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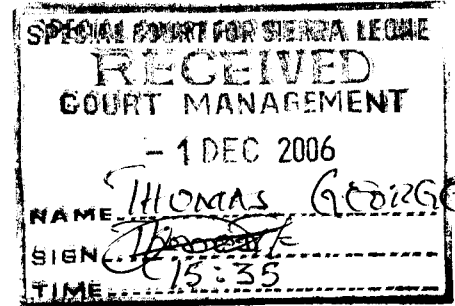
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SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown - Sierra Leone

Before: Hon. Justice Richard Lussick, Presiding
Hon. Justice Teresa Doherty
Hon. Justice Julia Sebutinde

Registrar: Mr. Lovemore G. Munlo SC

Date filed: 1 December 2006



THE PROSECUTOR

Against

Alex Tamba Brima
Brima Bazzy Kamara
Santigie Borbor Kanu

Case No. SCSL-04-16-T

CONFIDENTIAL

PROSECUTION FINAL TRIAL BRIEF

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TABLE OF CONTENTS

TABLE OF CONTENTS I. INTRODUCTION: ARMED FORCES REVOLUTIONARY COUNCIL	2
I. INTRODUCTION: ARMED FORCES REVOLUTIONARY COUNCIL	4
II. CONSIDERATIONS WHEN ASSESSING THE LAW AND EVIDENCE	10
III. OBSERVATIONS ON THE TESTIMONY OF ALEX TAMBA BRIMA	26
IV. DEFENCES	46
V. JUNTA PERIOD: 25 MAY 1997 TO CIRCA 13 FEBRUARY 1998 – THE FACTS	72
VI. MODES OF LIABILITY	107
VII. LIABILITY OF THE THREE ACCUSED FOR CRIMES COMMITTED DURING THE JUNTA PERIOD 25 MAY 1997 – 13 FEBRUARY 1998	133
VIII. JUNTA PERIOD: 25 MAY 1997 – 13 FEBRUARY 1998 – CRIME-BASES	144
IX. POST-INTERVENTION PERIOD: FROM 13 FEBRUARY 1998 UNTIL JUNE 1999	156
X. JOINT CRIMINAL ENTERPRISE – POST-INTERVENTION PERIOD	187
XI. THE AFRC AS A MILITARY ORGANISATION	197
XII. LAW APPLICABLE TO THE CHARGES IN THE INDICTMENT (I)	240
XIII. LAW APPLICABLE TO THE CHARGES IN THE INDICTMENT (II)	253
XIV. THE FIRST ACCUSED’S ALIBIS	270
XV. CRIMES IN KONO FROM 14 FEBRUARY UNTIL 30 JUNE 1998	302
XVI. CRIMES IN KAILAHUN FROM 14 FEBRUARY 1998 UNTIL 30 JUNE 1998	333
XVII. CRIMES IN KOINADUGU FROM 14 FEBRUARY UNTIL 30 SEPTEMBER 1998	342

XVIII. CRIMES IN BOMBALI FROM 1 MAY 1998 UNTIL 30 NOVEMBER 1998	367
XIX. CRIMES DURING THE INVASION, OCCUPATION AND RETREAT FROM FREETOWN FROM 6 JANUARY UNTIL AROUND 28 JANUARY 1999	381
XX. CRIMES IN PORT LOKO FROM JANUARY 1999 UNTIL APRIL 1999	429
XXI. COUNT 12 USE OF CHILD SOLDIERS	447
XXII. FORCED MARRIAGE	467
XXIII. CONCLUDING REMARKS	483
INDEX OF AUTHORITIES	486

I. INTRODUCTION: ARMED FORCES REVOLUTIONARY COUNCIL

BACKGROUND TO THE ESTABLISHMENT OF THE AFRC GOVERNMENT IN MAY 1997

1. On 23 March 1991 the Revolutionary United Front (RUF), led by Corporal Foday Sankoh, invaded Sierra Leone along its Eastern borders. The main aim of the RUF was to replace the All People's Congress (APC) Government under President Momoh, which the RUF perceived as being corrupt and neglecting the best interests of its citizens.
2. The RUF concentrated its hostilities on the eastern part of Sierra Leone, including the districts of Kailahun, Pujehun, Kono and Kenema (especially as Kono and Kenema were rich sources of diamonds that enabled the RUF to fund its movement).
3. This invasion by the RUF was resisted by the Republic of Sierra Leone Armed Forces (RSLAF). In 1992 the APC Government was removed by a junior officers' coup led by Captain Valentine Strasser, which established the National Provisional Ruling Council (NPRC).
4. Active hostilities between the RUF and RSLAF continued until the NPRC Government handed over power to the Sierra Leone Peoples Party Government (SLPP) led by President Ahmed Tejan Kabbah following elections in 1996.
5. Active hostilities between the RUF and RSLAF continued until 25 May 1997, when the SLPP Government was overthrown by an 'other ranks' coup of serving members of the RSLAF. The SLPP Government was forced into exile in Guinea.
6. It is significant that during the conflict between the RSLAF and the RUF from March 1991, despite the change in government, the RSLAF could not be defeated by the RUF.
7. It is the case of the Prosecution that all of the Accused were a part of the 'other ranks' members of the RSLAF who plotted and carried out the coup that removed the Kabbah Government, and that the First and Second Accused along with Sgt. Abu Sankoh were the leaders of the coup.
8. On the overthrow of the Kabbah Government, Major Johnny Paul Koroma was released from Pademba Road Prison and was made chairman of what became known as the Armed

Forces Revolutionary Council (AFRC). One of Johnny Paul Koroma's first steps was to invite the former enemies of the RSLAF – the RUF – to join them in government. This invitation was accepted by Foday Sankoh, the imprisoned leader of the RUF at that time, who subsequently ordered his RUF troops to join hands with the new AFRC regime.

9. As a reward for their role in overthrowing the Kabbah Government, all three Accused along with the other 14 persons who carried out the coup were made members of the Supreme Council of the AFRC Government, which was the most important legislative body in Sierra Leone.
10. The Supreme Council consisted of some of the most senior Sierra Leonean Army officers, the 17 coup plotters and the senior leadership of the RUF. All the coup plotters were known as 'honourables', with this position superseding rank and giving them power, influence and command over more senior officers in the SLA.
11. The First and Second Accused were also made Principal Liaison Officers (PLOs) in the AFRC Government, which the Prosecution submits placed them in the Sierra Leone Army (SLA) component of the AFRC hierarchy under only Johnny Paul Koroma and SAJ Musa. SAJ Musa was a former Vice Chairman of the former NPRC Government who had been recalled by the AFRC Government to help them establish legitimacy.
12. The most senior leadership of the SLA and RUF made up the AFRC Government, which through its Supreme Council worked together in taking any actions necessary in order to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas which were its main source of income. This included gaining and exercising control over the population of Sierra Leone in order to prevent or minimise resistance to their geographic control and use members of the civilian population to provide support to them.
13. Through these actions the AFRC Supreme Council fashioned policies that led to crimes which were either within their contemplation or were a reasonable foreseeable consequences of their policies.
14. For example, in order to exploit the diamond resources forced labour was used in both Kenema and Kono. Furthermore, in order to consolidate their geographical control over

Sierra Leone anyone who opposed the AFRC Government – such as Paramount chiefs, Civil Defence Forces (CDF) or supporters of the deposed SLPP Government – was eliminated.

THE OVERTHROW OF THE AFRC GOVERNMENT BY ECOMOG AROUND 14 FEBRUARY 1998

15. On around 13/14 February 1998, after nearly nine months in government, the AFRC was driven out of power following a military intervention by ECOMOG.
16. It is the case of the Prosecution that once the AFRC Government was driven out of Freetown the SLA and RUF components continued to work together in order to recapture Freetown once they had reorganised themselves in the East of the Country. Accordingly, a joint SLA and RUF attack retook Kono, which was one of the key diamond mining areas in Sierra Leone.
17. It is the case of the Prosecution that once the AFRC Government was driven out of power after the intervention the AFRC hierarchical structure remained intact as the AFRC evolved into a purely military organisation.
18. As such, the chain of command within the newly evolved AFRC military organisation was: Johnny Paul Koroma; SAJ Musa; the PLO 1, 2 and 3; followed by the honourables. This chain of command was reflected in 'bush ranks', whereby all of the Accused rose to at least the rank of brigadier.
19. After the joint SLA/RUF force had recaptured Kono, the Second Accused was the senior most SLA commander on the ground. There he worked with Superman who was the senior most RUF Commander on the ground. Each group, whilst working together, had their own commanders and separate chains of command. Whilst in Kono numerous crimes were committed by the SLA/RUF against the civilian population, most notably at Tombodu Town.
20. Around the end of April/beginning of May 1998, the First Accused came from Kailahun to Kono with the blessing of the RUF leadership with logistics for the SLA/RUF forces based in Kono. Upon his arrival in Kono, being the most senior member of the former AFRC

Government, the First Accused took over command of the SLA faction whereupon the Second Accused became his deputy.

21. Around mid-May 1998 the SLA faction in Kono under the First and Second Accused withdrew to Mansofinia and reported to SAJ Musa in the Koinadugu district. SAJ Musa was the most senior SLA Commander on the ground, as Johnny Paul Koroma had been placed under house arrest by the RUF in Kailahun.
22. SAJ Musa ordered the First and Second Accused to find a base in the north of the country and gave them the Third Accused and additional troops for this purpose. At Mansofinia the First Accused organised his brigade structure. By this time he was the commander, the Second Accused was his deputy and the Third Accused was his Chief of Staff.
23. As the three Accused headed north to find a base camp the troops under their command attacked various civilian villages where they committed numerous atrocities against the civilian population of those villages. A prime example of this occurred at Karina, which was the hometown of former President Kabbah. During these attacks the First Accused was in command, the Second Accused was his deputy and the Third Accused held a senior command position as Chief of Staff.
24. Whilst the troop commanded by the three Accused was travelling to the north of Sierra Leone to find a base camp RUF Superman was working with SAJ Musa along the Koinadugu axis, where numerous crimes were committed against the civilian population. SAJ Musa and the Accused kept in radio contact throughout this period until the First Accused lost his radio microphone. Thereafter, he could only listen to radio communications and not make any himself.
25. The three Accused set up a base in the north at Camp Rosos, where their troop remained for about three months. They subsequently moved to another nearby base known as Colonel Eddie Town. SAJ Musa later joined the Accused at Colonel Eddie Town after an in-fight with the RUF in Koinadugu.

THE ATTACK ON FREETOWN

26. It is the case of the Prosecution that SAJ Musa left Colonel Eddie Town around the end of November 1998 with the SLA faction. At this time, the First Accused was his second in command, the Second Accused was his third in command and the Third Accused was his Chief of Staff.
27. Following his split with SAJ Musa at Koinadugu, SAJ Musa had banned communications with the RUF. However, the First Accused and other members of the SLA faction under SAJ Musa secretly kept in touch with the RUF leadership.
28. On the death of SAJ Musa at Benguema around the 22 December 1998, the First Accused assumed command of the SLA faction. The Second Accused became his second in command whilst the Third Accused became his third in command.
29. On assuming command, the First Accused immediately contacted the RUF leadership and sought their support for a proposed joint attack on Freetown. However, as this support was slow in coming the First Accused was compelled to attack Freetown without the assistance of the RUF.
30. The SLA faction attacked and captured Freetown on 6 January 1999, where they were able to hold out for about three weeks. During this three week period the Accused were in contact with the RUF leadership, apprising them of the situation on the ground and waiting for promised ammunition and reinforcements.
31. It is the case of the Prosecution that the objective was for the RUF to join the SLA in Freetown and re-establish the Junta Government. However, as the RUF reinforcements did not arrive in time ECOMOG were able to force the SLA faction under the command of the Accused out of Freetown in late January 1999.
32. During their occupation and withdrawal from Freetown, widespread atrocities against the civilian population were committed by the SLA faction under the command of the Accused.
33. After withdrawing from Freetown the SLA joined up with the RUF faction, who had finally reached the Waterloo area. A two-pronged joint SLA/RUF attack was then

launched against Freetown, which was repulsed by ECOMOG. The Accused all took part in this new attack along with the RUF leadership.

34. Whilst the First and Third Accused fled with the RUF leadership to Makeni the Second Accused with a part of the SLA faction headed to the Western jungle where numerous atrocities were committed against the civilian population under the command of the Second Accused.

II. CONSIDERATIONS WHEN ASSESSING THE LAW AND EVIDENCE

INTRODUCTION

35. Article 17(3) of the Statute, which reflects fundamental international standards, provides that the Accused shall be presumed innocent until proven guilty. The Prosecution bears the burden of establishing the guilt of the Accused, and, in accordance with Rule 87(A) of the Rules, must do so beyond reasonable doubt.
36. Rule 89(A) of the Rules provides that proceedings before the Special Court are governed by the rules contained in Rules 89-98, and that the Chambers are not bound by national rules of evidence. Rule 89(B) adds that in cases not otherwise provided for in those Rules, a Chamber “shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.” In addition, Rule 89(C) provides that “[a] Chamber may admit any relevant evidence.” This provision ensures that the administration of justice will not be brought into disrepute by artificial or technical rules of evidence.¹
37. In cases not otherwise provided for by the Rules, the Trial Chamber has discretion in the evaluation of the evidence, and can take the approach it considers most appropriate for the assessment of evidence, and determine the credibility of witnesses and the weight to be afforded to the evidence proffered by the parties based on all of the relevant evidence admitted at trial.² However, like any judicial discretion, this discretion must be exercised judiciously. There has now developed a body of case law in international criminal courts dealing with the principles applicable to the exercise of this discretion.

¹ *Prosecutor v. Fofana*, SCSL-04-14-T-371, ‘Appeal against Decision refusing Bail’, (“*Fofana Appeal Decision on Bail*”), Appeals Chamber, 11 March 2005.

² *Prosecutor v. Kupreškić et al.*, IT-95-16-A, “Appeal Judgement”, (“*Kupreškić Appeal Judgment*”), App. Ch., 23 October 2001, para. 334; *Prosecutor v. Rutaganda*, ICTR-96-3-A, “Judgement,” (“*Rutaganda Appeal Judgment*”) Appeals Chamber, 26 May 2003., para. 207; *Prosecutor v. Sesay et al.*, SCSL-04-15-T, “Ruling on Gbao Application to Exclude Evidence of Prosecution Witness Mr. Koker”, (“*Sesay Ruling to Exclude Evidence*”) Trial Chamber, 23 May 2005, para. 4; *Fofana Appeal Decision on Bail*, paras 22-24.

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

38. The Trial Chamber has discretion to accept a witness's evidence notwithstanding inconsistencies with the witness's prior statements or the evidence of other witnesses.³ In assessing the evidence, the Trial Chamber may accept some parts of a witness's evidence and reject other parts.⁴
39. In particular, where the evidence of a witness relates to events that occurred years before the trial, the Trial Chamber should *not* treat "minor discrepancies between the evidence of various witnesses, or between the evidence of a particular witness and a statement previously made by that witness, as discrediting their evidence where that witness had nevertheless recounted the essence of the incident charged in acceptable detail."⁵ Lack of detailed memory on the part of a witness in relation to peripheral matters should not in general be regarded as necessarily discrediting the evidence.⁶
40. Thus, the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) has held that "[f]actors such as the passage of time between the events and the testimony of the witness, the possible influence of third persons, discrepancies, or the existence of stressful conditions at the time the events took place do not automatically exclude the Trial Chamber from relying on the evidence."⁷
41. The case law acknowledges in particular:
 - a. that "... where the witness is testifying in relation to repetitive, continuous or traumatic events, it is not always reasonable to expect witnesses to recall with precision the

³ *Prosecutor v. Delalić et al. (Čelebići case)*, IT-96-21-A, "Judgement", (**"Čelebići Appeal Judgment"**) Appeals Chamber, 20 February 2001, para. 497; *Kupreškić Appeal Judgment*, paras 31 and 156; *Prosecutor v. Kajelijeli*, ICTR-98-44A-A, "Judgement", (**"Kajelijeli Appeal Judgment"**) Appeals Chamber, 23 May 2005, paras. 96-97; *Prosecutor v. Semanza*, ICTR-97-20-A, "Judgement", (**"Semanza Appeal Judgment"**) Appeals Chamber, 20 May 2005, para. 224; *Prosecutor v. Limaj et al.*, IT-03-66-T, "Judgement", (**"Limaj Trial Judgment"**) Trial Chamber, 30 November 2005, paras 12, 543.

⁴ *Prosecutor v. Strugar*, IT-01-42-T, "Judgement", (**"Strugar Trial Judgment"**) Trial Chamber, 31 January 2005, para. 7; *Kupreškić Appeal Judgment*, paras 332-333; *Prosecutor v. Kunarac et al.*, IT-96-23, IT-96-23/1-A, "Appeal Judgment", (**"Kunarac Appeal Judgment"**) Appeal Chamber, 12 June 2002, para. 228.

⁵ *Blagojević and Jokić Trial Judgment*, para. 23, *Prosecutor v. Krnojelac*, IT-97-25-T, "Judgement", (**"Krnojelac Trial Judgment"**) Trial Chamber, 15 March 2002, para. 69 (emphasis added).

⁶ *Ibid.*

⁷ *Kupreškić Appeal Judgment*, para. 31.

- details, such as exact date or time, and/or sequence of the events to which they testify,”⁸ and that such circumstances may impair the ability of such witnesses to express themselves clearly or present a full account of their experiences in a judicial context;⁹
- b. that “it lies in the nature of criminal proceedings that a witness may be asked different questions at trial than he was asked in prior interviews and that he may remember additional details when specifically asked in court,”¹⁰
 - c. that “[a] witness may also forget some matter or become confused;”¹¹
 - d. that while there may be cases in which the trauma experienced by a witness may make that person unreliable as a witness, there is no recognized rule of evidence that traumatic circumstances render a witness’s evidence unreliable, and, if the Trial Chamber is to treat a witness as unreliable due to “the traumatic context, it must demonstrate this *in concreto* through a reasoned opinion adequately balancing all the relevant factors;¹² and
 - e. that where a witness is testifying about extremely traumatic events, any observation they made at the time may have been affected by stress and fear.”¹³
42. These factors are taken into account when assessing the credibility of witnesses.¹⁴
43. In cases of *repeated* contradictions within a witness’ testimony, the evidence can still be relied on if it has been sufficiently corroborated.¹⁵

⁸ *Prosecutor v. Simić et al.*, IT-95-9-T, “Judgement”, (“**Simić Trial Judgment**”) Trial Chamber, 17 October 2003, para. 22.

⁹ *Čelebići Trial Judgment*, para. 595.

¹⁰ *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, “Judgement”, (“**Naletilić Trial Judgment**”) Trial Chamber, 31 March 2003, para 10; *Prosecutor v. Vasiljević*, IT-98-32-T, “Judgement”, (“**Vasiljević Trial Judgment**”) Trial Chamber, 29 November 2002, para. 21; *Strugar Trial Judgment*, para. 8.

¹¹ *Strugar Trial Judgment*, para. 8.

¹² *Kunarac Appeal Judgment*, para. 324; see also *Prosecutor v. Kayishema*, ICTR-95-1-T, “Judgement and Sentence”, (“**Kayishema Trial Judgment**”) Trial Chamber, 21 May 1999, paras 73-75.

¹³ *Limaj Trial Judgment*, para. 15.

¹⁴ *Simić Trial Judgment*, para. 22; *Strugar Trial Judgment*, para. 8; *Limaj Trial Judgment* paras 12, 543.

¹⁵ *Prosecutor v. Halilović*, IT-01-48-T, “Judgement”, (“**Halilović Trial Judgment**”) Trial Chamber, 16 November 2005, para. 17.

CORROBORATION IS NOT REQUIRED

44. The Trial Chamber may rely on the testimony of a single witness as proof of a material fact;¹⁶ corroboration is not required although it may go to weight,¹⁷ and absence of corroboration may be particularly significant in the case of identification evidence.¹⁸ The uncorroborated testimony of a single witness may be sufficient to establish the presence of the Accused at the scene of a crime,¹⁹ and indeed, the Appeals Chamber of the ICTY has confirmed that an Accused may even be *convicted* on the basis of the evidence of a single witness, although such evidence must be assessed with the appropriate caution.²⁰

ASSESSING THE CREDIBILITY AND RELIABILITY OF WITNESSES

45. In addition to the matters referred to above, in assessing the credibility and reliability of witnesses, the Trial Chamber may have regard to matters such as the following:
- the fact that witnesses who do not have a high level of education may have difficulties in identifying and testifying to exhibits such as maps, and may have difficulties in testifying to dates, times, distances, colours and motor vehicles;²¹
 - the fact that the inability of witnesses to identify correctly types of weapons or the nature of injuries inflicted on a victim may be due to the witness's lack of knowledge of weapons or physiology, rather than any unreliability as a witness;²²
 - the fact that human memory degenerates over time²³ (and that peripheral details may be

¹⁶ Other, perhaps, than in the case of the testimony of a child witness not given under solemn declaration: *Kupreškić* Appeal Judgment, para. 33.

