

Accused's position as an Honourable, PLO 2 and member of the Supreme Council superseding the rank of a higher ranking soldier.

359. The order of political importance established during the Junta continued in effect after the AFRC evolved into a purely military organisation in the bush. The First Accused's appointment as PLO 2, Honourable, and member of the Supreme Council were the indicators of his political authority. The inference is that he, as PLO 2, and the Second Accused, as PLO 3, were the next most important amongst the coup plotters, and, after Johnny Paul Koroma and SAJ Musa, the next most important in the political administration in Sierra Leone.

360. All members of the Coup became honourables and members of the Supreme Council. In the bush, this meant that they retained command positions in the military hierarchy. The AFRC government system of hierarchy remained intact after the Intervention when the newly evolved AFRC military organisation came into existence.

361. Thus, TF1-184 gave evidence of the First Accused's "Council,"⁴⁹⁰ and TF1-334 spoke about "the brigade."⁴⁹¹ All evidence relating to command structures have the First Accused at the head, and the Second Accused as his number two, with remaining former Supreme Council members and honourables, including the Third Accused, occupying the most important positions in the command hierarchy under them.

362. The only logical inference must be that the AFRC hierarchy established during the Junta period (i.e. PLO, Supreme Council member, Honourable) continued in the bush after the intervention once the AFRC evolved into a military organisation.

All Accused

363. The First Accused's argument that as a corporal prior to the Intervention it was impossible for him to have any command responsibility after the Intervention when the AFRC was removed from power, is not sustainable on the evidence for the following reasons: (a) the above-mentioned concept of position superseding rank which continued after the Intervention; and (b) the fact that after the Intervention, once the SLAs were in the jungle they had their own system of ranks known as "bush ranks" which were followed in the

⁴⁹⁰ TF1-184, Transcript 27 September 2005, p. 39 and Transcript 29 September 2005, p.69.

⁴⁹¹ TF1-334, Transcript 19 May 2005, p. 37; Transcript 20 May 2005, p. 88; and Transcript 16 June 2005, p. 49.

jungle.

364. For example, DBK-037 gave evidence that before the intervention he was a private. After the intervention, whilst he was in the bush, he was promoted to the rank of lieutenant due to his good work in the field. However, once he rejoined the SLA after the conflict he reverted to his old rank and today is a serving SLA with the rank of a lance corporal.⁴⁹²

365. Thus, as is shown by the evidence of DBK-037, the First Accused may have been an 'other ranks' soldier prior to the Intervention, but he may have been promoted to a senior rank in the jungle. Indeed, it is the case of the Prosecution that all honourables were promoted at Masiaka to colonel,⁴⁹³ that the First and Second Accused were promoted to brigadier at Mansofinia,⁴⁹⁴ and the Third Accused was promoted later to brigadier.⁴⁹⁵

366. After the death of SAJ Musa at Benguema, the First and Second Accused became commander and second in command respectively, and again were promoted. The evidence shows that these "bush ranks" were respected⁴⁹⁶ and that SAJ Musa and all Accused used to promote other soldiers based on their performance in the field.⁴⁹⁷ Tellingly, as with DBK-037, after the conflict the Sierra Leonean government and the Sierra Leone Army declined to recognise these "bush ranks." As with DBK-037, who ceased to be a lieutenant, the three Accused all reverted back to the 'other ranks' positions they held prior to the Coup. This would explain the First Accused's rank being stated as Corporal in his discharge book.

367. The Prosecution submits that the Accused's argument of not being in a position to have any command responsibility in the bush after the Intervention, on the basis of them being other ranks soldiers, should be rejected in its entirety on the above two bases; namely the concept of position superseding rank, and the use of "bush ranks" in the jungle. The evidence, taken as a whole, speaks otherwise, and the First Accused's evidence to the contrary is a lie.

⁴⁹² DBK-037, Transcript 4 October 2006, p. 74.

⁴⁹³ TF1-334, Transcript 19 May 2005, pp. 15-16.

⁴⁹⁴ TF1-334, Transcript 20 May 2005, pp. 88-89.

⁴⁹⁵ TF1-334, Transcript 13 June 2005, p. 59.

⁴⁹⁶ Soldiers were following the orders of their superiors in the bush, See DSK-113, Transcript 12 October 2006, p. 113; DBK-117, Transcript 16 October 2006, pp. 31-32; DBK-129, Transcript 18 October 2006, p. 5.

⁴⁹⁷ DBK-131, Transcript 10 October 2006, p. 26-27. The witness was promoted to captain. Others were promoted to lieutenant.

REPORTING, PREVENTION AND PUNISHMENT OF CRIMES DURING THE AFRC PERIOD

368. Minutes of Supreme Council meetings were kept and all members of the Supreme Council received copies of these minutes,⁴⁹⁸ the inference being that Supreme Council members would have known or been on notice of any matter reported to the Supreme Council, with a good example being the aforementioned enactment of an anti-looting decree.
369. In September 1997, TF1-045 attended a meeting at the officers' mess at Wilberforce, chaired by the Chief of Army Staff (SO Williams). Amongst those present were "Five-Five" and Bazy. The group talked about putting a stop to the harassment of the civilian population in Freetown.⁴⁹⁹ The print media in Freetown was also reporting "massive looting" by Honourables at around this time.⁵⁰⁰
370. TF1-045 attended a further meeting in around October/November 1997 in Freetown at the Youyi building. Amongst those present were "Five-Five", the Army Chief of Staff, and General "Bupleh" [sic].⁵⁰¹ They talked about the harassment and raping of civilians in Freetown by AFRC and RUF members.⁵⁰² The evidence clearly demonstrates that the AFRC Government was aware of crimes being committed during its tenure and that it had the power to prevent and punish such illegal activities if it chose to do so. Prime examples of this power were the anti-looting decree and the arrest of Supreme Council members and honourables involved in the looting of the Iranian Embassy.
371. The Junta's response to perceived criminality or any opposition may be seen in the way in which a student strike was dealt with in Freetown in August 1997. Machetes were distributed by Johnny Paul Koroma's Chief Security Officer, Rambo, to RUF and SLA fighters in the presence of most of the honourables, including the Second and Third Accused. The strike was thereafter "put back quietly" on the orders of Johnny Paul Koroma by RUF and SLA fighters. Prosecution witness George Johnson later saw bodies

⁴⁹⁸ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 101.

⁴⁹⁹ TF1-045, Transcript 19 July 2005, pp. 57-63. The group also talked about putting a stop to the harassment of the civilian population in Freetown, and Eldred Collins told the group that a corridor was open for ammunition to land at the Magburaka airfield. See para.

⁵⁰⁰ Exhibit P94, Newspaper clipping from The Point, 19 September 1997, article entitled "Honourables or Out-Laws". See also Exhibit P66, United States Department of State, "Sierra Leone Country Report on Human Rights Practices for 1997", Released by the Bureau of Democracy, Human Rights, and Labour, 30 January 1998, p. 3.

⁵⁰¹ TF1-045, Transcript 19 July 2005, pp. 64-66.

⁵⁰² TF1-045, Transcript 19 July 2005, pp. 66-71.

in Connaught Hospital.⁵⁰³

372. In a further demonstration that the government had the ability to take action against those who committed crimes, honourables held responsible for the looting of the Iranian Embassy in Freetown on 31 December 1997 were dismissed from the Supreme Council, the Armed Forces Revolutionary Council and the armed forces. They included SLAs Hassan Papah Bangura and Tamba Gborie.⁵⁰⁴ According to the First Accused, the Supreme Council made the decision to take action against these individuals.⁵⁰⁵
373. This is a clear indication that even the most senior Junta figures were not above the law during the Junta period with arrest warrants even being issued for Issa Sesay for his role in the looting of the Iranian Embassy. This is in itself a good example of the joint co-operation between the SLAs and RUFs in the Supreme Council, whereby arrest warrants were issued by the Supreme Council against both senior SLA and RUF members of the Supreme Council.
374. This is further illustrated by the arrest of senior RUF leaders Gibril Massaquoi and Steve Bio, who were arrested by Issa Sesay, a senior RUF, on allegations that they were working to overthrow Johnny Paul Koroma.⁵⁰⁶

CONTINUED COOPERATION BETWEEN RUF AND SLA

375. The RUF and the AFRC worked together during the period of Junta rule to achieve a common aim: to gain, exercise and retain political power and control over the territory of Sierra Leone.⁵⁰⁷

⁵⁰³ George Johnson, Transcript 15 September 2005, p. 23. See also Exhibit P66, United States Department of State, "Sierra Leone Country Report on Human Rights Practices for 1997", Released by the Bureau of Democracy, Human Rights, and Labour, 30 January 1998, pp. 4, 6, 15.

⁵⁰⁴ TF1-334, Transcript 17 May 2005, pp. 57-59; Exhibit P89, Statement of Tamba Gborie, 25 March 1998, pp. 89-90; Exhibit 78, AFRC Press Release, 3 January 1998. Note that the title of Honourable changed to "People Revolutionary Leader" with effect from 15 December 1997. The title of Principal Liaison Officer was also changed to "Coordinating Officer," Exhibit P95, Newspaper clipping from Unity Now, 17 December 1997, article entitled "Reshuffle." All three points corroborated by Exhibit P88, Statement of Alfred Abu Sankoh, alias Zagallo, 27 March 1998, p. 18.

⁵⁰⁵ Accused Alex Tamba Brima, Transcript 3 July 2006, pp. 54-55; Exhibit P89, Statement of Tamba Gborie, 25 March 1998, p. 89.

⁵⁰⁶ Gibril Massaquoi, Tf1-046, Transcript 7 October 2005, pp. 108-110.

⁵⁰⁷ Exhibit P60, Personal Statement by Lt. JP Koroma on 1 October 1999; Exhibit P61, Revolutionary United Front's Apology to the Nation, delivered on SLBS, 18 June 1997.

376. Prosecution witnesses have testified that the relationship between the SLA and the RUF during the AFRC Junta was cordial.⁵⁰⁸ In spite of their individual differences, the evidence is that RUF and SLAs continued to attend Supreme Council meetings together and that the AFRC Government remained in power for roughly nine months until February 1998.⁵⁰⁹
377. The Chamber heard evidence in particular from two former high level members of the RUF: Gibril Massaquoi, former spokesman of the RUF, and witness TF1-045, former security to Foday Sankoh and part of Sankoh's Strike Force.⁵¹⁰ They each testified to a high level of cooperation during the Junta between members of the RUF and the SLA.
378. Gibril Massaquoi was in Freetown between August and October 1997 (before being arrested on 16 October 1997 for allegedly plotting a coup⁵¹¹) and gave evidence that the relationship between the SLA and the RUF was "cordial" in that period.⁵¹² He testified that he saw RUF and SLAs deployed together outside Freetown in Makeni and Magburaka, and working together at the AFRC Secretariats in Kenema and Bo.⁵¹³
379. Gibril Massaquoi arrived in Freetown on 2 August 1997⁵¹⁴ carrying letters from Sankoh for Johnny Paul Koroma and Sam Bockarie. In the letter to Koroma, Sankoh asked for assistance regarding his detention in Nigeria, and asked that he (Koroma) and the RUF work together cordially.⁵¹⁵ Massaquoi delivered the letter to Bockarie in Kenema. It asked Bockarie to work with the AFRC and to work to secure Sankoh's release from Nigeria.⁵¹⁶
380. In spite of the departure of Sam Bockarie for Kenema, the AFRC Junta continued to govern, and members of the RUF remained in Freetown as part of the AFRC Junta and

⁵⁰⁸ TF1-334, Transcript 17 May 2005, p. 22.

⁵⁰⁹ Exhibit P41, Fourth Report of the Secretary General on the Situation in Sierra Leone 18 March 1998 (S/1998/249), para. 6, reports that Freetown fell to ECOMOG on 13 February 1997, and that ECOMOG subsequently took control of Bo, Kenema, Zimmi, Lunsar, Makeni, Kabala and Daru.

⁵¹⁰ TF1-045, Transcript 19 July 2005, pp. 7-8. Witness TF1-045 attained the rank of lieutenant-colonel in the RUF. He was assigned to RUF commander Mike Lamin as a security in the period 1995 to 1999: Transcript 19 July 2005, Closed session, pp. 9-13.

⁵¹¹ And detained at Pademba Road Prison from 17 October 1997. Gibril Massaquoi, TF1-046, Transcript 7 October 2005, pp. 108-110.

⁵¹² Gibril Massaquoi, TF1-046, Transcript 7 October 2005, pp. 104-105.

⁵¹³ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, pp. 104-109.

⁵¹⁴ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 63.

⁵¹⁵ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 65.

⁵¹⁶ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 65.

attended Supreme Council meetings.⁵¹⁷ After the Coup, witness TF1-045, with RUF Commander B,⁵¹⁸ met Mosquito and Eddie Kanneh – Resident Minister of the East – in Kenema. He testified that Kanneh reported directly to Johnny Paul Koroma.⁵¹⁹ TF1-334 testified that Sam Bockarie worked closely with the Resident Minister East.⁵²⁰ Captain Yamao Kati, an SLA,⁵²¹ was commander for the AFRC and RUF in Tongo in charge of a company of over 200⁵²² mixed AFRC/RUF soldiers based there. Capt. Kati worked under his brigade (East) and sent reports to the brigade commander, but also gave information to RUF Commander Sam Bockarie whenever he (Sam Bockarie) was in Kenema.⁵²³ Capt. Kati's deputy was a member of the RUF, a Major Eagle.⁵²⁴

381. Gibril Massaquoi gave evidence that on his arrival in Freetown in August 1997, the RUF had offices at Cockerill, given to them by Johnny Paul Koroma.⁵²⁵ When Massaquoi was in Freetown, the AFRC government paid RUF members who were deployed at various fronts, or who were ministers or members of the Supreme Council.⁵²⁶

382. TF1-184 gave evidence of a cooperative relationship between Mosquito and senior SLA figures in the AFRC government.⁵²⁷ He testified that Mosquito would discuss things with "council" members when he came to Freetown, and he testified to seeing him in one of the council's meetings.⁵²⁸ On this occasion, Mosquito brought a diamond from Kono which was sold, and the money generated used to pay the teachers.⁵²⁹

383. Gibril Massaquoi testified about Supreme Council meetings attended by him in around August and September 1997. They were attended by Issa Sesay and others, and Exhibit

⁵¹⁷ The First Accused testified that the RUF was "part of the AFRC government" throughout the period from May 1997 to February 1998: Transcript 7 June 2006, pp. 50-51; although there was a "very big problem" between the leaders: Transcript 8 June 2006, p. 4.

⁵¹⁸ TF1-045, Transcript 19 July 2005, pp. 29-30. TF1-084 identifies Commander B as Mike Lamin, Transcript 19 July 2005, Closed session, p. 15.

⁵¹⁹ TF1-045, Transcript 19 July 2005, pp. 30-32.

⁵²⁰ TF1-334, Transcript 17 May 2005, pp. 56-57.

⁵²¹ TF1-045, Transcript 19 July 2005, pp. 42-43. Kati was later replaced by AFRC Commander Captain Jalloh. TF1-045, Transcript 19 July 2005, p. 76.

⁵²² TF1-045, Transcript 20 July 2005, pp. 61- 62.

⁵²³ TF1-045, Transcript 19 July 2005, p. 37 and Transcript 21 July 2005, p. 84.

⁵²⁴ TF1-045, Transcript 19 July 2005, pp. 35-39, 42-43.

⁵²⁵ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, pp. 68-69.

⁵²⁶ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, pp. 107-108.

⁵²⁷ TF1-184, Transcript 29 September 2005, p. 27.

⁵²⁸ TF1-184, Transcript 30 September 2005, pp. 53-54.

⁵²⁹ TF1-184, Transcript 30 September 2005, pp. 54-56.

P69 is a set of minutes of a Council (or Supreme Council) meeting in December 1997 attended by RUF members including Issa Sesay, Morris Kallon and Mike Lamin.⁵³⁰

384. TF1-045 arrived in Freetown in September 1997, remaining until about December 1997.⁵³¹ He was security to RUF Commander B⁵³² who, he testified, was a member of the “AFRC” or “council.”⁵³³ Because TF1-045 was an RUF officer, he attended the meetings his commander went to.⁵³⁴ He gave evidence of a series of meetings attended by him and Commander B, and RUF and “AFRC” (SLA) members of the Council, in the period to November 1997.
385. RUF and SLA forces received their arms and ammunition from the same sources and the supply of arms and ammunition was arranged jointly at the Supreme Council level, involving the cooperation not only of the two factions but also their leaders and foreign governments, in covert, complex and expensive operations.

DEFENCE EVIDENCE

386. The First Accused’s evidence is a continuation of outright lies and dubious explanations when read against all the evidence produced at trial. Much of the First Accused’s own evidence on key areas, such as his denial of involvement in the Coup, his status as an honourable or member of the AFRC Supreme Council, was not even supported by a number of Defence witnesses. The First Accused claims that it was a lie that the Third Accused was in Freetown at the time of the Coup, and insists instead that he was at Camp Charlie and only came to Freetown at the time of the Coup.⁵³⁵ Once again this is clearly a lie by the First Accused. The only Defence witness who said that the Third Accused was based at Camp Charlie did not see the Third Accused on the day of the coup, nor again at Camp Charlie.⁵³⁶

⁵³⁰ Exhibit P69, AFRC - Secretariat Minutes of Meeting held on the 9 December 1997, 23 January 1998.

⁵³¹ TF1-045, Transcript 19 July 2005, p. 75.

⁵³² TF1-045, Transcript 19 July 2005, p. 56.

⁵³³ TF1-045, Transcript 19 July 2005, p. 57.

⁵³⁴ TF1-045, Transcript 19 July 2005, pp. 56-60.

⁵³⁵ Accused Alex Tamba Brima, Transcript 29 June 2006, pp. 105-107.

⁵³⁶ DSK-113, Transcript 12 October 2006, pp. 97-98.

387. The Defence has led evidence that the soldiers at Camp Charlie, led by Akim, came to Freetown on the day of the coup to try and put it down after receiving radio communication for support. If this is true, why did the Third Accused not go with the support team from Camp Charlie to Freetown? What was the Third Accused doing in Camp Charlie until June? This is clearly a lie when the evidence of the Third Accused being an honourable (even the First Accused in his evidence admits that the Third Accused was an Honourable⁵³⁷) and member of the Supreme Council is looked at as a whole. As discussed below, there must have been a reason why some 'other ranks' were made Honourables and PLOs whilst others were not.
388. The First Accused's evidence that his co-Accused did not take part in the Coup, were not honourables (with the exception of the Third Accused) or members of the Supreme Council, was not challenged by his co-accused during their cross-examination of the First Accused. The Prosecution submits that the Accused have adopted those elements of the First Accused's evidence which they do not challenge, especially so far as it relates to their own clients (the Second and Third Accused).
389. Likewise, much of the evidence the First Accused gave about the co-Accused during the Junta period has not been supported by a number of Defence witnesses. Incredibly, while the First Accused admits that he trained with the Second Accused, was his friend before the Coup and was a PLO with him during the Junta period, but claims not to know whether the Second Accused was involved in the Coup.⁵³⁸ This is totally implausible and can only be regarded as yet another lie.
390. According to the evidence of the First Accused the Second Accused even saved the lives of the First Accused's family at the time of the Intervention. Incredibly, despite being good friends with the Second Accused, the First Accused does not know that the Second Accused is also known as Bazzy, a fact which is even admitted by the Second Accused in his Pre-Trial Brief.⁵³⁹

⁵³⁷ Accused Alex Tamba Brima, Transcript 3 July 2006, p. 41.

⁵³⁸ Accused Alex Tamba Brima, Transcript 29 June 2006, pp. 100, 104-105.

⁵³⁹ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-PT-148, "Kamara – Defence Pre-trial Brief", 21 February 2005, para 7.

391. The First Accused denied being an honourable and being a member of the Supreme Council.⁵⁴⁰ Instead, he testified that he became a member of the “Council” only.⁵⁴¹ He testified that he was appointed a member of the Council as a gesture of appreciation arising out of his father’s death.⁵⁴² He offers no explanation as to why he was appointed a PLO 2.⁵⁴³ He denied that he was one of the coup plotters or that he carried out the Coup,⁵⁴⁴ and even denied that he played football.⁵⁴⁵ The First Accused’s evidence is utterly implausible, particularly in light of the abundance of documentary and other evidence to the contrary.
392. The First Accused gave evidence-in-chief that his father, a retired⁵⁴⁶ expert armourer in the army,⁵⁴⁷ died in the days after the Coup, when he fell into a coma as a result of a Nigerian bomb dropping around the area in Aberdeen where he was working on repairing a faulty gun.⁵⁴⁸ Only one Defence witness supported the First Accused’s account of how his father died, and this witness was not an eyewitness to the alleged incident.⁵⁴⁹
393. Prosecution Exhibit P91 is a Death Notification Report relating to the First Accused’s father, dated 31 May 1997.⁵⁵⁰ It records the “immediate cause” of the First Accused’s father’s death as “hypertension diabetes”⁵⁵¹ and further states that the First Accused’s father’s death was “non violent.”⁵⁵²
394. The First Accused could not remember the time of day his father died,⁵⁵³ which the Prosecution submits is implausible if the account of his death was honest. The reality is

⁵⁴⁰ Accused Alex Tamba Brima, Transcript 3 July 2006, pp. 23-24.

⁵⁴¹ Accused Alex Tamba Brima, Transcript 6 June 2006, p. 70.

⁵⁴² Accused Alex Tamba Brima, Transcript 6 June 2006, p. 49.

⁵⁴³ Accused Alex Tamba Brima, Transcript 6 June 2006, pp. 56-57.

⁵⁴⁴ Accused Alex Tamba Brima, Transcript 6 June 2006, p. 32, 61. The First Accused claimed that 24 officers who were arrested and subsequently executed by the SLPP for the overthrow of the SLPP government were the only men whom he knew to be responsible for the coup: Transcript 6 June 2006, p. 37 and Transcript 29 June 2006, pp. 111-112.

⁵⁴⁵ Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 101-102 and Transcript 29 June 2006, p. 43. The First Accused claimed he played volleyball: Transcript 6 June 2006, p. 31. The First Accused also denied that the Second Accused played football: Transcript 20 June 2006, p. 11.

⁵⁴⁶ In 1996 (Accused Alex Tamba Brima, Transcript 28 June 2006, p. 5).

⁵⁴⁷ Accused Alex Tamba Brima, Transcript 5 June 2006, p. 62.

⁵⁴⁸ Accused Alex Tamba Brima, Transcript 6 June 2006, pp. 39-40.

⁵⁴⁹ DAB-059, Transcript 2 October 2006, p. 16.

⁵⁵⁰ Exhibit P91, Office of Chief Registrar of Births and Deaths Death Statistical/Notification Report, 11 June 1997.

⁵⁵¹ Exhibit P91, at heading 11.

⁵⁵² Exhibit P91, at heading 12.

⁵⁵³ Accused Alex Tamba Brima, Transcript 30 June 2006, p. 16.

that the First Accused's father died for the reasons stated on the Death Notification Report: hypertension diabetes, not a violent death

395. It is implausible that the First Accused would have been chosen to be a member of the AFRC Council as a gesture of appreciation arising out of his father's death.⁵⁵⁴ This is even more far-fetched because the First Accused, by his own testimony, had four elder brothers, two of whom joined the army before him⁵⁵⁵ and were higher ranking than him.⁵⁵⁶ No explanation was given by the First Accused as to why he received a plum Council appointment to the exclusion of his equally (or more) meritorious brothers. Moreover, there must have been numerous 'other ranks' soldiers whose relatives made sacrifices that were equal to or greater than that of the First Accused's father during the attack in question, yet were not rewarded with a position amongst the national executive of Sierra Leone. If the First Accused's story about his father's death were true, surely a simple promotion would have sufficed as a gesture of gratitude for his father's sacrifice.
396. Moreover, why would a retired man have been collected to repair the weapon in the first place, as the SLA would have had other serving armourers at the time? The First Accused himself admits that he knew of another armourer in the army at that time.⁵⁵⁷ The Prosecution submits that the First Accused is lying regarding the reason why he was appointed as a member of the council and that his evidence about it being compensation for his father's death is not believable, bearing in mind the medical records which clearly show that his father's death was non violent and was from hypertension and diabetes.
397. It is implausible that the First Accused, an 'other ranks' member of the SLA, should have been appointed to a senior position in government as Public Liaison Officer 2, along with Abu Sankoh, aka Zagallo as Public Liaison Officer I, and the Second Accused as Public Liaison Officer 3 if he was not himself involved in plotting and executing the coup. To think that the AFRC government would feel the need to fill some of its most important executive positions with a raft of undistinguished soldiers simply beggars belief. It is even

⁵⁵⁴ It is also highly improbable that the First Accused's father, a retired member of the SLA, should have been chosen to fix a gun for the AFRC Junta in the days after the coup. The First Accused testified that none of his brothers were appointed to the Council (Accused Alex Tamba Brima, 30 June 2006, pp. 39-40).

⁵⁵⁵ Accused Alex Tamba Brima, Transcript 28 June 2006, p. 5.

⁵⁵⁶ Assuming that the First Accused was a corporal at the time of the coup. See Exhibit D13, Piece of paper on which the First Accused wrote names of his 4 brothers, their army ranks and army numbers.

⁵⁵⁷ Accused Alex Tamba Brima, Transcript 11 June 2006, p. 11.

more incredulous that of all the lowly corporals to choose from, the fledgling AFRC government would entrust important responsibilities to a man who was seriously ill.

398. It is implausible that the First Accused did not know why Zagallo, Gborie, the Second Accused, and the Third Accused were appointed as Council members.⁵⁵⁸ It is implausible that the Council members named by the First Accused should have been selected from amongst the vast number of other ranks in the SLA, bearing in mind that other ranks constitute the bulk of the SLA, if they were not all involved in planning and executing the coup.⁵⁵⁹
399. There must have been a reason why the 17 other ranks were made council members and only three of them appointed to the more senior position of PLO, reporting directly to SAJ Musa as chief Secretary of State, making them in effect only one step below Johnny Paul Koroma, the AFRC chairman.
400. The Prosecution submits that the only logical reason was because these 17 other ranks soldiers were rewarded for the role which they played in the Coup and the more senior coup plotters, such as the First and Second Accused, were made PLOs in recognition of them being coup leaders and placing Johnny Paul Koroma and SAJ Musa in charge. Their role in the Coup is corroborated by the statements of Abu Sankoh, aka Zagallo,⁵⁶⁰ and Tamba Gborie,⁵⁶¹ both of which were exhibited before the Court and have been quoted in the TRC Report under the heading "Staging the Coup."⁵⁶²
401. The First Accused denied in cross-examination that he and the Second Accused were Honourables,⁵⁶³ although he had identified himself and the Second Accused as amongst the former Honourables who were arrested and then detained in Colonel Eddie Town.⁵⁶⁴ It is telling that the list of coup plotters and Supreme Council members provided by

⁵⁵⁸ Accused Alex Tamba Brima, Transcript 30 June 2006, p. 39.

