leone. But he said this was a situation where the chiefs and elders of the chieftdom sent their people for initiation and sometimes immunization for the defence of their various chieftdoms. Further President Kabbah made a request for all Sierra Leoneans to defend their democracy, and pleaded with them for their assistance in returning him to power.<sup>655</sup> As Justice Robertson puts it 'there may be a defence of necessity, which could justify desperate measures when a family or community is under murderous and unlawful attack'.<sup>656</sup>

448. The Accused further testified under cross examination that he watched the training at Base Zero but did not notice children under 15 being trained, but that later after the government had been reinstated he noticed that Kamajors were using children under 15 but that he advised the President.<sup>657</sup> The Accused said he first met TF2-140 in Bo and he was not aware that TF2-140 fought in Kenema.<sup>658</sup>

449. In his evidence, TF2-218, was merely speculating when he testified that he observed a significant number of Kamajors in Daru appeared to be in their early teens armed with cutlasses and knives, long barrel guns.. Under cross examination, Vice President Demby testified that it is difficult to say the precise age of a child in his ethnic culture.<sup>659</sup>

450. The second element in Count 8 talks of using children to participate actively in hostilities. In his evidence, the accused testified that as coordinator of the Civil Defence Forces, he did not play any role in getting children to actively participating in

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<sup>653</sup> Transcript, P.C. Joseph Ali-Kavura Kongomoh II, p. 56, June 1 2006.

<sup>654</sup> Ibid, pp.56-57

<sup>655</sup> Transcript, Hinga Norman, pp 54-58 Jan 31 2006

<sup>656</sup> *Prosecutor v. Norman et al.*, SCSL-04-14-AR72(E), Decision on Preliminary Motion based on lack of Jurisdiction (Child Recruitment), Dissenting Opinion Justice Robertson, 31 May 2004, pg 35

<sup>657</sup> Transcript, Hinga Norman, p.46, Feb. 7 2006

<sup>658</sup> Ibid, p.49

<sup>659</sup> Transcripts of Dr. Albert Joe Demby, pp. 78-79, Feb 13 2006



hostilities. He further testified that as he did not receive any specific instructions and gave no specific instructions to use children under the age of 15 and as Deputy Minister of Defence and National Coordinator, he never enlisted, recruited or conscripted before, during or after the conflict.<sup>660</sup> Under cross defence witness Keikula Amara denied that he had three child soldiers within his Kamajors. He also denied that at Talama he gave a weapon to the child soldier to execute one of the civilians he had as a captive.<sup>661</sup>

451. The Accused further testified that he did not have control over the participation of children under the age of 15 in hunter's activities between the hostilities from 25 May 1997 to 10 March 1998.<sup>662</sup> Under cross examination Lansana Bockarie denied that children assisted them to carry luggage like loads, foodstuff, weapons, and ammunition boxes. He also denied that children were used as spies and report back.<sup>663</sup> This was corroborated by Brima Tarawally who denied being aware of children manning check points or of children under 15 being use for spying missions.<sup>664</sup> Prosecution witness TF2-082 equally testified that he never saw Kamajors use child soldiers.<sup>665</sup>

452. The accused testified that he informed the CDF not to encourage the involvement of children. The accused further testified that he also informed President Kabbah to assist with the issue of children being involved in the war. The Prosecution submitted a number of documents pursuant to Rule 92 *bis* to supplement the allegations under Count 8. The majority of these documents make it clear that the pronouncements by the Government of Sierra Leone to stop the recruitment of children was in relation to both the national army and the CDF. Further these documents demonstrate that when policy announces concerning ending the recruitment of children with CDF these came from the government of Sierra Leone<sup>666</sup>. Any indication as to the use of child soldiers can hardly be said to be individually attributable to the conduct of the First Accused.

<sup>660</sup> Transcript, Hinga Norman, pp 52-53, Jan 31 2006

<sup>661</sup> Transcript, Keikula Amara, pp 17,20, May 18 2006

<sup>662</sup> Transcript, Hinga Norman, p.17, Feb. 2 2006.

<sup>663</sup> Transcript, Lansana Bockarie, pp.18-19, June 1 2006

<sup>664</sup> Transcript, Brima Tarawally, pp. 104-105, Oct. 6 2006.

<sup>665</sup> Transcript, TF2-082. Closed session, pg 41 16 September 2004.

<sup>666</sup> See for example "Sixth Progress Report of the Secretary General on the United Nations Observer Mission in Sierra Leone", 04/06/99, paragraph 36 "My Special Representative in Freetown continues to monitor the situation closely and raises the relevant issues with the Government. Government officials in the Southern Province have reportedly acted to halt underage recruitment by CDF elements". Submitted by the Prosecution

**Conclusion**

453. Based on the foregoing discussion of the evidence presented against the Accused Hinga Norman, the Prosecution has failed to prove beyond a reasonable doubt that he is guilty of any of the crimes charged under any theory of liability asserted by the Prosecution as applicable to the Accused and the facts presented therein.

Filed 22 November 2006

  
Dr Bu-Burkei Vabbi  
Senior Court Appointed Counsel

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under Rule 92 bis: Prosecutor v Norman, SCSL-10-14-T-447, “*Decision on Prosecution’s Request to Admit into Evidence Certain Document pursuant to Rule 92 bis and 89(c)*”, 14 July 2005.

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