¹⁷ *Prosecutor v. Tadić*, IT-94-1-A, "Judgement", (*"Tadić Appeal Judgment"*) Appeals Chamber, 15 July 1999, para. 65; *Čelebići* Appeal Judgment, para. 507; *Prosecutor v. Aleksovski*, IT-95-14/1-A, "Judgement", (*"Aleksovski Appeal Judgment"*) Appeals Chamber, 24 March 2000, paras 62-63; *Kunarac* Appeal Judgment, paras. 268 (and paras. 264-271 generally); *Kupreškić* Appeal Judgment, para. 33; *Kajelijeli* Appeal Judgment, para. 170 (citing cases); *Prosecutor v. Rutaganda*, ICTR-96-3-T, Trial Chamber I, 6, "Trial Judgment and Sentence", (*"Rutaganda Trial Judgment"*) Trial Chamber, December 1999, para. 18; *Čelebići* Trial Judgment, para. 594; *Prosecutor v. Akayesu*, ICTR-96-4-T, "Judgement", (*"Akayesu Trial Judgment"*) Trial Chamber, 2 September 1998, paras. 132-136;

¹⁸ *Kayishema and Ruzindana* Trial Judgment, para. 80; *Simić* Trial Judgment, para. 25; *Strugar* Trial Judgment, para. 9. ¹⁹ *Kupreškić* Appeal Judgment, paras 34, 220.

²⁰ *Kajelijeli* Appeal Judgment, paras. 96-97.

²¹ *Kordić and Prosecutor v. Kordić and Čerkez*, IT-95-14/2-A, "Judgement", (*"Kordić and Čerkez"*) Appeals Chamber, 17 December 2004, para. 274 (emphasis added). *Halilović* Trial Judgment, para. 18.

²² *Rutaganda* Trial Judgment, para. 23.

²³ *Ibid.*, paras. 334-335.

²⁴ *Akayesu* Trial Judgment, paras 140, 454-455.

forgotten over time, even if memories of core details remain vivid);

- d. the fact that witnesses may have difficulties in testifying through an interpreter, or that discrepancies in a witness statement given via an interpreter may be due to problems of interpretation;²⁴
- e. the fact that “a significant number of witnesses requested protective measures at trial, and expressed concerns for their lives and those of their family;”²⁵
- f. the fact that there is no reason why a person suffering from Post-Traumatic Stress Disorder (PTSD) cannot be a perfectly reliable witness;²⁶ survivors of such traumatic experiences cannot however be expected to recall the precise minutiae of events such as exact dates and times, and their inability to do so may in certain circumstances indicate truthfulness and lack of interference with the witness;²⁷
- g. the fact that discrepancies between a witness’s testimony and the witness’s prior statement(s) may be due to a variety of factors, and do not necessarily indicate that the witness is not credible or reliable, such other factors include failings on the part of the Prosecution investigator, translation problems, and the fact that witness statements are not made under solemn declaration before a judicial officer; thus, the Trial Chamber may attach greater probative value to the witness’s oral testimony in court which has been subject to the test of cross-examination;²⁸ and
- h. the fact that cultural factors of loyalty and honour may also have affected the witnesses’ evidence as to the events.²⁹

²⁴ *Rutaganda* Trial Judgment, paras 23, 334-335; *Akayesu* Trial Judgment, paras 145-154.

²⁵ *Limaj* Trial Judgment, para. 15.

²⁶ *Kupreškić* Appeal Judgement, para. 171; *Prosecutor v. Furundžija*, ICTY IT-95-17/1-T, “Judgement,” (“*Furundžija* Trial Judgment”), 10 December 1998, para. 109.

²⁷ *Furundžija* Trial Judgment, para. 113 (and see paras. 110 to 116 generally); *Akayesu* Trial Judgment, paras 142-144, 299.

²⁸ *Kayishema* Trial Judgment, paras 76-80; *Akayesu* Trial Judgment, para. 137; *Rutaganda* Trial Judgment, para. 19.

²⁹ *Limaj* Trial Judgment, para. 15.

HEARSAY EVIDENCE

46. Rule 89(C) gives the Chamber a broad discretion to admit relevant hearsay evidence,³⁰ that is, a statement of a person made otherwise than in the proceedings in which it is tendered, that is nevertheless tendered in those proceedings in order to establish the truth of what that person says.³¹ This applies even when the evidence cannot be examined at its source or when it is not corroborated by direct evidence.³² Proceedings in this legal system are conducted before professional judges who possess the necessary ability to begin by hearing hearsay evidence and then to evaluate it.³³ In the context of armed conflicts where thousands of people are displaced, detained or even killed, it can be expected that the witnesses will refer to events which others, and not they themselves, experienced, although such evidence must be considered on the basis of parity between the parties and on respect for the rights of the Accused as expressed in internationally recognised standards.³⁴

CIRCUMSTANTIAL EVIDENCE

47. Circumstantial evidence is admissible where it is in the interests of justice to admit it,³⁵ and is often used to establish the *mens rea* of an accused. If there is more than one conclusion which is reasonably open from the evidence, these conclusions must all be consistent with the guilt of an accused.³⁶

³⁰ *Aleksovski Appeal Decision on Evidence*, para. 15; *Prosecutor v. Blaškić*, IT-95-14-T, "Decision on Standing Objection of the Defence to the Admission of Hearsay with no Inquiry as to its Reliability," (*"Blaškić Decision on Admission of Hearsay"*) Trial Chamber, 21 January 1998, para. 10; *Prosecutor v. Tadić*, IT-94-1-T "Decision on Defence Motion on Hearsay" (*Tadić Decision on Hearsay*), 5 August 1996, paras. 7, 17; *Kordić and Čerkez Appeal Judgment*, paras 281, 282.

³¹ *Aleksovski Appeal Decision on Evidence*, para. 15; *Blaškić Decision on Admission of Hearsay*, para. 10; *Tadić Decision on Hearsay*, paras 7, 17; *Kordić and Čerkez Appeal Judgment*, paras 281, 282.

³² *Simić Trial Judgment*, para. 23.

³³ *Aleksovski Appeal Decision on Evidence*, para. 15; *Blaškić Decision on Admission of Hearsay*, para. 10; *Tadić Decision on Hearsay*, paras. 7, 17.

³⁴ *Blaškić Decision on Admission of Hearsay*, para. 4.

³⁵ *Simić Trial Judgment*, para. 27.

³⁶ *Halilović Trial Judgment*, para. 15; *Kordić and Čerkez Appeal Judgment*, para. 289; *Delalić Appeal Judgment*, para. 458; *Simić Trial Judgment*, para. 27.

INSIDER WITNESSES

48. In any trial in which an ‘insider’ provides evidence it is for the Tribunal of fact to assess what, if any, impact the conditions surrounding the witness have affected the reliability and credibility of the testimony. For instance, the witness George Johnson, TF1-167 was a very senior member of the AFRC faction in the bush; consequently, upon him making the decision to testify if it was appropriate, upon an objective assessment of his security position that he be provided with protection. In the difficult task of evaluating the evidence, due regard can be had to this “context of fear.”³⁷
49. Insider witnesses play a crucial role in the trials in international criminal courts and are recognised as a pivotal source of evidence. In *Prosecutor v. Hassan Ngeze and Barayagwiza*, the ICTY Trial Chamber considered that the testimony of an insider was in the “the interests of justice.”³⁸ Thus, the fact that such insiders have commonly been granted guarantees of non-Prosecution or mitigation is not considered as undermining the credibility of their testimonies.

PAYMENTS TO WITNESSES

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

EXPERT WITNESSES

51. Neither the Statute nor the Rules oblige a Trial Chamber to require medical reports or other scientific evidence as proof of a material fact.³⁹ In relation to experts, it is for the Court to determine whether the factual basis for an expert opinion is truthful and that

³⁷ *Limaj* Trial Judgment, para. 15.

³⁸ *Prosecutor v. Hassan Ngeze and Barayagwiza*, ICTR-99-52-I “Decision on the Defence Request to Hear the Evidence of Witness Y by Deposition,” Trial Chamber, 10 April 2003, para. 7.

³⁹ *Aleksovski* Appeal Judgment, para. 62.

determination is made in the light of all the evidence given.⁴⁰ Furthermore, the weight to be attributed to expert evidence is to be determined by the Trial Chamber in light of all the evidence adduced.⁴¹ According to the jurisprudence, the factors to consider when assessing the probative value of an expert's oral and written evidence are the professional competence of the expert, the methodologies used and the credibility of the findings made in light of these factors and other evidence accepted by the Trial Chamber.⁴² The Prosecution stresses that "[...] the expert may validly present his submissions on the issue of subordination, which naturally falls within the field of expertise of a military expert, and that, in this context, a military expert may express his opinion on matters of law."⁴³

DOCUMENTARY EVIDENCE

52. The weight to be attached to documents admitted into evidence is assessed when considering the entire evidence at the end of the trial.⁴⁴ If the original of a document is unavailable then copies may be relied upon.⁴⁵

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

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

⁴⁰ *Prosecutor v. Galić*, IT-98-29-T, "Decision on the Expert Witness Statements Submitted by the Defence", ("Galić Decision on Expert Witness") Trial Chamber, 27 January 2003, p. 4; *Čelebići Appeal Judgment*, para. 594.

⁴¹ *Galić Decision on Expert Witness*, p. 4; *Prosecutor v. Brđanin*, IT-99-36-T "Decision on Prosecution's Submission of Statement of Expert Witness Ewan Brown," Trial Chamber, 3 June 2003, p. 4.

⁴² *Blagojević Trial Judgment*, para. 27 endorsing *Vasiljević Trial Chamber's view*.

⁴³ *Prosecutor v. Hadžihasanović and Kubura*, IT-01-47-T, T "Decision on Report of Prosecution Expert Klaus Reinhardt", Trial Chamber 11 February 2004, p. 4.

⁴⁴ *Prosecutor v. Simić et al.*, IT-95-9-T, "Reasons for Decision on Admission of "Variant A&B" Document," Trial Chamber, 22 May 2002.

para. 12.

⁴⁵ *Fofana Appeal Decision on Bail*, para. 24.

matter in relation to all of the accused.⁴⁶

54. Thus, a witness presented by one Accused can give evidence against a co-Accused.⁴⁷ Similarly, evidence brought to light in the cross-examination of a witness by one Accused can be taken into account to the prejudice of another Accused, although the other Accused will have the right to further examine that witness to clarify the matter.⁴⁸

FAILURE TO PUT DEFENCE CASE TO PROSECUTION WITNESSES

55. The Rules of Procedure and Evidence of the Special Court do not have an equivalent rule to Rule 90(H)(ii) of the Rules governing procedures before the ICTY which provides:

In the cross-examination of a witness who is able to give evidence relevant to the case for the cross-examining party, counsel shall put to that witness the nature of the case of the party for whom that counsel appears which is in contradiction of the evidence given by the witness.⁴⁹

56. Nonetheless, the Prosecution submits that as a matter of good practice, and in accordance with general principles, each party is under a duty to put its case to witnesses for the opposing party.⁵⁰

⁴⁶ See, for instance, *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, “Decision on Request for Severance of Three Accused”, (“Bagosora Decision”) Trial Chamber, 27 March 2006, para. 5 referring to earlier relevant case law of the ICTY and ICTR.

⁴⁷ See *Prosecutor v. Kvočka et al.*, IT-98-30-PT, “Decision on the ‘Request to the Trial Chamber to Issue a Decision on Use of Rule 90 H’”, Trial Chamber, 11 January 2001, p. 3, in which the Trial Chamber rejected a defence motion seeking to limit Prosecution cross-examination of Defence witnesses to questions relating to the accused who called that witness. The Trial Chamber considered “that a witness presented by an accused may give evidence against one of his co-accused, so that the co-accused has a right to cross-examine that witness, and further that to prohibit all cross-examination by a co-accused as requested in the Motion could exclude relevant evidence”.

⁴⁸ *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, “Decision on the Defence Motion for the Re-Examination of Witness DE”, Trial Chamber, 19 August 1998, para. 15.

⁴⁹ The provision was added to the Rules of Procedure and Evidence of the ICTY on 17 November 1999. A similar provision was added to the ICTR Rules (Rule 90(G)(ii)) on 23 May 2003.

⁵⁰ In *Prosecutor v. Krajisnik*, it was noted by the Presiding Judge that the background to Rule 90(H)(ii) was that it would be unfair to a witness not to have the opportunity to respond to a party’s case, being unaware of what that case would be. See Transcript, 15 March 2006, p. 21428. See also *Prosecutor v. Oric*, IT-03-68-T, “Decision on Partly Confidential Defence Motion Regarding the Consequences of a Party Failing to Put its Case to Witnesses pursuant to Rule 90(H)(II)”, 17 January 2006; and *Prosecutor v. Brdjanin and Talic*, IT-99-36-T, “Decision on ‘Motion to Declare Rule 90(H)(ii) Void to the Extent that it is in violation of Article 21 of the Statute of the International Tribunal’ by the Accused Radoslav Brdjanin and on ‘Rule 90(H)(ii) Submissions’ by the Accused Momir Talic”, (“**Brdjanin Rule 90(H)(ii) Decision**”), 22 March 2002, for an analysis of the foundations, purpose and scope of the Rule.

57. This issue arose during the CDF proceedings where the Presiding Judge indicated that it was one to be considered at the end of the trial.⁵¹ The Prosecution provided the Trial Chamber in those proceedings with some relevant authorities when the point was raised.⁵²

58. The ICTR Appeals Chamber stated, prior to the adoption of an equivalent rule to Rule 90(H)(ii) of the ICTY Rules, that:

[W]hen weighing the Defence's allegations going to the credibility of the Prosecution witnesses, a Trial Chamber is entitled to take into account the fact that the Defence did not put such allegations to the witnesses for their reactions. Indeed, without the benefit of observing the witnesses' reactions to such allegations, the Trial Chamber was not in a position to determine whether there was merit in the Defence allegations. Contrary to the Appellant's claim, there is no indication that the Trial Chamber based its position on this matter on the version of Rule 90(G) which came into effect after the Appellant's trial.⁵³

59. In the *Akayesu* case before the International Criminal Tribunal for Rwanda (ICTR), the Trial Chamber had also found that a party must lay the foundations for its challenges and put those challenges to the witness in question during cross-examination, both as a matter of practicality and of principle.⁵⁴ The practical point is that in the absence of such a procedure, the Chamber is deprived of a resolution of the matter in the form of a convincing admission or rebuttal by the witness. The point of principle is that of fairness to the witness in having an allegation put to him so that he may respond to it.⁵⁵

60. The Trial Chamber in *Akayesu* went on to say that while this was a rule under the common law, "it is also simply a matter of justice and fairness to victims and witnesses, principles recognised in all legal systems throughout the world."⁵⁶ The precise circumstances in the *Akayesu* case were that the defence, in closing arguments, invited the Chamber to

⁵¹ *Prosecutor v Norman, Fofana, Kondewa*, Transcript, 14 February 2006, p. 65, lines 10-20.

⁵² *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-560, "Public Prosecution Authorities on the Duty of a Party to Put its Case to Witnesses in Cross-Examination", 16 February 2006. While the Defence for Fofana filed a Response, the issue did not fall to be decided at that stage of the proceedings, see SCSL-2004-14-T-561, "Fofana Response to Prosecution Authorities on the Duty of a Party to Put its Case to Witnesses in Cross-Examination", 17 February 2006.

⁵³ *Prosecutor v Kajelijeli*, ICTR-98-44A-A, "Judgement", Appeals Chamber, 23 May 2005, para. 26.

⁵⁴ *Akayesu* Trial Judgment, para. 46.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

disbelieve the testimony of prosecution witnesses on the basis that they belonged to a syndicate of informers or may have denounced the accused to take over his property, having failed to put this allegation to the witnesses concerned. The Trial Chamber did not accept the defence argument and determined that the credibility of each witness in the case had to be assessed on its merits.

61. As noted in *Akayesu*, the described rule has its origins in the common law and is followed in certain adversarial systems such as in England. It is generally known as the “the rule in *Browne v Dunn*”⁵⁷ which “emphasises the importance of cross-examination in obtaining comment upon facts in issue.”⁵⁸
62. The Prosecution submits that Rule 90(H)(ii) of the ICTY Rules and Rule 90(G)(ii) of the ICTR Rules merely codify a general principle of fairness. Commenting on the provision, the ICTY Appeals Chamber has stated:

Rule 90(H)(ii) seeks to facilitate the fair and efficient presentation of evidence whilst affording the witness cross-examined the possibility of explaining himself on those aspects of his testimony contradicted by the opposing party’s evidence, so saving the witness from having to reappear needlessly in order to do so and enabling the Trial Chamber to evaluate the credibility of his testimony more accurately owing to the explanation of the witness or his counsel.⁵⁹
63. The Prosecution submits that the Trial Chamber should refuse to accept or give less weight to Defence evidence that presents a line of defence that has not been put to Prosecution witnesses (for example the evidence of the First Accused that he was maltreated in the presence of Lt. Col. Petrie) in the interests of fairness to the witnesses and overall considerations of justice.

⁵⁷ *Browne v. Dunn* (1893) 6 R. 67, H.L.

⁵⁸ *Prosecutor v Brdjanin and Talic*, IT-99-36-T, “Decision on ‘Motion to Declare Rule 90(H)(ii) Void to the Extent that it is in violation of Article 21 of the Statute of the International Tribunal’ by the Accused Radoslav Brdjanin and on ‘Rule 90(H)(ii) Submissions’ by the Accused Momir Talic”, 22 March 2002, para. 12. The rule may be stated as follows: “If in a crucial part of the case, the prosecution intend to ask the jury to disbelieve the evidence of a witness for the defence it is right and proper that the witness should be challenged when in the witness-box, or at any rate, that it should be made plain while the witness is in the box that this evidence is not accepted”, Archbold, *Criminal Pleading, Evidence and Procedure* (London: 2001), p. 1097, cited in *Brdjanin Rule 90(H)(ii) Decision*, para. 12.

⁵⁹ *Prosecutor v Brdjanin and Talic*, IT-99-36-AR73.7, “Decision on the Interlocutory Appeal against a Decision of the Trial Chamber, as of right”, 6 June 2002, p. 4.

RELEVANCE OF EVIDENCE OF ACTS OCCURRING OUTSIDE THE TEMPORAL OR GEOGRAPHIC SCOPE OF THE INDICTMENT

64. Cases before international criminal courts commonly involve numerous crimes committed on a large scale over a significant period of time and over a large geographical area. Thus, in this case, the Indictment specifies the crimes charged by reference to geographical locations and periods of time. For instance, paragraph 68 of the Indictment charges the Accused with enslavement committed in Kono District “between about 14 February 1998 to January 2000,” and in “locations within the District such as AFRC/RUF camps, Tombodu, Koidu, Wondedu, Tomendeh.”
65. An accused can, of course, only be convicted of crimes with which he has been charged in the Indictment, even if at trial evidence emerges of other crimes for which he may bear responsibility. However, this does not mean that evidence of crimes or other conduct that occurred outside the geographical or temporal scope of the Indictment is irrelevant.⁶⁰
66. First, such evidence may nonetheless be relevant in determining whether the crimes charged have been proved beyond a reasonable doubt. For example, if an accused is charged with having murdered someone by shooting them on a specific date, this does not mean that evidence of the accused’s conduct, such as his preparatory acts or prior threats on other dates is inadmissible. These events occurring before and after the date of the alleged crime would typically not be pleaded in the indictment, but are, however, subject to pre-trial disclosure.
67. Evidence of crimes committed outside the geographic or temporal scope of the Indictment may be probative of the question whether the crimes charged in the Indictment were part of a widespread or systematic attack against a civilian population. Similarly, evidence that an accused exercised superior authority (for purposes of Article 6(3) of the Statute) shortly before the timeframe in the indictment, and/or shortly after the timeframe of the indictment, may clearly be probative of the question whether the accused exercised superior authority *during* the timeframe of the Indictment. In short, while the Trial Chamber is only called upon to decide what is charged in the indictment, in so doing, it

⁶⁰ *Prosecutor v. Strugar, Decision on the Defence Objection to the Prosecution’s Opening Statement Concerning Admissibility of Evidence*, Case No. IT-01-42-T, Trial Chamber. II, 22 January 2004, p. 3; *Prosecutor v. Kupreškić et al, Appeal Judgement*, Case No. IT-95-16-A, Appeals Chamber., 23 October 2001, paras. 321, 323.

must look at all of the evidence in the case considered as a whole, including evidence of matters falling outside the timeframe in the indictment.

68. All of the evidence in this case has been admitted by the Trial Chamber on the grounds that it is relevant. Where the Defence has had objections to the admission of evidence on grounds of relevance, it has had the opportunity to raise these objections during the trial. At this stage, at the end of the trial, the Trial Chamber must evaluate all of the evidence in the case as a whole. Evidence cannot be disregarded, merely because it deals with matters outside the geographical or temporal scope of the Indictment.
69. It furthermore needs to be emphasized that in order for an accused to be convicted of a crime charged in the indictment, it is not necessary for the Prosecution to prove beyond a reasonable doubt that the crime was in fact committed within the timeframe specified in the Indictment. It *cannot* be argued, for instance, that if witnesses are contradictory or uncertain as to the precise time at which a crime was committed, there must be a reasonable doubt as to whether the crime was within the temporal timeframe of the Indictment, and that the Accused must therefore be acquitted. The time of the commission of a crime is not a material element of the crime, and the guilt of an accused does not depend on it being proved.
70. The reason for specifying dates in an indictment is not because they are material to criminal liability but is to give notice to the Defence, so that it is able to prepare its case. However, it is clear that it is not always possible to be precise about exact dates when dealing with events on the scale that are under consideration, given especially the climate of upheaval in which they occurred. For this reason, the dates and timeframes given in the Indictment are often prefaced with qualifying words such as “between about” two given dates.
71. The common law rule concerning dates specified in an indictment, which was said in *Dossi* to be a rule that has existed “since time immemorial,”⁶¹ is expressed in *Archbold* as follows:

⁶¹ *R. v. Dossi*, 13 CR.App.R. 158 (CCA), at pp. 159-160 (“*Dossi*”): “From time immemorial a date specified in an indictment has never been a material matter unless it is actually an essential part of the alleged offence.... Thus, though the date of the offence should be alleged in the indictment it has never been necessary that it should be laid according to truth unless time is of the essence of the offence.”