⁵⁵⁹ Accused Alex Tamba Brima, Transcript 8 June 2006, p. 13.

⁵⁶⁰ Exhibit P88, Statement of Alfred Abu Sankoh, alias Zagallo, 27 March 1998.

⁵⁶¹ Exhibit P89, Statement of Tamba Gborie, 25 March 1998.

⁵⁶² Report of the Sierra Leone Truth and Reconciliation Commission, Vol. 3A, paras. 677-693.

⁵⁶³ Accused Alex Tamba Brima, Transcript 19 June 2006, p. 34 and Transcript 3 July 2006, pp. 40-42.

⁵⁶⁴ The First Accused testified that he was arrested by Commander 0-Five on the orders of SAJ Musa because he was a former honourable of the AFRC, Accused Alex Tamba Brima, Transcript 12 June 2006, p. 48.

Prosecution witnesses is consistent with the list of SLAs whom the First Accused names as Honourables detained with him in Colonel Eddie Town.⁵⁶⁵

402. It is not believable that, whilst acting as PLO 2 and being a member of the AFRC Government and attending council meetings, the First Accused did not know who the honourables were and why they were called honourables. Even the First Accused's own Defence witnesses contradict his evidence that he and the Second Accused were not honourables. According to DBK-005, the Accused were all honourables with securities and as such were important men.⁵⁶⁶ According to DBK-005, the Accused were also all members of the AFRC Government Supreme Council prior to the intervention.⁵⁶⁷
403. Likewise, DAB-063 heard that all the Accused took part in the overthrow of the Kabbah Government and were referred to as honourables. He heard that the Third Accused was an honourable and that the First and Second Accused were members of the Supreme Council.⁵⁶⁸ He also knew that the First Accused was also known as Gullit.⁵⁶⁹ Even Defence witnesses gave evidence that the persons referred to as honourables were the 'other ranks' who carried out the Coup.⁵⁷⁰ Once again, the First Accused is lying.
404. The First Accused claimed that he was not able to perform his duties as a PLO because of the deterioration in his health.⁵⁷¹ However, he was still able to, and did, give regular written and verbal reports to SAJ Musa as Chief Secretary of State.⁵⁷² The First Accused testified that because of his ill health, all of the departments which he was supposed to monitor, supervise, and coordinate were removed from him and given to other Council members. He was not, however, removed from the position of PLO 2.⁵⁷³ This claim is

⁵⁶⁵ Alex Tamba Brima, Transcript 12 June 2006, pp. 60-61. Honourables detained in Colonel Eddie Town were Sergeant Ibrahim Kamara, Warrant Officer Class 2 Franklyn Conteh, Corporal Santigie Kanu, Corporal Hassan Bangura, Abdul Sesay, Ibrahim Sesay, and George Adams.

⁵⁶⁶ DBK-005, Transcript 12 October 2006, pp. 17-18.

⁵⁶⁷ DBK 005, Transcript 12 October 2006, pp. 18-19.

⁵⁶⁸ DAB-063, Transcript 2 August 2006, pp. 61-62, 70.

⁵⁶⁹ DAB-063, Transcript 2 August 2006, p. 70.

⁵⁷⁰ DBK-012, Transcript 18 October 2006, p. 28; DAB-059, Transcript 2 October 2006, pp. 5-6, 28; DAB-033, Transcript 2 October 2006, pp. 49-50; DAB-063, Transcript 2 August 2006, p. 61.

⁵⁷¹ Accused Alex Tamba Brima, Transcript 3 July 2006, pp. 82-83; Transcript 6 June 2006, pp. 58-59.

⁵⁷² Accused Alex Tamba Brima, Transcript 20 June 2006, pp. 17-18. The First Accused appeared to deny this evidence in cross-examination, Transcript 3 July 2006, pp. 90-92.

⁵⁷³ Accused Alex Tamba Brima, Transcript 3 July 2006, p. 93.

totally implausible if it is indeed the case that the First Accused was too ill to carry out the functions of a PLO 2.

405. Furthermore, not a single witness (either Prosecution or Defence) gave evidence that the First Accused suffered from any major illness prior to the intervention. In fact, from the treatment which the First Accused was able to endure based on his own evidence after the intervention, if believed (and the Prosecution submits that it is not to be believed as being yet more lies) would indicate that the First Accused must have been very fit and well as opposed to being severely ill.
406. The First Accused testified that the members of the Supreme Council included Johnny Paul Koroma, SAJ Musa, Chief of Defence Staff Brigadier SFY Koroma, Sam Bockarie, Mike Lamin,⁵⁷⁴ and the Secretaries of State North, South and East.⁵⁷⁵ He testified that the Supreme Council was distinct from the AFRC “Council.”⁵⁷⁶
407. The Council “recommended,” whereas the Supreme Council took all the decisions.⁵⁷⁷ Members of the Council, he claimed, included himself, Abu Sankoh, the Second and Third Accused, Brima Kamara, Hassan Bangura, Tamba Gborie, “Samba” [sic] Kargbo, Momoh Bangura, Franklin [sic] Conteh, Moses Kabia, Issa Sesay, Morris Kallon, Denis Mingo and Gibril Massaquoi.⁵⁷⁸ What is telling is that the men whom the First Accused testified are “Council” members regularly appear *alongside* men whom he has identified as “Supreme Council” members in documents identifying “AFRC” or “Council,” or “Supreme Council” members (as the original members of the Council became known).⁵⁷⁹
408. It is also a lie that the Council which the First Accused sat on did not make decisions. The minutes of a council meeting dated 11 August 1997, which the First Accused attended, clearly show that decisions were made as opposed to recommendations.⁵⁸⁰ This demonstrates yet another lie from the First Accused.

⁵⁷⁴ Accused Alex Tamba Brima, Transcript 6 June 2006, pp. 63-64; Transcript 7 June 2006, p. 18, 38 and Transcript 3 July 2006, p. 68.

⁵⁷⁵ Accused Alex Tamba Brima, Transcript 20 June 2006, p. 26 and Transcript 6 June 2006, pp. 63-66.

⁵⁷⁶ Accused Alex Tamba Brima, Transcript 6 June 2006, pp. 68-71.

⁵⁷⁷ Accused Alex Tamba Brima, Transcript 6 June 2006, p. 69.

⁵⁷⁸ Accused Alex Tamba Brima, Transcript 6 June 2006, pp. 70-71.

⁵⁷⁹ For example, Exhibit P6, Exhibit P93, Exhibit P84.

⁵⁸⁰ Exhibit P34, Minutes of an Emergency Council Meeting of the AFRC held at State House on Monday, 11 August 1997.

409. The First Accused seems to suggest in his evidence that those responsible for carrying out the Coup were those persons who were executed on 28 October 1998. This would indicate that the Coup was carried out by senior officers in the SLA assisted by Zagallo and Gborie from the 'other ranks'. This is clearly wrong, as it is well known through Gborie's radio announcement that the coup had been carried out by 'other ranks'.⁵⁸¹ Many Defence witnesses also confirm that the coup was carried out by 'other ranks'.⁵⁸² It would also be illogical for the senior officers to carry out the coup and then appoint 'other ranks' in key positions such as PLOs.
410. The First Accused denied being responsible for overseeing mining in the AFRC period,⁵⁸³ an implausible claim given the abundance of Prosecution evidence to the contrary, and in light of his efforts to disassociate himself from mining in other aspects of his evidence.⁵⁸⁴ Tellingly, the First Accused, when captured at Bedu crossing after the intervention, was found to have a diamond in his possession.⁵⁸⁵ The logical inference to be drawn from this fact is that he acquired this diamond whilst he was PLO 2 supervising mining in Kono.
411. Bearing in mind the previous section of this brief dealing with the First Accused's own evidence, there are no grounds for accepting any of the evidence by which the First Accused has sought to extricate himself from evidence which paints him, beyond any doubt, as a coup plotter, a senior and active figure in the Junta Government, an Honourable and member of the Supreme Council. All the evidence overwhelmingly points to this conclusion.

⁵⁸¹ Exhibit P89, Statement of L/Cpl. Tamba Gborie, p.81.

⁵⁸² DAB-095, Transcript 28 September 2006, p. 8; DAB-147, Transcript 3 October 2006, p. 54; TRC-01, Transcript 16 October 2006, p. 101.

⁵⁸³ Accused Alex Tamba Brima, Transcript 8 June 2006, p. 26.

⁵⁸⁴ This aspect of the First Accused's evidence is addressed in the previous section of the brief. *See* section Observations on The First Accused's Evidence.

⁵⁸⁵ TF1-045, Transcript 19 July 2005, pp. 98-99.

VI. MODES OF LIABILITY

19531

412. The Prosecution submits that the evidence establishes the responsibility of the three Accused under Articles 6(1) and 6(3) of the Statute for the fourteen counts in the Indictment. The recognition in the Statute that individuals may be held criminally responsible for their participation in the commission of offences in any of several capacities is in clear conformity with general principles of criminal law.⁵⁸⁶ The Statute does not make any legal distinction between the different modes of participation and the consequences of engaging in any of the mentioned forms of participation entails equal criminal liability.⁵⁸⁷

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

Planning

413. In order to secure a conviction for planning a crime, the Prosecution must show that: (1) the accused, either alone or in concert with others, designed or organized the commission of the *actus reus* of a crime which was subsequently perpetrated.⁵⁸⁸ The criminal conduct designed constitutes one or more statutory crimes that are later perpetrated⁵⁸⁹ by another person⁵⁹⁰ and can be an acts or omissions;⁵⁹¹ (2) the planning was a factor substantially contributing to the criminal conduct;⁵⁹² and (3) the accused acted with direct intent, or was aware of the substantial likelihood that a crime would be committed in the execution of the plan.⁵⁹³

⁵⁸⁶ *Prosecutor v. Delalic et al. (Celebici)*, IT-96-21-A, 'Judgement', Trial Chamber, 16 November 1998, para. 321.

⁵⁸⁷ Antonio Cassese, "International Criminal Law", Oxford University Press, 2003, at p. 180. The ICTY and ICTR adopt a purposive approach, wherein they sought to establish the object and purpose of the provisions of the Statute as opposed to narrow construction. See e.g. *Tadic* Appeal Chamber Judgment, para. 189.

⁵⁸⁸ *Brima* Decision on Motion for Acquittal, para. 284; *Akayesu* Trial Judgment, para. 480.

⁵⁸⁹ *Kordić and Čerkez* Appeals Judgment, para. 26 ; *Kordić and Čerkez* Trial Judgment, para. 386; *Limaj* Trial Judgment, para. 513; *Akayesu* Trial Judgment, para. 473.

⁵⁹⁰ *Bagilishema* Trial Judgment, para. 30.

⁵⁹¹ *Kordić and Čerkez* Appeal Judgment, para. 31.

⁵⁹² *Ibid.*, para. 26; *Bagilishema* Trial Judgment, para. 30; *Stakić Rule 98bis Decision*, paras. 103-104.

⁵⁹³ *Brima* Decision on Motion for Acquittal, para. 284; *Kordić and Čerkez* Appeal Judgment, paras. 29, 31.

414. It needs to be established that the Accused, directly or indirectly, intended the crime in question to be committed.⁵⁹⁴ The required *mens rea* is that of intent or recklessness.⁵⁹⁵ The accused may be held criminally responsible for “planning” crimes that are committed in the execution of his plan, even if those crimes were not part of the plan, provided that he was aware of the substantial likelihood of their being committed.⁵⁹⁶
415. There may be different levels of culpability for “planning”, depending on different levels of command.⁵⁹⁷ A superior commander, for example, may determine the overall strategy whereas the field commander may have substantial discretion in determining his or her own tactical plan in accordance with the superior commander’s operational requirements.
416. An accused may be held liable on the basis of planning alone, but may additionally be liable under other modes of liability where the evidence supports such a finding. In these circumstances, the accused’s involvement in planning the crime at least constitutes an aggravating factor.⁵⁹⁸

Instigating

417. In order to secure a conviction for instigating a crime, the Prosecution must show that: (1) the *actus reus* of a crime was performed by a person other than the accused; (2) the accused prompted the person to commit an offence punishable under the Statute,⁵⁹⁹ in the sense that the conduct of the accused was a factor substantially contributing to the conduct of the other person;⁶⁰⁰ and (3) the accused acted with direct intent, or was aware of the substantial likelihood that a crime would be committed in response to his prompting.⁶⁰¹

⁵⁹⁴ *Brđanin* Trial Judgment, para. 268.

⁵⁹⁵ *Blaškić* Trial Judgment, para. 267.

⁵⁹⁶ *Kordić and Čerkez* Appeal Judgment, para. 30; *Tadić* Trial Judgment para. 692.

⁵⁹⁷ *Kupreškić* Trial Judgment, para. 862, where a commander that has been held criminally liable for passing orders from his superiors to his subordinates is also considered to have “assisted in the strategic planning of the whole attack.”

⁵⁹⁸ *Brđanin* Trial Judgement, para. 268.

⁵⁹⁹ *Orić* Trial Judgment, para. 270.

⁶⁰⁰ *Akayesu* Trial Judgment, para. 482; *Blaškić* Trial Judgment, para. 280; *Brđanin* Trial Judgement, para. 269; *Rutaganda* Trial Judgment, para. 38 ; *Prosecutor v. Strugar*, IT-01-42-T, “Decision on Defence Motion Requesting Judgment of Acquittal Pursuant to Rule 98 bis”, Trial Chamber, 21 June 2004, para. 86; *Kvočka et al.* Trial Judgment, para. 252; *Naletilić and Martinović* Trial Judgment, para. 60; *Brđanin* Trial Judgment, para. 269; *Kordić and Čerkez* Appeal Judgment, para. 27.

⁶⁰¹ *Brima* Decision on Motion for Acquittal, para. 293; *Kordić and Čerkez* Appeal Judgment, paras. 32;.

418. There must be a causal connection between the instigation and the execution of the crime, but this connection need not amount to a *conditio sine qua non*.⁶⁰² Instigation can be express or implied, and can also occur by omission rather than by a positive act, provided that the accused intended to cause the direct perpetrator to act in a particular way and, in fact, had that effect.⁶⁰³ A superior's persistent failure to prevent or punish crimes by his subordinates can also constitute instigation.⁶⁰⁴

419. It is necessary that the accused intended to provoke or induce the commission of the crime, or was aware of the substantial likelihood that the commission of a crime would be a probable consequence of his acts or omissions.⁶⁰⁵ Consequently, as in the case of "planning", the accused may be held criminally responsible for "instigating" crimes that are committed in the course of executing the instigated crime, even if the accused did not intend to instigate such crimes, so long as he was aware of the substantial likelihood of their being committed.⁶⁰⁶ Accordingly, the required *mens rea* is that of intent or recklessness.⁶⁰⁷

Ordering

420. In order to secure a conviction for ordering a crime, the Prosecution must demonstrate that: (1) the *actus reus* of the crime was performed by a person or persons other than the accused, with or without the participation of the accused; (2) the perpetrator(s) acted in execution of an express or implied order given by the accused to a subordinate or other person over whom the accused was in a position of authority; and (3) the accused issued the order with direct intent, or was aware of the substantial likelihood that a crime would be committed in the execution of the order.⁶⁰⁸

⁶⁰² *Blaškić* Trial Judgment, para. 280; *Tadić* Trial Judgment, para. 688; *Kvočka* Trial Chamber Judgment, para. 252; *Čelebići* Trial Judgment, para. 327; *Kordić and Čerkez* Trial Judgment, para. 387; Also see Antonio Cassese, *International Criminal Law*, Oxford University Press, 2003, page 190; *Galić* Trial Judgment, para. 168; *Akayesu* Trial Judgment, para. 482; *Orić* Trial Judgment, para. 271.

⁶⁰³ *Blaškić* Trial Judgment, para. 280; *Brđanin* Trial Judgment, para. 269.

⁶⁰⁴ *Blaškić* Trial Judgment, para. 337.

⁶⁰⁵ *Brđanin* Trial Judgment, para. 269.

⁶⁰⁶ *Limaj et al.* Trial Judgment para. 514; *Tadić* Appeal Judgment, para. 220: "What is required is a state of mind in which a person, although he did not intend to bring about a certain result, was aware that the actions of the group were most likely to lead to that result but nevertheless willingly took that risk. In other words, the so-called *dolus eventualis* is required..." ; *Tadić* Trial Judgment, para. 692.

⁶⁰⁷ *Blaškić* Trial Judgment, para. 267.

⁶⁰⁸ *Strugar* Trial Judgment, paras. 331-333; See also *Brima* Decision on Motion for Acquittal, para. 296.

421. An accused may be held liable for orders given within regular military formations as well as irregular bodies, such as paramilitary forces, in which there is no *de jure* superior-subordinate relationship, provided the accused is vested with an authority that enables him or her to give orders to the other members of the group.⁶⁰⁹ The necessary authority may be informal or of a purely temporary nature.⁶¹⁰
422. There is no requirement that the order be in writing or in any particular form.⁶¹¹ It may be express or implied.⁶¹² An order “does not need to be given by the superior directly to the person who performs the *actus reus* of the offence.”⁶¹³ The existence of an order may be proven circumstantially and there is no requirement to adduce direct evidence that the order was given.⁶¹⁴
423. That an accused is in a position of authority and “ordered” a particular crime may be inferred from a number of factors, including the number of illegal acts; the number, identity and type of troops involved; the effective command and control exerted over these troops; the logistics involved, if any; the widespread occurrence of the acts; the tactical tempo of operations; the *modus operandi* of similar illegal acts; the officers and staff involved; the location of the superior at the time; and the superior’s knowledge of crimes committed by his subordinates.⁶¹⁵ An accused may also be liable for receiving a criminal order and using his powers to instruct his subordinates to perform it. According to the *Kupreškić* Trial Chamber, this amounts to the “reissuing of orders that were illegal in the circumstances.”⁶¹⁶
424. A causal link between the act of ordering and the physical perpetration of a crime is a required component of the *actus reus* of ordering.⁶¹⁷ Such link need not be such that the offence would not have been committed in the absence of the order.⁶¹⁸

⁶⁰⁹ *Strugar* Trial Judgment, para. 331; *Kordić and Čerkez* Appeal Judgment, para. 28; *Kordić and Čerkez* Trial Judgment, para. 388; *Brđanin* Trial Judgment, para. 270.

⁶¹⁰ *Semanza* Appeal Judgment, para. 363; *Kordić and Čerkez* Trial Judgment, para. 388;

⁶¹¹ *Strugar* Trial Judgment, para. 331; *Blaškić* Trial Judgment, para. 281.

⁶¹² *Blaškić* Trial Judgment, para. 281.

⁶¹³ *Ibid.*, para. 282.

⁶¹⁴ *Strugar* Trial Judgment, para. 331; *Kordić and Čerkez* Trial Judgment, para. 388; *Blaškić* Trial Judgment, para. 281.

⁶¹⁵ *Galić* Trial Judgment, para. 171; *Blaskić* Trial Judgment, para. 307.

⁶¹⁶ *Kupreškić* Trial Judgment, para. 862.

⁶¹⁷ *Strugar* Trial Judgment, para. 332.

425. With regard to the *mens rea*, it must be established that the accused in issuing the order intended to bring about the commission of the crime, or was aware of the substantial likelihood that it would be committed in execution of the order.⁶¹⁹ However, if the order is generic (e.g. a general order to abuse prisoners of war), the mental element of recklessness or gross negligence is sufficient.⁶²⁰ It should be mentioned that it is the *mens rea* of the person who gave the order that is important and not that of the actual perpetrator.⁶²¹

426. A conviction for “ordering” a particular crime will not be entered where the accused has committed the same crime.⁶²²

Committing

427. An accused may be found liable for directly committing a crime if the Prosecution has demonstrated that: (1) the accused performed all elements of the *actus reus* of the crime in question. This means the participation of the accused physically or otherwise directly, in the material elements of a crime under the Court’s Statute⁶²³ or failing to act when such a duty exists;⁶²⁴ and (2) the accused acted with the required *mens rea* for the crime in question.⁶²⁵ The accused must either possess the *mens rea* of the relevant crime, or be aware of the substantial likelihood that a crime would occur as a consequence of his act or omission.⁶²⁶

Aiding and Abetting

428. The elements of aiding and abetting are: (1) the accused carries out an act or omission⁶²⁷ specifically directed to assist, encourage or lend moral support to the perpetration of a crime physically committed by a person other than the accused; (2) the accused’s conduct

⁶¹⁸ Ibid.

⁶¹⁹ *Blaškić* Appeal Judgment, para. 42; *Kordić* Appeal Judgment, para. 30; *Strugar* Trial Judgment, para. 333.

⁶²⁰ Antonio Cassese, *International Criminal Law*, Oxford University Press, 2003, p. 194, footnote 13; *Blaškić* Trial Judgment, para. 267.

⁶²¹ *Blaškić* Trial Judgment, para. 282.

⁶²² *Stakić* Rule 98 bis Decision, para. 109.

⁶²³ *Kvočka* Trial Judgment, para. 251.

⁶²⁴ *Simić* Trial Judgment, para. 137; *Stakić* Trial Judgment, para. 439; *Vasiljević* Trial Judgment, para. 62; *Krstić* Trial Judgment, para. 601.

⁶²⁵ *Kordić and Čerkez* Trial Judgment, para. 376; *Kvočka* Trial Judgment, para. 251.

⁶²⁶ *Kvočka* Trial Judgment, para. 251.

⁶²⁷ *Brdanin*, Trial Judgment, para. 271; *Kvočka*, Trial Judgment, para. 256; *Aleksovski* Trial Judgment, para. 62; *Blaskić* Trial Judgment, para. 284. Examples are given in *Tadić* Trial Judgment, para. 686; *Celebici* Trial Judgment, para. 842; *Akayesu* Trial Judgment, para. 705.

has a substantial effect upon the perpetration of the crime; and (3) the accused acted with knowledge that his conduct would assist in the commission of the crime.⁶²⁸

429. While having a role in a system without influence would not be enough to attract criminal responsibility⁶²⁹, there is no requirement that the conduct of the aider and abettor be a *conditio sine qua non* of the actions of the perpetrator.⁶³⁰ The fact that similar assistance could have been obtained from someone else does not remove the accused's responsibility.⁶³¹

430. Aiding and abetting need not be tangible, but may consist of moral support or encouragement of the principals.⁶³² Presence during the commission of the crime can constitute "abetting" if it has an encouraging effect on the perpetrators, or gives them moral support or psychological support, or has a significant legitimizing or encouraging effect on the principals, even if the accused takes no active part in the crime.⁶³³ The presence of a superior can be perceived as an important *indicium* of encouragement or support.⁶³⁴

431. The *actus reus* of aiding and abetting can take place before, during or after the crime has been committed, and this form of participation may take place geographically and temporally removed from the crime's location and timing.⁶³⁵ It is not necessary for the person aiding or abetting to be present during the commission of the crime.⁶³⁶ Thus, presence, particularly when coupled with a position of authority, is a probative, but not determinative, indication that an accused encouraged or supported the perpetrators of the

⁶²⁸ *Blaškić Appeal Judgment*, para. 45 (citing *Vasiljević Appeal Judgment*, para. 102); *Strugar Trial Judgment*, para. 349; *Brdanin Trial Judgment*, para. 271; *Blaskić Trial Judgment*, para. 284.

⁶²⁹ *Furundžija Trial Judgment*, para. 233.

⁶³⁰ *Strugar Trial Judgment*, para. 349 (citing *Blaškić Appeal Judgment*, para. 48); *Furundžija Trial Judgment*, paras. 233-235.

⁶³¹ *Furundžija Trial Judgment*, paras 224, 233.

⁶³² *Furundžija Trial Judgment*, para. 199.

⁶³³ *Tadić Trial Judgment*, paras 689-692 (see also paras 678-687); *Akayesu Trial Judgment*, paras 546-548; *Čelebići Trial Judgment*, paras 327-328; *Furundžija Trial Judgment*, paras 205-209, 232-235.

⁶³⁴ *Brdanin Trial Judgment*, para. 271; *Akayesu Trial Judgment*, paras 693, 704-705.

⁶³⁵ *Blaškić Appeal Judgment*, para. 48; *Simić Trial Judgment*, para. 162; *Naletilić and Martinović Trial Judgment*, para. 163; *Vasiljević Trial Judgment* para. 70; *Kvočka Trial Judgment*, para. 256; *Blaškić Trial Judgment*, para. 285; *Krnjelac Trial Judgment*, para. 88; *Kunarac Trial Judgment*, para. 391; *Aleksovski Trial Judgment*, paras 62, 129.

⁶³⁶ *Akayesu Trial Judgment*, para. 484.

crime.⁶³⁷ The Prosecution submits that a persistent failure to prevent or punish crimes by subordinates over time may also constitute aiding or abetting.⁶³⁸ Aiding and abetting does not require a pre-existing plan or arrangement to engage in the criminal conduct in question and the principal may not even know about the accomplice's contribution.⁶³⁹

432. The *mens rea* requirement for aiding and abetting is satisfied if the accused knows – in the sense of awareness – that his actions or omissions will assist the perpetrator in the commission of a crime.⁶⁴⁰ The aider and abettor must at least have accepted that the commission of a crime would be a possible and foreseeable consequence of his conduct.⁶⁴¹ Such awareness may be inferred from all relevant circumstances and does not need to be explicitly expressed.⁶⁴² The aider and abettor needs to have, as a minimum, accepted that his assistance would be a possible and foreseeable consequence of his conduct.⁶⁴³ While the aider and abettor need not share the *mens rea* of the principal, he must be aware of the essential elements of the crime ultimately committed by the principal.⁶⁴⁴ It is not necessary that the aider and abettor know the precise crime that was intended or actually committed, as long as he was aware that one or a number of crimes would probably be committed, and one of those crimes was in fact committed.⁶⁴⁵

433. Conduct held to constitute aiding and abetting has included supplying the weapon or other instruments used in the commission of the crime;⁶⁴⁶ failing to prevent others from perpetrating crimes in circumstances where the accused is under a legal obligation to

⁶³⁷ *Kvočka* Trial Judgment, para. 257; *Kunarac* Trial Judgment, para. 393; see *Tadić* Trial Judgment, para. 689; *Aleksovski* Trial Judgment, paras 64-65; *Akayesu* Trial Judgment, para. 693.

⁶³⁸ *Blaškić* Trial Judgment, para. 337.

⁶³⁹ *Kordić and Čerkez* Trial Judgment, para. 399; *Tadić* Trial Judgment, para. 677; *Čelebići* Trial Judgment, paras 327-328.