... a date specified in an indictment is not a material matter unless it is an essential part of the alleged offence; the defendant may be convicted although the jury finds that the offence was committed on a date other than that specified in the indictment....

The prosecution should not be allowed to depart from an allegation that an offence was committed on a particular day in reliance on the principle in *Dossi* if there is a risk that the defendant has been misled as to the allegation he has to answer or that he would be prejudiced in having to answer a less specific allegation....⁶²

72. The rule in *Dossi* was applied by the Appeals Chamber of the ICTR in the *Rutaganda* case.⁶³ The *Dossi* principle has also been recognised by the Appeals Chamber of the ICTY in the *Kunarac* case.⁶⁴ *Dossi* was further cited with approval by the ICTY Trial Chamber in the *Tadic* case, which affirmed that the date of the crime is not of the essence.⁶⁵ The ICTR Trial Chamber in the *Kayishema and Ruzindana* case expressly approved this passage in the *Tadic* case and the authorities cited therein (including *Dossi*), and similarly affirmed that the Prosecution need not prove an exact date of an offence where the date or

⁶² *Archbold Criminal Pleading, Evidence and Practice*, 2002 Edition, paras. 1-127 to 128, emphasis added.

⁶³ *Prosecutor v. Rutaganda*, ICTR-96-3-A, "Judgement", Appeals Chamber, 26 May 2003, paras 296-306, especially para. 306: "It is the opinion of the Appeals Chamber that the alleged variance between the evidence presented at trial and the Indictment in relation to the date of the commission of the offence cannot lead to invalidation of the Trial Chamber's findings unless the said date is actually an essential part of the Appellant's alleged offence. However, such is not the case in this instance. The Appeals Chamber notes, moreover, that according to the evidence presented at trial, the weapons distributions occurred during a period that was reasonably close to the date referred to in the Indictment and that, therefore, the Appellant was not misled as to the charges brought against him. For these reasons, the Appeals Chamber dismisses this sub-ground of appeal and finds that the Trial Chamber did not commit the alleged error of law in this instance." The Appeals Chamber in this judgement affirmed the judgement of the Trial Chamber in this respect: see *Prosecutor v. Rutaganda*, ICTR-96-3-T, "Judgement", Trial Chamber, 6 December 1999, para 201: "The Chamber notes that the dates of the three incidents - 8 April, 15 April, and 24 April - vary from the date on or about 6 April, which is set forth in paragraph 10 of the Indictment. The phrase 'on or about' indicates an approximate time frame, and the testimonies of the witnesses date the events within the month of April. The Chamber does not consider these variances to be material or to have prejudiced the Accused. The Accused had ample opportunity to cross-examine the witnesses. In reviewing the allegation set forth in this paragraph of the Indictment, the Chamber finds that the date is not of the essence. The essence of the allegation is that the Accused distributed weapons in this general time period." (Footnote omitted.)

⁶⁴ *Prosecutor v. Kunarac et al.*, IT-96-23&23/1-A, "Judgement", Appeals Chamber, 12 June 2002, para. 217: "in the view of the Appeals Chamber, minor discrepancies between the dates in the Trial Judgement and those in the Indictment in this case go to prove the difficulty, in the absence of documentary evidence, of reconstructing events several years after they occurred and not, as implied by the Appellant, that the events charged in Indictment IT-96-23 did not occur."

⁶⁵ *Prosecutor v. Tadic*, IT-94-1-T, "Opinion and Judgement", 7 May 1997, para. 534.

time is not also a material element of the offence.⁶⁶ In that case the Trial Chamber stated:

It is unnecessary, however, for the Prosecution to prove an exact date of an offence where the date or time is not also a material element of the offence. Whilst it would be preferable to allege and prove an exact date of each offence, this can clearly not be demanded as a prerequisite for conviction where the time is not an essential element of that offence. Furthermore, even where the date of the offence is an essential element, it is necessary to consider with what precision the timing of the offence must be detailed. It is not always possible to be precise as to exact events; this is especially true in light of the events that occurred in Rwanda in 1994 and in light of the evidence we have heard from witnesses. Consequently, the Chamber recognises that it has balanced the necessary practical considerations to enable the Prosecution to present its case, with the need to ensure sufficient specificity of location and matter of offence in order to allow a comprehensive defence to be raised.⁶⁷

73. The principle is applied in the national courts of a variety of jurisdictions, including for instance England and Wales,⁶⁸ Australia,⁶⁹ Canada,⁷⁰ Trinidad and Tobago⁷¹ and Papua New Guinea.⁷²
74. In cases where the evidence indicates that the event in question happened outside the temporal timeframe of the indictment, the question is thus whether the accused “has been misled as to the allegation he has to answer or that he would be prejudiced in having to answer a less specific allegation.” The Prosecution submits that if some witnesses put the

⁶⁶ *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, “Judgement and Sentence”, 21 May 1999, paras. 81-86.

⁶⁷ *Ibid*, para. 85.

⁶⁸ *R. v. JW* [1999] EWCA Crim 1088 (21 April 1999) (CCA); *R. v. Lowe* [1998] EWCA Crim 1204 (CCA).

⁶⁹ *R. v. Kenny Matter*, No. CCA 60111/97 (29 August 1997) (NSW CCA), where the indictment alleged offences in 1986 and the court convicted on evidence indicating that the offence happened in the last week of 1985; *R. v. Liddy* [2002] SASC 19 (31 January 2002) (SA CCA), esp. paras. 256ff; *R. v. Frederick* [2004] SASC 404 (7 December 2004) (SA CCA), esp. paras. 38-41.

⁷⁰ *R. v. Hughes* [1988] BCJ No. 2496; *R. v. B(G)* (1990), 56 CCC (3d) 200; *A.B. and C.S. v. R.*, [1990] 2 SCR 30 (SCC) both found at (<http://www.canlii.ca/ca/cas/scc/1990/1990scc59.html>).

⁷¹ *Bowen v. State*, Cr. App. No. 26 of 2004, Trinidad and Tobago Court of Appeal, 12 January 2005 (http://64.233.179.104/search?q=cache:LAekyq0Fx_wJ:www.ttlawcourts.org/Judgments/coa/2005/john/Cra26_2004.rt+f+dossi+indictment&hl=en&gl=uk&ct=clnk&cd=5).

⁷² *State v. Fineko* [1978] PNGLR 262 (25th July, 1978) (<http://www.worldlii.org/pg/cases/PNGLR/1978/262.html>). The rule is not applicable where the defence has provided an alibi defence or where the age of the complainant is an essential element of the offence. See *R. v. Radcliffe* [1990] Crim LR 524 (CA).

events within the relevant timeframe and others put it without or are uncertain as to time, it is difficult to see how the Defence could have been misled as to the allegation that the Accused has to answer. Even if all the evidence puts an event outside the timeframe of the Indictment, it is still difficult to see how the Defence would have been misled or prejudiced, given the inclusion in the Indictment of words such as “between about,” unless on the evidence it appears that the event was clearly so far outside the timeframe that the Indictment could not even be considered to be the same event as that to which the Indictment refers. Furthermore, the defence would have had the opportunity to cross-examine the Prosecution witnesses on this aspect of their evidence.

III. OBSERVATIONS ON THE TESTIMONY OF ALEX TAMBA BRIMA

75. The First Accused's evidence may be rejected in its entirety as founded on lies. The Accused has lied about his name, his nickname, his health, his occupation; all matters which may be regarded as highly relevant issues which have constituted for the First Accused important aspects of his defence.⁷³
76. Resolving whether or not the First Accused has lied in his evidence on these issues does not require findings on the merits of the evidence of Prosecution "insider" witnesses. The First Accused's lies are obvious on the face of his own evidence and the evidence (including documentary evidence) put to him in cross-examination.

"ALEX" TAMBA BRIMA/ TAMBA "ALEX" BRIMA

77. TF1-153 gave evidence that he had grown up with the First Accused – whom he called *Alex* Tamba Brima - at Wilberforce Barracks [emphasis added]. He testified that the First Accused was nicknamed "Gullit" because he was a very good footballer.⁷⁴ Asked about TF1-153's testimony in cross-examination, the First Accused gave the implausible explanation that TF1-153 had made a "mistake" because he had "gone mad."⁷⁵
78. The First Accused testified in examination-in-chief that whilst he had grown up with TF1-153 in Wilberforce barracks, his relationship with him "wasn't good" because the First Accused's brother Sahr had been falsely accused of impregnating TF1-153's sister.⁷⁶ He testified that TF1-153 lied in court because "he must have disliked me."⁷⁷
79. A number of Prosecution witnesses testified that the First Accused's full name is Alex Tamba or Tamba Alex Brima. TFI-184 testified that "Gullit" was known as "*Alex* Brima".⁷⁸ TF1-334 testified that "Gullit" was "Tamba *Alex* Brima".⁷⁹ TF1-114 testified

⁷³ Brima's evidence on matters more directly relevant to the various subject headings in this brief, are addressed later in the brief under those subject headings (for eg, Brima's membership of the Supreme Council, his position as PLO II, his alibis for Kono and Bombali districts, and the invasion of Freetown).

⁷⁴ TF1-153, Transcript 22 September 2005, pp. 13-14; p. 56.

⁷⁵ Accused Alex Tamba Brima: Transcript 29 June 2006, p. 16.

⁷⁶ Accused Alex Tamba Brima, Transcript 19 June 2005, Closed session, pp. 22-23.

⁷⁷ Accused Alex Tamba Brima, Transcript 19 June 2005, Closed session, p. 23.

⁷⁸ TF1-184, Transcript 27 September 2005, p. 19.

that the name “*Alex Tamba Brima*” was announced by the mass media with regards to the overthrow of the government in May 1997.⁸⁰ TF1-033 testified that “*Tamba Alex Brima*” was known as “*Gullit*.”⁸¹ George Johnson testified that “*Alex Tamba Brima’s*” “aka name” was “*Gullit*.”⁸² [Emphases added.]

80. The First Accused testified that he had never been known as “*Alex*.”⁸³
81. Cross-examined on Prosecution Exhibit P81,⁸⁴ a Power of Attorney signed by him on 12 March 2003 in the name “*Tamba Alex Brimah*” [emphasis added], with a signature bearing the initials “T” and “A”, the First Accused lied. He testified that this Power of Attorney, appointing three lawyers including Special Court Duty Counsel AFRC Claire Carlton-Hanciles to act as his attorneys, was signed by him “under duress.”⁸⁵
82. No such claim was ever reported to any Special Court official, or articulated before any Chamber, whether by the Accused or through his Counsel.⁸⁶ The First Accused later gave an implausible explanation for the signature’s appearance, claiming that he had signed the Power of Attorney with the initials “T-A-M” (or “T-M”), as this was “how I abbreviate my signature.”⁸⁷
83. Prosecution Exhibit P82,⁸⁸ a Request for Legal Assistance, was also signed by the First Accused on 12 March 2003 with initials “T” and “A” in the name “*Tamba Alex Brimah*”. On this occasion, the First Accused accepted that the signature bore an initial “A”, but claimed that he had been forced to sign the document by a policeman serving in the SLP,⁸⁹

⁷⁹ TF1-334, Transcript 16 May 2005, p. 21.

⁸⁰ TF1-114, Transcript 14 July 2005, pp. 118-119.

⁸¹ TF1-033, Transcript 11 July 2005, p. 6.

⁸² George Johnson, Transcript 15 September 2005, pp. 9-10.

⁸³ Accused Alex Tamba Brima, Transcript 5 June 2006, p. 59.

⁸⁴ Exhibit P81, Power of Attorney, 12 March 2003 (This document, like Exhibits P82 and P83 is a Special Court document, filed with the Special Court’s Registry and bearing a stamped marking to that effect).

⁸⁵ Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 73-74.

⁸⁶ Brima at first denied that he had signed with the letter “A”, albeit that his signature obviously bore this initial (Accused Alex Tamba Brima, Transcript 28 June 2006, p. 74).

⁸⁷ When shown Exhibit P81 again, on the second day of cross-examination (Accused Alex Tamba Brima, Transcript 29 June 2006, p. 35).

⁸⁸ Exhibit P82, Request for Legal Assistance, 12 March 2003.

⁸⁹ Accused Alex Tamba Brima, Transcript of 28 June 2006, pp. 76-77.

later claiming that he was “under gunpoint by John Anthony and other security called Jeff.”⁹⁰

84. Exhibit P82 was stamped, certified and signed as a true copy of an original document by one Mariana Goetz on 14 March 2003. Exhibit P81 was witnessed and signed by three individuals, Beatrice Kruche, John Anthony, Mariana Goetz. No cogent explanation was provided by the First Accused as to why he would not have wanted to sign a Power of Attorney or Request for Legal Assistance voluntarily. No explanation was provided why the Office of the Principal Defender of the Special Court (not the Office of the Prosecutor) would have forced him to sign documents adding a further initial “A” to his signature or why they would have forced him to sign under a partly correct name.
85. Prior to being shown the documents in cross-examination, the only person in the previous three years to whom the First Accused had allegedly reported the incident was his late lawyer, a Mr. Terrence Terry.⁹¹ Mr. Terry was a senior Sierra Leonean advocate who had earlier represented Charles Taylor before this court in Mr. Taylor’s challenge to his immunity.⁹² It would be implausible that such a respected advocate like Mr. Terry would not have brought the First Accused’s very serious allegations to the attention of the relevant authorities.
86. The First Accused denied signing a third Prosecution Exhibit, P83.⁹³ This document is a Power of Attorney dated 24 March 2003, signed in the name “Tamba Alex Brimah”, and bearing a signature with initials “T” and “A”, strikingly similar in form to the signature which may be seen on exhibits P81 and P82. By it, the First Accused appointed the late Mr. Terence Terry to act as his attorney.⁹⁴
87. Prosecution Exhibit P83 was a document, like Exhibits P81 and P82, provided by and filed with the Special Court’s Registry. Exhibit P83 was received by the Registrar’s Office on 28 March 2003, and is marked with a stamp to that effect. The inference that the Chamber

⁹⁰ Accused Alex Tamba Brima, Transcript of 28 June 2006, p. 78.

⁹¹ Accused Alex Tamba Brima, Transcript of 28 June 2006, pp. 78-80; 82. (Brima claimed that the Prosecution “jogged my memory” regarding the incident, *ibid.*, p. 80; p. 82. He allegedly reported the incident to Mr. Terry in about May 2003, *ibid.*, p. 89. Mr. Terry died in June 2004, *ibid.*, p. 90.)

⁹² *Prosecutor v. Taylor*, SCSL-03-01-15, “Applicant’s Motion Made Under Protest and without Waiving of Immunity Accorded to a Head of State President Charles Ghankay Taylor”, 23 July 2003.

⁹³ Exhibit P83, Power of Attorney, 24 March 2003.

⁹⁴ Accused Alex Tamba Brima, Transcript of 28 June 2006, pp. 88-89.

may draw from the document's source and its filing thereafter is that it is indisputably authentic. No explanation has been provided on behalf of the Defence as to why the signature on that document should have been forged, and by whom.

88. The Chamber will recall that when the First Accused was asked to look at one of the above exhibits after they had all been taken away from him he panicked. He wanted a guarantee from the Chamber that the document given to him was the document which he said he signed.⁹⁵ It remains to be explained why.
89. The Prosecution submits that the answer lies in the fact that because the First Accused claimed that one of his signatures on one of the exhibits was false whilst the others were all genuine he would not be able to recognise which signature he had earlier claimed to be false. The Prosecution submits that all the signatures on the above exhibits as signed by the First Accused are genuine, which is why he would not be able to remember which signature on which document he claimed to be false.
90. The only inference that the Chamber may draw from Exhibits P81, P82 and P83, taken together, and the First Accused's account of how they came to be, is this: In the face of a signature which was obviously his own, the First Accused lied in an effort to manoeuvre his way out of what amounts to a devastating blow to his credibility and to this aspect of his defence.
91. The First Accused lied when he claimed that he had signed Exhibits P81 and P82 under duress, and he lied when he claimed that he had not signed Exhibit P83. The Prosecution submits that the First Accused's evidence on this issue may be rejected in its entirety as manifestly dishonest.⁹⁶
92. The most damning piece of evidence, however, to prove that the First Accused was lying when he said that he was not known as Alex can be found in the court records of his initial appearance. The First Accused, during cross-examination, gave evidence that he could read, write and speak English and also that he regarded himself as a reasonably well

⁹⁵ Accused Alex Tamba Brima, Transcript 29 June 2006, pp. 32-33.

⁹⁶ The Prosecution notes that Brima himself, in questions from the Prosecution and His Honour Justice Lussick, appeared to be unclear about which document he had claimed to be signed by him under duress and which he had claimed bore a forged signature (Alex Tamba Brima: Transcript 29 June 2006 p. 32-33).

educated man.⁹⁷ In the First Accused's initial appearance before Judge Itoe on 15 March 2003, the First Accused told and agreed with Justice Itoe that his name was Tamba Alex Brima on two separate occasions.⁹⁸ Two days later, in a continuation of his initial appearance, the First Accused again told and agreed with Justice Itoe that his name was Tamba Alex Brima on two separate occasions.⁹⁹ On each occasion Ms. Clare Carlton-Hanciles appeared on his behalf for the Defence.

93. The First Accused in his own evidence did not suggest that he was ever put under duress either before or by Justice Itoe. The Prosecution submits that he would have done so if this were the case as he has done against Lt. Col. Petrie and others. This piece of evidence on its own confirms that the First Accused accepts that he is sometimes known as Alex and that he has been lying under oath before this trial chamber in this respect.
94. The First Accused has relied upon a discharge book tendered during his evidence in chief.¹⁰⁰ This book purportedly corroborates his evidence on two issues: that he was not known as Alex, and that he never rose in the AFRC period to the rank of either sergeant or staff sergeant.
95. The discharge book does not constitute any or any serious challenge to the abundance of documentary evidence tendered by the Prosecution in support of the Prosecution case that the First Accused, was/is known as Alex Tamba or Tamba Alex Brima, served as a PLO 2 in the AFRC Government, and attained, in the period of AFRC rule, the rank of Staff Sergeant.¹⁰¹ The Prosecution summarises this evidence as follows:
 - a. Exhibit P7 is a Proclamation dated 3 September 1997, contained in the Sierra Leone Gazette for 18 September 1997, naming members of the Council (the Armed Forces Revolutionary Council) with effect from 25 May 1997.¹⁰² They include at (6) "Staff

⁹⁷ Accused Alex Tamba Brima, Transcript 28 June 2006, p. 4.

⁹⁸ Accused Alex Tamba Brima, Transcript 15 March 2003, p. 2.

⁹⁹ Accused Alex Tamba Brima, Transcript 17 March 2003, p. 7.

¹⁰⁰ Exhibit D14, Discharge Book Republic of Sierra Leone Military Forces for Tamba Brima, August 2001.

¹⁰¹ Brima conceded in cross-examination that President Kabbah had, on his return to Government in 1998, annulled all promotions given by the illegitimate AFRC Government, Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 56-57. See TF1-334, Transcript of 17 May 2005, p. 27; TF1-334, Transcript of 16 May 2005, p. 75; TF1-334, Transcript of 16 May 2005, p. 100; TF1-334, Transcript of 17 May 2005, p. 9.

¹⁰² Exhibit P7, Sierra Leone Gazette, No. 54, 18 September 1997, Armed Forces Revolutionary Council Secretariat Govt. Notice No. 215 The Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation 1997 (P.N. No. 3 of 1997)

Sergeant Alex T. Brima”, obviously a reference to the Accused Brima.¹⁰³ The unavoidable inference from this document is that the First Accused was an original member of the Council formed immediately after the coup and that his name and rank at that time were as recorded on the official record giving effect to that.

- b. The “full AFRC Cabinet” is identified in a newspaper cutting from “The Pool” newspaper, dated 11 July 1997.¹⁰⁴ That cabinet includes PLOs, Directorates, Regional Secretaries, Secretaries of State and the “Supreme Council”.
- c. Under the heading “Supreme Council” there follows a list of names headed by Major Johnny Paul Koroma and Corporal Foday Saybana Sankoh. At (10) on the list there appears “Staff Sergeant Tamba Alex Brima – PLO II”, obviously a reference to the Accused Brima.
- d. Under the heading “PLO’s” the document reads at (2): “Staff Sergeant Alex Brima – Works and Labour, Sierratel, Customs and Excise, SALPOST”; again, obviously a reference to the Accused Brima.
- e. Minutes of an Emergency Council Meeting of the AFRC on 11 August 1997 – which the First Accused accepted he had attended – record as present “Staff Sgt. Tamba Alex Brima – PLO II” and “Ibrahim Bazy Kamara – PLO III.”¹⁰⁵ The PLO II is obviously a reference to the First Accused.
- f. Minutes of a meeting held on 9 December 1997 record as present “Hon.” “Tamba Alex Brima – PLO II”. Others present include the PLO 1, “Hon. Abu Sankoh”, “Hon SB Khanu (55) and Hon. Tamba Gborie”.¹⁰⁶ The distribution list is marked to include “All Council members”.¹⁰⁷
- g. Whilst the First Accused denied, in cross-examination on this document, that he was an honourable, and further repeated his denial that he was called Tamba Alex Brima,¹⁰⁸ he is obviously the person identified on these minutes as the PLO 2. He

¹⁰³ Accused Alex Tamba Brima, Transcript 3 July 2006, p. 34.

¹⁰⁴ Exhibit P93, Newspaper cutting from “The Pool” newspaper, 11 July 1997.

¹⁰⁵ Exhibit P34, Minutes of an Emergency Council Meeting of the AFRC held at State House on 11 August 1997, 16 August 1997.

¹⁰⁶ Exhibit P69, AFRC Secretariat, Minutes of Meeting held on 9 December 1997, 23 January 1998.

¹⁰⁷ Exhibit P69, p.2.

¹⁰⁸ Accused Alex Tamba Brima, Transcript 3 July 2006, p. 42.

testified that he could not recall attending this meeting, but did not deny that it had occurred.¹⁰⁹ The Prosecution submits that there is only one inference that may be drawn from Exhibit P69: that the First Accused was present at a meeting on 9 December 1997, and that he was correctly identified in the minutes by rank, appointment and name.

- h. A Security Council Press Release dated 28 January 1998¹¹⁰ in which a member of the Supreme Council of the AFRC - obviously the First Accused - is identified as "Brima, Alex Tamba/ Staff Sergeant."¹¹¹ In response to this document the First Accused quite implausibly stated that the person who prepared it had lied.¹¹²
96. The Evidence of Defence witnesses does not support the First Accused's contention that he was not known as "*Alex*" Tamba Brima/ Tamba "*Alex*" Brima.
 97. Even Defence witness TRC-01 gave evidence that he knew the First Accused as Alex Tamba Brima and that the First Accused had participated in the overthrow of the Kabbah Government.¹¹³ TRC-01 was both a reliable and credible witness who currently holds a very senior position in the SLA. His evidence on this point was not challenged by any of the Defence counsel.
 98. Tellingly, TRC-01 also states that he thought the First Accused was schooling and he was even contributing to the First Accused's school fees at the time of the coup.¹¹⁴ The First Accused in his own evidence states that at this time he was based under TRC-01 at the Army Headquarters and was on study leave having been attached to the Public Relations Office by TRC-01¹¹⁵ and that he would come only to collect his benefits from the Army at the time of the coup.¹¹⁶ This clearly shows that TRC-01 knew who the First Accused was.

¹⁰⁹ Accused Alex Tamba Brima, Transcript 3 July 2006, pp. 43-44.

¹¹⁰ Exhibit P84, Press Release SC/6472, entitled "Security Council Committee on Sierra Leone Releases List of Junta Members Affected by Sanctions", 28 January 1998.

¹¹¹ Exhibit P84 reads, in relevant part: "THE SUPREME COUNCIL OF THE ARMED FORCES REVOLUTIONARY COUNCIL Name Title ... 7. BRIMA, Alex Tamba/ Staff Sergeant Principal Liaison Officer II, Works and Labour, Sierra Tel, Customs and Excise, SALPOST".

¹¹² Accused Alex Tamba Brima, Transcript 28 June 2006 p. 92 to 96.

¹¹³ TRC-01, Transcript 16 October 2006, p. 101.

¹¹⁴ TRC-01, Transcript 16 October 2006, pp. 104-105.

¹¹⁵ Accused Alex Tamba Brima, Transcript 6 June 2006, p.28-30

¹¹⁶ Accused Alex Tamba Brima, Transcript 29 June 2006, pp. 79-81.

99. Even Tamba Gborie in his statement refers to the First Accused being a student just prior to the Coup and causing a disturbance on one occasion when as a student he came to collect his pay.¹¹⁷
100. The Defence military expert Maj. Gen. Prins also learned during his extensive research for his report that Alex Tamba Brima was also known as Gullit.¹¹⁸
101. Another Defence witness DAB-079 who was in Freetown at the time of the May 1997 coup learned that Alex Tamba Brima was part of the soldiers who overthrew the government and was also known as Gullit.¹¹⁹ Defence witness DAB-126 heard over the radio that Alex Tamba Brima, aka Gullit, was one of the soldiers who overthrew President Kabbah's Government.¹²⁰
102. Defence witness DAB-037 stated that when he went to the training centre with the First Accused he was called Alex Tamba Brima, as that is what was indicated on his military card.¹²¹
103. When confronted with Exhibit P99,¹²² a letter concerning requests for documents in respect of Alex Tamba Brima and TF1-184, the First Accused did not even comment on the fact that the prison authorities furnished information in respect of Alex Tamba Brima. The First Accused was visibly confused by the contention put to him in cross-examination that TF1-184 was already a provost marshal before he allegedly agreed to give evidence against Johnny Paul Koroma.
104. It is case of the Prosecution that based on the oral evidence of both prosecution and Defence witnesses, some of whom knew the First Accused well, in addition to the documentary evidence before this court,¹²³ that there is no doubt that the First Accused was and is known as Alex Tamba Brima or Tamba Alex Brima.

¹¹⁷ Exhibit P89, p. 75.

¹¹⁸ Maj. Gen. Prins, Transcript 19 October 2006, p. 52.

¹¹⁹ DAB-079, Transcript 28 July 2006, pp. 62-63.

¹²⁰ DAB-126, Transcript 15 September 2006, pp. 19-20.

¹²¹ DAB-037, Transcript 4 October 2006, p. 76.

¹²² Exhibit P99.

¹²³ Exhibit P86 and Exhibit P87.

“GULLIT”

105. A number of Prosecution witnesses testified that the First Accused was known by the alias “Gullit”. They included Gibril Massaquoi,¹²⁴ TF1-153,¹²⁵ George Johnson, TF1-334, TF1-184, and Lt. Col. John Petrie.
106. The First Accused testified that he had never been known as “Gullit”.¹²⁶ Rather, he claimed, this was a nickname by which his deceased brother Komba, a serving member of the SLA and Staff Sergeant at the time of his death on 8 May 2000, was known.¹²⁷
107. It was not put to a single Prosecution witness in cross-examination that “Gullit” was in fact the First Accused’s brother, Komba. This was also never suggested in the First Accused’s Defence Pre-Trial Brief,¹²⁸ and no such suggestion was put in “Brima’s Counsel’s General Understanding of the Prospective Testimony of First Accused.”¹²⁹
108. The First Accused’s evidence on this issue was obviously dishonest in the face of evidence from Prosecution witnesses who have no reason to lie. The Prosecution relies, in this part of the brief in particular, on the evidence of Prosecution witness Lt. Col. John Petrie.
109. Lt. Col. John Petrie gave the following evidence: he testified that “everybody” at the Joint Provost Unit, of which he was commanding officer, referred to Tamba “Alex” Brima as Gullit.¹³⁰ After his arrest in Juba on 18 January 2003, the man who had been pointed out to Petrie as Gullit¹³¹ was taken to the OSD¹³² headquarters in Freetown. There, he was questioned by CID Chief Superintendent FUK Darbo who asked him for his details. He gave his name as Tamba Brima.¹³³ Petrie later identified Gullit as one of the Special Court Accused.¹³⁴

¹²⁴ Gibril Massaquoi, Transcript 7 October 2005, p. 78.

¹²⁵ TF1-153, Transcript 22 September 2005, pp. 13-14.

¹²⁶ Accused Alex Tamba Brima, Transcript 5 June 2006, p. 61.

¹²⁷ Accused Alex Tamba Brima, Transcript 6 June 2006, p. 16. It is noteworthy that it was not once put in the cross-examination of any Prosecution witness that “Gullit” was, in fact, Brima’s brother, Komba.

¹²⁸ Defence Pre-Trial Brief for Alex Tamba Brima, 17 February 2005, para. 5.

¹²⁹ *Prosecutor v Brima, Kamara, Kanu*, SCSL-04-16-T-504, “Annex A to Confidential Defence Disclosure Pursuant to Trial Chamber’s Order of 17 May 2005”, 25 May 2006.

¹³⁰ John Petrie, Transcript 5 October 2005, p. 67.

¹³¹ John Petrie, Transcript 5 October 2005, p. 71.

¹³² “Operational Support Department”.

¹³³ John Petrie, Transcript 5 October 2005, p. 76.

¹³⁴ John Petrie, Transcript 5 October 2005, pp. 81-82.

110. The First Accused testified that Lt. Col. Petrie was lying.¹³⁵ The Prosecution addresses issues arising out of the evidence of this witness in further detail below.

111. Documentary evidence corroborates the Prosecution's case that the First Accused was known by the nickname Gullit. Confronted with this evidence in cross-examination, the First Accused lied yet further.

- a. Exhibit P86 is a record of an interview with the First Accused that took place on 13 January 2003 at the CID headquarters in Freetown. The interviewee's name is recorded as "Tamba Alex Brimah alias Gullit", and the record is purported to bear the First Accused's signature after the caution, and at the bottom of the first page.¹³⁶ The First Accused accepted that he had made the statement, but claimed that the signature was forged, and that he had made the statement under duress.¹³⁷ He claimed that Lt. Col. John Petrie was present, again, and that he, the First Accused, was held at gunpoint, beaten and stabbed twice in the hand with a bayonet.¹³⁸
- b. Exhibit P87 is a second record of interview dated 7 February 2003 with "Tamba Alex Brimah alias Gullit [sic]".¹³⁹ This interview also purports to bear the First Accused's signature after the caution and at the bottom of each page. The First Accused denied signing the document, and also denied making the statement. According to him, the statement was a total fabrication.¹⁴⁰
- c. An article entitled "A Day in Rebel Territory" by Eric Beauchemin whose author met both Brigadiers "Gullit" and "Five-Five" (and Johnny Paul Koroma) in Freetown.¹⁴¹

112. The First Accused accepted that he gave an interview at the CID headquarters on 13 January 2003. The interview was recorded on Exhibit P86. The only inference that may be drawn is that the record accurately recorded his name, and further that he signed it. Why should he not have? The First Accused's responses to Exhibits P86 and P87, and to

¹³⁵ Accused Alex Tamba Brima, Transcript 28 June 2006, p. 71 and p. 105.

¹³⁶ Exhibit P86, Record of Interview of Tamba Alex Brimah alias Gullit, 22 January 2003.

¹³⁷ Accused Alex Tamba Brima, Transcript 29 June 2006, pp. 21-22.

¹³⁸ Accused Alex Tamba Brima, Transcript 29 June 2006, p. 23

¹³⁹ Exhibit P87, Record of Interview of Tamba Alex Brimah alias Gullit, 7 February 2003.

¹⁴⁰ Accused Alex Tamba Brima, Transcript 29 June 2006, pp. 26-27.

¹⁴¹ Exhibit P85, Article entitled "A Day in Rebel Territory" by Eric Beauchemin, 21 January 2000.

Prosecution Exhibits P86, P81, P82 and P83 have demonstrated a pattern of reaction: denials and lies that become more extreme as the damning evidence which is presented to him accumulates. The only inference that may be drawn is that the First Accused, when presented with incriminating documentary evidence, lied, and then told more lies.

THE EVIDENCE OF LT. COL. JOHN PETRIE

113. Lt. Col. Petrie was a former British Army officer who was posted to Sierra Leone as part of the International Military Advisory and Training Team (IMATT) from October 2002 to October 2003, serving in Sierra Leone as Commanding Officer of the Republic of Sierra Leone Armed Forces (RSLAF) Joint Provost Unit (JPU).
114. Petrie gave a clear, honest and manifestly unbiased account of the First Accused's arrest in 2003 and his subsequent appearance in 2004 before the Special Court.
115. The First Accused testified that on 7 March 2003, when he was taken to the CID in Freetown, John Petrie along with others including OTP investigator John Berry, forced him under the "muzzles of their guns," to sign a ledger book in the name "Tamba Brima Gullit" and "roughed [him] up."¹⁴² John Petrie told him that if he moved, Petrie would shoot him.¹⁴³ The First Accused also testified that under John Petrie's watch, he was forced to make a statement under gunpoint, and even "stabbed with the bayonet twice." He testified that Petrie told him that he "did not cooperate with them to give evidence against Johnny Paul Koroma".¹⁴⁴
116. The First Accused's counsel put none of these allegations to Petrie in cross-examination. There are no grounds for impugning the credibility of this witness, and no grounds for finding that he lied on oath.
117. It beggars belief that the First Accused should claim that Petrie, who was serving in Sierra Leone as a member of the British Army when the First Accused was arrested on 7 March 2003, should have physically assaulted him, or sought to force him to "cooperate" with the Special Court, or should have forced him to sign a document in the wrong name. Again

¹⁴² Accused Alex Tamba Brima, Transcript 16 June 2006, pp. 34-41.

¹⁴³ Accused Alex Tamba Brima, Transcript 16 June 2006, pp. 38.

¹⁴⁴ Alex Tamba Brima: 16 June 2006, pp. 43-44.

there is no logical explanation why has the First Accused waited until now to raise these most serious of allegations. The answer is because they are lies.

118. If the Chamber accepts Lt. Col. Petrie's evidence, which the Prosecution says it must do, then it is bound to find that the First Accused has lied on at least all of the issues upon which their evidence differs.
119. It follows that the only inference this Chamber may draw is that the First Accused has lied about his full name, about his nickname, has lied in his attempts to discredit Prosecution witnesses, and has lied in court, on oath, time and again, when presented with evidence to the contrary.
120. All of the following Prosecution insider witnesses (TF1-153, TF1-184, TF1-167, TF1-334, TF1-045, TF1-033) knew the First Accused by the nickname of Gullit. Nearly all of them had known him for a long time and there would be no reason that they would not know his nickname.
121. A number of them also said that Gullit played football. It is the case of the Prosecution that most of the coup makers were apart of the 1st Battalion's football team. The alleged ringleader of the coup was Abu Sankoh, aka Zagallo, whilst the First Accused, aka Gullit was also one of the leaders of the coup.
122. The nicknames "Zagallo" and "Gullit" are both based on famous international footballers. Zagallo is a Brazilian International footballer and Rudd Gullit a Dutch international footballer.
123. The Prosecution submits that the only logical reason for Abu Sankoh and the First Accused being nicknamed after world famous footballers is because they both indeed played football. This is confirmed by Zagallo's statement¹⁴⁵ which is also quoted in the TRC Report¹⁴⁶ and Keen's book *Conflict and Collusion*,¹⁴⁷ both of which were relied on by the Defence military expert Maj. Gen. Prins.
124. Countless Defence witnesses refer to hearing about the coup through Tamba Gborie's announcement over the radio. This fact does not seem to be in dispute and is confirmed by

¹⁴⁵ Exhibit P88.

¹⁴⁶ TRC Report Vol. 3A, p. 242

¹⁴⁷ David Keen, "Conflict and Collusion" James Curry Ltd, Oxford 2005, p. 208.

Gborie in his statement¹⁴⁸ and is also referred to in the TRC report. Gborie in his statement also refers to the fact that that Alex Tamba Brima along with the football team based at Wilberforce barracks under Zagallo carried out the coup.¹⁴⁹ The First Accused in his own evidence admits that he heard that it was the football team who carried out the Coup.¹⁵⁰

125. In large part both Gborie's and Abu Sankoh, aka Zagallo's statements corroborate each other with respect to the persons who carried out the coup. Importantly, the persons both Gborie and Zagallo say carried out the coup are further corroborated by the evidence of Prosecution military insider witnesses TF1-334, TF1-184 and TF1-167 and the documents which name the AFRC Council such as Prosecution Exhibits P6 and P7 and those referred to in the Pool Newspaper as being members of the Supreme Council.

126. It is telling that most of the Defence witnesses (when read together) are nearly able to name this list of 17 as coup plotters less the three Accused. This, the Prosecution submits, is clear evidence that a majority of Defence witnesses who were SLAs in Freetown from the coup until the intervention are lying with regard to this aspect of their evidence. It is implausible that they can name nearly all the coup plotters except the three Accused, while also claiming not to have heard that any of the three Accused held any leadership role whilst based in Freetown.

127. Even Defence witness TRC-01 knew that the First Accused was also known as Gullit, played football and participated in the overthrow of the Kabbah Government.¹⁵¹ TRC-01 was both a reliable and credible witness who currently holds a very senior position in the SLA. His evidence on this point was not challenged by any of the Defence counsel.

128. Tellingly, TRC-01 also states that he thought the First Accused was schooling and he was even contributing to the First Accused school fees at the time of the coup.¹⁵² According to the First Accused's own evidence he was studying at the time of the coup.¹⁵³ Even the fact

¹⁴⁸ Exhibit P89, p. 81.

¹⁴⁹ Exhibit P89, p. 75-77.

¹⁵⁰ Accused Alex Tamba Brima, 29 June 2006, pp. 100.

¹⁵¹ TRC-01, Transcript 16 October 2006, p. 101.

¹⁵² TRC-01, Transcript 16 October 2006, pp. 104-105.

¹⁵³ Accused Alex Tamba Brima, Transcript 29 June 2006, p. 79.

that the First Accused is studying at the time of the coup is corroborated by Tamba Gborie's statement.¹⁵⁴

129. Another Defence witness who regarded the First Accused as his friend, DAB-096, knew that the First Accused played football¹⁵⁵ (a fact which the Accused in his own evidence denied¹⁵⁶). The Defence military expert Maj. Gen. Prins also learned during his extensive research for his report that Alex Tamba Brima was also known as Gullit.¹⁵⁷

130. Another Defence witness, DAB-079, who was in Freetown at the time of the May 1997 coup learned that Alex Tamba Brima was part of the soldiers who overthrew the government and was also known as Gullit.¹⁵⁸

131. It is significant that even a number of Defence witnesses, some of whom who knew the First Accused well, do not support important aspects of the First Accused's own evidence, namely that he was not referred to as Gullit.

132. It is clear that the First Accused only invented this story of his brother Komba being called Gullit at the time when he gave his own evidence.

133. It is case of the Prosecution that based on the oral evidence of both Prosecution and Defence witnesses, some of whom knew the First Accused well, in addition to the documentary evidence before this court,¹⁵⁹ that there is no doubt that the First Accused was and is known as Gullit.

THE FIRST ACCUSED'S ILL HEALTH

134. The First Accused claimed that the day after the coup he was in hospital following a road accident.¹⁶⁰ The only Defence witness who allegedly saw the First Accused in hospital at the time of the coup gave evidence that the First Accused was suffering from malaria.¹⁶¹

¹⁵⁴ Exhibit P 89, p. 75.

¹⁵⁵ DAB-096, Transcript 25 September 2006, p. 8.

¹⁵⁶ Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 13, 101-107.; 29 June 2006, pp. 35-47, 59.

¹⁵⁷ Maj. Gen. Prins, Transcript 19 October 2006, p. 52.

¹⁵⁸ DAB-079, Transcript 28 July 2006, pp. 62-63.

¹⁵⁹ Exhibits P86 and P87.

¹⁶⁰ Accused Alex Tamba Brima, Transcript 6 June 2006, pp. 41-42.

¹⁶¹ DAB-059, Transcript 2 October 2006, p. 7.

Thus, the only witness who even partially corroborates the First Accused regarding this crucial part of his testimony is at odds with him on this salient point.

135. Tellingly, the First Accused did not produce a single medical record from 34th Military Hospital in respect of either his road accident or other alleged illnesses, nor were any of the doctors or other medical staff who allegedly treated him called to corroborate his injuries or illness.
136. The First Accused claimed that he suffered from hypertension and high blood pressure during the AFRC period of rule.¹⁶² He claimed that he was unable to carry out his functions as a PLO 2 in the AFRC Government because of ill health.¹⁶³ During cross-examination the First Accused's Defence counsel did not suggest to a single Prosecution witness that the First Accused suffered from ill health, let alone such serious ill health that he was unable to perform his duties as PLO 2 and that he was in and out of hospital throughout the Junta period.
137. Furthermore, during the AFRC Government period the First Accused gave evidence that he was accompanied on one of the three trips which he made to Kono by a medical orderly. This medical orderly was listed as a Defence witness but did not give evidence.¹⁶⁴ The First Accused is therefore not even corroborated on this part of his evidence.
138. In cross-examination, the First Accused testified that between 1997 and 2001, he was not well enough to fulfil his functions as a soldier.¹⁶⁵ He claimed he was "seriously sick".¹⁶⁶ At the time of the Intervention, he was not well enough to fight.¹⁶⁷ When travelling en route from Kailahun to Kono in July 1998 he did not fight because he was too unwell and because he was escaping for his life.¹⁶⁸
139. Not a single Defence witness gave evidence before this Court supporting the First Accused's assertion that he suffered any ill health throughout the period of the indictment

¹⁶² Accused Alex Tamba Brima, Transcript 6 June 2006, pp. 58-59.

¹⁶³ Accused Alex Tamba Brima, Transcript 6 June 2006, pp. 58-59; Transcript 20 June 2006, p. 20 and Transcript 6 June 2006, pp. 60-61.

¹⁶⁴ Confidential Joint Defence Disclosure dated 10 May 2006 pursuant to Trial Chamber order of 26 April 2006 listed as a common witness under DAB-010

¹⁶⁵ Accused Alex Tamba Brima, Transcript 5 July 2006, p. 25.

¹⁶⁶ Accused Alex Tamba Brima, Transcript 5 July 2006, p. 29.

¹⁶⁷ Accused Alex Tamba Brima, Transcript 5 July 2006, p. 15.

¹⁶⁸ Accused Alex Tamba Brima, Transcript 5 July 2006, pp. 19-20.

let alone to such a degree that he could not fulfil his role as PLO 2 or was not capable of fighting.