⁶⁴⁰ *Strugar* Trial Judgment, para. 350 (citing *Tadić* Appeal Judgment, para. 229; *Aleksovski* Appeal Judgment, para. 162; *Blaškić* Appeal Judgment, para. 49); *Furundžija* Trial Judgment, para. 245; *Čelebići* Trial Judgment, paras 327-328; *Kunarac* Trial Judgment, para. 392. The principal need not know that he has been assisted by the aider and abettor. *Tadić* Appeal Judgment, para. 229 (ii); *Brđanin* Trial Judgment, para. 272.

⁶⁴¹ *Kvočka* Trial Judgment, para. 255.

⁶⁴² *Strugar* Trial Judgment, para. 350; *Tadić* Trial Judgment, paras 675-676; *Čelebići* Trial Judgment, paras 327-328.

⁶⁴³ *Blaškić* Trial Judgment, para. 286: "in addition to knowledge that his acts assist the commission of the crime, the aider and abettor needs to have intended to provide assistance, or as a minimum, accepted that such assistance would be a possible and foreseeable consequence of his conduct."

⁶⁴⁴ *Strugar* Trial Judgment, para. 350 (citing *Aleksovski* Appeal Judgment, para. 162).

⁶⁴⁵ *Strugar* Trial Judgment, para. 350 (citing *Blaškić* Appeal Judgment, para. 50); *Brđanin* Trial Judgment, para. 272.

⁶⁴⁶ *Tadić* Trial Judgment, paras 680, 684 (referring with apparent approval to the *Zyklon B* and *Mulka* cases).

protect a victim;⁶⁴⁷ failing to maintain law and order by a person in a position of authority;⁶⁴⁸ and the presence of the accused coupled with a position of authority during the perpetration of a crime.⁶⁴⁹

434. Either aiding or abetting alone is sufficient to render the perpetrator criminally liable.⁶⁵⁰

SUPERIOR RESPONSIBILITY: ARTICLE 6(3) OF THE STATUTE

435. A superior will be held criminally responsible for the crimes of his subordinates where: (1) an offence was committed; (2) there existed a superior-subordinate relationship between the accused and the perpetrator of the offence; (3) the accused knew or had reason to know that the perpetrator (subordinate) was about to commit the offence or had done so; and (4) the accused failed to take the necessary and reasonable measures to prevent the offence or to punish the perpetrator.⁶⁵¹

The Effective Control Test

436. The *actus reus* consists of the existence of a superior-subordinate relationship, i.e. a hierarchical relationship between the accused and the perpetrator, in which the former has ‘effective control’ over the latter.⁶⁵² The test of ‘effective control’ concerns the material ability of the accused to prevent offences or to punish the offenders.⁶⁵³ The hierarchical relationship need not be formalized, as it may be derived from the accused’s *de facto* or *de*

⁶⁴⁷ *Tadić* Trial Judgment, para. 686 (referring with apparent approval to the *Borkum Island Case*); *Akayesu* Trial Judgment, paras 704-705 (failure of *bourgmestre* to maintain law and order in a commune, and failure to oppose killings and serious bodily or mental harm, found to constitute a form of tacit encouragement, which was compounded by being present at such criminal acts); *Aleksovski* Trial Judgment, para. 88.

⁶⁴⁸ *Akayesu* Trial Judgment, paras 704-705.

⁶⁴⁹ *Rutaganira* Trial Judgment, paras 76-77.

⁶⁵⁰ *Akayesu* Trial Judgment, para. 484; while “aiding” is defined by the ICTR as “giving assistance to someone”, abetting is defined as “facilitating the commission of an act by being sympathetic thereto.”

⁶⁵¹ *Čelebići* Appeal Judgment, paras 189-198, 225-226, 238-239, 256, 263; *Strugar* Trial Judgment, para. 357; It is settled that Article 7(3) applies to both international and internal armed conflicts. *Kordić and Čerkez* Trial Judgment, para. 401.

⁶⁵² *Čelebići* Appeal Judgment, paras 197 and 255-6 and 303; *Čelebići* Trial Judgment, para. 378; *Kajelijeli* Appeal Judgment, para. 87.

⁶⁵³ *Čelebići* Appeal Judgment, para. 196; *Strugar* Trial Judgment, para. 362-363; *Kayishema* Appeal Judgment, para. 302; *Kunarac* Trial Judgment, para. 396; *Bagilishema* Appeal Judgment, para. 50.

jure position of superiority.⁶⁵⁴ As stated by the Appeals Chamber in *Aleksovski*, “it does not matter whether [the accused] was a civilian or a military superior, if it can be proved that [...] he had the powers to prevent or to punish [...]”⁶⁵⁵ Article 6(3) applies equally to temporary or ad hoc military units if, at the time of the alleged acts, the offenders were under the effective control of the accused.⁶⁵⁶

437. “Effective control” need not take the form of military-style command.⁶⁵⁷ Responsibility may be incurred by civilians who are not part of a military structure, such as political leaders, if they *de facto* constitute part of the chain of command.⁶⁵⁸ It should be noted that the ICTY has held that the existence of *de jure* authority creates a *presumption* that effective control exists.⁶⁵⁹ Thus, when the accused had an official title within an organisation, it is presumed that he had effective control over his subordinates, unless proof of the contrary is produced.⁶⁶⁰

438. A *de facto* superior who lacks formal letters of appointment but who has, in reality, effective control over the perpetrators of offences equally incurs criminal responsibility.⁶⁶¹ In the same vein, the mere *ad hoc* or temporary nature of a military unit or an armed group does not *per se* exclude a relationship of subordination between the member of the unit or group and its commander or leader.⁶⁶² There is no requirement that the relationship between the superior and the subordinate be permanent in nature.⁶⁶³

⁶⁵⁴ *Čelebići* Appeal Judgment, paras 192-194; *Kordić and Čerkez* Trial Judgment, paras 405-406, 416; *Krnojelac* Trial Judgment, para. 93; *Kunarac* Trial Judgment, para. 396; *Galić* Trial Judgment, para. 173; *Stakić* Trial Judgment, para. 459.

⁶⁵⁵ *Aleksovski* Appeal Judgment, para. 76.

⁶⁵⁶ *Strugar* Trial Judgment, para. 362; *Kunarac* Trial Judgment, paras 399, 628.

⁶⁵⁷ *Baglishema* Appeal Judgment, para. 55; *Kajelijeli* Appeal Judgment, para. 87.

⁶⁵⁸ *Aleksovski* Appeal Judgment, para. 76; *Čelebići* Appeal Judgment, paras 195-197, reaffirming the conclusion of the Trial Chamber in *Čelebići* Trial Judgment, paras 356-363.

⁶⁵⁹ The ICTY Appeals Chamber in *Čelebići* held that “[i]n general, the possession of *de jure* power in itself may not suffice for the finding of command responsibility if it does not manifest in effective control, although a court may presume that possession of such power *prima facie* results in effective control unless proof to the contrary is produced.” *Čelebići* Appeal Judgment, para. 197; this was repeated in *Galić* Trial Judgment, para. 173.

⁶⁶⁰ *Hadžihasanović* Trial Judgment, para. 83.

⁶⁶¹ *Brđanin* Trial Judgment, para. 276.

⁶⁶² *Kunarac* Trial Judgment, para. 399; *Strugar* Trial Judgment, para. 362; *Halilović* Trial Judgment, para. 61; *Orić* Trial Judgment, para. 310.

⁶⁶³ *Limaj* Trial Judgment, para. 522.

439. A superior may also be responsible for crimes committed by a subordinate more than one level down the chain of command.⁶⁶⁴ In the *Halilović* case, the Trial Chamber referred to the judgment in the case against the Japanese Admiral Soemu Toyoda tried in the aftermath of World War II:

The military tribunal in that case highlighted that subordination does not have to be direct and stated that (*Toyoda* case, p. 5006): “[i]n the simplest language it may be said that this Tribunal believes the principle of command responsibility to be that, if this accused knew, or should by the exercise of ordinary diligence have learned, of the commission by his subordinates, *immediate or otherwise*, of the atrocities proved beyond a shadow of a doubt before this Tribunal or of the existence of a routine which would countenance such, and, by his failure to take any action to punish the perpetrators, permitted the atrocities to continue, he has failed in his performance of his duty as a commander and must be punished.”⁶⁶⁵

440. There is no requirement that the superior-subordinate relationship be direct or immediate in nature.⁶⁶⁶ For example, the relationship between a commander of one unit and troops belonging to other units that are temporarily under his command, constitutes the hierarchic relationship of superior-subordinate.⁶⁶⁷ Effective control can exist, whether that subordinate is immediately answerable to that superior or more remotely under his command.⁶⁶⁸ A superior may also be responsible for crimes committed by a subordinate more than one level down the chain of command.⁶⁶⁹ Thus, whether this sort of control is directly exerted upon a subordinate or mediated by other sub-superiors or subordinates is immaterial, as long as the responsible superior would have means to prevent the relevant crimes from being committed or to take efficient measures for having them sanctioned.⁶⁷⁰

⁶⁶⁴ *Strugar* Trial Judgment, paras. 363-366; see also ICRC Commentary to the Additional Protocols, p. 1013, para. 3544.

⁶⁶⁵ *Halilović* Trial Judgment, para. 63, footnote 149.

⁶⁶⁶ *Strugar* Trial Judgment, para. 363; *Orić* Trial Judgment, paras 310-311; *Čelebići* Appeal Judgement, para. 252.

⁶⁶⁷ *Stakić* Trial Judgment, 31 July 2003, para. 459.

⁶⁶⁸ This essentially was the view expressed in the post-World War II trial of the Japanese General Tomoyuki Yamashita, by the U.S. Military Commission (subsequently affirmed by the U.S. Supreme Court). *Trial of General Tomoyuki Yamashita Before U.S. Military Commission* (Oct. 7–Dec. 7, 1945), summarized in 4 U.N. War Crimes Commission, Law Reports of Trials of War Criminals 1, 33-35 (1948). Affirmed in the appeal before the U.S. Supreme Court in *In re Yamashita*, 327 U.S. 1 (1946).

⁶⁶⁹ *Halilović* Trial Judgment, para. 63.

⁶⁷⁰ *Strugar* Trial Judgment, paras 363-366.

⁶⁷⁰ *Orić* Trial Judgment, paras 307 et seq.

441. The Appeals Chamber in *Blaskić* held that “the indicators of effective control are more a matter of evidence than of substantive law, and those indicators are limited to showing that the accused had the power to prevent, punish, *or* initiate measures leading to proceedings against the alleged perpetrators where appropriate.”⁶⁷¹

442. The jurisprudence provides for certain criteria that may be indicative of the existence of authority in terms of effective control.⁶⁷² They include the formality of the procedure used for appointment of a superior,⁶⁷³ the official position held by the accused,⁶⁷⁴ the position of the accused within the military or political structure,⁶⁷⁵ the actual tasks that he performed,⁶⁷⁶ the power of the superior to issue orders whether *de jure* or *de facto*⁶⁷⁷ or take disciplinary action,⁶⁷⁸ the power to appoint leaders of local groups, and charged specific persons with a specific task,⁶⁷⁹ the fact that subordinates show in the superior's presence greater discipline than when he is absent,⁶⁸⁰ the fact that the subordinates were informing the accused of measures taken,⁶⁸¹ the capacity to transmit reports to competent authorities for the taking of proper measures,⁶⁸² the capacity to sign orders,⁶⁸³ provided that the signature on a document is not purely formal or merely aimed at implementing a decision made by others,⁶⁸⁴ but that the indicated power is supported by the substance of the document⁶⁸⁵ or that it is obviously complied with,⁶⁸⁶ an accused's high public profile, manifested through public appearances and statements⁶⁸⁷ or by participation in high-

⁶⁷¹ *Blaškić* Appeal Judgment, para. 69 (emphasis added); *Akayesu* Trial Judgment, para. 491; *Strugar* Trial Judgment, para. 366; *Halilović* Trial Judgment, para. 63; *Orić*, Trial Judgment, paras 307 et seq. (emphasis added).

⁶⁷² *Orić* Trial Judgment, paras 307 et seq.

⁶⁷³ *Halilović* Trial Judgment, para. 58.

⁶⁷⁴ *Kordić and Čerkez* Trial Judgment, paras 418-424.

⁶⁷⁵ *Kordić and Čerkez* Trial Judgment, para. 423.

⁶⁷⁶ *Kordić and Čerkez* Trial Judgment, para. 424.

⁶⁷⁷ *Aleksovski* Trial Judgment, paras 101, 104; *Blaškić* Trial Judgment, para. 302; *Kordić and Čerkez* Trial Judgment, para. 421; *Kajelijeli* Trial Judgment, paras 403-404.

⁶⁷⁸ *Blaškić* Trial Judgment, para. 302; *Hadžihasanović* Trial Judgment, paras 83 et seq.

⁶⁷⁹ *Orić* Trial Judgment, para. 700.

⁶⁸⁰ *Čelebići* Appeal Judgment, para. 206, endorsing the findings of *Čelebići* Trial Judgment, para. 743.

⁶⁸¹ *Čelebići* Appeal Judgment, para. 209.

⁶⁸² *Aleksovski* Trial Judgment, para. 78; *Blaškić* Trial Judgment, para. 302.

⁶⁸³ *Čelebići* Trial Judgment, para. 672; *Kordić and Čerkez* Trial Judgment, para. 421; *Naletilić and Martinović* Trial Judgment, para. 67.

⁶⁸⁴ *Kordić and Čerkez* Trial Judgment, para. 421.

⁶⁸⁵ *Ibid.*

⁶⁸⁶ *Naletilić and Martinović* Trial Judgment, para. 67.

⁶⁸⁷ *Kordić and Čerkez* Trial Judgment, para. 424.

profile international negotiations,⁶⁸⁸ the fact that witnesses had described his sphere of command, the respect he enjoyed and his widely acknowledge leadership,⁶⁸⁹ the fact that an accused had been promoted as commander.⁶⁹⁰

443. The effective control test can be satisfied even when the superior is not competent to order and/or implement sanctions himself. It has been held that the superior has to order or execute appropriate sanctions⁶⁹¹ or, if not yet able to do so, he or she must at least conduct an investigation⁶⁹² and establish the facts⁶⁹³ in order to ensure that offenders under his or her effective control are brought to justice.⁶⁹⁴ The superior need not conduct the investigation or dispense the punishment in person,⁶⁹⁵ but he or she must at least ensure that the matter is investigated⁶⁹⁶ and transmit a report to the competent authorities for further investigation or sanction.⁶⁹⁷ As in the case of preventing crimes, the superior's own lack of legal competence does not relieve him from the duty of taking action within his material ability.⁶⁹⁸

444. The proof of the existence of a superior-subordinate relationship does not require the identification of the principal perpetrators, particularly not by name, nor that the superior had knowledge of the number or identity of possible intermediaries, provided that it is at least established that the individuals who are responsible for the commission of the crimes were within a unit or a group under the control of the superior.⁶⁹⁹

⁶⁸⁸ *Alekovski* Trial Judgment, para. 101; *Kordić and Čerkez* Trial Judgment, para. 424; *Strugar* Trial Judgment, para. 398.

⁶⁸⁹ *Čelebići* Appeal Judgment, paras 206, 209, endorsing the findings of *Čelebići* Trial Judgment, paras 746-750.

⁶⁹⁰ *Čelebići* Appeal Judgment, para. 206.

⁶⁹¹ As for instance, by suspending a subordinate: *Ntagerura* Trial Judgment, para. 650.

⁶⁹² *Kordić and Čerkez* Trial Judgment, para. 446; *Brđanin* Trial Judgment, para. 279; *Halilović* Trial Judgment, paras 74, 97, 100.

⁶⁹³ *Halilović* Trial Judgment, paras 97, 100.

⁶⁹⁴ *Strugar* Trial Judgment, para. 378; *Halilović* Trial Judgment, para. 98.

⁶⁹⁵ *Halilović* Trial Judgment, paras 99-100.

⁶⁹⁶ *Ibid.*, paras 97, 100.

⁶⁹⁷ *Blaškić* Appeal Judgment, para. 632; *Blaškić* Trial Judgment, paras 302, 335, 464; *Kordić and Čerkez* Trial Judgment, para. 446; *Kvočka* Trial Judgment, para. 316; *Stakić* Trial Judgment, para. 461; *Brđanin* Trial Judgment, para. 279; *Halilović* Trial Judgment, paras 97, 100.

⁶⁹⁸ *Alekovski* Trial Judgment, para. 78; *Blaškić* Trial Judgment, paras 302, 335, 464; *Halilović* Trial Judgment, para. 100.

⁶⁹⁹ *Blaškić* Appeal Judgment, para. 217. See also *Hadžihasanović* Trial Judgment, para. 90.

The Superior Knew or Had Reason to Know

445. Article 6(3) requires that the superior either (a) knew or (b) had reason to know that his subordinates were about to commit criminal acts or had already done so. Whereas the former requires proof of actual knowledge, the latter requires proof only of some grounds which would have enabled the superior to become aware of the crimes of his or her subordinates.⁷⁰⁰

446. Actual knowledge may be established by way of circumstantial evidence.⁷⁰¹ The superior's position per se is not to be understood as a conclusive criterion⁷⁰² but may appear to be a significant indication from which knowledge of a subordinate's criminal conduct can be inferred.⁷⁰³ For instance, the fact that crimes were committed frequently or notoriously by subordinates of the accused, indicates that the superior had knowledge of the crimes.⁷⁰⁴ Circumstantial evidence can in particular be gained from⁷⁰⁵ the number, type and scope of illegal acts, the time during which they occurred, the number and type of troops, the logistics involved, the geographical location of the acts, their widespread occurrence, the tactical tempo of operations, the *modus operandi* of similar illegal acts, the officers and staff involved and the location of the commander at the time.⁷⁰⁶ Additionally, the fact that a military commander "will most probably" be part of an organized structure with

⁷⁰⁰ Ibid., para. 317.

⁷⁰¹ *Čelebići* Trial Judgment, paras 383, 386; *Kordić and Čerkez* Trial Judgment, para. 427; *Krnojelac* Trial Judgment, para. 94; *Naletilić* Trial Judgment, para. 71; *Galić* Trial Judgment, para. 174; *Brđanin* Trial Judgment, para. 278; *Strugar* Trial Judgment, para. 368; *Halilović* Trial Judgment, para. 66; *Limaj* Trial Judgment, para. 524; *Hadžihasanović* Trial Judgment, para. 94; *Bagilishema* Trial Judgment, para. 46; *Kajelijeli* Trial Judgment, para. 778; *Aleksovski* Trial Judgment, para. 80; *Blaškić* Trial Judgment, para. 307; these Judgments indicate that the position of authority of the superior over the subordinate is a significant indication in itself that the superior knew of crimes committed by his subordinates.

⁷⁰² *Blaškić* Appeal Judgment, para. 57; *Bagilishema* Trial Judgment, para. 45; *Semanza* Trial Judgment, para. 404; *Kajelijeli* Trial Judgment, para. 776.

⁷⁰³ *Aleksovski* Trial Judgment, para. 80; *Blaškić* Trial Judgment, para. 308.

⁷⁰⁴ The Trial Chamber held that "[t]he crimes committed in the *Čelebići* prison-camp were so frequent and notorious that there is no way that [the accused] could not have known or heard about them." *Čelebići* Trial Judgment, para. 770.

⁷⁰⁵ This list of criteria is in particular referred to in *Čelebići* Trial Judgment, para. 386; *Blaškić* Trial Judgment, para. 307; *Kordić and Čerkez* Trial Judgment, para. 427; *Galić* Trial Judgment, para. 174; *Brđanin* Trial Judgment, para. 276, footnote 736; *Strugar* Trial Judgment, para. 368; *Limaj* Trial Judgment, para. 524; *Hadžihasanović* Trial Judgment, para. 94; *Bagilishema* Trial Judgment, para. 968; Final Report of the Commission of Experts, Established Pursuant to Security Council Resolution 780 (1992), UN Doc. S/1994/674, p. 17.

⁷⁰⁶ *Orić* Trial Judgment, paras 316 -324.

reporting and monitoring systems has been cited as a factor facilitating the showing of actual knowledge.⁷⁰⁷

447. A superior can be held responsible on the basis of having had reason to know, had he made use of information which, by virtue of his superior position and in compliance with his duties, was available to him, that subordinates were about to commit or had already committed crimes.⁷⁰⁸

448. It is sufficient that the superior be in possession of sufficient information in written or oral form,⁷⁰⁹ or even general in nature, to be on notice of the likelihood of illegal acts by his subordinates, i.e., so as to justify further inquiry in order to ascertain whether such acts were indeed being or about to be committed.⁷¹⁰ Such information must suggest the need for further inquiry into the likely or possible unlawful acts of subordinates and need not be explicit or specific.⁷¹¹ In particular, with regard to the duty to prevent, the superior need be on notice only of the “risk” or possibility of crimes being committed by his subordinates, not that crimes will certainly be committed.⁷¹² Moreover, the Prosecution submits that where a superior possesses such information, he has an affirmative duty to take reasonable measures to prevent criminal conduct, that go beyond his duty to investigate the situation.⁷¹³

449. In *Celebici*, the ICTY Appeals Chamber held that “knowledge may be presumed ... if [the superior] had the *means* to obtain the knowledge but deliberately refrained from doing

⁷⁰⁷ *Naletilić and Martinović* Trial Judgment, para. 73.

⁷⁰⁸ *Čelebići* Trial Judgment, paras 387-389, 393; *Blaškić* Trial Judgment, para. 332; *Bagilishema* Trial Judgment, para. 46; *Čelebići* Appeal Judgment, para. 238; *Galić* Trial Judgment, para. 175.

⁷⁰⁹ *Čelebići* Appeal Judgment, para. 238; *Kvočka* Trial Judgment, para. 318; *Galić* Trial Judgment, para. 175.

⁷¹⁰ *Čelebići* Trial Judgment, para. 393; *Kordić and Čerkez* Trial Judgment, para. 437; *Strugar* Trial Judgment, paras 369-370; *Čelebići* Appeal Judgment, para. 241; *Blaškić* Appeal Judgment, para. 62; *Kvočka* Trial Judgment, para. 318; *Krnjelac* Trial Judgment, para. 94; *Naletilić and Martinović* Trial Judgment, para. 74; *Galić* Trial Judgment, para. 175; *Brđanin* Trial Judgment, para. 278; *Blagojević* Trial Judgment, para. 792; *Halilović* Trial Judgment, para. 68; *Kayishema* Trial Judgment, para. 228; *Semanza* Trial Judgment, para. 405; *Kajelijeli* Trial Judgment, para. 778; *Kamuhanda* Trial Judgment, para. 609.

⁷¹¹ *Bagilishema* Appeal Judgment, para. 28; *Čelebići* Appeal Judgment, paras 236, 238; *Strugar* Trial Judgment, para. 369; *Kvočka* Trial Judgment, paras 317-318; *Kordić and Čerkez* Trial Judgment, para. 437.

⁷¹² *Krnjelac* Appeal Judgment, paras 155, 166, 169, 170, 173-180. *Strugar* Trial Judgment, paras 370, 416-418.

⁷¹³ *Kvočka* Trial Judgment, paras 317-318; *Čelebići* Appeal Judgment, para. 238 (notice of the violent or unstable character of subordinates may trigger duty to intervene); *Strugar* Trial Judgment, para. 373.

so.”⁷¹⁴ The superior need not have possessed knowledge of the *specific* details of the crime.⁷¹⁵

450. This determination does not require the superior to have actually acquainted himself with the information in his possession,⁷¹⁶ nor that the information would, if read, compel the conclusion of the existence of such crimes.⁷¹⁷ It rather suffices that the information was available to the superior and that it indicated the need for additional investigation in order to ascertain whether offences were being committed or about to be committed by subordinates.⁷¹⁸

451. This does not necessarily mean that the superior may be held liable for failing personally to acquire such information in the first place.⁷¹⁹ However, as soon as the superior has been put on notice of the risk of illegal acts by subordinates,⁷²⁰ he is expected to stay vigilant and to inquire about additional information, rather than doing nothing⁷²¹ or remaining willfully blind.⁷²²

452. Examples of information which have been found to place a superior on notice of the risk of criminal conduct by a subordinate – and consequently that show that the superior possessed the requisite knowledge - include that of a subordinate having a notoriously

⁷¹⁴ *Čelebići* Appeal Judgment, para. 226; *Stakić* Trial Judgment, paras 460-461; in the *Halilović* case, the Trial Chamber held that knowledge cannot be presumed if a person fails in his duty to obtain the relevant information, but it may be presumed where a superior had the means to obtain the relevant information and deliberately refrained from doing so, see *Halilović* Trial Judgment, para. 69.

⁷¹⁵ *Čelebići* Appeal Judgment, para. 238: “[a] showing that a superior had some general information in his possession, which would put him on notice of possible unlawful acts by his subordinates would be sufficient to prove that he ‘had reason to know’... This information does not need to provide specific information about unlawful acts committed or about to be committed. For instance, a military commander who has received information that some of the soldiers under his command have a violent or unstable character, or have been drinking prior to being sent on a mission, may be considered as having the required knowledge.” This view was also repeated by the ICTY Trial Chamber in *Galić* Trial Judgment, 5 Dec. 2003, para. 175; *Krnjelac* Appeal Judgment, para. 155.

⁷¹⁶ *Čelebići* Appeal Judgment, para. 239; *Galić* Trial Judgment, para. 175.

⁷¹⁷ *Čelebići* Trial Judgment, para. 393; *Naletilić and Martinović* Trial Judgment, para. 74; *Halilović* Trial Judgment, para. 68; *Hadžihasanović* Trial Judgment, para. 97.

⁷¹⁸ *Čelebići* Trial Judgment, para. 393.

⁷¹⁹ *Čelebići* Appeal Judgment, para. 226; *Blaškić* Appeal Judgment, para. 62; *Halilović* Trial Judgment, para. 69; *Limaj* Trial Judgment, para. 525.

⁷²⁰ Instead of the “risk” of crimes by subordinates, as used in describing the standard of possible awareness in the case law of this Tribunal (*Krnjelac* Appeal Judgment, para. 155; *Čelebići* Trial Judgment, para. 383; *Strugar* Trial Judgment, para. 416), some judgments speak of “likelihood” (*Kordić and Čerkez* Trial Judgment, para. 437; *Limaj* Trial Judgment, para. 525) or even of “substantial” and “clear likelihood” (*Strugar* Trial Judgment, paras 420, 422). Yet this language, rather than requiring a higher standard, seems merely to express that with such a degree of likelihood the risk test is definitely satisfied. See also *Hadžihasanović* Trial Judgment, paras 98, 102 et seq.

⁷²¹ *Strugar* Trial Judgment, para. 416.