140. Furthermore, the First Accused's evidence is not supported by the medical findings on his discharge from the military which state that he is "fit for his present Medical Category which is FE",¹⁶⁹ meaning that he was "fighting efficient". Nowhere in the discharge book is it suggested that the Accused suffered from any serious ill health from May 1997 to the date of his discharge. The First Accused sought to distance himself from this finding: he claimed in re-examination that he was not examined by any medical personnel before he was discharged,¹⁷⁰ a surprising claim given how much he was otherwise prepared to rely upon the contents of the discharge book.¹⁷¹

141. On the contrary, despite being seriously unwell, the First Accused gave evidence that he was arrested, beaten,¹⁷² and then detained in Kailahun district from March to July 1998, that he thereafter walked to Koidu Town and then drove to Yarya where he remained in hiding in the bush until September 1998. Having been arrested by "0-Five", he testified that he walked across Bombali District to Eddie Town where he was detained before moving to Benguema.¹⁷³ In Kailahun, he was detained at one point in a dungeon for two weeks.¹⁷⁴ When he was arrested by the Westside Boys in 1999, he was again thrown in a dungeon after allegedly being shot by TF1-167.¹⁷⁵ In all these periods, there is no evidence that the First Accused received any medical care, yet he managed to survive. This is despite the First Accused's own evidence that even whilst in detention during the trial the slightest problem would cause his blood pressure to rise,¹⁷⁶ and that during the Junta period an Alpha Jet would cause him palpitations until he was taken back to hospital.¹⁷⁷

142. It is utterly implausible that any medical condition from which he allegedly suffered was in the period 1997 to mid 1999, if existent, anything other than minor and intermittent. In any event, such ailments obviously were not of sufficient gravity in 1997 to prevent him

¹⁶⁹ Exhibit D14, Discharge Book Republic of Sierra Leone Military Forces for Tamba Brima, August 2001, p. 9.

¹⁷⁰ Accused Alex Tamba Brima, Transcript 6 July 2006, p. 115.

¹⁷¹ Accused Alex Tamba Brima, Transcript 6 July 2006, pp. 7-15.

¹⁷² Accused Alex Tamba Brima, Transcript 8 June 2006, p. 50.

¹⁷³ Accused Alex Tamba Brima, Transcript 12 June 2006, pp. 43-44 and pp. 50-51.

¹⁷⁴ Accused Alex Tamba Brima, 8 June 2006, pp. 61-64.

¹⁷⁵ Accused Alex Tamba Brima, Transcript 16 June 2006, pp. 10-12.

¹⁷⁶ Accused Alex Tamba Brima, Transcript 30 June 2006, pp. 23

¹⁷⁷ Accused Alex Tamba Brima, Transcript 3 July 2006, pp. 91

from taking up his duties as a PLO 2, and in 1998 and 1999 from leading a troop of soldiers through the bush in Bombali and on the attack and withdrawal from Freetown.¹⁷⁸

143. Once again, the First Accused has lied; this time about his medical condition in a desperate attempt to distance himself from the activities of the AFRC Government in which he held a very senior position.

THE FIRST ACCUSED'S PROFESSION

144. In the years following the signing of the Lomé peace agreement, the First Accused was involved in politics, and worked for the Commission for the Consolidation of Peace.¹⁷⁹ He was discharged from the army on 28 April 2001.¹⁸⁰ He testified in chief that in the period prior to his arrest in January 2003, he was doing business as a petty trader selling palm oil, hog meat and pig's foot.¹⁸¹ He sought to deny this in cross-examination, perhaps because the claim was implausible. He testified that he was "doing business", not doing business as a petty trader,¹⁸² and then testified he had meant that he was doing "petty-petty business", not petty trading.¹⁸³

145. In any event, the First Accused lied. Prior to testifying, he had held himself out to be a diamond miner, a far more plausible profession for a man who had been closely involved in mining activities in Kono in the period of AFRC rule,¹⁸⁴ and whose family continues to

¹⁷⁸ Prosecution witnesses describe in great detail Brima's movements and actions during this time period. For example, Brima's actions in the AFRC period (TF1-334, Transcript 16 May 2005, pp. 100-101; TF1-334, Transcript 17 June 2005, pp. 52-64; TF1-167, Transcript 15 September 2005, pp. 20-21); Brima's command of the troop from Koidu to Mansofinia (TF1-334, Transcript 20 May 2005; TF1-167, Transcript 19 September 2005, pp. 62 & 65); Brima leading the troop to Rosos, and from there to Colonel Eddie Town (TF1-334, Transcript 23 May 2005; TF1-334, Transcript 24-25 May 2005; TF1-167, Transcript 15 September 2005, pp. 51-60, & 68); Brima taking over command after SAJ Musa's death, and leading the troop the invasion of Freetown and the retreat (TF1-334, Transcript 13 June 2005, pp. 53-59; TF1-334, Transcript 14-16 June 2005; TF1-167, Transcript 15-16 September 2005; TF1-167, Transcript 16 September 2005, p. 10-13).

¹⁷⁹ Accused Alex Tamba Brima, Transcript 6 July 2006, pp. 63-64.

¹⁸⁰ Exhibit D14, p. 5.

¹⁸¹ Accused Alex Tamba Brima, Transcript 16 June 2006, pp. 17-18.

¹⁸² Accused Alex Tamba Brima, Transcript 6 July 2006, pp. 65-67.

¹⁸³ Accused Alex Tamba Brima, Transcript 6 July 2006, pp. 66-67.

¹⁸⁴ TF1-334 describes the First Accused as overseeing mining in the east while based in Koidu during the AFRC regime (TF1-334, Transcript 17 May 2005, pp. 52-53). TF1-153 details the First Accused's oversight of the mining operations in Kono. This included the First Accused's visits to Koidu and the distribution of diamonds (TF1-153, Transcript 22 September 2005, pp. 19-22; and Transcript 23 September 2005, pp. 60-61). TF1-167 also says that the First Accused was sent to Kono to take care of the diamonds (TF1-167, Transcript 15 September 2005, pp. 20-21). This was all denied by the First Accused, Accused Alex Tamba Brima, Transcript 4 July 2006, pp. 49, 52.

be involved in mining in Kono District.¹⁸⁵ The First Accused sought to distance himself from mining in the course of his testimony¹⁸⁶ and lied when shown documentation that contradicted his evidence on this issue.

- a. In the signed statement which the First Accused accepts he gave to the CID on 22 January 2003,¹⁸⁷ his occupation is stated as “diamond miner”. In a second statement made on 2 February 2003,¹⁸⁸ his occupation is again stated to be “diamond miner”, and he is also described as “engaged in mining in Kono”.¹⁸⁹ In cross-examination, the First Accused repeated his claims that the first statement was made under duress, and that he did not make the second statement.¹⁹⁰
- b. When in the custody of the Special Court, the First Accused completed a Declaration of Means Form. That form is signed by him and dated 12 March 2003. He gives his profession as “diamond miner”.¹⁹¹ The First Accused denied in cross-examination that the form had been signed by him, and denied having seen it before he was cross-examined on its contents.¹⁹²
- c. His claim is dishonest and totally implausible: it is implausible that a Declaration of Means Form, which would have triggered financial assistance for him in the payment of the attorneys who now represent him, would have been signed or completed by anyone other than the First Accused.

THE FIRST ACCUSED’S EVIDENCE AGAINST PROSECUTION “INSIDER” WITNESSES

146. The First Accused made a series of allegations against Prosecution insider witnesses during his evidence-in-chief and in cross-examination.

¹⁸⁵ Accused Alex Tamba Brima, Transcript 4 July 2006, pp. 48-50, pp. 56-57; and Transcript 6 July 2006, p. 68.

¹⁸⁶ Accused Alex Tamba Brima, Transcript 6 July 2006, p. 68.

¹⁸⁷ Exhibit P86, Record of Interview of Tamba Alex Brimah alias Gullit, 13 January 2003.

¹⁸⁸ Exhibit P87, Record of Interview of Tamba Alex Brimah alias Gullit, 7 February 2003.

¹⁸⁹ Exhibit P87, p. 2.

¹⁹⁰ Accused Alex Tamba Brima, Transcript 6 July 2006, p. 68.

¹⁹¹ Exhibit P98, Declaration of Means Form for Tamba Alex Brima, 12 March 2003. This document is filed with the Special Court’s Registry.

¹⁹² Accused Alex Tamba Brima, Transcript 6 July 2006, pp. 68-69.

147. The explanations given by the First Accused as to why witnesses with no reason to lie would give damning evidence against him were utterly implausible. He testified that all 59 witnesses who gave evidence for the Prosecution came to lie,¹⁹³ and claimed that witnesses were paid.¹⁹⁴ He testified that every witness who gave evidence against him was asked by the Prosecution to call him Gullit.¹⁹⁵ Witness TF1-157, not an insider witness, and never detained at Pademba Road Prison, came to lie because once a Prosecution witness, he would be given “special treatment” to come and lie.¹⁹⁶
148. Lt. Col. John Petrie apparently lied when he testified that “Five-Five” was known as “Brigadier Five-Five”.¹⁹⁷ Witness TF1-023, a “crime-base” witness, apparently lied because she testified that “Brigadier Gullit” was a senior commander in Benguema.¹⁹⁸ Witness TF1-033 also testified that Tamba Brima was referred to as Brigadier Gullit; again, the First Accused said this witness was lying.¹⁹⁹ Witness TF1-114 allegedly lied about hearing the name Alex Tamba Brima on the radio.²⁰⁰ In painting this delusional portrait of a conspiracy of liars, the First Accused even went so far as to declare that the person who prepared a press release for the United Nations Security Council Committee on Sierra Leone was also lying.²⁰¹
149. The First Accused’s claims are utterly without foundation. The First Accused’s evidence that inducements were allegedly given by Petrie to soldiers, including Prosecution insider witnesses, at Pademba Road Prison for agreeing to testify against Johnny Paul Koroma may be rejected as obviously dishonest.
150. Furthermore, it is difficult to see what connection an inducement to testify against Johnny Paul Koroma (who escaped the arrests in January 2003 and whose current whereabouts are

¹⁹³ Accused Alex Tamba Brima: Transcript 29 June 2006, p. 14.

¹⁹⁴ For example, Accused Alex Tamba Brima, Transcript 28 June 2006, p. 57.

¹⁹⁵ Accused Alex Tamba Brima, Transcript 28 June 2006, p. 111.

¹⁹⁶ Accused Alex Tamba Brima, Transcript 29 June 2005, pp. 13-14 and TF1-157, Transcript 22 July 2005, p. 90.

¹⁹⁷ Alex Tamba Brima: Transcript 28 June 2006, p. 63; John Petrie: Transcript 5 October 2005, p. 77.

¹⁹⁸ Accused Alex Tamba Brima: Transcript 28 June 2006, Closed session, pp. 59-60; TF1-023, Transcript 10 March 2005, Closed session, p. 30.

¹⁹⁹ Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 61-62; TF1-033, Transcript 12 July 2005, p. 21.

²⁰⁰ Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 69-70; TF1-114, Transcript 14 July 2005, pp. 118-119.

²⁰¹ Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 92-95; Prosecution Exhibit P84.

unknown) might have to the present proceedings against the Accused (Brima, Kamara and Kanu).²⁰²

151. Allegations which suggest that other “crime base” Prosecution witnesses lied as a result of being given or offered special treatment may also be rejected as obviously dishonest. All allegations by which the First Accused has sought to impugn the credibility of Prosecution witnesses are totally without foundation, manifestly dishonest, and may be rejected in their entirety.

²⁰² Indeed, when asked in cross-examination on behalf of the Third Accused about a possible motivation for testifying against the Third Accused, John Petrie gave the following evidence about detainees held in Pademba Road when he visited there in 2003: “MR KNOOPS: Thank you, Your Honour, I am very grateful. Q. Colonel, with respect to this investigation in Pademba Road, were you able to inquire into any potential motive regarding or stemming from the car dispute as to whether these individuals who talked with you about this incident, which you qualify as trivial, were revengious to Mr Kanu and were incriminating him? A. Are you talking about with respect to the incident that resulted in -- Q. Yes, the car incident? A. They'd been there for over two years. That particular incident, I felt, in their minds was long gone. They were -- I didn't sense that they were particularly vengeful towards Mr Kanu. They had -- they gave us the reason that they were picked up that night, the dispute over a car. Not one of them really came across saying that the dispute over the car was one person's fault or another. I mean, they blamed Five-Five, but equally what they were saying could have been their fault. But the two people that spoke at length, they were not particularly specific about Five-Five's role in the conflict. It was more of a -- it was a general explanation of their role and where they were and who they were with and it included a lot more people than just Five-Five. Q. Colonel, did they blame Mr Kanu for their arrest or detention? A. I got the impression that they blamed Johnny Paul Koroma more for the detention.”, John Petrie, Transcript 6 October 2005, pp. 28-29.

IV. DEFENCES

152. This section anticipates certain defences which each Accused may attempt to rely on based on arguments in their respective Pre-Trial Briefs and all the evidence adduced at trial.

THE “GREATEST RESPONSIBILITY” REQUIREMENT

153. In its Decision on Defence Motions for Judgement of Acquittal,²⁰³ the Trial Chamber, while not determining whether the reference to “persons who bear the greatest responsibility” in Article 1(1) of the Statute creates a jurisdictional requirement or a prosecutorial discretion,²⁰⁴ considered the category of persons contemplated by the provision and whether there was evidence at the Rule 98 stage that would place the three Accused in that category. The Trial Chamber examined the scope of Article 1(1) with reference to the exchanges between the UN Security Council, UN Secretary-General and Government of Sierra Leone at the time of the establishment of the Special Court, and determined that political and military leaders, other persons, and even children potentially came within the broad scope of the provision. Therefore, the Trial Chamber concluded that there was evidence, if believed, that was capable of placing each of the three Accused in the category of “persons who bear the greatest responsibility”. It was pointed out that the fact that others may also belong to this category did not place the three Accused beyond its reach. The Defence evidence has not cast doubt on the characterization of the level of responsibility borne by the three Accused. The Prosecution submits that the evidence establishes that the three Accused were all senior members of the AFRC holding leadership positions within that organization. As such, they participated in the crimes set out in the Indictment. There can therefore be no doubt that the three Accused are in actuality persons bearing the greatest responsibility for the acts charged.

²⁰³ *Prosecutor vs Brima, Kamara, Kanu*, SCSL-04-16-T-469. “Decision on Defence Motions for Judgement of Acquittal Pursuant to Rule 98”, pp. 26-39.

²⁰⁴ See also *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-PT-026, “Decision on the Preliminary Motion on the Lack of Personal Jurisdiction filed on behalf of the Accused Fofana”, 3 March 2004.

OBEDIENCE TO SUPERIOR ORDERS

154. In his Pre-Trial Brief,²⁰⁵ the Third Accused submits that “although customary international law does not recognize [the defence of superior orders] as a complete excuse but merely as a potential mitigating circumstance with respect to the punishment, the Statute of the SCSL nor its Rules of Procedure and Evidence seem to exclude the applicability of this defence.” In this context, the Third Accused submits that “a potential argument arises in that the Accused acted upon a (Constitutional based) obligation as to the protection of his State which obligation arose irrespective of the character or nature of the conflict and/or Government at issue.”²⁰⁶
155. Art. 6 (4) of the Statute of the Special Court (which corresponds with Art. 7 (4) of the Statute of the ICTY and Art. 6 (4) of the Statute of the ICTR) states that “the fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the Special Court determines that justice so requires.” Consequently, the Third Accused cannot rely upon the defence of superior orders to avoid criminal responsibility. This is because an absurdity would result if this defence was possible, because each person in the chain of command could claim that they followed superior orders of their government or superior.²⁰⁷
156. The Third Accused is charged with serious violations of international humanitarian law. They cannot be justified either by an “obligation to defend the country” or by “obedience to superior orders.”

²⁰⁵ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-PT-39, “Kanu – Defence Pre-Trial Brief and Notification of Defences Pursuant to Rule 67(A)(ii)(a) and (b)”, 22 March 2004, (“**Kanu Brief**”), p. 630, para 41 (iii).

²⁰⁶ Kanu Brief, page 629, para 41 (iii).

²⁰⁷ See *In ree von Leeb*, United States Military Tribunal at Nuremberg, Germany, October 28, 1948, 15 IL 376 (1949)), cited in Dixon/Khan, *Archbold International Criminal Court: Practice, Procedure and Evidence*, 2003, p. 463. The fact that Article 33 I of the ICC Statute does, in exceptional circumstances, allow this defence, is irrelevant for the SCSL.

MISTAKE OF LAW AND MISTAKE OF FACT

157. This has been raised by the Third Accused in his Pre-Trial Brief²⁰⁸. According to him, “the defence of mistake of law may be raised in view of the potential unclarity of the prevailing law²⁰⁹ and the defence of mistake of fact can be raised if it amounts to an excuse to a criminal charge when, despite the existence of *actus reus*, the requisite *mens rea* is absent since the person mistakenly was of the honest and reasonable belief that there existed factual circumstances making the conduct lawful.” The Third Accused states that “this defence is of relevance in the case of him executing unlawful orders, while he was not aware that the order was unlawful and therefore lacked the requisite *mens rea*.²¹⁰”
158. It would seem that this defence concerns the Third Accused’s lack of knowledge that through his actions he was committing crimes under the Statute. Thus he claims to lack the requisite *mens rea* for the offences with which he is charged.
159. The question arises if the defence of mistake of fact/law (with the consequence that it excludes criminal responsibility) is a possible defence before the Special Court. Neither the Statute of the Special Court nor those of the ICTY and ICTR contain a provision that mistake of law/fact are defences. There is little jurisprudence from the Ad-Hoc Tribunals on this. The ICTY stated that “we subscribe to the view that obedience to superior orders does not amount to a defence per se but is a factual element which may be taken into consideration in conjunction with other circumstances of the case in assessing whether the defences of mistake of fact are made out.”²¹¹ Judge Cassese stated that [in relation to a guilty plea of the accused] “the accused cannot be allowed on the one hand to admit to his guilt and by the same token nullify this plea by claiming that he acted under a mistake of fact.”²¹² This seems to indicate that the defence exists. However, it is not clear if the defence would result in an acquittal. The ICTY does not provide clear guidance when it

²⁰⁸ Kanu Brief, p. 628-629, para 41 (i and ii).

²⁰⁹ Kanu Brief, p. 628, para 41 (i).

²¹⁰ Kanu Brief, page 629, para 41 (i, ii). This argument is the same as “obedience to superior order”, raised by the Accused in para 41 (iii). It will be discussed here under the concept of “mistake of law”.

²¹¹ *Prosecutor v Erdemovic*, IT-96-22, “Judgement”, Appeals Chamber, 7 October 1997, Joint Separate Opinion of Judge MacDonald and Judge Vohrah, para 34.

²¹² *Prosecutor v Erdemovic*, IT-96-22, “Judgement”, Appeals Chamber, 7 October 1997, Separate and Dissenting Opinion of Judge Cassese, para 10 and 37.

stated (with regards to the defence of duress²¹³) that “we take the view that duress cannot afford a complete defence of a soldier charged with crimes against humanity or war crimes in international law involving the taking of innocent lives.”²¹⁴ The majority adopted this reasoning saying that “the Appeals Chamber finds that duress does not afford a complete defence (...).”²¹⁵ The argument can be made that it is therefore also doubtful if mistake of fact/law would afford a complete defence.

160. However, the Prosecution submits that this question can ultimately remain open, because in its view, the evidence overwhelmingly shows all three Accused did have the requisite *mens rea* and did not lack the mental element. They all knew or had reason to know that their actions were wrong at the time when the crimes were committed, as evidenced by the following paragraphs.
161. All the Accused joined the SLA in around 1992 where they each undertook at least three months training, and in the case of the Third Accused, six months training.
162. TRC-01, an unchallenged Defence witness who was in a senior position of command and was also involved in training and recruitment gave specific evidence that the SLAs were trained by the ICRC in international humanitarian law, were well versed in the laws of war, and knew that it was wrong to kill civilians. According to this witness, a lot of the SLAs were even aware of the Geneva Conventions.²¹⁶
163. According to TRC-01, even the irregulars who fought alongside the SLAs had their training designed so that they would respect the standards of international humanitarian law in addition to imbibing the good ethical conduct of trained SLAs whom they fought alongside with.²¹⁷ TF1-167 confirms that as a vigilante he heard about the Geneva Conventions during his training.²¹⁸

²¹³ Someone acting under duress also lacks the necessary *mens rea*. He commits a crime not because he wants to, but because he is forced to do so.

²¹⁴ *Prosecutor v Erdemovic*, IT-96-22, “Judgement”, Appeals Chamber, 7 October 1997, Joint Separate Opinion of Judge MacDonald and Judge Vorah, para 88.

²¹⁵ *Prosecutor v Erdemovic*, IT-96-22, “Judgement”, Appeals Chamber, 7 October 1997, para 19.

²¹⁶ TRC-01, Transcript 16 October 2006, pp. 111-112. While the transcript reads “RCRC”, the Prosecution submits that the witness clearly said or meant to say “ICRC”, and that this is likely a transcription error.