⁷²² *Čelebići* Trial Judgment, para. 387; *Halilović* Trial Judgment, para. 69.

violent or unstable character and that of a subordinate drinking prior to being sent on a mission.⁷²³ Similarly, a commander's knowledge of, for example, the criminal reputation of his subordinates may be sufficient to meet the *mens rea* standard if it amounted to information which would put him on notice of the present and real risk of offences within the jurisdiction of the Special Court.⁷²⁴

Necessary and Reasonable Measures

453. A superior must take reasonable and necessary measures within his material abilities to prevent the offence or punish the offender.⁷²⁵ There is no rigid definition as to what constitutes reasonable measures;⁷²⁶ it should be decided on a case-by-case basis in light of the superior's material abilities.⁷²⁷ Such 'available' measures have been held to include measures which are beyond the legal authority of the superior, if their undertaking is materially possible.⁷²⁸
454. Indeed a superior may be held liable despite lacking the formal legal competence to take particular measures to prevent or repress offences committed by subordinates.⁷²⁹ Such a superior ordinarily can, for example, alert others concerning crimes committed or about to be committed by subordinates.⁷³⁰
455. At the same time, however, mere punishment by the superior of a subordinate after the crimes had been committed cannot remedy the superior's failure to take 'necessary and reasonable measures' in advance aimed at preventing the crime.⁷³¹

⁷²³ *Čelebići* Appeal Judgment, para. 238; *Krnjelac* Appeal Judgment, para. 154; *Hadžihasanović* Trial Judgment, para. 100.

⁷²⁴ *Brđanin* Trial Judgment, para. 278, referring to *Čelebići* Appeal Judgment, paras 223 and 241; *Halilović* Trial Judgment para. 68.

⁷²⁵ *Strugar* Trial Judgment, para. 372; *Aleksovski* Appeal Judgment, para. 76; *Blaškić* Trial Judgment, para. 335; *Čelebići* Trial Judgment, paras. 377, 395.

⁷²⁶ *Aleksovski* Trial Judgment, para. 81; *Čelebići* Trial Judgment, para. 394.

⁷²⁷ *Strugar* Trial Judgment, para. 372, 374, 378.

⁷²⁸ *Čelebići* Trial Judgment, para. 395. *Stakić* Trial Judgment, para. 461.

⁷²⁹ *Strugar* Trial Judgment, para. 372; *Čelebići* Trial Judgment, para. 395; *Kordić and Čerkez* Trial Judgment, para. 443.

⁷³⁰ *Aleksovski* Trial Judgment, para. 78; *Blaškić* Trial Judgment, para. 302. See also Y. Sandoz, C. Swinarski and B. Zimmerman (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC, Martinus Nijhoff, Geneva 1987, para 3562; *Blaškić* Trial Judgment, para. 335. *Stakić* Trial Judgment, para. 461.

⁷³¹ *Blaškić* Trial Judgment, para. 336. *Stakić* Trial Judgment, para. 461.

456. The contours of a superior's duty to prevent crimes by subordinates were addressed in the *Strugar* case, where the ICTY Trial Chamber stated that "if a superior has knowledge or has reason to know that a crime is being or is about to be committed, he has a duty to prevent the crime from happening and is not entitled to wait and punish afterwards."⁷³² The Trial Chamber listed several factors considered by the post-World War II tribunals in establishing a superior's responsibility for failure to prevent crimes by his subordinates, including *inter alia* the failure to issue orders aimed at bringing practices into accord with the rules of war, the failure to secure reports that military actions had been carried out in accordance with international law, the failure to protest against or criticize criminal acts, the failure to take disciplinary measures to prevent criminal acts by subordinates, and the failure to insist before a superior authority that immediate action be taken against perpetrators of crimes.⁷³³

457. The Trial Chamber in *Strugar* also held that "a superior's duty to punish the perpetrators of a crime includes at least an obligation to investigate possible crimes, to establish the facts, and if the superior has no power to sanction, to report them to the competent authorities."⁷³⁴

Plurality of Superiors

458. More than one superior may be held responsible for their failure to prevent or punish the same crime committed by a subordinate.⁷³⁵ The fact that an accused may himself have had superiors does not impact on his own responsibility as a superior. Command responsibility applies to every commander at every level.⁷³⁶

⁷³² *Strugar* Trial Judgment, para. 373; See also *Blaškić* Trial Judgment, para. 336. Customary international law allows for conviction on the sole basis that the superior failed to prevent the crimes of his subordinates even if the perpetrators were punished after crimes had been committed. *US v. von Leeb and others* (High Command Case), US Military Tribunal sitting at Nuremberg, Judgment of 28 October 1948, in TWC, XI, p. 568, also in *Annual Digest* 1948 ; *US v. List and others* (Hostages Case), US Military Tribunal sitting at Nuremberg, Judgment of 19 February 1948, TWC, XI, p. 1298-99, also in *Annual Digest* 1948.

⁷³³ *Strugar* Trial Judgment, para. 374.

⁷³⁴ *Strugar* Trial Judgment, para. 376.

⁷³⁵ *Blaškić* Trial Judgment, para. 303; *Krnojelac* Trial Judgment, para. 93.

⁷³⁶ *Halilović* Trial Judgment, para. 62. *Blaškić* Trial Judgment, paras 296, 302, 303; *Krnojelac* Trial Judgment, para. 93; *Naletilić and Martinović* Trial Judgment, para. 69.

459. Finally, an accused who is found guilty under Article 6(1) of the Statute should not also be convicted of the same crime pursuant to Article 6(3); instead, his superior position will be considered an aggravating factor in sentencing.⁷³⁷

JOINT CRIMINAL ENTERPRISE

460. International jurisprudence has established that persons who contribute to the perpetration of crimes in execution of a common criminal purpose may be subject to criminal liability as a form of “commission” pursuant to Article 6(1) of the Statute.⁷³⁸

461. The three Accused are all charged as participants in a joint criminal enterprise ("JCE") the plan, purpose or design of which was to take any action necessary to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas. The natural resources of Sierra Leone, in particular the diamonds, were to be shared with persons outside Sierra Leone in return for assistance in carrying out the joint criminal enterprise. As set out in the Indictment, the common plan included gaining and exercising control over the civilian population of Sierra Leone in order to prevent or minimize resistance to the geographic control of the three Accused and others, and to use members of the population to provide support to the members of the joint criminal enterprise. It is the Prosecution's theory that the common plan either directly involved the commission of the crimes alleged against the three Accused or that the full extent of the crimes was a reasonably foreseeable consequence of that plan.

462. The key players in the joint criminal enterprise during the relevant time frame included those named in the Indictment as well as other members of the AFRC and the Revolutionary United Front (RUF) who shared the common design throughout. It is not alleged that *every* member of the AFRC and *every* member of the RUF was necessarily a member of the joint criminal enterprise.

⁷³⁷ *Kordić and Čerkez* Appeal Judgment, para. 34 (quoting *Blaškić* Appeal Judgment, para. 91).

⁷³⁸ *Tadić* Appeal Judgement, para. 190; *Vasiljević* Appeal Judgement, para. 95; *Prosecutor v. Milutinović et al.*, IT-99-37-AR72, “Decision on Dragoljub Ojdanić’s Motion Challenging Jurisdiction—Joint Criminal Enterprise”, Appeals Chamber, 21 May 2003, para. 20.

463. There are three recognized forms of joint criminal enterprise.⁷³⁹ The first category or ‘basic form’ describes cases where all participants, acting pursuant to a common purpose which amounts to or involves the commission of one or more crimes listed in the Statute, share the same criminal intent. The second category, a variant of the first, is also a *basic form*, and applies where the accused has personal knowledge of a concerted system of ill-treatment, as well as the intent to further this concerted system of ill-treatment.⁷⁴⁰ This second category is frequently used to describe concentration camp cases, but can apply in other cases characterized by the existence of an organized system set in place to achieve a common criminal purpose.⁷⁴¹ In such cases, it is necessary to prove that the accused had personal knowledge of the system and the intent to further the system; it is less important to prove that there was a more or less formal agreement between all the participants than to prove their involvement in the system.⁷⁴² On a proper analysis, the first and second categories may be regarded not as separate ‘categories’ of joint criminal enterprise liability, but merely as two different ways in which an accused can participate in a joint criminal enterprise under the ‘basic form’ of liability.⁷⁴³ The third category or ‘extended form’ describes cases where all participants share the intention to carry out a common design and where the physical perpetrator commits a crime which falls outside the scope of the original design but which is nevertheless a natural and foreseeable consequence of that design.⁷⁴⁴ Regardless of the role played by each participant in the commission of the crime, all of the participants in the joint criminal enterprise are guilty of the same crime.⁷⁴⁵

464. The Trial Chamber accepted in its Decision pursuant to Rule 98⁷⁴⁶ that the Prosecution had specified all three variants of JCE liability in the Indictment⁷⁴⁷ as well as in the Pre-Trial

⁷³⁹ *Tadić* Appeal Judgment, paras 195-226; *Vasiljević* Appeals Judgment, paras 96-99.

⁷⁴⁰ *Prosecutor v. Milorad Krnojelac*, IT-97-25-A, “Judgement”, 17 September 2003, (“*Krnojelac Appeal Judgement*”), para. 32.

⁷⁴¹ *Ibid*, para. 89.

⁷⁴² *Ibid*, para. 96.

⁷⁴³ See *Prosecutor v. Stakić*, IT-97-24-T, “Judgement,” 31 July 2003, (“*Stakić Trial Judgement*”), para. 435 (“A person may *participate* in a joint criminal enterprise *in various ways*: (i) by personally committing the agreed crime as a principal offender; (ii) by assisting or encouraging the principal offender in committing the agreed crime as a co-perpetrator who shares the intent of the joint criminal enterprise; (iii) *by acting in furtherance of a particular system in which the crime is committed by reason of the accused's position of authority or function and with knowledge of the nature of that system and intent to further it*” (emphasis added).

⁷⁴⁴ *Vasiljević* Appeals Judgment, para. 99.

⁷⁴⁵ *Vasiljević* Appeals Judgment, paras 110-111; *Blagojević and Jokić* Trial Judgment, para. 702.

⁷⁴⁶ *Brima* Decision on Motion for Acquittal, para. 323 and 326.

⁷⁴⁷ Indictment, paras 33-35.

Brief.⁷⁴⁸ The Indictment is indeed clear in alleging all three categories, as it specifically states that the crimes “alleged in this indictment, including unlawful killings, abductions (...) were either actions within the joint criminal enterprise or were a reasonably foreseeable consequence of the joint criminal enterprise”⁷⁴⁹ Accordingly, the three Accused are specifically alleged to have acted pursuant to a basic (*within*) or alternatively extended (*foreseeable*) joint criminal enterprise with respect to the acts charged.⁷⁵⁰

465. The Prosecution submits that all three variants of JCE may be applicable to the facts proven at trial and that the Trial Chamber may rely on the variant or variants of JCE liability which it concludes best fit the facts of this case.⁷⁵¹

466. The following elements establish liability as a co-perpetrator in a joint criminal enterprise:⁷⁵²

- i. A plurality of persons;
- ii. The existence of a common plan, design or purpose which amounts to or involves the commission of a crime listed in the Statute; and
- iii. The participation of the accused in the execution of the common plan;
- iv. Shared intent to commit a crime in furtherance of the common plan, or personal knowledge of a system of ill-treatment and intent to further the criminal purpose of the system;
- v. Where the crime charged was a natural and foreseeable consequence of the execution of the enterprise, participation in the enterprise with the awareness that such a crime was a possible consequence of its execution and willingly taking the risk that the crime might occur.⁷⁵³

⁷⁴⁸ Pre-Trial Brief, para. 209? ****

⁷⁴⁹ Indictment para. 34.

⁷⁵⁰ See further Prosecutor v. Krnojelac, IT-97-25, “Judgment”, 15 March 2002, (“Krnojelac Trial Judgment”) para. 84, where the Prosecution only alleged that the Accused acted “in concert” with others and the Trial Chamber subsequently interpreted the “words ‘in concert with’ to connote acting pursuant to a basic joint criminal enterprise.”

⁷⁵¹ Cf. Kupreškić Trial Judgement, para. 745-746.

⁷⁵² Prosecutor v. Kvočka, IT-98-30/1-T, “Judgement”, 2 November 2001, (“Kvočka Trial Judgement”), para. 266; See also Tadić Appeal Judgement, para. 227.

⁷⁵³ Brđanin Trial Judgement, para. 265; see also Tadić Appeal Judgement, para. 228; Stakić Appeal Judgment, paras 64-65.

PLURALITY OF PERSONS

467. A joint criminal enterprise can be large or more restricted in size. In the *Karemera* case, the ICTR Appeals Chamber confirmed that it would be incorrect to suggest that liability can arise only from participation in enterprises of limited size or geographical scope.⁷⁵⁴ In the case of a large scale joint criminal enterprise, the participants may change over a period of time, with new members joining, and some persons ceasing to be members.
468. There is no requirement that the plurality of persons be organized in a military, political or administrative structure⁷⁵⁵ and membership in the enterprise may be fluid so long as the common aim remains constant.⁷⁵⁶ Identification of a perpetrator by category is sufficient if the precise identity is not known.⁷⁵⁷ For example, it has been found that a “group including the leaders of political bodies, the army, and the police who held power in the Municipality of Prijedor” was a plurality of persons, meeting the first element of JCE.⁷⁵⁸

COMMON PURPOSE

469. It is necessary to demonstrate the existence of a common plan, design or purpose which amounts to or involves the commission of one or more crimes listed in the Statute. While the aim of defeating the enemy and regaining control of territory is not in itself a criminal aim, if the plan *involves* the commission of crimes against civilians in order to achieve that aim, liability may be invoked under the doctrine of JCE.
470. There is no need for the Prosecution to establish that the common plan, design or purpose was expressly or formally agreed between the various members of the joint criminal enterprise, or previously arranged or formulated.⁷⁵⁹ Furthermore, the understanding or arrangement may be an unspoken one. In other words, it is only necessary that the person

⁷⁵⁴ *Prosecutor v Karemera*, “Decision on Jurisdictional Appeals: Joint Criminal Enterprise”, 12 April 2006, para. 16. See also *Krajisnik* Trial Judgment, para. 876.

⁷⁵⁵ *Vasiljević* Appeal Judgment, para. 100.

⁷⁵⁶ *Brđanin* Trial Judgement” para. 261; *Tadić* Trial Judgement para. 227; *Blagojević and Jokić* Trial Judgment, paras 700-701.

⁷⁵⁷ *Kvočka* Trial Judgment para. 266; *Tadić* Appeal Judgment, para. 227; *Prosecutor v. Rasevic*, IT-97-25/1-PT, “Decision regarding Defence Preliminary Motion on the Form of the Indictment”, Trial Chamber, 28 April 2004, para. 47; *Prosecutor v. Stojan Zupljanin*, IT-99-36-I, “Second amended Indictment”, October 2004.

⁷⁵⁸ *Prosecutor v Stakić*, Appeal Judgment, para. 69.

⁷⁵⁹ *Krajisnik* Trial Judgment, para. 883.

have a tacit common state of mind with other members of the joint criminal enterprise, which may be inferred from all the circumstances. The existence of such a common plan, design or purpose may be established by circumstantial evidence, and may be inferred from all the evidence.⁷⁶⁰ In particular, the common plan, understanding or agreement may be inferred merely “from the fact that a plurality of persons acts in unison to put the plan into effect or from other circumstances.”⁷⁶¹ For instance, it has been said that “[w]here the act of one accused contributes to the purpose of the other, and both acted simultaneously, in the same place and within full view of each other, over a prolonged period of time, the argument that there was no common purpose is plainly unsustainable.”⁷⁶²

471. While the physical perpetrator of crimes will often be a member of the enterprise, it is well-established that persons, such as leaders, who may be more removed from the *actus reus* of a crime are not immune from liability. Senior leaders necessarily divide tasks up amongst each other and use the means at their disposal, such as armies, to execute the common plan. A commander may use the forces under his control, while another participant makes inflammatory speeches and yet another provides political support. Therefore, it has been held that a JCE may exist even if none or only some of the physical perpetrators are part of the enterprise if they are procured by members of the enterprise to commit crimes which further the common plan.⁷⁶³ In an interlocutory decision in the *Ojdanic* case, Judge Bonomy considered the question of the membership of the physical perpetrator in the JCE in some detail and concluded in relation to the ICTY/R case law that:

it is not inconsistent with the jurisprudence of the Tribunal for a participant in a JCE to be found guilty of commission where the crime is perpetrated by a person or persons who simply act as an instrument of the JCE, and who are not shown to be participants in the JCE. There is certainly no binding

⁷⁶⁰ *Prosecutor v. Blagoje Simić*, IT-95-9-T, “Judgement”, 17 October 2003, para. 158; *Prosecutor v. Mitar Vasiljević*, IT-98-32-T, “Judgement”, 29 November 2002, para. 66; *Krnojelac* Trial Judgement, para. 80, footnote 236; *Prosecutor v. Anto Furundžija*, IT-95-17/1-A, “Judgement”, (“*Furundžija Appeals Judgement*”), 21 July 2000, para. 119; *Krnojelac* Appeal Judgement, paras. 81, 96.

⁷⁶¹ *Tadić* Appeal Judgement, para. 227; *Krnojelac* Trial Judgement, para. 80.

⁷⁶² *Furundžija Appeals Judgment*, para. 120.

⁷⁶³ *Krajisnik* Trial Judgment, para. 883.

decision of the Appeals Chamber that would prevent the Trial Chamber from finding an accused guilty on that basis.⁷⁶⁴

472. In the case of the second category of joint criminal enterprise, the emphasis is on the accused's knowledge of the system and intent to further that system. It is not necessary to prove an agreement between the accused and the physical perpetrators of the crimes, however it must be shown that the accused knew of the system and agreed to it.⁷⁶⁵
473. In the case of a large scale joint criminal enterprise, the participants may change over a period of time, with new members joining, and some persons ceasing to be members. A new and distinct joint criminal enterprise may come into existence if the objective of the enterprise changes, such that the objective is fundamentally different in nature and scope from the original plan. The members of the new joint criminal enterprise may be the same, or alternatively it may be that only some of the original members joined the new enterprise.⁷⁶⁶

PARTICIPATION OF THE ACCUSED

474. Participation in a joint criminal enterprise 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 purpose.⁷⁶⁷ Presence at the scene of the crime is not required.⁷⁶⁸ The accused's contribution need not have been substantial or necessary to the achievement of the objective of the enterprise.⁷⁶⁹ "Provided the agreed crime is committed by one of the participants in the joint criminal enterprise, all the participants are equally guilty of the crime regardless of the role each played in its commission".⁷⁷⁰
475. An accused's contribution to the JCE may take different forms, but a sufficient contribution is clearly made when an accused physically or directly perpetrates a serious

⁷⁶⁴ *Prosecutor v Milutinovic et al.*, "Decision on Ojdanic's Motion Challenging Jurisdiction: Indirect Co-Perpetration", 22 March 2006, para. 13.

⁷⁶⁵ *Kvočka* Appeal Judgment, para. 118; *Krnojelac* Appeal Judgment, para. 97.

⁷⁶⁶ *Blagojević and Jokić* Trial Judgment, paras 700-701.

⁷⁶⁷ *Stakić* Appeal Judgment, para. 64.

⁷⁶⁸ *Kvočka* Appeal Judgment, paras 112-113.

⁷⁶⁹ *Krajisnik* Trial Judgment, para., 883.

⁷⁷⁰ *Krnojelac* Trial Judgment, para. 82.

crime that advances the goal of the criminal enterprise, or when a person in a position of authority or influence knowingly fails to protest against the commission of such crimes.⁷⁷¹

In the specific context of the second category of JCE liability, the *actus reus* focuses on the accused's participation in the enforcement of a system of ill treatment or repression. The necessary participation can be inferred from, among other factors, the position and functions of the accused.⁷⁷²

SHARED INTENT

476. As set out by this Trial Chamber, the shared intent in the first form of criminal enterprise exists where the accused possesses the intent to commit a crime in furtherance of the common plan.⁷⁷³ This intent to commit a crime can exist even when the accused does not personally commit the crime but nevertheless intends this result.⁷⁷⁴

477. The shared intent to commit crimes in furtherance of the common plan may be inferred from the evidence. When reliance is placed on the state of mind of an accused by inference, that inference must be the only reasonable inference available on the evidence.⁷⁷⁵ Shared intent may, and often will, be inferred from knowledge of the plan and participation in its advancement.⁷⁷⁶

478. However, if the Trial Chamber is not satisfied that the Accused shared the state of mind required for the commission of the crimes charged pursuant to a joint criminal enterprise, it may nevertheless consider the Accused's responsibility as an aider or abettor.⁷⁷⁷

479. Regarding the second type of JCE, the *Tadić* Judgement stressed that the *mens rea* element comprised: "(i) knowledge of the nature of the system and (ii) the intent to further the common concerted design to ill-treat the inmates."⁷⁷⁸ Personal knowledge of the system of ill treatment can be proven by express testimony or by reasonable inference from the

⁷⁷¹ *Kvočka* Trial Judgment, para. 309.

⁷⁷² *Kvočka* Trial Judgment, para. 272; *Kvočka* Appeal Judgment, para. 101.

⁷⁷³ *Brima* Decision on Motion for Acquittal, para. 311.

⁷⁷⁴ *Tadić* Appeal Chamber Judgment, para. 196; *Brđjanin* TCJ para. 264.

⁷⁷⁵ *Vasiljević* Appeals Judgment, para. 120.

⁷⁷⁶ *Kvočka* Trial Judgment, para. 271.

⁷⁷⁷ *Vasiljević* Trial Judgment, paras 68-69.

⁷⁷⁸ *Tadić* Appeals Chamber Judgement, para. 203; *Krnojelac* Appeal Judgment, para. 89; *Kvočka* Trial Judgment, para. 311.

accused's position of authority.⁷⁷⁹ The ICTY Appeals Chamber has also stated that the required criminal intent does not require the accused's personal satisfaction, enthusiasm, or personal initiative in contributing to the joint criminal enterprise.⁷⁸⁰

CRIMES AS A NATURAL AND FORESEEABLE CONSEQUENCE

480. For the application of third category joint criminal enterprise liability, it is necessary to prove that: (a) crimes that were not intended as part of the implementation of the common purpose occurred; (b) these crimes were a natural and foreseeable consequence of effecting the common purpose and (c) the participant in the joint criminal enterprise was aware that the crimes were a possible consequence of the execution of the common purpose, and in that awareness, he nevertheless acted in furtherance of the common purpose.⁷⁸¹ The crime must be shown to have been foreseeable to the particular accused.⁷⁸² Although it has been held until now that more than negligence is required, liability attaches where the risk was both a predictable consequence of the execution of the common design and the accused was either *reckless* or *indifferent* to that risk.⁷⁸³

DISTINCTION BETWEEN LIABILITY PURSUANT TO A JCE AND AIDING AND ABETTING

481. An aider and abettor carries out acts directed to assist, encourage, or lend moral support to the perpetration of a specific crime and this support has a substantial effect on the perpetration of that crime, while a co-perpetrator in a joint criminal enterprise performs acts which are in some way directed to the furtherance of the common objective through the commission of crimes.⁷⁸⁴ An aider and abettor has knowledge that his acts assist the commission of a specific crime, while the co-perpetrator in a joint criminal enterprise intends to achieve the common objective.⁷⁸⁵ In the context of a crime committed by several co-perpetrators in a joint criminal enterprise, the aider and abettor is always an

⁷⁷⁹ *Tadić* Appeal Judgment, para. 228.

⁷⁸⁰ *Kvočka* Appeal Judgment, para. 106.

⁷⁸¹ *Stakić* Appeal Judgment, para. 87.

⁷⁸² *Tadić* Appeal Judgment, para. 220.

⁷⁸³ *Tadić* Appeal Chamber Judgment para 204, 220, 228.

⁷⁸⁴ *Tadić* Appeal Judgment, para. 229.

⁷⁸⁵ *Tadić* Appeal Judgment, para. 229.

accessory to these co-perpetrators, although the co-perpetrators may not even know of the aider and abettor's contribution.⁷⁸⁶ Where this occurs, the accused will be criminally responsible for aiding and abetting all of the crimes that were committed in the course of that joint criminal enterprise.⁷⁸⁷ When, however, an accused participates in a crime that advances the goals of the criminal enterprise, it is often reasonable to hold that his form of involvement in the enterprise amounts to that of a co-perpetrator.⁷⁸⁸

⁷⁸⁶ *Tadić* Appeal Judgment, para. 229.

⁷⁸⁷ *Tadić* Appeal Judgment, para. 229.

⁷⁸⁸ *Prosecutor v. Miroslav Kvočka, Milojica Kos, Mlado Radic, Zoran Zigic, Dragoljub Prcać*, IT-98-30/1-T, 2 November 2001, Judgment, Trial Chamber, at para. 284.

VII. LIABILITY OF THE THREE ACCUSED FOR CRIMES COMMITTED DURING THE JUNTA PERIOD 25 MAY 1997 – 13 FEBRUARY 1998

JOINT CRIMINAL ENTERPRISE

482. The Prosecution submits that on the evidence presented in relation to the Junta period, the Trial Chamber should be satisfied beyond a reasonable doubt of the guilt of the three Accused for the crimes committed in Kono; the specific crimes of unlawful killings, physical violence and abductions and forced labour in Kenema District; and unlawful killings, looting and burning in Bo District, pursuant to the theory of joint criminal enterprise.

PLURALITY OF PERSONS

483. Members of the AFRC, including Brima, Kamara and Kanu, and members of the RUF, including Issa Hassan Sesay, Morris Kallon and Augustine Gbao participated in the joint criminal enterprise. The key players in the enterprise during the Junta period included those named in the Indictment as well as other members of the AFRC and RUF, who shared the common design throughout despite shifts in the emphasis on participation in criminal acts by the two groupings. The three Accused all participated in the Coup on 25 May 1997 and were appointed to senior positions within the AFRC government. The RUF were invited to share power almost immediately, resulting in a plurality of persons belonging to both groups in the government, holding key decision-making authority.

COMMON PLAN

484. Throughout the Junta period, there was an armed conflict in Sierra Leone between, on the one hand, forces of the Junta and, on the other, forces of ECOMOG, CDF (including Kamajors) and SLAs who had remained loyal to the Kabbah Government. The common aim of the Accused, together with other members of the AFRC and RUF, was to use any means necessary to retain political power and control over the territory of Sierra Leone, including through the commission of crimes within the jurisdiction of the Special Court.

Controlling the diamond wealth of the country as a source of revenue for the Junta and eliminating all perceived opposition formed part of that plan. The plan, design or purpose amounted to an organized system to terrorize the civilian population into submission and ensure its political and practical support for the Junta through forced labour, killings and serious physical and mental injury. There was at the time a widespread and systematic attack against the civilian population in Sierra Leone.

485. The existence of the plan may be inferred from all the evidence of a widespread and consistent pattern of crimes committed in Kono, Kenema and Bo Districts. The only means to consolidate and retain control of the population was through the commission of crimes.

486. The Accused were members of the Supreme Council of the AFRC Government, which acted as both a legislative and executive body. The Accused were referred to as honourables.⁷⁸⁹ The First and Second Accused were given senior positions within the Supreme Council as Public Liaison Officers.⁷⁹⁰ As such, they were responsible for several ministries within the AFRC government from 25 May 1997 to February 1998. During that time all three Accused attended regular Supreme Council meetings along with high level members of the RUF, at which issues concerning the governance of the country were discussed, including but not limited to: diamond mining, use of civilians for mining, and the extensive looting and pillaging being carried out by both soldiers of the AFRC and rebels of the RUF.⁷⁹¹ The Supreme Council carried out the day-to-day functions of government, including the issuing of decrees and proclamations.⁷⁹² There were ministerial positions⁷⁹³ and military commanders.⁷⁹⁴ The Sierra Leonean Army was under the control of the Supreme Council and had soldiers stationed in Makeni, Kenema, Bo and, later,

⁷⁸⁹ TF1-334, TF1-019, TF1-301; see also Exhibit P69, "Minutes dated 23 January 1998 of meeting of AFRC Supreme Council held on 9 December 1997."

⁷⁹⁰ TF1-334, TF1-184, TF1-167, TF1-114. See also Exhibit P.5.2, AFRC Decree setting out the duties of PLOs, and Exhibit P6 giving the names of AFRC Council Secretariat members, including the names of the three Accused.

⁷⁹¹ TF1-334, TF1-046.

⁷⁹² See Exhibits P4, P5.1, P5.2, P5.3, P6, P7, P8, P9 and P10.

⁷⁹³ Witness TF1-334, TT 17 May 2005, pp. 16-17.

⁷⁹⁴ Witness TF1-334, TT 17 May 2005, pp. 18-22.

Kailahun, Daru and Tongo.⁷⁹⁵ The Supreme Council was the most senior body of the AFRC government and oversaw law and decision-making in Sierra Leone.⁷⁹⁶

487. The evidence demonstrates that the three Accused and other members of the AFRC worked together with or alongside members of the RUF in order to achieve their shared objectives. Not only were all three Accused participants in the coup d'état which deposed the elected government of Tejan Kabbah, but they were also instrumental in establishing the AFRC, along with other members of the coup d'état.⁷⁹⁷ The members of the coup placed a former Sierra Leone Army ("SLA") officer, Johnny Paul Koroma, in charge of the new administration and once the RUF had accepted the invitation to share in the political power, the two groups set about securing their control and power over Sierra Leone.⁷⁹⁸
488. The spokesman of the RUF, Eldred Collins, underscored the joining of the two groups and of the affiliated individuals in a public broadcast. He articulated the purpose of the joint enterprise by explaining the aims and objectives of the Junta government in working together to defend the motherland of Sierra Leone.⁷⁹⁹
489. As a demonstration of the implementation of the common plan, the evidence shows that the SLA and RUF worked and mined together in Kono.⁸⁰⁰ Mines monitoring officers were appointed and the evidence is that civilians were forced to mine.⁸⁰¹ An AFRC/RUF secretariat was established in Kenema Town and opposition was eliminated during an operation in Kenema in December 1997 in which persons accused of supporting the Kamajors were killed.⁸⁰² People were forced to mine and beaten for failing to comply with AFRC/RUF instructions.⁸⁰³ Civilians were killed during operations in Bo in search of Kamajors, their supporters and others who refused to align with the AFRC Government.

⁷⁹⁵ Witness TF1-334, TT 17 June 2005, p. 53.

⁷⁹⁶ Gibril Massaquoi, TT 11 October 2005, p. 104 and 7 October 2005, p. 72.

⁷⁹⁷ See Exhibit P37, Security Council Resolution 1132, concerning Sierra Leone and the AFRC, 8 October 1997.

⁷⁹⁸ TF1-334, Transcript 16 May 2005, pp. 44-45; Gibril Massaquoi, TF1-046, Transcript 7 October 2005, pp. 46-48.

⁷⁹⁹ TF1-334, Transcript 16 May 2005, p. 54.

⁸⁰⁰ TF1-334, Transcript 17 May 2005, p. 53.

⁸⁰¹ TF1-334, Transcript 17 May 2005, p. 53.

⁸⁰² TF1-122, Transcript 24 June 2005, pp. 33-34, 35-49, 104.

⁸⁰³ See e.g. TF1-045, Transcript 19 July 2005, 55.

PARTICIPATION OF THE ACCUSED IN THE COMMON PLAN

490. The three Accused contributed to the achievement of the common design through their positions as integral and senior members of the Supreme Council, which was governing the country from 25 May 1997 to 13 February 1998 and under whose administration diamond mining was organized.
491. The First Accused oversaw diamond mining in Kono,⁸⁰⁴ appointed Mines Monitoring Officers⁸⁰⁵ and reports were sent to him about occurrences there.⁸⁰⁶ The Third Accused also went to Koidu Town during the Junta period and held meetings with Sam Bockarie, senior commander of the RUF.⁸⁰⁷
492. While Sam Bockarie apparently exercised some control over the Eastern territories, he was not in complete control of Kenema. Furthermore, he had been ordered by Foday Sankoh to take commands from Johnny Paul Koroma during the relevant time period.⁸⁰⁸
493. The Prosecution notes the time frame of the unlawful killings in Kenema: 25 May 1997 to 19 February 1998, this being the period of the AFRC government. The evidence clearly demonstrates that at the time of the crimes alleged, the rebel presence in Kenema was a combination of RUF and AFRC troops. The First Accused was in Tongo and was introduced as a high ranking member of the AFRC government in charge of the mining.⁸⁰⁹
494. The crimes in Bo District were similarly committed while each of the three Accused was an integral and senior member of the Supreme Council. They attended AFRC Supreme Council meetings and accessed minutes thereof. By virtue of their positions of power and activities during the Junta period, the three Accused assisted in putting the forced mining program into effect and implemented strategies to terrorize the civilian population where support for the AFRC/RUF was felt to be lacking. In view of their position of authority or influence, they had the power to protest against the commission of crimes but knowingly failed to do so.

⁸⁰⁴ TF1-334, Transcript 17 May 2005, pp. 52-53; George Johnson, Transcript 15 September 2005, p. 21.

⁸⁰⁵ TF1-153, Transcript 22 September 2005, p. 18.

⁸⁰⁶ TF1-153, Transcript 22 September 2005, pp. 22-23.

⁸⁰⁷ TF1-019, Transcript 30 June 2005, pp. 85-86, 100-101.

⁸⁰⁸ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, pp.46-48.

⁸⁰⁹ TF1-045, Transcript 19 July 2005, p. 39.

SHARED INTENT

495. The Prosecution submits that the shared intent to commit crimes in furtherance of the common plan may be inferred from the evidence of a system of forced mining and attacks against civilians. The Prosecution submits that the only reasonable conclusion on the evidence is that the three Accused all shared the intent to perpetrate the crimes committed during the Junta period.
496. The crimes committed during the Junta period cannot possibly have been isolated, unrelated acts. This inference may be drawn, *inter alia*, from the commonality of the perpetrators (in some cases the crimes were committed by members of the RUF, in some cases by members of the AFRC forces, and in some cases by members of both acting together), the commonality in the way that the crimes were committed, the commonality in the purpose for which the crimes were committed and the fact that the crimes were committed over a wide geographic area throughout the period of the Junta rule.

CRIMES AS A NATURAL AND FORESEEABLE CONSEQUENCE

497. Alternatively, based upon the evidence of the common design, it was foreseeable that the full extent of the crimes, even if not agreed upon, would be committed and the Accused, with that awareness, nevertheless acted in furtherance of the plan. The Prosecution submits that physical violence and killings would be foreseeable consequences of the implementation of a system of forced mining even if such acts were not intended as part of the common plan.

INDIVIDUAL CRIMINAL RESPONSIBILITY UNDER ARTICLE 6(1) OF THE STATUTE

Planning, Instigating and Aiding and Abetting

498. During the relevant period, each of the three Accused held a significant position in the AFRC/RUF Junta and was an integral member of the Supreme Council which at that time was governing the country. They attended AFRC Supreme Council meetings and accessed minutes thereof, where issues were raised including looting, raping, harassment of the civilian population in Freetown and diamonds.

The First Accused: Alex Tamba Brima, aka Gullit

499. As can be concluded from the Prosecution and other evidence adduced above (both oral and documentary) in the face of the lies of the First Accused during his own testimony it is clear that the First Accused was known either as Alex Tamba Brima or Tamba Alex Brima, that his nickname was Gullit, and that he was one of the coup plotters who overthrew the Kabbah Government in May 1997.
500. The evidence further shows that as a reward for his role in overthrowing the Kabbah Government, he and the other 17 coup plotters were referred to as honourables and given a position on the AFRC Council, which over a short period of time became known as the Supreme Council. The Supreme Council was the most important governing body in Sierra Leone.
501. The First Accused, as one of the leaders of the Coup, was appointed as PLO 2, and was only beneath Johnny Paul Koroma, SAJ Musa and Abu Sankoh, aka Zagallo, in the Junta hierarchy. In this role, he had numerous ministries under his supervision and as such played a key role in the government. Through his position as PLO 2, he was able to wield power and authority over soldiers and officers higher in rank than himself on the basis of his position as an honourable and the military concept of position superseding rank.
502. The evidence shows that the First Accused played a full role in the AFRC government. He regularly attended Supreme Council meetings where government policies were discussed and articulated, which were thereafter passed on to the Secretaries of State for implementation through SAJ Musa who was the Chief Secretary.
503. The First Accused knew full well that the AFRC Government, through its various secretariats in both Kenema and Kono, were forcing civilians to mine on behalf of the AFRC Government. He personally visited these sites and received reports from the mining monitoring officers. The First Accused in particular was in contact with Eddie Kanneh, the Resident Minister for the East, and the AFRC Secretariats in both Kono and Kenema. Even when the Intervention occurred, the First Accused was in Kono monitoring the mining.

504. The First Accused intended or knew that the policy of the AFRC was to force civilians to mine, as diamond mining had been identified as one of only three potential main sources of income for the AFRC Government. The First Accused knew, through his attendance at Supreme Council meetings (where he received reports from the relevant secretaries of state and brigade commanders, either directly or through SAJ Musa) that it was a policy to eliminate all opposition to the AFRC Government. Particularly, the First Accused was in contact with Eddie Kanneh, the Resident Minister for the East, as well as the AFRC Secretariats in both Kono and Kenema.

505. The Prosecution submits that the First Accused is liable for planning and instigating or otherwise aiding and abetting the crime of enslavement in Kenema and Kono, as well as killings and other crimes committed during the Junta period. In concert with other members of the Supreme Council, the First Accused planned that civilians would be forced to mine in order to meet the needs of the Junta. This is evident from the First Accused's activities in Kono and the pattern of forced mining in Kono and Kenema. The only possible inference on the evidence is that the First Accused intended that civilians would be deprived of their liberty. Alternatively, or in addition, the First Accused prompted others, through the mines monitoring officers, to commit the crime of enslavement and is therefore liable for instigating. Alternatively, the First Accused is liable for aiding and abetting the crime of enslavement. His presence in Kono was designed to assist in the organization of the diamond mining. Forced mining was so widespread that the only possible inference, in view of his position of authority, is that he actively encouraged it. Reports were sent to him by TF1-153, and thus there can be no doubt that he was aware that his actions or omissions would assist the direct perpetrators in the commission of the crime. Similarly, the First Accused knew that it was a policy to eliminate all opposition to the AFRC and actively encouraged this policy.

The Second Accused: Brima Bazy Kamara, aka Bazy

506. The same evidence above for the First Accused applies equally to the Second Accused in relation to his role as a coup plotter, honourable, member of the Supreme Council and PLO 3, being under only the First Accused.

507. The Second Accused did not contradict the First Accused's evidence during his own cross examination of the First Accused. In his Pre-Trial Brief, the Second Accused stated that he was in custody when the Coup took place.⁸¹⁰ However, he did not produce a single witness to give evidence to this effect at trial.
508. As PLO 3, the Second Accused was beneath only Johnny Paul Koroma, SAJ Musa, PLO 1 and the First Accused in the Junta hierarchy. Like the First Accused, he had numerous ministries under his supervision and, like the First Accused, attended Supreme Council meetings. The only reasonable inference is that he must have known about the policies of the AFRC Government, which included forced mining. As with the First Accused, his position as an honourable and PLO meant that his position superseded his rank.
509. No evidence has come before this Trial Chamber that the Second Accused was too unwell to fulfil his role as PLO 3 and indeed, numerous Defence witnesses knew the Second Accused as PLO 3,⁸¹¹ as being an honourable,⁸¹² and being a member of the Supreme Council of the AFRC Government.⁸¹³
510. No explanation has been given before this Chamber why an 'other ranks' soldier like the Second Accused held the positions of Honourable, PLO 3, or was a member of the Supreme Council.
511. The only logical inference based on the evidence of the Prosecution (both oral and documentary) was that the Second Accused was one of the leaders of the Coup that overthrew the Kabbah Government, and that such prestigious and powerful positions were given to him as a reward for his role in installing the AFRC Government under Johnny Paul Koroma.
512. The Prosecution submits that the Second Accused is liable for planning and instigating or otherwise aiding and abetting the crime of enslavement in Kenema and Kono, as well as killings and other crimes committed during the Junta period. In concert with other

⁸¹⁰ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-148, "Kamara – Defence Pre-Trial Brief," 21 February 2005, para. 10.

⁸¹¹ DBK-012, Transcript 5 October 2006, p. 80; DBK-129, Transcript 9 October 2006, pp. 60-63; DBK-005, Transcript 5 October 2006, p. 36; Accused Alex Tamba Brima, Transcript 3 July 2006, p. 41.

⁸¹² DBK-117, Transcript 16 October 2006, pp. 28-30; DAB-063, Transcript 2 August 2006, p. 61; DBK-005, Transcript 12 October 2006, p. 9.

⁸¹³ DBK-005, Transcript 12 October 2006, p. 18; TRC-01, Transcript 16 October 2006, p. 104.

members of the Supreme Council, the Second Accused planned that civilians would be forced to mine in order to meet the needs of the Junta. This is evident from the pattern of forced mining in Kono and Kenema. The only possible inference on the evidence is that the Second Accused intended that civilians would be deprived of their liberty. Alternatively, or in addition, the Second Accused prompted others, through his position of authority, to commit the crime of enslavement and is therefore liable for instigating. Alternatively, the Second Accused is liable for aiding and abetting the crime of enslavement. Forced mining was so widespread that the only possible inference, in view of his role on the Supreme Council, is that he actively encouraged it. Similarly, the Second Accused knew that it was a policy to eliminate all opposition to the AFRC and actively encouraged this policy.

Third Accused: Santigie Kanu, aka Five-Five

513. The same evidence above for the First Accused applies equally to the Third Accused in relation to him being a coup plotter, honourable, and member of the Supreme Council.
514. The Third Accused did not contradict the First Accused's evidence during his own cross-examination of the First Accused.
515. As a member of the Supreme Council, the Third Accused was only beneath Johnny Paul Koroma, SAJ Musa, and the 3 PLOs in the Junta hierarchy. Like the First Accused, the Third Accused attended Supreme Council meetings, and the only reasonable inference is that he must have known about the policies of the AFRC Government, which included forced mining in both Kono and Kenema. As with the First Accused, the Third Accused's position as an honourable and Supreme Council member meant that his position superseded his rank.
516. Based on all of the evidence, the only reasonable inference is that the Third Accused knew of the use of civilians for forced mining in Kono, as according even to a Defence witness, he visited Koidu Town and addressed a hall of dignitaries and youth about issues affecting Koidu Town.⁸¹⁴

⁸¹⁴ DAB-042, Transcript 15 September 2006, pp. 89, 95-98.

517. No evidence has come before this Trial Chamber that the Third Accused was too unwell to fulfil his role as an honourable and member of the Supreme Council. Indeed, numerous Defence witnesses knew the Third Accused as being an honourable⁸¹⁵ and being a member of the Supreme Council of the AFRC Government.⁸¹⁶
518. No explanation has been given before this trial why an 'other ranks' soldier like the Third Accused held the positions of honourable and Supreme Council member.
519. The only logical inference based on the evidence of the Prosecution (both oral and documentary) was that the Third Accused was one of the leaders of the Coup that overthrew the Kabbah Government, and such prestigious and powerful positions were given to him as a reward for his role in installing the AFRC Government under Johnny Paul Koroma.
520. The Prosecution submits that the Third Accused is liable for planning and instigating or otherwise aiding and abetting the crime of enslavement in Kenema and Kono, as well as killings and other crimes committed during the Junta period. In concert with other members of the Supreme Council, the Third Accused planned that civilians would be forced to mine in order to meet the needs of the Junta. This is evident from the pattern of forced mining in Kono and Kenema. The only possible inference on the evidence is that the Third Accused intended that civilians would be deprived of their liberty. Alternatively, or in addition, the Third Accused prompted others, through his position of authority, to commit the crime of enslavement and is therefore liable for instigating. Alternatively, the Third Accused is liable for aiding and abetting the crime of enslavement. Forced mining was so widespread that the only possible inference, in view of his role on the Supreme Council, is that he actively encouraged it. Similarly, the Third Accused knew that it was a policy to eliminate all opposition to the AFRC and actively encouraged this policy.

⁸¹⁵ DAB-059, Transcript 27 September 2006, p. 89; DBK-012, Transcript 6 October 2006, p. 50; DBK-117, Transcript 16 October 2006, pp. 28-30; DAB-063, Transcript 2 August 2006, p. 61; DBK-005, Transcript 5 October 2006, p. 36; Accused Alex Tamba Brima, Transcript 3 July 2006, p. 41.

⁸¹⁶ DAB-063, Transcript 2 August 2006, p. 62; DBK-005, Transcript 12 October 2006, p. 19; TRC-01, Transcript 16 October 2006, p. 104.

SUPERIOR RESPONSIBILITY (ARTICLE 6(3) OF THE STATUTE)

521. The Prosecution submits that in the light of all the evidence, coupled with the high level of authority possessed by the three Accused during the period of Junta rule, all three Accused bear responsibility pursuant to Article 6(3) of the Statute for the crimes committed during this period. Political leaders, such as the three Accused, if they *de facto* constitute part of the chain of command, can incur liability under Article 6(3).
522. The evidence set out above establishes the power and authority of the Supreme Council of which all three Accused were members. The Supreme Council met regularly, and had control over the police and political authority over the military. The three Accused and other members of the Supreme Council collectively clearly had the material ability to prevent offences or to punish those subordinates responsible for committing crimes. Evidence of this ability is contained in the response to the looting problem in Freetown and the establishment of the Western Area Security Patrol.⁸¹⁷ There is no evidence that steps were taken to prevent or punish forced mining, indeed, the evidence is that forced mining amounted to a government policy or was at least tolerated.
523. The evidence of Supreme Council meetings, the presence of the military at those meetings, and the reporting structure establishes that the three Accused knew or had reason to know that their subordinates were about to commit criminal acts or had already done so. The pattern of similar offences and, in particular, the First Accused's presence in Kono reinforces this assertion.
524. The three Accused and other members of the Supreme Council collectively had a number of means at their disposal to prevent the offences or punish the perpetrators. Indeed, through the Supreme Council their ability to put in place law enforcement structures was unlimited.

⁸¹⁷ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 85.

VIII. JUNTA PERIOD: 25 MAY 1997 – 13 FEBRUARY 1998 – CRIME-BASES

DIAMOND MINING IN KONO DISTRICT

525. The AFRC Junta gained and exercised power and control over the diamond mining areas of Sierra Leone in the period of their rule. Following the coup, former SLA-deployments gave the AFRC strong footholds in various parts of the country including in Koidu town and Kenema town.⁸¹⁸ Diamond mining was carried out in Kono District and in Tongo, Kenema District, by RUF and SLA members working together⁸¹⁹ for and under the AFRC administration, ultimately the Supreme Council. Revenue from diamonds was one of the main sources of income for the Junta.⁸²⁰ Defence witnesses do support the Prosecution case that SLA/RUF worked and mined together in Kono.⁸²¹

526. SAJ Musa headed the AFRC's mining unit.⁸²² He assigned the First Accused to oversee the diamond mining in Kono.⁸²³ Abu Sankoh was also responsible for supervising mining in his position as PLO 1 with responsibility for mineral resources.⁸²⁴ Both Kono and Kenema are in the Eastern Province and therefore also fell under the supervision of Secretary of State East Captain Eddie Kanneh.⁸²⁵ SAJ Musa, the First Accused and Sankoh were of all members of the Supreme Council.

527. The Chamber heard evidence from, in particular, two Prosecution insider witnesses closely involved in the diamond mining in Kono and Kenema Districts.⁸²⁶

⁸¹⁸ Exhibit P57, No Peace Without Justice Conflict Mapping Report, 10 March 2004, p. 31.

⁸¹⁹ TF1-334, Transcript 17 May 2005, pp. 53-54.

⁸²⁰ Exhibit P34, Minutes of an Emergency Council Meeting of the AFRC held at State House on Monday 11th August 1997, 16 August 1997, para. 7. The aim of this meeting was to discuss the general financial position of the country (para. 2).

⁸²¹ DAB-100, Transcript 28 September 2006, pp. 127-128; DAB-101, Transcript 12 September 2006, pp. 75, 100-101; DAB-113, Transcript 7 September 2006, p.123; DAB-122, Transcript 18 September 2006, pp. 82 & 89.

⁸²² Exhibit P93, Clipping from The Pool newspaper, 11 July 1997, entitled "The Full AFRC Cabinet", front and back pages, under main heading "The Full AFRC Cabinet", "Captain SAJ Musa – Secretary of Mineral Resources and Chief Secretary"; Exhibit P84, Press Release entitled Security Council Committee on Sierra Leone Releases List of Junta Members Affected by Sanctions, 28 January 1998, at (26) "Musa, Solomon A. J. / Captain Chief Secretary of State & Secretary of State, Lands Mines and the environment".

⁸²³ TF1-334, Transcript 17 May 2005, pp. 52-53; George Johnson, TF1-167, Transcript 15 September 2005, p. 21. Johnson testified that Brima was sent to Kono by Major Johnny Paul Koroma.

⁸²⁴ Exhibit P93, Clipping from The Pool newspaper, 11 July 1997, entitled "The Full AFRC Cabinet", front and back pages.

⁸²⁵ TF1-334, Transcript 17 May 2005, pp. 52-53.

⁸²⁶ TF1-153, Transcripts 22-23 September 2005; TF1-045, Transcript 19-22 July 2005.

528. TF1-153 gave evidence that he was sent to Kono by SAJ Musa and the First Accused as Mines Monitoring Officer.⁸²⁷ There were about 20 to 30 mines monitoring officers in Kono. TF1-153's responsibility was to oversee the people who were mining for diamonds,⁸²⁸ to act as a watchdog for the government ensuring that those who had licences to mine were working within their "terms of reference."⁸²⁹ He was based in Koidu Town.⁸³⁰

529. The First Accused would come and go from Kono during the time that TF1-153 was working there, and TF1-153 would report to him what was going on in Koidu Town.⁸³¹ The Third Accused also came to Koidu Town during the Junta period and through his position as an honourable and member of the Supreme Council was able to address the dignitaries of Koidu Town in the community centre. It is the case of the Prosecution that whilst meeting senior figures in Koidu Town it would have been almost impossible for the Third Accused not to know that forced mining was taking place in Koidu Town and other parts of Kono.⁸³²

530. The mining in Kono was supervised by both SLA and RUF soldiers, with civilians carrying out the mining.⁸³³ Defence witness DAB-113 testified that military men took over his mining place in Paema in Kono District.⁸³⁴ Defence witnesses support the Prosecution case that the SLA/RUF soldiers forced civilians to mine for them.⁸³⁵ In view of evidence that SLA/RUF worked and mined together in Kono, the evidence of DAB-039 that only the RUF forced civilians to mine should be rejected.⁸³⁶

531. TF1-153 saw Mosquito in Kono on three to five occasions. On the first occasion, he and the First Accused introduced the new mines monitoring officers, including the witness, to the people in the town hall in Kono.⁸³⁷ TF1-019 testified that Mosquito and "Honourable

⁸²⁷ TF1-153, Transcript 22 September 2005, p. 18.

⁸²⁸ TF1-153, Transcript 22 September 2005, p. 19.

⁸²⁹ TF1-153, Transcript 22 September 2005, p. 21.

⁸³⁰ TF1-153, Transcript 22 September 2005, p. 19.

⁸³¹ TF1-153, Transcript 22 September 2005, pp. 22-23.

⁸³² DAB-042, Transcript 15 September 2006, p. 89.

⁸³³ TF1-334, Transcript 17 May 2005, p. 53.

⁸³⁴ DAB-113, Transcript 7 September 2006, p.102.

⁸³⁵ DAB-122, Transcript 18 September 2006, p.89; DAB-113, Transcript 7 September 2006, pp. 123-124; DAB-101, Transcript 12 September 2006, pp. 75, 80, 101-102.

⁸³⁶ DAB-039, Transcript 5 September 2006, p.95.

⁸³⁷ TF1-153, Transcript 23 September 2005, p. 60.

Five-Five" would occasionally lodge in Koidu Town on Sahr Lebbie Street.⁸³⁸ They would both come and go from Koidu Town.⁸³⁹

532. There was a two pile system in operation in Koidu Town: meaning that miners would distribute into two piles, one for the government and one for the owner licence-holder.⁸⁴⁰

533. The mining sites became very dangerous during the time the witness was in staying in Koidu Town. He reported to his senior mines managing officer, Mr. Kawawa Jallow, that he would see dead bodies by the side of the pit. This was communicated to SAJ Musa in Freetown and had been reported by witness TF1-153 to the First Accused.⁸⁴¹

DIAMOND MINING IN KENEMA DISTRICT

534. The Prosecution submits that clearly, during the AFRC period, diamond mining in Tongo came under the AFRC control. According to Witness TF1-062, Tongo was under AFRC control from August 1997 until around January 1998.⁸⁴² From the evidence of Witness TF1-045, the arrival in Kenema of AFRC soldiers and the mining activities started even before August 1997. According to Witness TF1-045, he left Monrovia in the third week of June 1997⁸⁴³ and went to Kenema where he stayed for two to three weeks⁸⁴⁴ before proceeding to Tongo to mine.⁸⁴⁵ He spent three months in Tongo⁸⁴⁶ and left at the end of September 1997.⁸⁴⁷

535. Supreme Council member Sam Bockarie was in overall command of both Kenema and Tongo.⁸⁴⁸ He had men involved in mining for him personally in Tongo, and they reported directly to him.⁸⁴⁹ Other commanders also were involved in "personal" mining.⁸⁵⁰

⁸³⁸ TF1-019, Transcript 30 June 2005, pp. 87-88.

⁸³⁹ TF1-019, Transcript 30 June 2005, pp. 87-88.

⁸⁴⁰ TF1-153, Transcript 22 September 2005, p. 22.

⁸⁴¹ TF1-153, Transcript 22 September 2005, pp. 22-25.