²¹⁷ TRC-01, Transcript 16 October 2006, pp. 111-112

²¹⁸ TF1-167, Transcript 19 September 2005, p. 90

164. This is corroborated by at least two Defence witnesses who were former SLAs who gave evidence that they had received training in international humanitarian law.²¹⁹ The majority of the roughly one dozen former or serving SLAs who were with the AFRC faction in the jungle after the intervention gave evidence that they had not been taught during their training to kill, rape, or amputate the arms of civilians nor had they been taught to burn down the houses of civilians.²²⁰
165. Some of these same witnesses also considered it wrong for ECOMOG to kill surrendering soldiers and civilians.²²¹ A number of these same witnesses knew that SAJ Musa had ordered that innocent civilians should not be killed or amputated or their houses burnt or else they would face punishment.²²² Some Defence witnesses even gave evidence that SAJ Musa told the troop about crimes against humanity and that he would refer to the Geneva Conventions which he had with him in a book.²²³
166. Based on the above evidence it is the case of the Prosecution that the defence of mistake of fact/law is not applicable to the Third Accused. All the accused knew that it was wrong to kill, rape, amputate the arms, and burn houses and steal from civilians. They also knew that if they did so they would be committing crimes.

TU QUOQUE

167. It is well established in international humanitarian law that there is no defence based on any principle of *tu quoque*, i.e. the argument whereby the fact that the adversary has also committed similar crimes offers a valid defence. “The existence of an attack from one side involved in an armed conflict against the other side’s civilian population does not justify

²¹⁹ DAB-033, Transcript 25 September 2006, pp. 38-39; TRC-01, Transcript 16 October 2006, p. 111-112, 118

²²⁰ DAB-033, Transcript 2 October 2006, pp. 48-49, 25 September 2006, pp. 84-85; DAB-095, Transcript 28 September 2006, pp. 3-4, 6; DBK-012, Transcript 18 October 2006, p. 25; DSK-113, Transcript 12 October 2006, pp. 111-112; DBK-117, Transcript 16 October 2006, pp. 30-31; DBK-129, Transcript 18 October 2006, pp. 2-5; DBK-005, Transcript 5 October 2006, p. 21, Transcript 4 October 2006, p. 58, Transcript 12 October 2006, pp. 5-8, 36-37; DBK-131, Transcript 26 October 2006, pp. 7-10; DSK-113, Transcript 12 October 2006, pp. 111-113.

²²¹ DAB-095, Transcript 28 September 2006, p. 7; DBK-012, Transcript 6 October 2006, pp. 55-58, 6 October 2006, pp. 84, 95; DBK-131, Transcript 26 October 2006, p. 10; DAB-033, Transcript 2 October 2006, pp. 93-94;

²²² DAB-095, Transcript 28 September 2006, pp. 52-55; DBK-012, Transcript 9 October 2006, pp. 18-19; DBK-131, Transcript 26 October 2006, p. 46

²²³ DAB-033, Transcript 25 September 2006, pp. 84-85; DBK-012, Transcript 9 October 2006, p. 18

an attack by that other side against the civilian population of its opponent.”²²⁴ “The ‘*tu quoque*’ defence has no place in contemporary international law. The bulk of this body of law lays down absolute, unconditional obligations not based on reciprocity.”²²⁵

MILITARY NECESSITY

168. In the opening statement in the case *Prosecutor vs. Brima et al.*,²²⁶ the Defence for the Third Accused made the following statement: “*The Defence evidence (...) will lay foundation for the invocation of the defence of military necessity with respect to some of the alleged burning, destruction and looting of the property described in the Indictment. (...) As previous judgments have made clear if the relevant attacks and if the Defence is able to show these were carried out as a result of military necessity, they are not unlawful. This is what we are going to prove with respect to some of the alleged activities in the indictment. The Defence will lay the foundation for the argument that some destruction of property served as a military objective and thus cannot incur criminal liability. (...) We will introduce evidence that AFRC members were primarily on the defensive and conducted defensive operations and carried out raids locally only in order to obtain supplies.*”

169. There is no general immunity of civilian property. Unlike civilians (and other non-combatants), who never can be a military objective and therefore can never be the direct target of the use of force,²²⁷ even if this would serve a military purpose,²²⁸ civilian property can if they are military objectives: “Military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization offers a definite military advantage.”²²⁹ However, “indiscriminate attacks, that is to say attacks which strike civilian objects without distinction, may qualify as direct attacks against

²²⁴ *Prosecutor v Limaj et al*, IT-03-66, “Judgement”, Trial Chamber, 30 November 2005, para 193.

²²⁵ *Prosecutor v. Kupreškić et al.*, IT-95-16-T, “Judgement”, Trial Chamber, 14 January 2000, para 515-520.

²²⁶ Trial Transcript, 5 June 2006, p. 20.

²²⁷ *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-T, “Judgement”, Appeals Chamber, 17 December 2004, para 48: “The civilian population as such shall not be the object of an attack.”

²²⁸ *Ibid*, para 54: “The Appeals Chamber clarifies that the prohibition against attacking civilians may not be derogated from because of military necessity”

²²⁹ *Ibid*, para 53,

civilians. Indiscriminate attacks are expressly prohibited by Additional Protocol I. This prohibition reflects a well-established rule of customary law applicable in all armed conflicts.”²³⁰ It is worth emphasizing the fact that attacks on civilian property that are not military objectives cannot be justified by military necessity.²³¹ The Prosecution further points out that “all forms of wilful and unlawful appropriation of civilian property carried out during the armed conflict is plunder.”²³² “It includes both, large-scale seizures and appropriation by individual soldiers for their private gain.”²³³ Plunder is prohibited under Additional Protocol II²³⁴ and “infringe upon a number of norms of international humanitarian law.”²³⁵ Plunder “must involve grave consequences for the victims, thus amounting to a ‘serious violation’.”²³⁶ The seizure of private property is lawful if it is needed for the conduct of military operations.²³⁷

170. The Prosecution led evidence that the destruction of civilian property (burning of houses) and their looting/appropriation were a widespread and extensive practice within the AFRC. Those attacks were indiscriminate and directed against civilian property that were not military objects, for the destruction of houses of innocent civilians not involved in the conflict did not offer a definite military advantage. Their destruction was therefore unlawful and cannot be justified by military necessity. Furthermore, plunder (for example ‘Operation Pay Yourself’) was unlawful as it was not needed for the conduct of military operations, it was more serious as it deprived the already poor civilian population of its means to survive.

²³⁰ *Prosecutor v. Galić*, IT-98-29-T, “Judgement”, Trial Chamber, 5 December 2003, para 57.

²³¹ *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-T, “Judgement”, Appeals Chamber, 17 December 2004, para 54. *Prosecutor v. Blaskić*, IT-95-14-A, “Judgement”, Appeals Chamber, 29 July 2004, para 109. The Appeals Chamber rectified a misleading quote from the Trial Chamber that “targeting civilians and civilian property is an offence when not justified by military necessity.” *Prosecutor v. Strugar*, IT-01-42, “Judgement”, Trial Chamber, January 2005, para 280.

²³² *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, “Judgement”, Trial Chamber, 31 March 2003, para 617; *Prosecutor Kordić and Čerkez*, IT-95-14/2, “Judgement”, Trial Chamber, 26 February 2001, para 352;

Prosecutor v. Jelisić, IT-95-10-A, “Judgement”, Trial Chamber, 14 December 1999, para 48.

²³³ *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, “Judgement”, Trial Chamber, 31 March 2003, para 612-613.

²³⁴ Art. 4 (2)(g) of Additional Protocol II.

²³⁵ *Prosecutor v. Simić et al.*, IT-95-9-T, “Judgement”, Trial Chamber, 17 October 2003, para 98.

²³⁶ *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, “Judgement”, Trial Chamber, 31 March 2003, para para 613, 614

²³⁷ *Prosecutor v. Simić et al.*, IT-95-9-T, “Judgement”, Trial Chamber, 17 October 2003, para 100.

ECOMOG JET-RAIDS

171. The Defence may well claim that it was the ECOMOG jet raids and bombardment which destroyed villages and caused deaths of civilians rather than the Accused or those under their command. The evidence, however, as a whole clearly indicates that this was not the case. Any ECOMOG jet raids which there may have been, as shown by the evidence, mostly occurred after the village had been attacked by the Accused and had already been subject to burning by the Accused and the troops under their command. Likewise the killings, amputations and rapes occurred in the villages before the ECOMOG jet raids.

ALIBI: GENERAL

172. “If a defendant raises an alibi, he is merely denying that he was in a position to commit the crime with which he is charged. That is not a defence in its true sense.”²³⁸ Consequently, it is the burden of the Prosecution to prove beyond a reasonable doubt the alibi offered by the Accused is wrong and that the Accused was present and committed the crime.²³⁹

173. Only the First Accused has relied on the defence of alibi pursuant to Rule 67 and called alibi witnesses to prove his alibi (the First Accused’s defence of alibi will be dealt with separately in this brief).

174. The Second and Third Accused have not raised the defence of alibi pursuant to Rule 67 despite them being well aware of this being an issue through the Prosecution motion filed following the evidence of the First Accused.²⁴⁰

175. The Prosecution accepts that it bears the burden of disproving the alibi of the First Accused. The Prosecution also accepts that under Rule 67, despite not raising a defence of alibi, the Second and the Third Accused are not precluded from pleading it.

176. Should this be the case the Prosecution submits that those alibi defences should be rejected in their entirety on the following basis:

²³⁸ *Prosecutor v. Delalić et al. (Čelebići case)*, IT-96-21-A, “Judgement”, Appeals Chamber, 20 February 2001, para 581.

²³⁹ *Prosecutor vs. Kayishema and Ruzindana*, ICTR-95-1, “Judgement”, Trial Chamber, 21 May 1999, para 234; *Prosecutor vs. Musema*, ICTR-96-13-T, “Judgement”, Trial Chamber, 27 January 2000, para 108.

²⁴⁰ See generally *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-508, “Prosecution Motion for Relief in Respect of Violations of Rule 67”, 7 July 2006.

177. The Third Accused raised the defence of alibi in his Pre-Trial Brief in respect of the UNAMSIL charges but not in respect of anything else.²⁴¹ The only reasonable inference deriving from this was that the Third Accused had no alibi for any of the other period and did not intend to rely on it as a defence. Should the Third Accused rely on it now it would merely be a belated afterthought in a desperate bid to avoid liability.
178. The Third Accused did not support the First Accused's alibi and say that he was with him when the First Accused allegedly escaped from Goba Water.²⁴²
179. Neither the Second Accused nor the Third Accused have led evidence that they were with anyone else, nor has any witness said that either the Second or Third Accused were with them, at the time of the commission of a crime charged in the Indictment.
180. The First Accused in his own evidence and various Defence witnesses have given evidence that the Second and Third Accused were under arrest from Colonel Eddie Town to Freetown. The Prosecution does not accept this evidence as it is founded on a series of demonstrable lies.
181. However, even if this Trial Chamber did accept this evidence then the three Accused would only be providing each other with alibis for the period from Colonel Eddie Town to Goba Water, a period during which the Prosecution submits few crimes were committed. There would be no alibi for Kono post-Intervention, the Bombali campaign including Karina, or the attack on Freetown.
182. In essence the Second and Third Accused are relying on the fact that none of their witnesses saw them in Kono, Bombali or Freetown and in the case of the Third Accused, Port Loko.

²⁴¹ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-PT-039, "Kanu – Defence Pre-Trial Brief and Notification of Defences Pursuant to Rule 67(A)(ii)(a) and (b), 22 March 2004, pp. 625-628

²⁴² *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-510, "Kanu – Response to Prosecution Motion for Relief in respect of Violations of Rule 67", 12 July 2006, para. 5.

MISTAKEN IDENTITY

183. The Prosecution anticipates that another potential defence of the Accused is that of mistaken identity.

184. This defence is likely to fall into two categories. The first is that those people who identified them or said they saw them were mistaken (this is likely to be more applicable to “crime base” witnesses), which is essentially a defence of alibi (because the Accused may claim the witness who identified him was wrong and he was at another place); whilst the second category is that those insiders who knew the Accused from before were lying.

First Category: “Crime-base” Identification

185. In the case of the Third Accused the Prosecution also anticipates the defence that there were many SLAs called “Five-Five” and that the “Five-Five” who committed the crimes in the Indictment was someone other than himself.

186. The Prosecution submits that the first category of witnesses would have no reason to lie especially if they are hearing the names at the time. They would have no reason to know that say “Gullit”, “Bazzy” or “Five-Five” would end up being an accused in this case. It was simply a name they heard at that time.

187. Other “crime base” witnesses would also be in a position to actually identify the Accused if they personally saw them when the crime was committed and heard them being called by their name or if they spent time with the Accused and there troop for example by being abducted

188. The only allegation presented before this Trial Chamber is that these Prosecution witnesses have lied against the Accused because they have been paid to do so by the Prosecution.

189. Not only is it fanciful to suggest that all Prosecution witnesses have been paid by the Prosecution to lie but no hard evidence has been produced to this effect, other than the usual witness expenses which are applicable to all witnesses appearing before this Court, whether for the Prosecution or the Defence.

190. There is therefore no good reason why the identification of the Accused by “crime base” witnesses as set out below should be disbelieved:

a. The First Accused

- i. Bombali and in particular Karina ---TF1-158, TF1-157
- ii. Freetown in January 1999-----TF1-024, TF1-023, TF1-157

b. The Second Accused.

- i. Freetown in January 1999-----TF1-023
- ii. Port Loko-----TF1-023

c. The Third Accused

- i. Kono pre-Intervention-----TF1-019
- ii. Bombali and in particular Karina----TF1-158, TF1-157, TF1-094
- iii. Freetown in January 1999-----TF1-227, TF1-094, TF1-157, TF1-085

Second Category: Insider Identification

191. The Prosecution submits that this category of witness is the best witness in terms of identification because these witnesses actually knew the Accused and are unlikely to make a mistake about identity.

All the Accused

Gibril Massaquoi – TF1-046

192. Gibril Massaquoi was a senior RUF commander who knew all three Accused from their days in Freetown on the Supreme Council.²⁴³

193. When he was released from Pademba Road Prison on 6 January 1999 during the Freetown Invasion he was taken to State House where he met the three Accused again.²⁴⁴ The First

²⁴³ Gibril Massaquoi, Transcript 7 October, 2005, pp. 76-79, 83

²⁴⁴ Gibril Massaquoi, Transcript 7 October 2005, pp. 113-115

Accused was in command whilst the Second and Third Accused also held command positions.²⁴⁵

194. Massaquoi spent two to three hours a day after his release at State House, so he would have known who was at State House and in command during the occupation of Freetown in January 1999.²⁴⁶ The First and Third Accused even made him speak to the BBC.²⁴⁷ He also spoke on the radio to Sam Bockarie requesting reinforcements for the Accused whilst they were in Freetown.²⁴⁸
195. Gibril Massaquoi also recognised the Second Accused as being the commander of the Westside Boys when he was sent to them by Foday Sankoh to tell them to stop disturbing commuters.²⁴⁹
196. Significantly, during cross-examination none of the lawyers for the Accused ever suggested to Gibril Massaquoi that none of the Accused was in Freetown during January 1999, nor was it suggested that the First Accused was not in command and that the other Accused did not hold senior command positions.
197. It is clear from this that the Accused have recently made up (probably from the time that the First Accused gave evidence) that they were not in Freetown at the time of the January 1999 Invasion. Were it otherwise, it is not plausible that they would have not challenged Gibril Massaquoi on this most crucial of issues.
198. The First Accused in his evidence suggested that Gibril Massaquoi may have held a grudge against him because Gibril Massaquoi had shot his brother Komba. Tellingly, Gibril Massaquoi was never cross-examined on this point by lawyers for the First Accused, which is a clear indication that this story was made up by the First Accused at the time of giving evidence in a desperate attempt to discredit Gibril Massaquoi, who had given damaging evidence against him.²⁵⁰

²⁴⁵ Gibril Massaquoi, Transcript 7 October 2005, p. 120

²⁴⁶ Gibril Massaquoi, Transcript 10 October 2005, p. 5, Transcript 11 October 2005, p. 64

²⁴⁷ Gibril Massaquoi, Transcript 7 October 2005, pp. 122-123

²⁴⁸ Gibril Massaquoi, Transcript 10 October 2005, pp. 8-9

²⁴⁹ Gibril Massaquoi, Transcript 10 October 2005, pp. 44-45

²⁵⁰ Accused Alex Tamba Brima, Transcript 6 June 2006, pp. 15-18 & Transcript 28 June 2006, pp. 65-68.

199. Even if it were the case that Gibril Massaquoi had killed the First Accused's brother in around 2000 (which the Prosecution does not accept) the Prosecution submits that this would not give a motive for Gibril Massaquoi to lie against the Accused. It may do so if the boot was on the other foot and the First Accused was giving evidence against Gibril Massaquoi, but not otherwise.
200. Apart from the alleged grudge referred to above by the First Accused (which the Prosecution does not consider to affect the credibility or reliability of Gibril Massaquoi) the First Accused in his own evidence did not otherwise challenge the credibility and reliability of Gibril Massaquoi.
201. No other witness has cast any aspersions on either the credibility or reliability of this witness. As such the Prosecution submits that his entire evidence may be believed especially as it relates to identification of the Accused.

Emile Sidikie - TF1-153

202. TF1-153 grew up with the First Accused in Wilberforce barracks and knew him well.²⁵¹ Even the First Accused in his own evidence agrees that he grew up with TF1-153 at Wilberforce barracks.²⁵² He was also close to SAJ Musa and was sent by the First Accused and SAJ Musa to be a mines monitoring officer in Kono.²⁵³
203. TF1-153 saw the First Accused in Kono before the intervention and reported to him as a mines monitoring officer.²⁵⁴ TF1-153 saw all the Accused at camp Rosos/Colonel Eddie Town in command positions.²⁵⁵
204. On the death of SAJ Musa TF1-153 identifies the First Accused as taking over command and leading the advance in to Freetown.²⁵⁶ TF1-153 saw the First and Third Accused at State House in Freetown during the January 1999 invasion as well as Gibril Massaquoi,

²⁵¹ TF1-153, Transcript 22 September 2005, pp. 13-14

²⁵² Accused Alex Tamba Brima, Transcript 19 June 2006, p. 22

²⁵³ TF1-153, Transcript 22 September 2005, p. 18

²⁵⁴ TF1-153, Transcript 22 September 2005, p. 22

²⁵⁵ TF1-153, Transcript 22 September 2005, pp. 73-85

²⁵⁶ TF1-153, Transcript 22 September 2005, pp. 93-98

19482

who had just been released from Pademba Road jail²⁵⁷ and heard the Second Accused in Freetown collecting machetes at the WFP warehouse for 'Operation Cut Hand'.²⁵⁸

205. During cross-examination the Defence for the First Accused did not suggest to TF1-153 that he did not know him, that he did not see him in Kono before the intervention, that he was under arrest from Colonel Eddie Town to Freetown, that he was not in command after the death of SAJ Musa, that he did not lead the attack on Freetown and that he was not present in Freetown during the January 1999 invasion of Freetown.
206. During cross-examination neither the defence for the Second Accused nor the defence for the Third Accused suggested to TF1-153 that the Second and Third Accused were under arrest from Colonel Eddie Town to Freetown and that he did not see either the Second or Third Accused in Freetown during the January 1999 invasion of Freetown.
207. The First Accused suggested in his own evidence that TF1-153 may hold a grudge against him because of a dispute between their respective families involving an allegation that one the First Accused's brothers impregnated TF1-153's sister.²⁵⁹ This was not put to TF1-153 during his cross-examination and has clearly been made up by the First Accused as an afterthought in an attempt to discredit TF1-153, who had given damaging evidence against him.
208. The First Accused, when asked why TF1-153 had lied about him before the court, could only come up with the explanation that TF1-153 must have gone mad. Even if true (and there has been no evidence that it is) this is hardly a compelling reason for TF1-153 to give false testimony against the Accused.²⁶⁰
209. The Prosecution submits that such an assertion of dislike by the First Accused is no reason whatsoever why TF1-153's evidence should not be believed.
210. Apart from the above assertion of dislike by the First Accused no other witness has caste any aspersions on either the credibility or reliability of this witness and as such his entire evidence should be believed especially as it relates to identification.

²⁵⁷ TF1-153, Transcript 22 September 2005, p. 99

²⁵⁸ TF1-153, Transcript 23 September 2005, p. 18

²⁵⁹ Accused Alex Tamba Brima, Transcript 19 June 2006, p. 22-23

²⁶⁰ Accused Alex Tamba Brima, Transcript 29 June 2006, pp. 16-17.

Abdulai Koroma - TF1-033

211. This witness was in Freetown from the time of the coup until the intervention.²⁶¹ He testified that the First and Second Accused were involved in the coup and that they were both PLOs in the AFRC.²⁶² He also saw the First Accused in Freetown when the AFRC was in power.²⁶³ The First Accused agrees that he knew TF1-033 even before the coup in the NPRC days.²⁶⁴ After the Freetown Intervention TF1-033 fled Freetown, and he saw and knew the Second Accused in Kono before being abducted by him there.²⁶⁵
212. After his abduction the witness accompanied all the Accused as they moved across Bombali (including the attack on Karina)²⁶⁶ to Rosos²⁶⁷ and Colonel Eddie Town,²⁶⁸ and was with the Accused during the advance to and attack on Freetown in January 1999.²⁶⁹
213. Having known the Accused prior to the intervention and the fact that he spent nearly a year in there company after he was abducted TF1-033 would have known and be able to identify the three Accused.
214. During cross-examination none of the Defence counsel suggested to TF1-033 that any of the Accused were not present in Kono, Bombali, Karina, Rosos, Colonel Eddie Town, the Freetown Invasion or any of the other places where the witness identified the Accused as being present.
215. During cross-examination none of the Defence counsel suggested to TF1-033 that any of the Accused were ever under arrest at Gberemantmatank during the advance to Freetown. TF1-033 was present at Goba Water when SAJ Musa was buried. He testified that he saw all the Accused there, yet no Defence counsel suggested to TF1-033 that the First and Third Accused escaped from Goba Water. Nor was it ever suggested to TF1-033 that the Second Accused was under arrest at Goba Water.