⁸⁴² TF1-062, Transcript 27 June 2005, pp. 7-8, 37-38. TF1-062 testified that the troops left in the Muslim month of Ramadan.

⁸⁴³ TF1-045, Transcript 21 July 2005, p. 76-77.

⁸⁴⁴ TF1-045, Transcript 19 July 2005, pp. 33-34.

⁸⁴⁵ TF1-045, Transcript 19 July 2005, p. 34.

⁸⁴⁶ TF1-045, Transcript 19 July 2005, p. 38.

⁸⁴⁷ TF1-045, Transcript 21 July 2005, p. 81.

⁸⁴⁸ TF1-045, Transcript 21 July 2005, p. 85.

⁸⁴⁹ TF1-045, Transcript 19 July 2005, p. 35.

536. Separately, there was an AFRC mining programme⁸⁵¹ in Tongo involving both RUF and SLA⁸⁵² commanders.

537. SLA Captain Yamao Kati was commander in Tongo in charge of a company of over 200 mixed "AFRC"/RUF soldiers deployed to Tongo to fight the Kamajors, and also to carry out mining. When Sam Bockarie was in Kenema, Kati would report and give information to him, although he in fact worked under the Brigade (East).⁸⁵³

538. Hundreds of civilians were used to carry out the mining in Tongo.⁸⁵⁴ Civilians were organised by a civilian administration called the AFRC Secretariat. In Tongo, SLA Staff Sergeant Junior Sheriff was in charge of the AFRC Secretariat.⁸⁵⁵ When a civilian found a diamond at the mining site, it would be handed over ultimately to Eddie Kanneh, the Resident Minister in Kenema, or sent to Freetown.⁸⁵⁶

539. Committees⁸⁵⁷ of civilians escorted by armed AFRC fighters were formed to "collect" civilians by force to be handed over to the Secretariat. The civilians were guarded so that they would not escape. When they were captured, they were undressed, their shoes removed, and sometimes they were tied one to the other.⁸⁵⁸ They worked at the mining sites under gunpoint.⁸⁵⁹ Civilians were forced to mine: if they refused to do so they were beaten, tortured or killed.⁸⁶⁰

540. TF1-045 returned to Tongo in about December 1997 when he carried out personal mining on behalf of RUF Mike Lamin (Commander B).⁸⁶¹ The AFRC remained in control of Tongo at this time. Kati had died and the AFRC Commander was Captain Jalloh, an

⁸⁵⁰ TF1-045, Transcript 21 July 2005, pp. 7-8.

⁸⁵¹ TF1-045, Transcript 21 July 2005, p. 8.

⁸⁵² Note that witness TF1-045 referred frequently in his evidence to "AFRC" meaning "SLA" soldiers. Having said this, he also gave evidence that since the 1997 coup, there was no distinction between AFRC and RUF because everyone became the AFRC, Transcript 21 July 2005, pp. 91.

⁸⁵³ TF1-045, Transcript 19 July 2005, pp. 35-39; 42-43; Transcript 20 July 2005, p. 62. Transcript 21 July 2005, p. 84.

⁸⁵⁴ TF1-045, Transcript 19 July 2005, pp. 47-48. TF1-045 estimates that about 300-500 people were mining in Tongo at this time.

⁸⁵⁵ TF1-045, Transcript 19 July 2005, pp. 45-46; TF1-334, Transcript 17 May 2005, pp. 54-55.

⁸⁵⁶ TF1-045, Transcript 19 July 2005, pp. 53-55.

⁸⁵⁷ Committee members also received a commission on diamonds valued by them for the AFRC/RUF, TF1-045, Transcript 21 July 2005, pp. 88-89.

⁸⁵⁸ TF1-045, Transcript 19 July 2005, pp. 48-51.

⁸⁵⁹ TF1-045, Transcript 19 July 2005, p. 52.

⁸⁶⁰ TF1-045, Transcript 19 July 2005, p. 55. Witness saw two incidents of killings of civilians in Tongo, Transcript 21 July 2005, pp. 9-17.

⁸⁶¹ TF1-045, Transcript 19 July 2005, p. 75.

“AFRC.”⁸⁶² Even for the personal mining, TF1-045 was given 10 to 15 civilians for his use every day.⁸⁶³ TF1-045 continued mining in Tongo in January 1998, until the Kamajor attacks became too frequent, and he left for Kenema. Resident Minister Eddie Kanneh was also in Kenema at this time.⁸⁶⁴

POLICY TO ELIMINATE ALL OPPOSITION TO THE AFRC GOVERNMENT

541. It was a policy of the AFRC government to eliminate all opposition to it. That policy was shared by all of those in Government, SLAs and RUF, and was shared by all members of the Supreme Council, including the three Accused. The AFRC Government ordered, as a matter of policy, attacks on villages like Tikonko, in Bo, which supported the former SLPP Government.

542. For example, TF1-053 describes AFRC soldiers abusing SLPP members and eventually burning down the SLPP building in Bo Town.⁸⁶⁵ On another occasion in Gerihun, TF1-054 attended a meeting with Kamajors, local students, and AFRC representatives including Mike Lamin and Gbao.⁸⁶⁶ The AFRC delegation said they wanted to join forces with the Kamajors. Instead, soldiers started shooting outside,⁸⁶⁷ attacked the Vice President’s house with an RPG,⁸⁶⁸ and killed Chief Demby.⁸⁶⁹ The clear message sent by these attacks was that “you are either for us or against us,” with elimination being the consequence of resistance.

⁸⁶² TF1-045, Transcript 19 July 2005, p. 76.

⁸⁶³ TF1-045, Transcript 19 July 2005, p. 78.

⁸⁶⁴ TF1-045, Transcript 19 July 2005, pp. 78-79.

⁸⁶⁵ TF1-053, Transcript 18 April 2005, pp. 98-99.

⁸⁶⁶ TF1-054, Transcript 19 April 2005, pp. 86-87.

⁸⁶⁷ TF1-054, Transcript 19 April 2005, p. 88.

⁸⁶⁸ TF1-054, Transcript 19 April 2005, p. 89.

⁸⁶⁹ TF1-054, Transcript 19 April 2005, pp. 92-93.

THE CRIMES: KENEMA DISTRICT 25 MAY 1997-19 FEBRUARY 1998

COUNTS 1 – 2

543. The evidentiary basis for the crimes charged in Counts 3 to 14 of the Indictment as set out below, taken as a whole, provides the evidentiary basis for the acts of terrorism charged as Count 1 and the collective punishments charged as Count 2.

COUNTS 3 – 5: UNLAWFUL KILLINGS

544. Both Prosecution and Defence evidence shows that during the AFRC/RUF government (May 1997 – February 1998), there was established an AFRC/RUF secretariat in Kenema Town.⁸⁷⁰ Eddie Kanneh was Secretary of State East for the AFRC. Sam Bockarie, aka Mosquito, was also present.⁸⁷¹ The AFRC/RUF were stationed in Kenema town for about nine months, from 25 May 1997 to February 1998.⁸⁷²

545. The Prosecution submits that the AFRC/RUF carried out unlawful killings in Kenema. In December 1997 AFRC/RUF troops in Kenema launched 'Operation No Living Thing' on Kenema Town, in which people were accused of being Kamajors and arrested.⁸⁷³ One man was killed, his belly opened and his intestines stretched across the road at a check point manned by AFRC/RUF.⁸⁷⁴

546. In February 1998, seven civilians, including B. S. Massaquoi and Andrew Quee were arrested and accused of being Kamajor supporters. They were tortured and killed.⁸⁷⁵

547. The Prosecution submits that there was no serious challenge to the Prosecution evidence of unlawful killings in Kenema in cross-examination and the evidence was not disputed by Defence witnesses.⁸⁷⁶ That Defence witness DAB-147 did not witness the killings does

⁸⁷⁰ TF1-122, Transcript 24 June 2005, pp. 5-8; DAB-147, Transcript 3 October 2006, pp.19, 22, 62 & 63.

⁸⁷¹ TF1-122, Transcript 24 June 2005, pp. 7-8; DAB-147, Transcript 3 October 2006, p.23.

⁸⁷² TF1-122, Transcript 24 June 2005, p. 7.

⁸⁷³ TF1-122, Transcript 24 June 2005, pp. 32-33.

⁸⁷⁴ TF1-122, Transcript 24 June 2005, pp. 33-34, 104.

⁸⁷⁵ TF1-122, Transcript 24 June 2005, pp. 35-49

⁸⁷⁶ DAB-033, Transcript 25 September 2006 and 2 October 2006; DAB-147, Transcript 3 October 2006. No where in the evidence of the two Defence Witnesses, did they dispute the Prosecution evidence on killings in Kenema.

not mean they never happened.⁸⁷⁷ The Prosecution evidence should be accepted.

548. The evidence shows that at the time of the Coup, the Kamajors were in control of Tongo Field.⁸⁷⁸ On or about August 1997, Junta soldiers entered Tongo.⁸⁷⁹ The soldiers told the civilians that they had overthrown the government and had now come to Tongo. The soldiers proceeded to loot property and kill civilians who resisted.⁸⁸⁰ Mosquito, who was only briefly in Tongo, called a meeting of civilians in Tongo and addressed them on behalf of the Supreme Council. He stated that the AFRC Government had been established in Freetown and was now in Tongo. He said he was the Vice Chairman and the RUF had been called to join the government.⁸⁸¹
549. The Prosecution submits that in Tongo, during the AFRC/RUF Junta, mining continued under AFRC/RUF control.⁸⁸² Both Prosecution and Defence evidence shows that men of both factions were present and in control of Tongo.⁸⁸³ Control of Tongo mining starting in August 1997 continued until the troops left in January 1999, due to frequent Kamajor attacks.⁸⁸⁴ Civilians who disobeyed orders or stole diamonds were shot and killed.⁸⁸⁵ Anyone refusing to mine would be beaten, tortured, or killed.⁸⁸⁶
550. While acknowledging unlawful killings in Tongo, the Defence sought to attribute the killings to only the RUF faction.⁸⁸⁷ The Prosecution submits that on the basis of the evidence as a whole it cannot reasonably be inferred that while the two factions AFRC/RUF, were both be in control in Tongo, only one faction and not the other, committed crimes. The Prosecution submits that there is evidence that the AFRC also committed unlawful killings in Tongo.

⁸⁷⁷ DAB-147, Transcript 3 October 2006, p.38. The witness kept moving between Tongo and the AFRC Secretariat at Kenema (p.22), which may explain why he was unable to witness any killings.

⁸⁷⁸ TF1-062, Transcript 27 June 2005, p. 6.

⁸⁷⁹ TF1-062, Transcript 27 June 2005, pp. 8-9.

⁸⁸⁰ TF1-062, Transcript 27 June 2005, pp. 11-12.

⁸⁸¹ TF1-062, Transcript 27 June 2005, pp. 14-16.

⁸⁸² TF1-062, Transcript 27 June 2005, pp. 20-21.

⁸⁸³ TF1-045, Transcript 19 July 2005, pp. 38-43; DAB-147, Transcript 3 October 2006, p. 35; DAB-033, Transcript 2 October 2006, p. 109; DAB-063, Transcript 2 August 2006, p. 23.

⁸⁸⁴ TF1-062, Transcript 27 June 2005, pp. 37-38. The witness says that the troops left in the Muslim month of Ramadan. That year's month of Ramadan closely corresponded with January 1998.

⁸⁸⁵ TF1-062, Transcript 27 June 2005, pp. 33-37.

⁸⁸⁶ TF1-045, Transcript 19 July 2005, p. 55 ("If he refused to mine and you are captured, you will be beaten. You will undergo serious torture, if -- and if you are not lucky you will die. They will shoot you with a gun.")

⁸⁸⁷ DAB-147, Transcript 3 October 2006, p. 36.

COUNTS 10 – 11: PHYSICAL VIOLENCE

551. The Prosecution submits that it has led sufficient evidence to prove the use of physical violence in Kenema. In June 1997 a civilian, Bonnie Wailer, was detained by AFRC/RUF soldiers and assaulted before being killed, along with two others.⁸⁸⁸
552. The allegations of physical violence relating to Kenema are further demonstrated by the physical treatment of a number of civilians who were arrested for allegedly betraying the Junta. B.S. Massaquoi, the Kenema Town Council Chairman, Brima Kpaka, a prominent Kenema businessman, Andrew Quee and four others were arrested in February 1998.⁸⁸⁹ They were alleged to be Kamajor supporters.⁸⁹⁰
553. They were detained in the AFRC Secretariat and bore bruises on their faces and hands. They were transferred to the Kenema CID for an investigation, which found no evidence that they supported the Kamajors and recommended their immediate release. They were released, rearrested by the police then transferred to the Junta brigade headquarters. AFRC soldiers beat and kicked B.S. Massaquoi.⁸⁹¹ As already submitted above, these civilians were later killed.
554. The Prosecution submits that there was no serious challenge to the Prosecution evidence of the use of physical violence on civilians in Kenema District in cross-examination, and the evidence was not disputed by Defence witnesses.⁸⁹² That Defence witness DAB-147 did not witness any beatings of civilians by soldiers in Kenema at the time that he was there does not mean that it never happened.⁸⁹³ The Prosecution submits that its evidence should be accepted.

⁸⁸⁸ TF1-122, Transcript 24 June 2005, pp. 18-23.

⁸⁸⁹ TF1-122, Transcript 24 June 2005, p. 35.

⁸⁹⁰ TF1-122, Transcript 24 June 2005, p. 37.

⁸⁹¹ TF1-122, Transcript 24 June 2005, pp. 36-45.

⁸⁹² DAB-033, Transcript 25 September 2006 and 2 October 2006; DAB-147, Transcript 3 October 2006. No where in the evidence of the two Defence Witnesses, did they dispute the Prosecution evidence regarding use of physical violence by AFRC in Kenema.

⁸⁹³ DAB-147, Transcript 3 October 2006, p.38. The witness kept moving between Tongo and the AFRC Secretariat at Kenema (p.22), which may explain why he was unable to witness any beatings.

COUNT 13: ABDUCTIONS AND FORCED LABOUR

555. The Prosecution adduced evidence that about 300-500 people mined under AFRC control in 1997.⁸⁹⁴ The indicia of enslavement were present whenever a “government work day” was announced. The evidence of witness TF1-045 as to the capture at gunpoint, undressing and lining up of civilians at the mining area and the beating and serious torture of civilians refusing to mine⁸⁹⁵ is echoed in the evidence of Witness TF1-062.
556. While the evidence of witness TF1-122 as to civilians reporting that able bodied men were captured and forced to mine diamonds at Tongo Field is hearsay, it is also relevant, admissible and corroborates the direct evidence of both Witness TF1-045 and TF1-062.
557. There is evidence that one of the workmen of witness TF1-062 was beaten when he refused to work. Another civilian who refused to place a bag of gravel in a certain area was shot. On these days no food or equipment was provided and groups of about 20 armed guards from the AFRC were assigned to every group of 100 civilians. Diamonds found on government workdays were handed to the AFRC/RUF commanders and any civilian suspected of stealing diamonds was flogged or killed.⁸⁹⁶
558. The diamonds were weighed at the AFRC secretariat and given to Eddie Kanneh.⁸⁹⁷ Kanneh, Secretary of State East in the AFRC Government, reported to the Supreme Council.⁸⁹⁸
559. The Prosecution submits that its evidence is overwhelming and should be believed. The evidence of Defence witness DAB-033, suggesting that only the RUF engaged in diamond mining and forced people to mine,⁸⁹⁹ is implausible and should be rejected. The claim by Defence witness DAB-147 that he never witnessed AFRC soldiers forcing civilians to mine⁹⁰⁰ is untruthful and should be rejected. That the witness did not witness the forced mining does not mean it never happened. In any case, the witness was in Tongo for a very

⁸⁹⁴ TF1-045, Transcript 19 July 2005, p. 47.

⁸⁹⁵ TF1-045, Transcript 19 July 2005, pp. 49-55.

⁸⁹⁶ TF1-062, Transcript 27 June 2005, pp. 27-37.

⁸⁹⁷ TF1-045, Transcript 19 July 2005, pp. 54-55.

⁸⁹⁸ TF1-334, Transcript 17 May 2005, pp. 16-17; TF1-114, Transcript 14 July 2005, p. 127.

⁸⁹⁹ DAB-033, Transcript 25 September 2006, pp. 43-45, 59.

⁹⁰⁰ DAB-147, Transcript 3 October 2006, p. 38.

limited period of time and may well not have been in a position to witness the forced mining.⁹⁰¹

THE CRIMES: BO DISTRICT 1 JUNE 1997-30 JUNE 1997

COUNTS 1 – 2

560. The evidentiary basis for the crimes charged in Counts 3 to 14 of the Indictment as set out below, taken as a whole, provides the evidentiary basis for the acts of terrorism charged as Count 1 and the collective punishments charged as Count 2.

COUNTS 3 – 5: UNLAWFUL KILLINGS

Tikonko

561. The Prosecution submits that it has led sufficient evidence of unlawful killings by the AFRC in both Tikonko and Gerihun. In June 1997, about 200 armed soldiers invaded Tikonko. The civilians believed it was to kill the Kamajors in Bumpe and Tikonko.⁹⁰² Five civilians were shot at Tikonko Junction.⁹⁰³ More civilians were killed in Tikonko, including women and children. One of the women killed had her belly slit open. One of the men killed had skin removed from his forehead.⁹⁰⁴ Twenty civilian corpses were buried in the town.⁹⁰⁵

562. The Prosecution evidence of unlawful killings is corroborated by Defence witness DAB-137, who however, does not know who was responsible for the attack on Tikonko.⁹⁰⁶ The Prosecution evidence that AFRC soldiers committed the unlawful killings therefore remains substantially undisputed and should be believed.

⁹⁰¹ DAB-147, Transcript 3 October 2006, p.22. The witness went to Tongo only twice and stayed 2-3 days.

⁹⁰² TF1-004, Transcript 23 June 2005, p. 12.

⁹⁰³ TF1-004, Transcript 23 June 2005, p. 13.

⁹⁰⁴ TF1-004, Transcript 23 June 2005, pp. 19-26.

⁹⁰⁵ TF1-004, Transcript 23 June 2005, pp. 30.

⁹⁰⁶ DAB-137, Transcript 3 October 2006, pp. 12-13.

Gerihun

563. In June 1997, delegates from Freetown, including Mike Lamin had arrived in Gerihun to speak with the Village Chiefs and Kamajors of Gerihun about uniting with the AFRC. Lamin's proposal was rejected.⁹⁰⁷ The Prosecution has led sufficient evidence to prove that Junta soldiers then entered a hotel in Bo Town looking for Chief Demby and Kamajors.⁹⁰⁸ They were told that he was in Gerihun.⁹⁰⁹
564. On 26 June 1997 uniformed and armed soldiers entered Gerihun. Some of the men entered the house of Paramount Chief Demby and killed him and others.⁹¹⁰ The only Defence witness who testified about the death of Paramount Chief Demby merely heard⁹¹¹ about his death and does not know who killed him.⁹¹²
565. The Prosecution submits that the time frame of the unlawful killings in Bo is critical. The evidence demonstrates that these events took place in June 1997 – about one month after the coup that installed the AFRC government. That the SLA and AFRC were working together in Bo District is evidenced by the involvement of both RUF (Mike Lamin and Augustine Gbao) and AFRC (Boisy Palmer, A. F. Kamara, and A. B. Kamara) personnel.⁹¹³ The evidence is also clear that those responsible for the attack on Gerihun reported directly to the Supreme Council.⁹¹⁴ This, the Prosecution submits, is a prime example of the Junta Government eliminating any potential opposition.
566. In view of the cogent Prosecution evidence in support of unlawful killings in Gerihun by the AFRC, the evidence of Defence witness DAB-138 that he did not witness or hear anything being done by the military and that it was the Kamajors who were killing people in Bo,⁹¹⁵ is untruthful and should be rejected.

⁹⁰⁷ TF1-054, Transcript 19 April 2005, pp. 87-88.

⁹⁰⁸ TF1-054, Transcript 19 April 2005, pp. 81-84.

⁹⁰⁹ TF1-054, Transcript 19 April 2005, pp. 86-88.

⁹¹⁰ TF1-053, Transcript 18 April 2005, pp. 105-111; TF1-054, Transcript 19 April 2005, pp. 91-94.

⁹¹¹ DAB-137, Transcript 2 October 2006, pp. 126-127.

⁹¹² DAB-137, Transcript 3 October 2006, pp. 11-13.

⁹¹³ TF1-054, Transcript 19 April 2005, pp. 78, 87, 92-93.

⁹¹⁴ TF1-334, Transcript 17 May 2005, pp. 2-8. Mike Lamin was a member of the Supreme Council and a delegate of this body to the meeting in Bo. Both Mike Lamin and Gbao attended the meeting in Gerihun, and they announced themselves as a delegation from Freetown; TF1-054, Transcript 19 April 2005, p. 87.

⁹¹⁵ DAB-138, Transcript 19 October 2006, pp.42-44.

COUNT 14: LOOTING AND BURNING

567. The evidence shows that the attacks on Bo Town occurred during the time of the AFRC government. The Prosecution submits that the attack on Tikonko was by the AFRC and it was motivated by the presence of Kamajors in the town.⁹¹⁶ The soldiers sang that the people of Tikonko would know them that day.⁹¹⁷

568. Both Prosecution and Defence evidence shows that during the attack houses in the village were burnt.⁹¹⁸ The Defence evidence shows that there was also looting.⁹¹⁹ The Prosecution submits that the AFRC committed the looting and burning. The only Defence witness who testified about crimes committed in Tikonko did not know who attacked the village and committed the crimes.⁹²⁰ The Prosecution therefore submits that the Prosecution evidence should be accepted.

⁹¹⁶ TF1-004, Transcript 23 June 2005, pp.5-7.

⁹¹⁷ TF1-004, Transcript 23 June 2005, p. 16.

⁹¹⁸ TF1-004, Transcript 23 June 2005, p. 28; DAB-137, Transcript 2 October 2006, p.128.

⁹¹⁹ DAB-137, Transcript 3 October 2006, p.12.

⁹²⁰ DAB-137, Transcript 3 October 2006, p.12.

IX. POST-INTERVENTION PERIOD: FROM 13 FEBRUARY 1998 UNTIL JUNE 1999

WITHDRAWAL FROM FREETOWN AFTER THE INTERVENTION

569. It is pertinent to note that, rather than imploding from within due to infighting between the two factions, the Junta continued in power until it was forcefully removed by ECOMOG and troops loyal to former President Kabbah on around 13th February 1998.
570. Even then, the AFRC Government did not go easily. They fought a three or four day battle against superior ECOMOG forces supported by air power in and around Freetown, before finally withdrawing in a disorganised manner after they had ran desperately short of ammunition.⁹²¹
571. Col. Iron testified that the AFRC faction initially retreated from Freetown in a chaotic fashion.⁹²² It is however the case of the Prosecution that even though the retreat was in disarray the Joint criminal enterprise between the two factions remained intact.
572. Early signs of this can be seen at Masiaka when Johnny Paul Koroma ordered Operation Pay Yourself over the BBC as the troops fled Freetown.⁹²³ Almost simultaneously from Kenema Sam Bockarie, aka Mosquito ordered Operation Pay Yourself.⁹²⁴
573. These announcements by the respective leaders of the SLA and RUF led to widespread looting in and around Masiaka⁹²⁵ and Kenema,⁹²⁶ by both SLAs and RUF, as the groups headed towards the relative safety of Kono and Kailahun.
574. At Masiaka, senior SLA commanders were present including the Second and Third Accused.⁹²⁷ Senior RUF commanders at Masiaka included Issa Sesay and Superman.⁹²⁸ At Masiaka it can be seen that the SLA and RUF were still working together when SAJ Musa organised a meeting and put together a joint SLA /RUF operation to rescue family

⁹²¹ TF1- 334, Transcript 17 May 2005, p. 68

⁹²² Exhibit P36, Military Expert Witness Report on the Armed Forces Revolutionary Council by Col. Richard Iron, August 2005, C2.2

⁹²³ TF1-334, Transcript 17 May 2005, pp. 72-73

⁹²⁴ TF1-045, 19 July 2005, p. 82

⁹²⁵ TF1-334, 17 May 2005, p. 74.

⁹²⁶ TF1-045, 22 July 2005, p. 11; 19 July 2005, pp. 82-83.

⁹²⁷ TF1-334, Transcript 17 May 2005, pp. 69-71.

⁹²⁸ TF1-184, Transcript 26 September 2005, p. 90.

members of SLAs and RUFs who had been stranded in Bo after they were driven out by the Kamajors.⁹²⁹ The subsequent operation was led by A.F.Kamara (SLA) and Issa Sesay (RUF).⁹³⁰

575. At Masiaka all honourables were promoted to the rank of colonel/brigadier general,⁹³¹ and thus retained senior command positions in the bush. It is the case of the Prosecution that on the basis of position superseding rank, the AFRC hierarchy prior to the intervention continued in the jungle after the intervention. Namely, the chain of command was: Johnny Paul Koroma, followed by SAJ Musa, followed by the three PLOs and finally the honourables.
576. From Makeni the Second Accused joined SAJ Musa in Kabala, where SAJ Musa was in command of the troops. At Kabala SAJ Musa called a meeting that was attended by the Second Accused and Superman.⁹³² It was decided at this meeting that the SLAs and RUF should capture Kono and claim international recognition, and that Johnny Paul Koroma should be collected from his village to go with them.⁹³³
577. At Kabala Mosquito was eager to know about the life of Chairman Johnny Paul Koroma and regularly contacted Superman over the Radio to get particulars. Mosquito wanted the Koroma to come to Kailahun.⁹³⁴
578. It is the case of the Prosecution that command and control was gradually being restored within the SLA and RUF troops from Masiaka onwards, although along the lines of separate chains of command. Full command was finally restored at Makeni, after Johnny Paul Koroma had addressed the troops at a muster parade.⁹³⁵
579. It is notable that senior members of both the SLA (the Second and Third Accused) and RUF (Issa Sesay, Morris Kallon and Superman) leadership were all present when Johnny

⁹²⁹ TF1-167, Transcript 15 September 2005, pp. 27-28; TF1-334, 17 May 2005, pp. 74-75.

⁹³⁰ TF1-167, Transcript 15 September 2005, p. 27-28.

⁹³¹ TF1-167, Transcript 15 September 2005, pp.27-28.

⁹³² TF1-167, Transcript 15 September 2005, pp. 30-31.

⁹³³ TF1-334, Transcript 17 May 2005, pp. 82-83.

⁹³⁴ TF1-334, Transcript 17 May 2005, p. 85.

⁹³⁵ TF1-334, Transcript 17 May 2005, p. 87

Paul Koroma addressed the muster parade.⁹³⁶ The two factions were therefore both still working together at this point.