²⁶¹ TF1-033, Transcript 11 July 2005, pp. 3-4, 8-9

²⁶² TF1-033, Transcript 11 July 2005, p. 6-8

²⁶³ TF1-033, Transcript 12 July 2005, pp. 45-46

²⁶⁴ Accused Alex Tamba Brima, Transcript 19 June 2006, p. 24; 11 July 2005, pp. 135-136

²⁶⁵ TF1-033, Transcript 12 July 2005, pp. 120-123

²⁶⁶ TF1-033, Transcript 11 July 2005, pp. 18-19

²⁶⁷ TF1-033, Transcript 11 July 2005, pp. 22 to 24

²⁶⁸ TF1-033, Transcript 12 July 2005, pp. 38, 40, 88-89. While this witness disavows knowledge of Colonel Eddie Town, it is the submission of the Prosecution that he did in fact go there, but knew it by another name – “Gberemantmatank”.

²⁶⁹ TF1-033, Transcript 11 July 2005, pp. 42-62

216. When the First Accused in his own evidence is asked why witness TF1-033 has lied about him in his evidence the only explanation which the First Accused has come up with is “that is for him to decide in his own mind....he would do that because there is a problem between my family and his family”.²⁷⁰ The nature of this problem was never explained by the First Accused.
217. Furthermore, in describing his relationship with TF1-033 the First Accused stated in his own evidence, “I would say I hadn’t a problem with him as far as our relationship is concerned”.²⁷¹
218. Even the First Accused cannot give any explanation why TF1-033 may have come and lied about him before this Court. The Prosecution submits that no other witness has cast any aspersions on either the credibility or reliability of TF1-033 and as such his evidence in its entirety should be accepted especially as it regards identification.

Augustine Mallah - TF1-045

219. This witness was a body guard to a senior RUF commander. During the AFRC period he saw all three Accused at AFRC meetings in Freetown.²⁷² He was present in Kailahun when the First Accused’s diamonds were taken from him by the RUF.²⁷³
220. None of the Defence counsel suggested to TF1-045 that the three Accused did not attend AFRC meetings. In particular Defence counsel for the First Accused did not suggest that TF1-045 was not present when any diamonds were taken from him by the RUF in Kailahun during the intervention. Nor was it suggested to TF1-045 that the First Accused did not have any diamonds with him when he was captured and searched by the RUF in Kailahun.
221. In his own evidence the First Accused gave no evidence as to why TF1-045 was lying against him. As such there is no reason to doubt the reliability and credibility of TF1-045. No other witness has cast any aspersions on either the credibility or reliability of TF1-045.

²⁷⁰ Accused Alex Tamba Brima, Transcript 19 June 2006, p. 26

²⁷¹ Accused Alex Tamba Brima, Transcript 19 June 2006, p. 26

²⁷² TF1-045, Transcript 19 July 2005, pp. 58-59, 65-72, 21 July 2005, pp. 94-96

²⁷³ TF1-045, Transcript 19 July 2005, p. 99, 21 July 2005, pp. 57-58

As such the Prosecution submits that the evidence of TF1-045 should be accepted in its entirety, especially as regards identification.

Alie Turay, aka Alabama - TF1-184

222. Witness TF1-184 joined the SLA in 1988,²⁷⁴ he was a security to SAJ Musa during the time of the NPRC Government²⁷⁵ and again became SAJ Musa's security when SAJ Musa returned after the coup. He remained SAJ Musa's security until SAJ Musa was killed at Benguema.²⁷⁶
223. TF1-184 trained the Third Accused,²⁷⁷ was friendly with him²⁷⁸ and went on a peacekeeping mission with him to Monrovia.²⁷⁹ After returning from Monrovia TF1-184 worked with the Third Accused at Mile 38,²⁸⁰ and it was the Third Accused who asked TF1-184 to join them once the SLPP Government was overthrown.²⁸¹
224. There can be no doubt that witness TF1-184 knew the Third Accused before the coup. TF1-184 identified the Third Accused as being Santigie Kanu and that his nickname was Five-Five, being the last two digits of his soldier number.²⁸²
225. TF1-184 stated that all the Accused overthrew the SLPP Government and were a part of the group known as the AFRC.²⁸³ TF1-184 knew the First Accused²⁸⁴ and the Second Accused²⁸⁵ from the time when he was working for SAJ Musa in the NPRC Government. The First Accused in his own evidence admits that he knew TF1-184 from this period.²⁸⁶ On the basis of his position in the military since 1988, being a body guard to SAJ Musa

²⁷⁴ TF1-184, Transcript 26 September 2005, p. 70

²⁷⁵ TF1-184, Transcript 26 September 2005, p. 71

²⁷⁶ TF1-184, Transcript 26 September 2005, p. 71

²⁷⁷ TF1-184, Transcript 26 September 2005, p. 80

²⁷⁸ TF1-184, Transcript 30 September 2005, p. 30

²⁷⁹ TF1-184, Transcript 26 September 2005, p. 82

²⁸⁰ TF1-184, Transcript 30 September 2005, pp. 30-32. Although the record reflects that the Accused said "Mile 88", the Prosecution submits, when the context is fully examined, that the witness undoubtedly was referring to Mile 38.

²⁸¹ TF1-184, Transcript 26 September 2005, p. 83

²⁸² TF1-184, Transcript 26 September 2005, p. 80

²⁸³ TF1-184, Transcript 26 September 2005, p. 83

²⁸⁴ TF1-184, Transcript 29 September 2005, p. 19

²⁸⁵ TF1-184, Transcript 29 September 2005, pp. 96-97

²⁸⁶ Accused Alex Tamba Brima, 19 June 2006, pp. 16-17

during both the NPRC and AFRC regimes it would be inconceivable that TF1-184 would not both know and be able to recognise the Accused.

226. This is more so since it is an admitted position that both the Second and Third Accused were PLOs in the AFRC Government and according to documentary evidence before this Court attended meetings of the AFRC government (a fact that the First Accused does not deny), which SAJ Musa also attended. As TF1-184 was SAJ Musa's security it would be inconceivable that he would not have seen the Accused at these meetings and not know who they were.

227. After the intervention the witness was with SAJ Musa in Kurubonla when he saw SAJ Musa order the First Accused to find a base.²⁸⁷ The Second Accused as well as TF1-167 were with the First Accused at that time.²⁸⁸ When TF1-184 arrived in Colonel Eddie Town with SAJ Musa he recognised all the Accused. All of the Accused were holding command positions and none of them were under arrest.²⁸⁹

228. TF1-184 advanced with the troop from Colonel Eddie Town to Freetown and was accompanying SAJ Musa as his chief of security. During the advance from Colonel Eddie Town to Freetown none of the Accused were under arrest and instead the First Accused was second in command to SAJ Musa. The Second Accused was next in line in the chain of command after the First Accused and the Third Accused also held a senior command position.²⁹⁰

229. According to TF1-184 after SAJ Musa's death at Benguema the First Accused assumed command of the troops, the Second Accused was appointed as his second in command whilst the Third Accused was appointed the third in command.²⁹¹

230. TF1-184 was personally present in Freetown during the Invasion and knew that all three Accused were in State House holding the command positions as mentioned above.²⁹²

²⁸⁷ TF1-184, Transcript 29 September 2005, p. 29

²⁸⁸ TF1-184, Transcript 27 September 2005, p. 19

²⁸⁹ TF1-184, Transcript 27 September 2005, pp. 41-42

²⁹⁰ TF1-184, Transcript 27 September 2005, pp. 41-42, 45

²⁹¹ TF1-184, Transcript 27 September 2005, p. 56

²⁹² TF1-184, Transcript 29 September 2005, pp. 68-72

231. During cross-examination none of the Defence counsel of the Accused suggested to TF1-184 that any of the Accused was not present in Kono, Bombali, Karina, Rosos, Colonel Eddie Town or Freetown in January 1999 or any of the other places where the witness identified the Accused as being present.
232. During cross-examination no Defence counsel suggested to TF1-184 that any of the Accused were ever under arrest at Colonel Eddie Town or during the advance to Freetown. TF1-184 was present at Goba Water when SAJ Musa was buried, where he saw all the Accused, yet no Defence counsel suggested to him that the First and Third Accused escaped from Goba Water, nor was it ever suggested to TF1-184 that the Second Accused was under arrest at Goba Water.
233. During cross-examination no Defence counsel suggested to TF1-184 that any of the Accused was not in a position of command either in Freetown before the intervention, after the intervention at Kurubonla, Colonel Eddie Town, during the advance to Freetown or whilst the Accused were in Freetown.
234. With regard to the identity of the Accused and their whereabouts there is no compelling reason as to why the evidence of TF1-184 should not be believed.
235. It is clear from the lack of cross-examination on the point that all Accused accepted that they were where TF1-184 said they were when he gave evidence. He was not challenged on this aspect of his evidence.
236. It is the case of the Prosecution that this alleged lack of presence by the Accused at various locations by the Accused is an afterthought and was fabricated after the First Accused gave evidence. Otherwise, why else was it not put to TF1-184 and other Prosecution witnesses? There is no other logical explanation.
237. Even later challenges to TF1-184's credibility by subsequent Defence witnesses, such as the assertion that he received special treatment if he promised to lie against the Accused, were not put to TF1-184 during cross-examination. The First Accused in his own evidence did not even accuse TF1-184 of agreeing to give evidence against him. According to the First Accused TF1-184 had agreed to give evidence only against Johnny Paul Koroma.

238. Even this accusation by the First Accused is entirely illogical because it was well known that Johnny Paul Koroma had escaped arrest by the time the First Accused was in jail in March 2003. This is clearly an example of yet more lies which the First Accused gave in his evidence, such as TF1-184 being SAJ Musa's cook (which was not even supported by a large majority of his own witnesses), such as TF1-167 being the Second Accused's house cleaner when it was well known that TF1-167 was with the Second Accused as his security.
239. The accusations by Defence witnesses that TF1-184 received special treatment after he agreed to give evidence against the Accused are not even supported by the Accused. These accusations have clearly been concocted by the First Accused's former brothers in arms under the instructions of the First Accused in a desperate attempt to discredit both TF1-184 and TF1-334 who had both given damaging evidence against him.
240. Tellingly, all the alleged evidence about witnesses TF1-184 and TF1-334 came after the Counsel for the First Accused stated before the Court that these witnesses needed to meet the First Accused in order to "get their story straight".²⁹³

George Johnson, aka Junior Lion - TF1-167

241. TF1-167 was security to Johnny Paul Koroma for two weeks immediately after the SLPP Government was overthrown on 25 May 1997. There after he became Chief of Security (CSO) to the Second Accused.²⁹⁴
242. TF1-167 in his position as CSO to the Second Accused during the AFRC government period would have known him and been able to recognise him. He even stayed in the Second Accused's family house in Kabala after the intervention.²⁹⁵
243. On account of the meetings which he accompanied the Second Accused to he would also have known and been able to recognise the First and Third Accused who would also have attended such meetings.

²⁹³ See Submissions, Transcript 25 July 2006, pp. 6-8, 13.

²⁹⁴ TF1-167, Transcript 15 September 2005, pp. 8-9

²⁹⁵ TF1-167, Transcript 15 September 2005, p. 30

244. He knew the First Accused who he says was PLO 2 and was sent to Kono²⁹⁶ as well as the Third Accused who was one of the persons who carried out the coup.²⁹⁷ He also saw the Third Accused when machetes were distributed in order to put down quietly protesting students.²⁹⁸ TF1-167 knew that the nickname of the Third Accused was Five-Five.²⁹⁹
245. After the intervention TF1-167 was with and saw the Second Accused in Kono. At this time the Second Accused was deputy to superman who was in overall command of the troops.³⁰⁰ Prior to leaving Kono with the Second Accused TF1-167 saw the First Accused arrive in Kono from Kailahun with reinforcements and take over command of the troop from the Second Accused.³⁰¹
246. After the First and Second Accused left Kono TF1-167 was with them when they went to Mansofinia, he was also with the Accused when the First Accused in front of the other Accused ordered Karina to be attacked.³⁰² He saw all the Accused moving through Karina during the attack.³⁰³
247. TF1-167 saw the Accused in Rosos in command positions and also saw them in command positions when they moved to Colonel Eddie Town. Before SAJ Musa arrived in Colonel Eddie Town the First Accused was the commander, the Second Accused was his deputy and the Third Accused was G5 commander.³⁰⁴
248. TF1-167 states that the Accused were arrested at Colonel Eddie Town on the arrival of Commander 0-Five for not carrying out operations properly and released by SAJ Musa on the advance to Freetown.³⁰⁵
249. Tellingly, none of the Accused through there Defence counsel during cross-examination suggested to TF1-167 that the Accused remained under arrest until the death of SAJ Musa

²⁹⁶ TF1-167, Transcript 15 September 2005, pp. 20-21

²⁹⁷ TF1-167, Transcript 15 September 2005, pp. 13-14

²⁹⁸ TF1-167, Transcript 15 September 2005, p. 23

²⁹⁹ TF1-167, Transcript 16 September 2005, p. 68

³⁰⁰ TF1-167, Transcript 15 September 2005, p. 38

³⁰¹ TF1-167, Transcript 15 September 2005, p. 39

³⁰² TF1-167, Transcript 15 September 2005, pp. 47, 53-54

³⁰³ TF1-167, Transcript 15 September 2005, p. 58

³⁰⁴ TF1-167, Transcript 15 September 2005, p. 69

³⁰⁵ TF1-167, Transcript 15 September 2005, pp. 74-79

at Benguema and only then managed to escape. Furthermore, it was never suggested to TF1-167 that the Accused were not present in Freetown.

250. The Prosecution submits that the seed was sown for the Accused creating their false story about them being under arrest from Colonel Eddie Town to Freetown by the evidence of TF1-167 who was the first and only Prosecution witness who ever even alluded to the arrest of the Accused at Colonel Eddie Town. Before TF1-167 gave evidence the Accused had never indicated through their Pre-Trial Briefs or cross-examination that they were ever under arrest from Colonel Eddie Town to Freetown.
251. It is also telling that the First Accused and the Third Accused plead alibi in respect of two specific areas in their respective Pre-Trial Briefs. However, both ignore this defence of alibi when according to the First Accused in his evidence he and the Third Accused escape together at Goba Water and are either en route to Makeni or at Makeni during the Freetown invasion. It is clear from this omission that this alibi as pleaded by the First Accused in his evidence is a total fabrication.
252. En route from Colonel Eddie Town to Freetown before SAJ Musa's death at Benguema TF1-167 specifically places the First Accused as second in command to SAJ Musa , whilst the Second Accused is G4 (logistics) commander and the Third Accused is G5 (abductees/civilians) commander.³⁰⁶
253. After the death of SAJ Musa TF1-167 is present when the First Accused takes command of the troop and the Second Accused is appointed as his deputy.³⁰⁷ He also sees the Third Accused who he says is very close to the First Accused and is also a commander.³⁰⁸
254. TF1-167 saw all the Accused in State House as commanders during the 6 January invasion of Freetown.³⁰⁹ After the withdrawal from Freetown TF1-167 was with the Second Accused who was in command at Mamamah and the Westside.³¹⁰
255. During cross-examination none of the defence council of the Accused suggested to TF1-167 that any of the Accused were not present in Kono, Bombali, Karina, Rosos, Colonel

³⁰⁶ TF1-167, Transcript 16 September 2005, pp. 5-6

³⁰⁷ TF1-167, Transcript 16 September 2005, pp. 11-13

³⁰⁸ TF1-167, Transcript 16 September 2005, pp. 13, 16

³⁰⁹ TF1-167, Transcript 16 September 2005, pp. 27-28, 39-41

³¹⁰ TF1-167, Transcript 16 September 2005, pp. 64-71

Eddie Town, Freetown in January 1999, the Westside or any of the other places where the witness identified the Accused as being present.

256. The Prosecution submits that TF1-167 knew and could recognise all the Accused, who he worked closely with, especially the Second Accused, from before the 25 May 1997 coup right up until the Westside side in June 1999. As such TF1-167's identification of all the Accused in the places which he mentions should be accepted.

257. The Prosecution further submits that the credibility of TF1-167 was hardly brought into question by any witness before the court, including all of the Accused through cross-examination.

258. The First Accused suggested that TF1-167 had shot his brother. This was denied by TF1-167 and even if correct (which the Prosecution denies) it would not give TF1-167 any motive to come and lie against the First Accused. If anything it would give the First Accused a motive to lie against TF1-167 had there positions been reversed in this trial.

259. There is no suggestion of any other witness or any person connected with the special court telling TF1-167 that he should come and lie against the Accused in return for special treatment. It is submitted by the Prosecution that the evidence of TF1-167 should be believed in its entirety especially in relation to the identity of the Accused.

Alimamy Bobson Sesay - TF1-334

260. TF1-334 worked as Honourable Hassan Papah Bangura's, aka Bomblast (Commander or Supervisor A) driver, as admitted by the First Accused in his own evidence³¹¹ during the AFRC Government period and continued to work under him whilst they were in the jungle after the intervention.³¹² Hassan Papah Bangura (Commander A) was one of the 17 who carried out the coup along with the Accused and moved in the circles of the Accused.³¹³

261. TF1-334 knew the Second and First Accused during the AFRC Government because he used to visit their offices when they were both PLOs with his Honourable Hassan Papah

³¹¹ Accused Alex Tamba Brima, Transcript 19 June 2006, p. 4

³¹² TF1-334, Transcript 16 May 2005, pp. 9

³¹³ TF1-334, Transcript 17 May 2005, pp. 9-13

Bangura (Commander A).³¹⁴ Previously he had worked with the First Accused at Kabasa Lodge during the NPRC regime³¹⁵ and the First Accused in his own evidence admits seeing TF1-334 at Kabasa Lodge.³¹⁶

262. After the intervention TF1-334 saw the Second Accused in Koidu town who was the senior most SLA commander.³¹⁷ Before the SLAs withdrew from Kono TF1-334 saw the First Accused arrive and take over command from the Second Accused.³¹⁸ TF1-334 moved with the Accused from Kono via Tombodu to Mansofinia.³¹⁹

263. TF1-334 was personally present when SAJ Musa in Koinadugu District told the First Accused to find a base in the North.³²⁰ And when the First Accused returned to Mansofinia and restructured the troop.³²¹ He was also present when the First Accused appointed the Second Accused as his second in command and the Third Accused as his chief of staff at Mansofinia.³²²

264. TF1-334 travelled with the Accused and the troops under their command from Mansofinia to Camp Rosos and through all the various villages they attacked en route including Karina.

265. TF1-334 was present with all the Accused at Camp Rosos and Colonel Eddie Town until the advance to Freetown. During this period TF1-334 did not see or hear of any of the Accused being under arrest, rather he saw all three holding senior command positions.

266. TF1-334 was a part of the advance from Colonel Eddie Town to Freetown. At no stage during the advance did he see or hear of the Accused being under arrest, rather they all held senior command positions.

267. TF1-334 was present when the First Accused took command of the troop after the death of SAJ Musa at Benguema. He was also present when the First Accused appointed the Second Accused as his deputy and the Third Accused as his third in command.

³¹⁴ TF1-334, Transcript 16 May 2005, pp. 74-75; 17 June 2005, pp. 62-64

³¹⁵ TF1-334, Transcript 17 June 2005, p. 62

³¹⁶ Accused Alex Tamba Brima, Transcript 19 June 2006, p. 4

³¹⁷ TF1-334, Transcript 18 May 2005, p. 21

³¹⁸ TF1-334, Transcript 19 May 2005, p. 10, 20 May 2005, p. 27, 55-56

³¹⁹ TF1-334, Transcript 20 May 2005, pp. 71-73

³²⁰ TF1-334, Transcript 20 May 2005, p. 86

³²¹ TF1-334, Transcript 20 May 2005, p. 87

³²² TF1-334, Transcript 20 May 2005, pp. 88-92

268. TF1-334 also saw all of the three Accused at State House after the invasion of Freetown on 6 January 1999 holding positions of command.
269. TF1-334 also with the Second Accused who he saw was the commander in the Westside after the withdrawal of the AFRC faction from Freetown at the end of January 1999.
270. There can be no doubt that TF1-334 knew and was able to identify all the Accused. Tellingly, none of the defence council for any of the Accused during cross-examination suggested to witness TF1-334 that the Accused was not present at the places he said they were. Neither did any of the defence council for any of the Accused during cross-examination suggest to TF1-334 that the Accused were under arrest from Colonel Eddie Town to Freetown and did not take part in the Freetown invasion.
271. The Prosecution submits that the reason for this is that the Accused were not under arrest during this period and since TF1-334 gave evidence before TF1-167 the idea of any of them being under arrest had not even occurred to them.
272. During TF1-334's cross-examination none of the Defence counsel of any of the Accused suggested to TF1-334 that he received favourable treatment in Pademba Road Prison because he had agreed to come to court and lie against the Accused.
273. Tellingly, the First Accused in his own evidence does not even suggest that TF1-334 received special treatment in Pademba Road Prison because he had agreed to lie against the Accused. The only suggestion that is made is that TF1-334 had agreed to give evidence against Johnny Paul Koroma.
274. The accusations by Defence witnesses that TF1-334 received special treatment after he agreed to give evidence against the Accused are not even supported by the Accused. These accusations have clearly been concocted by the First Accused's former brothers in arms under the instructions of the First Accused in a desperate attempt to discredit both TF1-184 and TF1-334 who had both given damaging evidence about him.