580. Johnny Paul Koroma largely reiterated SAJ Musa's plan at Kabala to move to Kono and make a defensive stronghold in the East.⁹³⁷ En route to Kono Sewafe was burnt down on Johnny Paul Koroma's orders⁹³⁸ and civilians were also abducted to carry things for the troops.⁹³⁹

THE CAPTURE OF KOIDU TOWN IN MID-FEB 1998

581. The RUF and SLAs jointly attacked Koidu Town. After an initial rebuff by a Kamajor ambush, the joint SLA/RUF force finally captured Koidu Town around the end of February 1998.⁹⁴⁰ Superman was in command of the attack whilst the Second Accused was his deputy.⁹⁴¹
582. Once Koidu Town was captured on Johnny Paul Koroma's arrival he became commander of all forces in Kono with Issa Sesay as the senior most RUF man on the ground, followed by Superman.⁹⁴²
583. Due to the belief that civilians had betrayed them to the ECOMOG in Freetown and the Kamajors in Kono, Johnny Paul Koroma ordered that Kono should be a "civilian no go area", so that any civilian who refused to join them should be executed.⁹⁴³ Johnny Paul Koroma also said that all civilian houses should be burned down in Koidu Town to stop any civilian from settling there. Issa Sesay reinforced what Johnny Paul Koroma had said about the civilians. Johnny Paul Koroma's order was followed and the civilians were forced out of Koidu Town and their houses were burned down.⁹⁴⁴

⁹³⁶ TF1-334, Transcript 17 May 2005, pp. 86-87

⁹³⁷ TF1-334, Transcript 17 May 2005, p. 87

⁹³⁸ TF1-334, Transcript 17 May 2005, p. 93

⁹³⁹ TF1-334, Transcript 17 May 2005, pp. 91-92

⁹⁴⁰ TF1-334, Transcript 17 May 2005, pp. 102-103

⁹⁴¹ TF1-167, Transcript 15 September 2005, p. 31

⁹⁴² TF1-334, Transcript 17 May 2005, pp. 116-117

⁹⁴³ TF1-334, Transcript 18 May 2005, pp. 3-5

⁹⁴⁴ TF1-334, Transcript 18 March 2005, pp. 5-9

584. Johnny Paul Koroma said that it was vital that Kono should be defended because they would be able to acquire diamonds to fund their movement.⁹⁴⁵ Johnny Paul Koroma announced his intention to go to Kailahun and then on to Liberia, Burkina Faso and Libya to purchase arms and ammunition which could be sent to Kono via Kailahun.⁹⁴⁶
585. Before leaving for Kailahun, Johnny Paul Koroma had a meeting with Superman, Morris Kallon and the Second Accused whereby it was agreed that the SLAs would be under the command of the RUF in Kono. After about a week in Kono, Johnny Paul Koroma left with Issa Sesay, Morris Kallon, Mike Lamin, Akim, and SLA Rambo to join Sam Bockarie in Kailahun.⁹⁴⁷
586. After Johnny Paul Koroma left for Kono, the Second Accused automatically became the top SLA commander in Kono, based on his position as the most senior AFRC Supreme Council member present in Kono at that time.⁹⁴⁸ Superman was the overall commander in Kono and was based at Dabundeh Street in Koidu Town. He was deputised by the Second Accused, who was based with the other SLAs at Masingbi Road.⁹⁴⁹
587. Superman had a radio set in Debundeh Street, which allowed him to keep in contact with Mosquito, who was his overall commander and based in Kailahun.⁹⁵⁰ Initially, the SLA commanders such as Hassan Papah Bangura, aka Bomblast could use the radio in Dabundeh Street; for instance, evidence was given that Hassan Papah Bangura spoke to Issa Sesay.⁹⁵¹ Even after the confusion between the SLAs and RUF arose in Kono after Morris Kallon shot two SLAs, the SLAs were still able to freely monitor the radio set.⁹⁵²
588. Superman decided on the command structure for the defence of Kono in the presence of the Second and Third Accused, Momoh Derty and Morris Kallon.⁹⁵³ In Kono the troops were divided into battalions. Battalion commanders included Saidu Kambulai (aka Baski),

⁹⁴⁵ TF1-334, Transcript 18 May 2005, p. 6

⁹⁴⁶ TF1-334, Transcript 18 May 2005, p. 6

⁹⁴⁷ TF1-334, Transcript 18 May 2005, pp. 18-19

⁹⁴⁸ TF1-334, Transcript 18 March 2005, pp. 21-22

⁹⁴⁹ TF1-334, Transcript 18 March 2005, p. 24; TF1-167, 15 September 2005, p. 38

⁹⁵⁰ TF1-334, Transcript 18 March 2005, pp. 24-25

⁹⁵¹ TF1-334, Transcript 18 March 2005, p. 36

⁹⁵² TF1-334, Transcript 19 May 2005, p. 3

⁹⁵³ TF1-167, Transcript 15 September 2005, pp. 35-36

Saidu Mansafari (aka Tito), and Savage.⁹⁵⁴ Some battalions were mixed RUF and SLA whilst others were mainly either all SLA or RUF.⁹⁵⁵

589. The SLA HQs was based at Masingbi Road where the Second Accused, Hassan Papah Bangura, George Johnson (aka Junior Lion) and other SLAs were based.⁹⁵⁶

590. The SLA had battalions under their command at Jagbwema Fama; Tombodu Town, Sewafe, Yengema, and Woama.⁹⁵⁷

591. RUF commanders based in Kono under Superman included Komba Gbundema at Yomandu, Rambo at Gandorhun, Col. Issac Mongor, Col. David Vandy, Lt. Col. Emmanuel Williams (aka Rocky).⁹⁵⁸

592. Through radio communications the SLAs and RUF were ordered to conduct operations by Sam Bockarie. These operations were carried out jointly. For example, on one occasion when Mosquito was sending ammunition from Kailahun to the SLAs and RUF in Kono, both the SLAs and RUF were ordered by Mosquito to clear Koidu Geiya so that the ammunition could be received. This was done.⁹⁵⁹

593. On another occasion Mosquito warned the SLAs/RUF in Kono that the ECOMOG troops had advanced towards Njaiama Sewafe and were heading towards Koidu Town. Mosquito wanted Kono to be a stronghold for the Junta forces so he ordered the SLAs and RUF to destroy Sewafe Bridge in order to block the ECOMOG advance to Koidu Town.⁹⁶⁰ Attempts were made to do this.⁹⁶¹

594. It is the case of the Prosecution that the SLAs and the RUF were working together in Kono, through their own separate commanders and chains of command, in order to achieve the joint objective of securing Kono so that they could exploit its diamond resources in order to fund their movement to eventually recapture Freetown.

⁹⁵⁴ TF1-167, Transcript 15 September 2005, p. 38.

⁹⁵⁵ TF1-334, Transcript 19 May 2005, pp. 17-26.

⁹⁵⁶ TF1-334, Transcript 19 May 2005, pp. 26-27.

⁹⁵⁷ TF1-334, Transcript 19 May 2005, pp. 17-26.

⁹⁵⁸ TF1-334, Transcript 19 May 2005, pp. 31-47.

⁹⁵⁹ TF1-334, Transcript 18 May 2005, pp. 29-31.

⁹⁶⁰ TF1-334, Transcript 18 May 2005, pp. 31-34.

⁹⁶¹ TF1-334, Transcript 20 May 2005, pp. 51-53.

595. The Prosecution submits that the first signs of this clear strategic objective can be inferred from the fact that after the Accused left Kono in mid-May 1998 and reported to SAJ Musa, they were ordered by SAJ Musa to find a base in the north. The order to find such a base is a clear indication that once the SLAs and RUF had established themselves in the East their ultimate aim was to head north back to Freetown.
596. The Prosecution accepts that the First Accused was not in Kono when it was retaken by the joint SLA/RUF force in late February 1998. It is the case of the Prosecution that the First Accused fled Kono shortly before the intervention in the face of threatened Kamajor attacks.
597. It is the case of the Prosecution that the First Accused fled towards Guinea with diamonds which he had acquired through his role as PLO 2, supervising diamond mining in Kono together with his securities.⁹⁶²
598. The Prosecution accepts that Johnny Paul Koroma was humiliated by Sam Bockarie when he reached Kailahun, was stripped of his diamonds and sent to Kangama where he essentially remained under house arrest until after the Freetown invasion
599. It is the case of the Prosecution, however, that Johnny Paul Koroma's humiliation at the hands of Sam Bockarie was before the First Accused was stripped of his diamonds and that the First Accused was not present when Johnny Paul Koroma had his diamonds taken from him under the orders of Sam Bockarie.
600. With regard to the First Accused, it is the case of the Prosecution that he was captured by the RUF at Bedu crossing in Kailahun district whilst attempting to flee to Guinea. Whereupon he was searched and the diamonds which he had stolen whilst in Kono were retrieved from him.⁹⁶³
601. The First Accused may have been subject to some minor maltreatment whilst in Kailahun, however it is the case of the Prosecution that this only lasted for a few days and thereafter the First Accused was back on good terms with Sam Bockarie and the other RUF commanders in Kailahun.

⁹⁶² TF1-045, Transcript 19 July 2005, pp. 98-99.

⁹⁶³ TF1-045, Transcript 19 July 2005, pp. 98-99.

602. It is the case of the Prosecution that the First Accused was sent by Sam Bockarie from Kailahun to Kono, of his own free will no later than the end of April with logistic supplies⁹⁶⁴ for the Second Accused and Superman, with a view to cementing the strained relationship that was existing between the SLAs and RUF in Kono as a result of RUF Morris Kallon shooting two SLAs.⁹⁶⁵
603. Notwithstanding this strained relationship, the SLAs and RUF were still working together in Kono after it was retaken at the end of February under their two separate chains of command, headed respectively by the Second Accused for the SLAs and Superman for the RUF.
604. It is the case of the Prosecution that whilst the Second Accused was working with Superman in Kono, SAJ Musa was based in the Koinadugu Axis, having declined to go to either Kono or Kailahun.⁹⁶⁶
605. The Third Accused was shuttling between SAJ Musa and the Second Accused in order to keep SAJ Musa informed of the developments on the ground in Kono.⁹⁶⁷ This further underlines the cooperation between the RUF and SLAs after the Intervention, whereby SAJ Musa was covering the northern approach to Kono whilst keeping himself informed of developments in Kono.
606. For the crimes committed in the Koinadugu Axis during this period by SLA SAJ Musa and RUF Superman working together please refer to the Koinadugu crime-base section of this brief.
607. For the crimes committed in Kono after the Intervention please refer to the Post-Intervention Period section of this brief.

⁹⁶⁴ TF1-334, Transcript 20 May 2005, pp.44, 50-51.

⁹⁶⁵ TF1-334, Transcript 19 May 2005, pp. 9-14.

⁹⁶⁶ TF1-184, Transcript 27 September 2005, pp. 6-7

⁹⁶⁷ TF1-334, Transcript 18 May 2005, pp. 19-20, Transcript 16 June 2005, p. 37.

SLA WITHDRAWAL TO MANSOFINIA AND ADVANCE TO CAMP ROSOS UNDER THE COMMAND OF THE FIRST ACCUSED

608. Around the end of April/early May, the First Accused arrived in Kono from Kailahun with logistics for the SLA and RUF forces.⁹⁶⁸ The First Accused, based on his position as PLO 2 in the AFRC Government, assumed command from the Second Accused in Kono upon his arrival.⁹⁶⁹ The First Accused called the senior SLAs together at 55 Spot and told them about Johnny Paul Koroma's mistreatment and how the First Accused's diamonds had been taken from him by the RUF.⁹⁷⁰
609. Even Defence witness DAB-039 in his evidence-in-chief heard that Alex Tamba Brima, aka Gullit, was in Kono and telling his troops not to cause havoc. This Defence evidence corroborates the Prosecution claim that the First Accused was commanding troops in the field in Kono.⁹⁷¹
610. Thereafter, under threat from the advancing ECOMOG and Kamajor forces, and bearing in mind their strained relationship with the RUF in Kono, the SLAs under the command of the First Accused withdrew from Kono to Mansofinia via Tombodu and the First Accused's own village of Yarya.⁹⁷² At Tombodu the First and Second Accused came across Savage, the SLA Battalion commander in Tombodu who had already committed a large number of crimes there.⁹⁷³
611. At Mansofinia the First and Second Accused left the troop whilst they travelled to report to SAJ Musa at Mongo Bendugu. Whilst the SLA had been operating together with the RUF in Kono, SAJ Musa (who was the most senior commander after Johnny Paul Koroma) was commanding the SLAs in the Koinadugu Axis.⁹⁷⁴
612. Accordingly, as the most senior commanders in the field, the First and Second Accused reported to SAJ Musa, who ordered them to find a base in the north.⁹⁷⁵ After this meeting the First and Second Accused returned to Mansofinia, where the First Accused was in

⁹⁶⁸ TF1-334, Transcript 19 May 2005, p. 8; Transcript 20 May 2005 pp. 44, 50-51.

⁹⁶⁹ TF1-224, Transcript 19 May 2005, p. 8

⁹⁷⁰ TF1-334, Transcript 19 May 2005, pp. 14-15

⁹⁷¹ DAB-039, Transcript 5 September 2006, pp. 88-89.

⁹⁷² TF1-167, Transcript 15 September 2005, pp. 44-45

⁹⁷³ TF1-167, Transcript 15 September 2005, pp. 45-45

⁹⁷⁴ TF1-184, Transcript 30 September 2005, p. 62

⁹⁷⁵ TF1-334, Transcript 20 May 2005, pp. 82-86

command of the whole troop.⁹⁷⁶ SAJ Musa sent the Third Accused with some soldiers⁹⁷⁷ to join the First Accused's troop at Mansofinia. SAJ Musa had confirmed the First Accused as the commander of the SLAs in Mansofinia.⁹⁷⁸

613. After returning to Mansofinia after meeting SAJ Musa, the First Accused reorganised his troop.⁹⁷⁹ The First Accused announced that he was the Chief of Command and the head of the brigade while promoting himself to the rank of brigadier, the Second Accused was appointed Deputy Chief in Command and a member of the brigade administration and promoted to brigadier, the Third Accused was appointed as Chief of Staff and a member of the brigade administration although he remained a colonel.⁹⁸⁰

614. The brigade was comprised of four companies, each with a company commander who, along with the operation commander (Hassan Papah Bangura) and military supervisors, was responsible to the Third Accused. The brigade administration was responsible for the direct command of the Brigade.⁹⁸¹ Each company had a company supervisor who reported directly to the First Accused.⁹⁸²

615. The brigade structured by the First Accused also had an adjutant, military police commander, regimental sergeant major (RSM), intelligence officer, brigade administrator, task force commander and political advisor.⁹⁸³ The troop had a total strength of about 500.⁹⁸⁴ It is the case of the Prosecution that the brigade as structured by the First Accused was a well-organised and effective military force as it headed north to find a base.

616. TF1-167 was appointed as provost marshal in charge of discipline to ensure that jungle justice was adhered to. Jungle justice involved not stealing government property (e.g. arms, ammunition, medicine) and that there should be no raping during operations. Punishments for breaching jungle justice included flogging or death.⁹⁸⁵

⁹⁷⁶ TF1-334, Transcript 20 May 2005, pp. 86-87

⁹⁷⁷ TF1-334, Transcript 20 May 2005, p. 87-88.

⁹⁷⁸ TF1-334, Transcript 20 May 2005, p. 88

⁹⁷⁹ TF1-167, Transcript 15 September 2005, p. 47-48; TF1-334, Transcript 20 May 2005, p. 87-88.

⁹⁸⁰ TF1-334, Transcript 20 May 2005, pp. 87-101

⁹⁸¹ TF1-334, Transcript 20 May 2005, pp. 87-101

⁹⁸² TF1-334, Transcript 23 May 2005, p. 3-6, 26, 43-44,

⁹⁸³ TF1-334, Transcript 23 May 2005, pp. 27-39

⁹⁸⁴ TF1-334, Transcript 23 May 2005, p. 39

⁹⁸⁵ TF1-167, Transcript 15 September 2005, pp. 48-49

617. The Second Accused was also made G4 in charge of logistics and the Third Accused also appointed G5⁹⁸⁶ in charge of abductees.
618. Tellingly, from Kono to Rosos to Colonel Eddie Town to Freetown, FAT Sesay is always referred to in the evidence of the Prosecution military insiders (TF1-184, TF1-167⁹⁸⁷ and TF1-334⁹⁸⁸) as an administrative officer. Even the evidence of certain Defence witnesses point to the fact that this was FAT Sesay's role within the troop.
619. For example, DAB-033⁹⁸⁹ referred to FAT Sesay as a dull man who was not physically fit in the battlefield and that he was only there to advise. DBK-131 referred to FAT Sesay as keeping the nominal role.⁹⁹⁰ The Prosecution's case is that FAT Sesay was never in command of the troop as the First Accused and some of the Defence witnesses claim, but instead was an administrative officer throughout the time the SLA faction was in the jungle.
620. Before leaving Mansofinia, the First Accused issued orders that any civilian or soldier who attempted to run away would be shot on sight and that any village which repelled an attack should be burned.⁹⁹¹ In addition, he ordered that all strong civilians captured en route were to be made part of the troop.⁹⁹²
621. After leaving Mansofinia the troop passed back through Yarya, which was the First Accused's own village.⁹⁹³ The First Accused had a radio set with him when he left Mansofinia, and initially over the radio he declined Superman's invitation to return to Kono.⁹⁹⁴
622. The Prosecution submits that these regular radio conversations, when possible, between the First Accused and the RUF leadership is a significant piece of evidence of how the two factions were working together.

⁹⁸⁶ TF1-167, Transcript 15 September 2005, p. 50

⁹⁸⁷ TF1-167, Transcript 15 September 2005, p. 41

⁹⁸⁸ TF1-334 Transcript 25 May 2005 p.9; Transcript 23 May 2005, p.32.

⁹⁸⁹ DAB-033, Transcript 25 September 2006, pp 98-99.

⁹⁹⁰ DBK-131, Transcript 26 October 2006, pp. 56-57.

⁹⁹¹ TF1-334, Transcript 23 May 2005, p. 17

⁹⁹² TF1-334, Transcript 23 May 2005, pp. 16-17

⁹⁹³ TF1-167, Transcript 15 September 2005, p. 51

⁹⁹⁴ TF1-334, Transcript 23 May 2005, p. 41

623. The Prosecution accepts that there may have been times when the different leaders in each faction fell out with each other or even amongst themselves for short periods. It is however the submission of the Prosecution that this is not fatal to the joint criminal enterprise, as ultimately both groups were working in unison towards the same goal, namely the reinstatement of the Junta Government in Freetown. This plan became more apparent after the death of SAJ Musa at Benguema in December 1999.
624. The troop under the First Accused moved through Bombali District in an organised military fashion. An advance group led the way, followed by the brigade administration where the Accused were based, which was followed by a rear group. A standard operating procedure was developed whereby the first group attacked a village and then called in the HQ group. The rear group would then burn down the village.
625. Shortly after the attack on Karina the First Accused's troop lost its radio man and microphone, which meant that the First Accused could only monitor the radio communications of other commanders who were using the airwaves.⁹⁹⁵ The First Accused could therefore listen to the radio communications of the RUF and SAJ Musa's forces but could not call them to let them know of his position.
626. It is the case of the Prosecution that from the advance to Mansofinia to Camp Rosos, the First Accused was at all times the commander of the SLA troops who formed a part of his brigade, whilst the Second Accused was second in command to the First Accused and the Third Accused held a senior command position.
627. For crimes committed in Bombali please refer to Bombali crime-base section in this brief.

CAMP ROSOS

628. Eventually the SLA troop under the First Accused set up a base camp at a place which came to be known as camp Rosos. At this stage they were still unable to communicate their position to anyone because they still had no microphone for their radio set, though they could still only monitor the radio conversations of others.

⁹⁹⁵ TF1-334, Transcript 23 May 2005, pp. 79-81

629. Discipline was enforced within the troop en route from Mansofinia to Bombali by TF1-167, who was appointed Provost Marshall by the First Accused at Mansofinia.⁹⁹⁶ As Provost Marshall it was TF1-167's job to ensure that the troops abided by jungle justice.
630. Jungle Justice involved not stealing government property (such as arms, ammunition, medicines), and not raping during operations. Anyone caught breaking these rules would be punished by death or public flogging. As provost marshal, TF1-167 reported directly to the First and Second Accused.⁹⁹⁷
631. At Camp Rosos the First Accused appointed a Mammy Queen to look after women's affairs, and who had the power to lock undisciplined women in a rice box. The discipline order was clearly spelt out and was signed by the Third Accused.⁹⁹⁸ The Third Accused was in total control of women at camp Rosos.⁹⁹⁹ TF1-334 saw this disciplinary system in operation.¹⁰⁰⁰
632. On arriving at Camp Rosos, the First Accused ordered that it should be a made a civilian 'no go' area, meaning that there should be no civilians within 15 miles of Rosos and that captured civilians who were brought to the camp should be executed. The First Accused passed this order in the presence of the Second and Third Accused.¹⁰⁰¹ These orders were carried out.¹⁰⁰²
633. The First Accused ordered 'Operation Clear the Area' whereby all villages surrounding Rosos were to be burnt down. The area was to be "jarred jarred," meaning everything of importance was to be taken.¹⁰⁰³ These orders were carried out.¹⁰⁰⁴
634. It is telling that as soon as a microphone was found at Batkanu and radio contact could be re-established, the First Accused, in addition to calling SAJ Musa and Brig. Mani, also called Issa Sesay and Morris Kallon, both of whom were senior RUF commanders.¹⁰⁰⁵

⁹⁹⁶ TF1-167, Transcript 15 September 2005 pp. 48-49

⁹⁹⁷ TF1-167, Transcript 15 September 2005 pp. 49-50

⁹⁹⁸ TF1-334, Transcript 24 May 2005, pp. 62-65.

⁹⁹⁹ TF1-334, Transcript 24 May 2005, pp. 62-65.

¹⁰⁰⁰ TF1-334, Transcript 24 May 2005, pp 67-68.

¹⁰⁰¹ TF1-334, Transcript 23 May 2005, p. 104

¹⁰⁰² TF1-334, Transcript 24 May 2005, pp. 2-5.

¹⁰⁰³ TF1-334, Transcript 23 May 2005, p. 105

¹⁰⁰⁴ Insert ref—refer Bombali section

¹⁰⁰⁵ TF1-334, Transcript 24 May 2005, pp. 31-36.

From this it can clearly be inferred that the First Accused regarded himself as still working with the RUF leadership.

635. When the First Accused reported to SAJ Musa it is important to note that at that time SAJ Musa was still working together with Superman on the Koinadugu axis. It is also significant that the First Accused also immediately made radio contact with Brig. Mani and informed him that he was unable to find him. This corroborates TF1-334's evidence that at Mansofinia SAJ Musa had ordered the First Accused to find Brigadier Mani and set up a base camp in the north. Again this is significant evidence to show that the First Accused did report to SAJ Musa in Mansofinia in early May 1998 and that his alibi in this respect is a lie.
636. During the First Accused's radio conversation with Issa Sesay he reported his position and told Issa Sesay that Issa Sesay should have confidence in him and that he was relying on Issa Sesay's co-operation.¹⁰⁰⁶ The First Accused then spoke to Morris Kallon and explained to him why he moved from Kono and that he was still pursuing the cause. Morris Kallon was happy that communication between the two had been restored.¹⁰⁰⁷
637. The case of the Prosecution is that it can be inferred from all the evidence, including the crime-base evidence dealt with elsewhere in this Brief, that the common intention as between the Accused, other members of the AFRC, and the RUF leadership, was the reinstatement of the Joint SLA/RUF Government in Freetown (that is, to regain and to retain political power and control over the territory of Sierra Leone), and to do so by any means necessary, including through the commission of crimes within the jurisdiction of the Special Court.
638. On a later occasion SAJ Musa informed the First Accused of his position in Mongo Bendugu, which had just been recaptured from the Guineans along with arms and ammunition. SAJ Musa also told the First Accused of his plan to attack Kabala by pretending to surrender.¹⁰⁰⁸

¹⁰⁰⁶ TF1-334, Transcript 24 May 2005, p. 36

¹⁰⁰⁷ TF1-334, Transcript 24 May 2005, p. 36

¹⁰⁰⁸ TF1-334, Transcript 24 May 2005, p. 44.

639. Other evidence in the Koinadugu section of this brief suggests that this attack did take place and that it was a joint attack with Superman's RUF forces. At this stage (i.e. before the Accused reached Colonel Eddie Town) the evidence suggests that the SLAs and RUF were still working together.
640. The First Accused also called Mosquito on the radio to renew their relationship, which had been in existence since the Junta period and throughout the First Accused's stay in Kailahun, before he left for Kono with logistics for the joint SLA/RUF troop based there under the Second Accused and Superman.
641. During his radio communication with Mosquito the First Accused explained why he had been out of contact, briefed Mosquito on the areas that his troop had attacked, and updated him on his current position.¹⁰⁰⁹ Mosquito in return informed the First Accused that he was happy, that the two sides (RUF and SLA) were brothers, and that Johnny Paul Koroma was safe
642. It is these and other later continuing radio contacts, especially after the death of SAJ Musa at Benguema, between the First Accused and the RUF leadership which the Prosecution mainly relies on to show that the First Accused and the other Accused were always working with the RUF to re-establish the Junta in Freetown notwithstanding SAJ Musa's stated aim of reinstating the SLA.
643. In particular, this shared intention of collectively reinstating the Junta became apparent through the radio communications between the Accused and the senior RUF leadership after the death of SAJ Musa. These continued through to the attack on Freetown, the retreat from Freetown by the SLAs and the joint re-attack on Freetown by both the SLA and RUF after the SLAs have been driven from Freetown by ECOMOG at the end of January 1999.
644. It is the case of the Prosecution that from the time the troop arrived at Camp Rosos until their departure to Colonel Eddie Town, the First Accused was at all times the commander of the SLA troops who formed a part of his brigade, whilst the Second Accused was

¹⁰⁰⁹ TF1-334, Transcript 24 May 2005, p. 56.

second in command to the First Accused and the Third Accused held a senior command position.

COLONEL EDDIE TOWN

645. After remaining in Camp Rosos for about three months, in around September 1998 under pressure from ECOMOG the First Accused with his Brigade moved from Camp Rosos to a new camp referred to as Major/Colonel Eddie Town (so-named because it was discovered by Major/Colonel Eddie on the orders of the First Accused).¹⁰¹⁰ In particular, this followed an ECOMOG jet attack where Jalloh the radio operator died.¹⁰¹¹ Witness DBK-126 gave evidence of how the SLA faction in Camp Rosos was harnessing solar power in order to recharge the batteries for their radios.¹⁰¹²

646. At Colonel Eddie Town discipline continued to be enforced amongst the troops. TF1-167 was arrested to face jungle justice after he shot his second in command.¹⁰¹³ The Prosecution submits that this is an indication of how effective the disciplinary procedure was amongst the SLAs. An investigation was carried out against TF1-167,¹⁰¹⁴ following which he surrendered for arrest. It is also significant that at this time TF1-167 held a senior position as a battalion commander and as such even soldiers who were either senior in rank or held senior positions were equally subject to discipline. Another example discipline being applied to people in senior positions was the arrest of Bio and Bomblast who were former honourables and members of the AFRC Supreme Council.¹⁰¹⁵

647. In Colonel Eddie Town the First Accused passed laws against stealing government property, against raping and the proscribed punishment for a breach of those laws. For example, any fighter who was reluctant to go on a ambush was subject to being publicly flogged.¹⁰¹⁶

¹⁰¹⁰ TF1-167, Transcript 15 September 2005, p. 68; TF1-334, Transcript 24 May 2005, pp. 72-73.

¹⁰¹¹ TF1-334, Transcript 24 May 2005, p. 72.

¹⁰¹² DBK-126, Transcript 25 October 2006, pp. 47-48.

¹⁰¹³ TF1-167, Transcript 15 September 2005, pp.76-77.

¹⁰¹⁴ DBK-037, Transcript 4 October 2006, p. 73-75.

¹⁰¹⁵ TF1-184, Transcript 27 September 2005, pp.31-32.

¹⁰¹⁶ TF1-167, Transcript 15 September 2005, p. 78.

648. At Colonel Eddie Town the town itself served as the Brigade HQ. The First Accused remained the senior most commander, followed by the Second Accused, whilst the Third Accused remained G5 officer and FAT Sesay was G1 administration.¹⁰¹⁷
649. At Colonel Eddie Town the First Accused summoned the entire brigade, including the commanders (the Second and Third Accused were also present) and ordered the operation commander to distribute the companies in surrounding villages in order to take up defensive positions.¹⁰¹⁸
650. The 4th company (or D company) was based in the surrounding village of Rochin under the command of TF1-167, with Sammy as his intelligence officer and Kordale as his second in command.¹⁰¹⁹
651. As commander of 4th (D) company TF1-167 kept arms and ammunition within his company which he distributed before operations. He used civilians to carry arms and ammunition who were under supervision of the Battalion G5. TF1-167 was reporting directly to the First Accused who also used to give him instructions. During operations he reported to the operations commander.¹⁰²⁰
652. Whilst at Colonel Eddie Town seven women who were accused of witchcraft were displayed and impaled by SLAs at the HQ. Three of these women died. They were impaled by Cyborg, Kabila, Mad Crazy, and SBU Killer, all of whom were SLAs.¹⁰²¹ It is the case of the Prosecution that since all the Accused were based at the HQ in Colonel Eddie Town they either would have ordered the impaling or at the very least been aware of it.
653. At Colonel Eddie Town over the radio SAJ Musa informed the First Accused that he was sending Major 0-Five and some SLAs to reinforce the First Accused's Brigade at Colonel Eddie Town. SAJ Musa said that he wanted to make Colonel Eddie Town an SLA defensive area. SAJ Musa said that he would follow after the reinforcements. The First

¹⁰¹⁷ TF1-167, Transcript 15 September 2005, p. 69.

¹⁰¹⁸ TF1-334, Transcript 24 May 2005, p. 87.

¹⁰¹⁹ TF1-167, Transcript 15 September 2005, p. 70.

¹⁰²⁰ TF1-167, Transcript 15 September 2005, pp. 70-72.

¹⁰²¹ TF1-167, Transcript 15 September 2005, pp. 72-74.

- Accused told SAJ Musa that he was standing by to receive the men.¹⁰²² SAJ Musa kept in contact with Commander 0-Five as Commander 0-Five travelled to meet up with the First Accused at Colonel Eddie Town as both Commander 0-Five and SAJ Musa had radio sets.
654. Prior to the arrival of Commander 0-Five and his men the First Accused made promotions and in anticipation of the arrival of more men with Commander 0-Five renamed the four companies as battalions.¹⁰²³
655. After an initial failed attempt the First Accused sent TF1-334 the operations commander and Col. King with a radio set in order to meet up with Commander 0-Five and guide Commander 0-Five and his troop into Colonel Eddie Town.¹⁰²⁴
656. En route to the rendezvous with Commander 0-Five, Witness TF1-334 heard the RUF spokesman Eldred Collins declare 'Operation Spare No Soul' over the BBC radio. According to Collins, under 'Operation Spare No Soul' soldiers should destroy any village which they captured and spare no person.¹⁰²⁵
657. TF1-334 with the party from Colonel Eddie Town who rendezvoused with Commander 0-Five at Gbendembu. During the return to Colonel Eddie Town Commander 0-Five at Kantia executed 15 civilians who he had captured from Kamalo en route.¹⁰²⁶
658. Commander 0-Five arrived at Colonel Eddie Town with roughly 200 men and reported to the First Accused. On Commander 0-Five's arrival the Brigade Administrator FAT Sesay listed the soldiers who arrived at Colonel Eddie Town with Commander 0-Five.¹⁰²⁷ This ties in with the Defence witnesses who describe FAT Sesay as an administrator who kept the nominal role.¹⁰²⁸
659. On Commander 0-Five's arrival the First Accused created two new battalions: one known as the 5th Battalion, and the other known as the STF Battalion, which comprised mostly of Special Task Force (STF) soldiers from Liberia.¹⁰²⁹ The First Accused also increased the

¹⁰²² TF1-334, Transcript 24 May 2005, pp. 90-91.

¹⁰²³ TF1-334, Transcript 24 May 2005, pp. 92-92.

¹⁰²⁴ TF1-334, Transcript 24 May 2005, pp. 101-104.

¹⁰²⁵ TF1-334, Transcript 24 May 2005, pp. 105-106

¹⁰²⁶ TF1-334, Transcript 25 May 2005, p. 4

¹⁰²⁷ TF1-334, Transcript 25 May 2005, pp. 9, 33, 35

¹⁰²⁸ DBK-131, Transcript 26 October 2006, pp. 56-57.

¹⁰²⁹ TF1-334, Transcript 25 May 2005, p. 45

strength of other existing battalions by providing them each with some of Commander 0-Five's men.¹⁰³⁰ The First Accused also made further promotions on the arrival of Commander 0-Five and his men.¹⁰³¹

660. It is the case of the Prosecution that at no time were the Accused under arrest at Col. Eddie town. In the alternative, it is the case of the Prosecution that if the Accused were ever under arrest this was only for a very short period after the arrival of Commander 0-Five and that they were released prior to the arrival of SAJ Musa at Colonel Eddie Town.

661. The only Prosecution witness who alludes to the Accused being arrested at Colonel Eddie Town is TF1-167 and even he says that Commander 0-Five planned the arrest with the other battalion commanders because the Accused were not carrying out operations properly.¹⁰³² Even then, according to TF1-167 the Accused were released by SAJ Musa at Newton where the First Accused was made SAJ Musa's second in command, the Second Accused became third in command and the Third Accused was put in a command position whilst looking after the abductees who were with them.¹⁰³³

662. It is the case of the Prosecution that the First Accused has seized upon this small opening in the testimony of TF1-167 to fabricate an elaborate lie about his being under arrest from Colonel Eddie Town to Goba Water. The Prosecution further submits that the First Accused, having artfully crafted this lie after listening to the entire Prosecution case, has convinced the SLA Defence witnesses who advanced from Colonel Eddie Town to Freetown to lie on his behalf in order to back up his patent fabrication.¹⁰³⁴

663. In contrast to TF1-167's account, the First Accused testified that he was brought to Colonel Eddie Town under arrest by Commander 0-Five, where he found the other Accused already under arrest.¹⁰³⁵ Tellingly, not one Defence witness could corroborate the Accused on the circumstances of his arrest at Colonel Eddie Town. Once again this is a

¹⁰³⁰ TF1-334, Transcript 25 May 2005, pp. 46-47

¹⁰³¹ TF1-334, Transcript 25 May 2005, p. 48

¹⁰³² TF1-167, Transcript 15 September 2005, pp. 75-76

¹⁰³³ TF1-167, Transcript 16 September 2005, pp. 3-6

¹⁰³⁴ In this respect, the Prosecution draws the attention of the court to the following exchange, in which counsel for the First Accused appears to insinuate that defence insider witnesses were not able to testify until they had a chance to speak with the First Accused and get their "stories straight", Transcript 25 July 2006, pp. 6-13.

¹⁰³⁵ Accused Alex Tamba Brima, Transcript 12 June 2006, pp. 43-44, 54-55; 6 July 2006, pp. 12-13

clear indication that both the Accused and their Defence witnesses are lying about the fact that the Accused were under arrest from Colonel Eddie Town to Freetown.

664. TF1-167, who was also under arrest facing jungle justice also states that the First Accused ordered him to go and meet SAJ Musa and guide him into Colonel Eddie Town.¹⁰³⁶ This is corroborated by TF1-184 who was travelling with SAJ Musa from Koinadugu to Colonel Eddie Town who states that en route to Colonel Eddie Town SAJ Musa radioed the First Accused that they were coming and the First Accused sent TF1-167 to meet them and guide them into Colonel Eddie Town.¹⁰³⁷
665. According to the Prosecution this clearly indicates that the First Accused had been released and was back in command, even if it can be accepted that he was ever detained on Commander 0-Five's orders. According to TF1-334, SAJ Musa radioed the First Accused and told him that he had had an infight with Superman and was on his way to Colonel Eddie Town, which again indicates that the First Accused was not arrested on the arrival of Commander 0-Five.¹⁰³⁸
666. It is the case of the Prosecution that if any former honourables were under arrest when SAJ Musa arrived it was Bioh and Bomblast, who had ostensibly both been accused of being witches but in reality were arrested for not supporting the First Accused in his bid to retain command after SAJ Musa arrived in Colonel Eddie Town.¹⁰³⁹
667. It is the case of the Prosecution that even before SAJ Musa's arrival in Colonel Eddie Town the First Accused and other Accused had started to form a faction consisting of former AFRC council members which did not want to hand over command to SAJ Musa.
668. Whilst at Colonel Eddie Town the First Accused had further radio communications with Mosquito, Issa Sesay and Morris Kallon where greetings were exchanged.¹⁰⁴⁰ SAJ Musa banned communications with the RUF once he arrived at Colonel Eddie Town following his split with Superman in Koinadugu.

¹⁰³⁶ TF1-167, Transcript 15 September 2005, p. 77

¹⁰³⁷ TF1-184, Transcript 27 September 2005, p. 27

¹⁰³⁸ TF1-334, Transcript 25 May 2005, p. 54

¹⁰³⁹ TF1-334, Transcript 16 June 2005, p. 42; TF1-184, Transcript 27 September 2005, pp. 34-35

¹⁰⁴⁰ TF1-334, Transcript 13 June 2005, pp. 33-37

669. According to TF1-184 and TF1-334 the First Accused was in command at Colonel Eddie Town when SAJ Musa arrived.¹⁰⁴¹ After the arrival of SAJ Musa at Colonel Eddie Town with about 250 more SLAs SAJ Musa took over command of all troops at Colonel Eddie Town and restructured the Brigade.¹⁰⁴²
670. SAJ Musa appointed the First Accused as his deputy who was to directly report to him, SAJ Musa appointed the Second Accused as third in command whilst the Third Accused remained as Chief of Staff.¹⁰⁴³ SAJ Musa appointed military supervisors who were to report directly to him but were subordinate to the First Accused.¹⁰⁴⁴ SAJ Musa also made appointments and promotions but kept the basic structure of six battalions.¹⁰⁴⁵
671. At Colonel Eddie Town SAJ Musa called a muster parade and told the troops of his intention to advance to Freetown and reinstate the army.¹⁰⁴⁶ At this muster parade SAJ Musa reminded the troop about crimes against humanity and said that there should be no burning of houses or amputations and that if anybody broke the laws which he had given, disciplinary action would be taken.¹⁰⁴⁷
672. Most Defence witnesses who attended SAJ Musa's muster parade at Colonel Eddie Town accept that SAJ Musa announced his intention to advance to Freetown and that he ordered that crimes should not be committed against the civilian population during the advance.
673. The main difference between the Prosecution witnesses and the Defence witnesses who were on the advance from Colonel Eddie Town to Freetown relates to the position that the Accused occupied when the troop under SAJ Musa left Colonel Eddie Town for Freetown. Whilst the Prosecution witnesses place the Accused in command, the Defence witnesses who were present at Colonel Eddie Town place the Accused as being under arrest.
674. Significantly, however, none of the Defence witnesses corroborated where the First Accused testified that he and the Third Accused escaped from (i.e at Goba Water). On the contrary, DSK-113 said he saw the First and Third Accused after Benguema moving

¹⁰⁴¹ TF1-184, Transcript 29 September 2005, pp. 54-55, TF1-334, 25 May 2005, p. 55

¹⁰⁴² TF1-334, Transcript 25 May 2005, p. 55

¹⁰⁴³ TF1-334, Transcript 13 June 2005, p. 26, Transcript TF1-184 27 September 2005, pp. 41-42

¹⁰⁴⁴ TF1-334, Transcript 13 June 2005, pp. 3-9

¹⁰⁴⁵ George Johnson, TF1-167, Transcript 16 September 2005, p. 8

¹⁰⁴⁶ TF1-184, Transcript 27 September 2005, pp. 40-41

¹⁰⁴⁷ TF1-334, Transcript 13 June 2005, pp. 26-27

around freely, going up and down and sitting with Adamu Mansa and FAT Sesay.¹⁰⁴⁸ Clearly this indicates that the Accused were not under arrest and there was not such a commotion on the death of SAJ Musa as suggested by the First Accused in his evidence.

675. It is also significant that DSK-113 was present when SAJ Musa was buried at Goba Water, however he makes no mention in his evidence of the Accused or anyone else escaping at Goba Water.¹⁰⁴⁹
676. According to the evidence of the First Accused and most of the Defence witnesses who were present at Colonel Eddie Town when the troop advanced from Colonel Eddie Town to Freetown, the brigade left in an organised fashion and continued its advance to Freetown in an organised and structured military fashion.¹⁰⁵⁰
677. The advance party led the way, followed by the HQ party which consisted of the medical unit, radio operators, ammunition, the prisoners and the command including SAJ Musa, with a group in the rear and the RDF battalion supporting the various groups as it advanced.¹⁰⁵¹
678. It is significant that in the First Accused's own evidence he is able to give considerable details about the composition of the HQ Party, how SAJ Musa called the Battalion commanders for briefings at the HQ Party, the content of those briefings, how he was able to hear SAJ Musa talking to his men over the radio and the crux of those conversations at the HQ party and basically how he was able to describe the detailed workings of the Brigade HQ and its movements.¹⁰⁵²
679. The Prosecution submits that the First Accused was able to make all the above observations as the Brigade HQ advanced because he was second in command to SAJ Musa and close to him at all times. The Prosecution submits that if the First Accused was under arrest and closely guarded by even up to 32 guards (according to one Defence witness¹⁰⁵³), it would not have been possible for him to give such detailed evidence regarding how the HQ Brigade operated and in particular what SAJ Musa was doing as the

¹⁰⁴⁸ DSK-113, Transcript 12 October 2006, pp. 105, 114-115.

¹⁰⁴⁹ DSK-113 Transcript 12 October 2006, p. 107.

¹⁰⁵⁰ Exhibit P36, Expert Report of Col. Iron

¹⁰⁵¹ George Johnson, TF1-167, Transcript 15 September 2005, p. 86

¹⁰⁵² Accused Alex Tamba Brima, Transcripts 13 June 2006 and 5 July 2006.

¹⁰⁵³ DAB-033, Transcript 2 October 2006, p. 91.

Brigade advanced from Colonel Eddie Town to Freetown. The First Accused is clearly lying about his position within the HQ Brigade. He was a commander, not a prisoner.

680. The usual structure during the advance was that the advance party would clear the area and then radio for the HQ party to move forward, followed by the rear party. The Troop moved in a strategic manner, carrying out hit-and-run operations on ECOMOG positions for food and ammunition whilst avoiding large scale ECOMOG garrisons such as at Port Loko.¹⁰⁵⁴
681. So organised was the troop structure and movement that even each battalion had its own battalion administration (mirroring that of the brigade administration), with three separate companies each with a company commander allowing both an adequate span of command and chain of command.¹⁰⁵⁵ (*See section The AFRC as a Military Organisation*)
682. According to the Prosecution friction continued between SAJ Musa and the First Accused before SAJ Musa's death at Benguema. Such friction mainly revolved around the First Accused's eagerness to keep in contact with the RUF who were in the rear and SAJ Musa's disowning of the RUF following his split with Superman in Koinadugu.
683. According to TF1-184, before Lunsar SAJ Musa and the First Accused had an argument where SAJ Musa shouted at the First Accused not to communicate with the RUF who were in the rear, at which point the First Accused grumbled about the fact that SAJ Musa was telling them what to do.¹⁰⁵⁶
684. The Prosecution considers this important evidence of the First Accused's intention to take over the troop and link up with the RUF, especially when viewed in the context of his earlier communications with RUF Mosquito, Issa Sesay and Morris Kallon whilst at camp Rosos and Colonel Eddie Town and the First Accused arranging for the arrest of Bio and Bomblast at Colonel Eddie Town for refusing to support his bid to retain command when SAJ Musa arrived at Colonel Eddie Town.
685. At Mamamah Mosquito announced that his troops had attacked RDF and that troops under his command were moving toward Freetown. On hearing this, SAJ Musa accused radio operator Alfred Brown of passing on information to the RUF and warned Alfred Brown

¹⁰⁵⁴ DBK-131, Transcript 26 October 2006, p. 46 and Exhibit P36, Expert Report of Col. Iron.

¹⁰⁵⁵ DBK-131, Transcript 26 October 2006, pp. 58-59.

¹⁰⁵⁶ TF1-184, Transcript 27 September 2005, pp. 43-44.

not to come near the set again.¹⁰⁵⁷ Once again the Prosecution submits it can be inferred that despite SAJ Musa's warning not to contact the RUF and his intention to reach Freetown before the RUF, other members of his troop were still secretly contacting the RUF behind SAJ Musa's back.

686. When the troop reached Newton shortly before the attack on Benguema, SAJ Musa and his men all took an oath that on reaching Freetown they will only say that they have come to reinstate the Army.¹⁰⁵⁸ It is telling that, according to TF1-184, after the oath was taken he heard the First Accused call his men who included the Second and Third Accused and other former members of the AFRC Council to discuss whether SAJ Musa's plan was to their benefit. According to this witness, they decided against SAJ Musa's plan to reinstate the army.¹⁰⁵⁹
687. It is the case of the Prosecution that through the First Accused's continued contacts with the RUF and the fact that SAJ Musa's plan was not to the benefit of the Accused and other former AFRC members that it can be inferred that the Accused and the other former AFRC council members objective on reaching Freetown was to reinstate the old SLA/RUF Junta.
688. During the Junta period all the Accused had held senior positions as honourables and PLOs which entitled them to the benefits of high office. Whilst in the jungle the Accused also enjoyed senior command positions. It is the case of the Prosecution that if SAJ Musa was successful in reinstating the Army then the Accused all ran the risk of at best being restored to the army as members of the other ranks and at the worst facing court martial for their role in the May 1997 coup. Such court martial had already led to the execution of 28 former SLAs who were a part of the AFRC Government in October 1998.
689. After heavy fighting Benguema was captured in late December 1998. It was at Benguema that SAJ Musa was killed after an ammunition dump exploded. TF1-184 believed that the SAJ Musa had been shot in the back of the head from close range by the First Accused.¹⁰⁶⁰ Tellingly, all the Accused, Woyoh and other members on the AFRC Council were close by

¹⁰⁵⁷ TF1-334, Transcript 13 June 2005, pp. 46-48.

¹⁰⁵⁸ TF1-184, Transcript 27 September 2005, pp. 46-47.

¹⁰⁵⁹ TF1-184, Transcript 27 September 2005, p. 47.

¹⁰⁶⁰ TF1-184, Transcript 27 September 2005, pp. 49-61, pp. 105-107.

when SAJ Musa died.¹⁰⁶¹ Before the troop left Goba Water there was grumbling amongst the troop that the First Accused had killed SAJ Musa.¹⁰⁶²

690. It is the case of the Prosecution that the First Accused conspired along with the other Accused and some of the former AFRC Council members to kill SAJ Musa because they were not in agreement with his plan to reinstate the Army, which may have left them in a vulnerable position. In the alternative, the death of SAJ Musa was extremely convenient for the Accused and some of the other former AFRC Council members who shared the same intention of the Accused. According to TF1-153, the Accused, Woyoh and others were celebrating when the First Accused became commander on the death of SAJ Musa.¹⁰⁶³

691. Support for the Prosecution's case can be found in the fact that one of the first actions that the First Accused took when taking over command after the death of SAJ Musa was to re-establish the previously banned radio contacts with Mosquito to let him know that SAJ Musa was dead and that he was in command.¹⁰⁶⁴

692. The Prosecution submits that the evidence shows that from the death of SAJ Musa until the attack, withdrawal and joint re-attack on Freetown with the RUF, the Accused were working with the RUF in order to capture Freetown and reinstate the Junta.

693. Even at Goba Water (where SAJ Musa was buried) a joint RUF/SLA force under SLA Brigadier Mani and RUF Superman had been advancing to Makeni.¹⁰⁶⁵

694. Upon SAJ Musa's death the First Accused immediately took command of the troop and was even seen wearing SAJ Musa's uniform as a symbol of his assumption to power.¹⁰⁶⁶ The Second Accused was appointed second in command, the Third Accused was appointed third in command, Woyoh was promoted to brigadier and SAJ Musa's chief of security was appointed as the First Accused's chief of security.¹⁰⁶⁷ The First Accused made some changes in appointments and promotions but kept the same brigade

¹⁰⁶¹ TF1-184, Transcript 27 September 2005, pp. 49-61, pp. 105-107; George Johnson, TF1-167, Transcript 16 September 2005, p. 10, TF1-334 Transcript 13 June 2005, pp. 53-54.

¹⁰⁶² TF1-334, Transcript 13 June 2005, p. 57.

¹⁰⁶³ TF1-153 Transcript 22nd September 2005 p 94

¹⁰⁶⁴ George Johnson, TF1-167, Transcript 16 September 2005, p. 11

¹⁰⁶⁵ George Johnson, TF1-167, Transcript 16 September 2005, p. 19

¹⁰⁶⁶ TF1-184, Transcript 27 September 2005, pp. 56, 59-60, TF1-334, Transcript 13 June 2005, p. 57

¹⁰⁶⁷ TF1-334, Transcript 13 June 2005, pp. 59-62, TF1-184, Transcript 27 September 2005, p. 56

administration and battalion structure as SAJ Musa had put in place at Colonel Eddie Town.¹⁰⁶⁸

695. During the advance to Freetown, after the operation to York but before they left for Hastings, the First Accused radioed Mosquito in Kailahun and informed him that the troop wanted to attack Freetown but that he lacked logistics and arms and ammunition and also needed reinforcements. Mosquito agreed to send reinforcements to the First Accused to enable him to enter Freetown.¹⁰⁶⁹
696. Later after the operation to Waterloo the First Accused radioed Issa Sesay who informed him that they (RUF) had captured Kono and were heading towards Makeni and that they were on the way to reinforce the First Accused. The First Accused told Issa Sesay that they were awaiting reinforcements then the entire troop (SLA and RUF) would enter Freetown.¹⁰⁷⁰
697. The First Accused around the same time also contacted Superman. Superman told the First Accused that his troops were moving towards Makeni and promised to reinforce the First Accused's position so that they (RUF and SLA) can enter Freetown.
698. The Prosecution submits that through these radio contacts between the First Accused and the senior most leadership of the RUF in the field (Mosquito, Issa Sesay and Superman) it can be inferred that the First Accused was planning a joint attack on Freetown with the RUF in order to reinstate the Junta. It can further be inferred from all the evidence, including the crime-base evidence dealt with elsewhere in this Brief, that the common intention as between the Accused, other members of the AFRC, and the RUF leadership, was to use any means necessary to achieve this aim, including through the commission of crimes within the jurisdiction of the Special Court.
699. It is also significant that SAJ Musa died at Benguema around 22 December, yet the actual attack on Freetown did not take place until 6 January, nearly three weeks later. Benguema is only about 30 km from Freetown. The clear inference is that for those nearly three

¹⁰⁶⁸ TF1-334, Transcript 13 June 2005, pp. 67-80

¹⁰⁶⁹ TF1-334, Transcript 13 June 2005, pp. 88-89

¹⁰⁷⁰ TF1-334, Transcript 13 June 2005, p. 91

weeks the SLA faction under the First Accused was waiting for the RUF to reinforce them so that they could jointly attack Freetown.

700. As indicated in Col. Iron's report and the evidence of other witnesses, over this three week period food was running short, morale amongst the First Accused's troop was declining and they had been subject to an ECOMOG air attack at Allen Town where they had lost troops.¹⁰⁷¹ Under these circumstances, the First Accused, in order to keep the structure and cohesion of his force together, could no longer afford to await the RUF reinforcements, who were bogged down after Makeni, and thus had no other option but to launch his assault on Freetown.¹⁰⁷²
701. Even after the SLA Faction under the First Accused had successfully taken Freetown the expectation was that the RUF would join them and consolidate their gains in Freetown, as is evidenced by the continued radio communications between the two parties as set out below.
702. At around 7.30 to 8am on 6 January 1999 the SLA faction under the First Accused captured State House which became their headquarters.¹⁰⁷³ On the same day the Second Accused had made radio contact with Mosquito whilst he was outside State House.¹⁰⁷⁴
703. At State House on the first day (i.e. 6 January) the Third Accused announced over local radio that he was chief of staff, that the army had taken over the reins of government from President Kabbah, and that the First Accused was the commander of the troops.¹⁰⁷⁵ This was endorsed later in the day by FAT Sesay over the BBC.¹⁰⁷⁶ On the same day Mosquito announced over Radio France that troops under the command of the First Accused had captured Freetown and State House and that he would continue to defend State House.¹⁰⁷⁷

¹⁰⁷¹ Exhibit P36, Military Expert Witness Report on the Armed Forces Revolutionary Council by Col. Richard Iron, August 2005, D2.8, D2.9.

¹⁰⁷² Exhibit P36, Military Expert Witness Report on the Armed Forces Revolutionary Council by Col. Richard Iron, August 2005, D2.8, D2.9.

¹⁰⁷³ George Johnson, TF1-167, Transcript 16 September 2005, pp. 26-27.

¹⁰⁷⁴ TF1-184, Transcript 27 September 2005, pp. 60-61; Transcript 29 September 2005, pp. 99-100.

¹⁰⁷⁵ TF1-334, Transcript 14 June 2005, p. 19

¹⁰⁷⁶ TF1-334, Transcript 14 June 2005, pp. 20-21

¹⁰⁷⁷ TF1-334, Transcript 14 June 2005, p. 20