275. Tellingly, all the alleged evidence about witnesses TF1-184 and TF1-334 came after the Counsel for the First Accused intimated that that these witnesses would meet with the First Accused to discuss their stories.³²³

³²³ See Submissions, Transcript 25 July 2006, pp. 6-8, 13.

V. JUNTA PERIOD: 25 MAY 1997 TO CIRCA 13 FEBRUARY 1998 – THE FACTS

PROSECUTION EVIDENCE

THE COUP

276. On 25 May 1997 (then) Corporal Tamba Gborie announced in a radio broadcast the overthrow of the SLPP Government of President Ahmad Tejan Kabbah by the ‘other ranks’ of the SLA.³²⁴
277. On around 28 May 1997, Major Johnny Paul Koroma announced on the radio his chairmanship of the Armed Forces Revolutionary Council or AFRC.³²⁵ Also on 28 May, a proclamation was issued by Koroma³²⁶ making provision for the interim administration of Sierra Leone by the Armed Forces Revolutionary Council (“the Council”).³²⁷ That proclamation was broadcast on SLBS on 29 May.³²⁸
278. By this proclamation, Sierra Leone’s elected Parliament and all political parties were dissolved, the Constitution of Sierra Leone “suspended” in so far as its provisions were inconsistent with the Proclamation or any law made under it, and the Council gave itself the power to order the detention of anyone it chose to “in the interest of public safety or public order.”³²⁹

COUP MAKERS AND FOOTBALLERS

279. The three Accused were all members of the group of other ranks SLAs who plotted and carried out the coup.

³²⁴ TF1-334, Transcript 16 May 2005, pp. 26-27; Exhibit P88: Statement of Alfred Abu Sankoh, alias Zagallo, 27 March 1998, pp. 10-11; Exhibit P89: Statement of Tamba Gborie, 25 March 1998, pp. 81-82.

³²⁵ TF1-334, Transcript 16 May 2005, p. 44; Exhibit 89: Statement of Tamba Gborie, p. 84.

³²⁶ Hereafter referred to as “Proclamation of 28 May 1997”.

³²⁷ Exhibit P4: Proclamation Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation 1997, Public Notice No. 3 of 1997 published 28 May 1997.

³²⁸ Exhibit P75: SLBS Radio Broadcast 29 May 1997, 15:26 GMT. Proclamation issued by the Administration of Sierra Leone Armed Forces Revolutionary Council 1997, in Freetown on 28 May 1997. Corroborated by Exhibit P88: Statement of Alfred Abu Sankoh, alias Zagallo, 27 March 1998, p. 12; Exhibit P89: Statement of Tamba Gborie, 25 March 1998, p. 86.

³²⁹ Exhibit P4: Proclamation Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation 1997, Public Notice No. 3 of 1997 published 28 May 1997, paras. 1-2, para. 6. Para 6(3): “Any order made under subparagraph (1) directing that any person be detained shall not be questioned in any court of law.”

280. TF1-334 gave evidence that 17 men plotted and carried out the coup. They were (predominantly) ‘other ranks’³³⁰ members of the SLA and members of a football team of the 1st Battalion in Wilberforce.³³¹ They were identified³³² as Staff Sergeant Abu Sankoh, aka “Zagallo,”³³³ Sergeant Alex Tamba Brima,³³⁴ Sergeant Ibrahim Bazy Kamara,³³⁵ Corporal Hassan “Papah” Bangura, Warrant Officer Class II “Woyoh,”³³⁶ Corporal Gborie,³³⁷ Santigie Borbor Kanu, aka “Five-Five,”³³⁸ Corporal Momoh Derty and others.³³⁹

281. Corroborating TF1-334, George Johnson testified that the following twelve ‘other ranks’³⁴⁰ soldiers in the SLA were amongst those who carried out the coup (in the order as in the preceding paragraph): “Zagallo”, Alex Tamba Brima, aka “Gullit,” Ibrahim Bazy Kamara, aka “Dark Angel,” Hassan “Papa” Bangura, aka “Bomb Blast,” “Foday Kallay” [sic], “Sullay Falaba,” “Biorbo,” “Rambo” – Chief Security to Johnny Paul Koroma, “Woyoh,” “Sammy” or Samuel Kargbo, Santigie Kanu, aka “55,” and Momoh “Durti” [sic].³⁴¹

282. Gibril Massaquoi gave evidence that 17 key junior officers participated in the coup.³⁴² He named the following other ranks SLAs: Abu Sankoh, aka “Zagalo,” Ibrahim Bazy Kamara, aka “Bazzy,” “Bioyoh” Sesay, “Woyoh,” and “Bomb Blast.”³⁴³

³³⁰ Save as indicated below. TF1-334, Transcript 16 May 2005, p. 27.

³³¹ TF1-334, Transcript 17 May 2005, pp. 12-13; Transcript 17 June 2005, p. 67.

³³² TF1-334, Transcript 17 May 2005, pp. 9-10. Ranks as at May 1997.

³³³ Exhibit P88: Statement of Alfred Abu Sankoh alias Zagallo, 27 March 1998, gives Sankoh’s full name as “Alfred Abu Sankoh.” According to his statement, he was 39 years old in 1998. He corroborates TF1-334’s evidence regarding the football team: he says that he was coach of the army football team which was camped and trained at the Wilberforce Military Football grounds (p. 4).

³³⁴ Aka Gullit. TF1-334, Transcript 16 May 2005, p. 75.

³³⁵ Aka IB, aka Makavelle. TF1-334, Transcript 16 May 2005, p. 75; or Dark Angel: George Johnson, Transcript 15 September 2005, p. 9.

³³⁶ TF1-334, Transcript 17 May 2005, pp. 3-4. Full name Franklyn Conteh: TF1-334’s testimony on Exhibit P6, Transcript 17 May 2005, p. 27. Exhibit P93, Clipping from The Pool newspaper, 11 July 1997, entitled “The Full AFRC Cabinet,” front and back pages (infra), refers to this individual as “WOII Conteh F.”

³³⁷ TF1-334, Transcript 17 May 2005, p. 15.

³³⁸ TF1-334, Transcript 17 May 2005, p. 28. Exhibit P93, Clipping from The Pool newspaper, 11 July 1997, entitled “The Full AFRC Cabinet,” front and back pages (infra), refers to this individual as “Sergeant Khanu SB”.

³³⁹ TF1-334, Transcript 19 May 2005, pp. 12-13. Exhibit P93, Clipping from The Pool newspaper, 11 July 1997, entitled “The Full AFRC Cabinet,” front and back pages (infra), refers to this individual as “Corporal Momoh Bangura”.

³⁴⁰ George Johnson, Transcript 15 September 2005, p. 15.

³⁴¹ George Johnson, Transcript 15 September 2005, pp. 14-15.

³⁴² Gibril Massaquoi, Transcript 11 October 2005, pp. 104-105.

³⁴³ Gibril Massaquoi, Transcript 7 October 2005, pp. 76-78.

283. Prosecution witness TF1-184 worked as a personal security for SAJ Musa for two to three months in the AFRC period.³⁴⁴ He also testified that the First, Second and Third Accused overthrew the SLPP Government. TF1-114 recalled Corporal Gborie announcing the Coup by AFRC Junta forces on the mass media, and recalled the name of one of the PLOs, Alex Tamba Brima, alias "Gullit," announced by the media.³⁴⁵
284. Many of the coup makers were known to each other, and to Prosecution witnesses, from the days of the NPRC Government.³⁴⁶ In this period, the Second Accused was a security to the Attorney-General, Mr. Gooding. Witness TF1-184 met him in 1992.³⁴⁷ The First Accused testified that he was security to Strasser based at Kabasa lodge.³⁴⁸ TF1-334 worked with him there,³⁴⁹ and TF1-184 gave evidence that he first met the First Accused in 1992 at Kabasa lodge.³⁵⁰ During the NPRC period, TF1-184 had worked as a security for SAJ Musa.³⁵¹
285. At the time of the May 1997 coup, the Third Accused was deployed at Camp Charlie, in Mile 91, with Prosecution witness TF1-184.³⁵² TF1-184 had trained the Third Accused in 1991³⁵³ and had worked with him under the same commander in Monrovia as part of the Sierra Leone ECOMOG contingent there.³⁵⁴ The Third Accused had also been a security to Captain Strasser during the NPRC regime.³⁵⁵ Abu Sankoh, during the NPRC Junta, served as Chief Security Officer to Major J.P. Gbondo, who was a member of the Supreme Council and Secretary of State in the Ministry of Works,³⁵⁶ and Tamba Gborie was assigned to the Secretary of State North, Lt.-Col. Fallah Sewa, as bodyguard.³⁵⁷

³⁴⁴ TF1-184, Transcript 26 September 2005, pp. 74-75 and Transcript 30 September 2005, p. 54.

³⁴⁵ TF1-114, Transcript 14 July 2005, pp. 118-119 and Transcript 18 July 2005, p. 24.

³⁴⁶ TF1-184, Transcript 29 September 2005, pp. 96-97; Transcript 29 September 2005, p. 19; TF1-184, Transcript 26 September 2005, Closed session, p. 71; Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 24-25; Transcript 6 June 2006, p. 20; Transcript 19 June 2006, p. 25; Exhibit P88, Statement of Alfred Abu Sankoh, alias Zagallo, 27 March 1998 & Exhibit P89, Statement of Tamba Gborie, 25 March 1998, p. 70.

³⁴⁷ TF1-184, Transcript 29 September 2005, pp. 96-97; Accused Alex Tamba Brima, Transcript 28 June 2006, p. 25.

³⁴⁸ Accused Alex Tamba Brima, Transcript 6 June 2006, p. 20 and Transcript 19 June 2006, p. 25.

³⁴⁹ TF1-334, Transcript 17 June 2005, p. 62.

³⁵⁰ TF1-184, Transcript 29 September 2005, p. 19.

³⁵¹ TF1-184, Transcript 26 September 2005, Closed session, p. 71.

³⁵² TF1-184, Transcript 30 September 2005, p. 34.

³⁵³ TF1-184, Transcript 26 September 2005, p. 80.

³⁵⁴ TF1-184, Transcript 26 September 2005, p. 82.

³⁵⁵ Accused Alex Tamba Brima, Transcript 28 June 2006, p. 24.

³⁵⁶ Exhibit P88, Statement of Alfred Abu Sankoh, alias Zagallo, 27 March 1998.

³⁵⁷ Exhibit P89, Statement of Tamba Gborie, 25 March 1998, p. 70.

286. In 1998, statements were obtained by the SLP from “Alfred” Abu Sankoh,³⁵⁸ alias Zagallo and from Tamba Gborie.³⁵⁹ Both were arrested and executed in October 1998.³⁶⁰
287. Sankoh corroborates TF1-334’s evidence that the May 1997 coup makers were football players: he says that he selected a total of 25 men to form the team, comprising a combination of soldiers and a few civilians employed by the army.³⁶¹ Tamba Gborie, who says he was staying at Wilberforce Military Barracks prior to the coup, says that he knew a few of the military personnel who were members of the military football team at the barracks, including “Alex Brima.”³⁶²
288. On 24 May 1997, Sankoh says, he called up 17 men, including members of the football team and “Sgt. Alex Tamba Brima” and “Lance Corporal Tamba Gborie,” and they planned to arrest the senior officers at the Military Headquarters in Cockerill.³⁶³ The men also included WO II Franklyn Conteh, Sgt Ibrahim Bazzi Kamara, Cpl. “Mohamed” [sic] Kanu, alias “Five-Five.”³⁶⁴
289. The coup makers broke into Pademba Road Prison early in the morning on 25 May 1997 to get reinforcements. They released Johnny Paul Koroma who had been detained as a result of a previous coup attempt, and many other SLA soldiers, including Prosecution witness George Johnson.³⁶⁵ George Johnson went to the army headquarters at Cockerill with Major Johnny Paul Koroma. On his arrival, Johnson and assembled soldiers were sent to the army ordinance at Murray Town to get more arms and ammunition.³⁶⁶ Johnny Paul Koroma assumed command of the men very shortly after his release from Pademba Road.³⁶⁷
290. After the takeover, TF1-334 saw the First Accused at State House.³⁶⁸ On the day of the coup, TF1-153 also saw him at Wilberforce barracks. The First Accused arrived with a

³⁵⁸ Exhibit P88, Statement of Alfred Abu Sankoh alias Zagallo, 27 March 1998.

³⁵⁹ Exhibit P89, Statement of Tamba Gborie, 25 March 1998.

³⁶⁰ Accused Alex Tamba Brima, Transcript 20 June 2006, p. 41, p. 48.

³⁶¹ Exhibit P88, Statement of Alfred Abu Sankoh alias Zagallo, 27 March 1998, p. 6.

³⁶² Exhibit P89, Statement of Tamba Gborie, 25 March 1998, p. 75.

³⁶³ Exhibit P88, Statement of Alfred Abu Sankoh alias Zagallo, 27 March 1998, p. 7.

³⁶⁴ Exhibit P88, Statement of Alfred Abu Sankoh alias Zagallo, 27 March 1998, pp. 7-8.

³⁶⁵ TF1-334, Transcript 17 May 2005, pp. 12-13; George Johnson, Transcript 15 September 2005, p. 7.

³⁶⁶ George Johnson, Transcript 15 September 2005, p. 12.

³⁶⁷ Exhibit P88, Statement of Alfred Abu Sankoh alias Zagallo, 27 March 1998, p. 10; Exhibit P89, Statement of Tamba Gborie, 25 March 1998, p. 79.

³⁶⁸ TF1-334, Transcript 17 June 2005, p. 61.

Land Rover and the British High Commissioner's jeep, and explained that "they had overthrown."³⁶⁹ Significantly, the First Accused mentioned to TF1-153 that "your man is coming, we have sent for him."³⁷⁰ This was a reference to SAJ Musa who was also a family friend of the First Accused³⁷¹ and had been a Vice Chairman to Chairman Strasser in the days of the NPRC Government. As per the First Accused's announcement, SAJ Musa did return to Sierra Leone and joined the AFRC Government being second in authority only to Johnny Paul Koroma. This raises the question as to how the First Accused, who, according to his own evidence, was only a corporal who did not take part in the Coup, would have had access to such inside information shortly after the Coup. The answer must be that he was an integral part of the Coup.

291. The Third Accused went to Prosecution witness TF1-184's house holding an AK-47 and asked him to "join."³⁷²
292. The evidence of Prosecution witnesses regarding the planning and first hours of the Coup is corroborated by the statements of Abu Sankoh and Tamba Gborie. Sankoh says that after the group seized military equipment from Cockerill barracks, Gborie went with a group of soldiers to the Sierra Leone Broadcasting Service ("SLBS").³⁷³
293. He says the First Accused was posted at the Wilberforce Military Barracks (which corroborates TF1-153's discussion with him), Sgt. Brima Kamara was posted to the army ordinance at Murray Team and Franklyn Conteh to take care of the military headquarters. He refers to Alex Brima, as a "coup leader."³⁷⁴ Sankoh headed to Pademba Road Prison at around 7 am with a group of soldiers, including Sgt. Ibrahim Bazzzy Kamara and Cpl. Foday Kallay.³⁷⁵
294. The Prosecution submits that the evidence that the Accused and others carried out the coup is highly significant. It is the case of the Prosecution that it was on account of their role in overthrowing the SLPP Government that the Accused and the other ranks soldiers who

³⁶⁹ TF1-153, Transcript 22 September 2005, pp. 12-13.

³⁷⁰ TF1-153, Transcript 22 September 2005, pp. 15-16.

³⁷¹ Accused Alex Tamba Brima, Transcript 28 June 2006, p. 6.

³⁷² TF1-184, Transcript 26 September 2005, pp. 83-84.

³⁷³ Exhibit P88, Statement of Alfred Abu Sankoh alias Zagallo, 27 March 1998, p. 8.

³⁷⁴ Exhibit P88, Statement of Alfred Abu Sankoh alias Zagallo, 27 March 1998, pp. 8-9.

³⁷⁵ Exhibit P88, Statement of Alfred Abu Sankoh alias Zagallo, 27 March 1998, p. 9.

carried out the coup were rewarded by being appointed to senior positions within the newly established AFRC Government.

295. Thus it was the involvement of the Accused in the coup which enabled them to be elevated from the other ranks to positions within the AFRC hierarchy such as Honourables, PLOs, Supreme Council members, which superseded rank and as such, placed them in positions of authority during the Junta period.

296. Furthermore, it is the case of the Prosecution that the AFRC hierarchy continued to exist in the jungle after the intervention so that when the AFRC evolved into a military organisation after the intervention, the hierarchical positions held during the Junta period were converted into command positions based on the Junta hierarchy of seniority.

BEGINNING OF COOPERATION BETWEEN RUF AND SLAS: AFRC AND THE SUPREME COUNCIL

297. Cpl. Foday Sankoh, the leader of the RUF, was invited by Johnny Paul Koroma, the newly appointed chairman of the AFRC, to join in sharing political power almost immediately after the Coup. The invitation was accepted and together the two groups set about securing their control and power.

298. The period in which the AFRC was in government was also known as the Junta.³⁷⁶ This lasted for about nine months, from around 25 May 1997 to around 12/13 February 1998.

299. The three Accused were all members of the AFRC, honourables, and members of the Supreme Council.

300. TF1-334 gave evidence naming the AFRC's members and their functions. His evidence is corroborated in every material respect, not only by contemporaneous documentary evidence, but also by the evidence of other Prosecution insider witnesses, including George Johnson and Gibril Massaquoi.

301. Witness TF1-334 worked for Hassan "Papah" Bangura, aka Bomblast³⁷⁷ during the Junta

³⁷⁶ George Johnson, Transcript 15 September 2005, pp. 21-22.

³⁷⁷ Various referred to by him in his evidence as Commander A and Supervisor A. TF1-334, Transcript 15 June 2005, Closed Session, p. 66.

period as a military transport officer.³⁷⁸ The two had trained in the army in the same year and were very close.³⁷⁹ TF1-334 went with Bangura everywhere.³⁸⁰ Hassan Papah Bangura was a member of the Supreme Council and TF1-334 escorted him to meetings of the Supreme Council.³⁸¹

302. TF1-334 could read and write English, and Hassan Papah Bangura could not. After Supreme Council meetings, TF1-334 would read documents – proclamations, decrees and minutes – and discuss them with him.³⁸² Bangura also supervised the Ministry for Energy and Power in the AFRC Government³⁸³ and reported to the Second Accused who was the PLO under whom Bangura’s ministry fell.³⁸⁴

303. Prosecution witness George Johnson was chief security officer to the Second Accused during the Junta and was extremely close to him. He accompanied him to meetings and used to go with securities on operations for the Second Accused, giving him situation reports on his return.³⁸⁵

304. Prosecution witness Gibril Massaquoi was a former RUF spokesman and a member of the Supreme Council during the Junta.³⁸⁶

305. By the Proclamation of 28 May 1997, the Armed Forces Revolutionary Council, or “the Council,” was to consist of a chairman, deputy chairman and other members not exceeding 27 in number.³⁸⁷

306. TF1-334 testified that the president, or chairman, was Major Johnny Paul Koroma, and the

³⁷⁸ TF1-334, Transcript 16 May 2005, Closed Session, pp. 8-9.

³⁷⁹ TF1-334, Transcript 17 June 2005 Closed Session, pp. 38-39.

³⁸⁰ TF1-334, Transcript 16 May 2005, Closed Session, p. 12.

³⁸¹ TF1-334, Transcript 16 May 2005, Closed Session, p. 12. Although he never attended those meetings himself, Transcript 17 June 2005, Closed Session, p. 31.

³⁸² TF1-334, Transcript 16 May 2005, Closed session, pp. 12-13. For e.g., of Exhibit P4, Transcript 16 May 1997, p. 59; of Exhibit P5.1, Transcript 16 May 2005, pp. 71-72.

³⁸³ TF1-334, Transcript 16 May 2005, Closed session, p. 11.

³⁸⁴ George Johnson, Transcript 15 September 2005, p. 20.

³⁸⁵ George Johnson, Transcript 15 September 2005, pp. 17-19.

³⁸⁶ Gibril Massaquoi, Transcript 7 October 2005, p. 72. He received two months salary in this role, and attended two meetings; a third meeting was aborted, Gibril Massaquoi, Transcript 7 October 2005, p. 75.

³⁸⁷ Exhibit P4, para. 1. Membership of the Council was in July 1997 to not exceed 40. Exhibit P5.1, Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation (Amendment) Decree, 1997, AFRC Decree No. 4, made and issued on 12 July 1997, para. 1; TF1-334, Transcript 16 May 2005, pp. 71-72.

vice-president, or deputy chairman, was Corporal Foday Sankoh. In Sankoh's absence,³⁸⁸ SAJ Musa, Secretary of State, or Chief Secretary of State,³⁸⁹ acted as vice-president, or deputy chairman.³⁹⁰

307. In July 1997, Johnny Paul Koroma's "Cabinet" was announced. By this time, original members of the "Council" had become the "Supreme Council."³⁹¹

308. TF1-334 testified that the 17 men who plotted the May 1997 coup all became Supreme Council members and honourables.³⁹²

309. Johnny Paul Koroma was the head of the Supreme Council and the vice-chairman was SAJ Musa. Other members were Colonel Avivavo, Deputy Defence Minister,³⁹³ and RUF members who included Colonel Sam Bockarie, aka Mosquito, Colonel Issa Sesay, Colonel Morris Kallon, aka "Bilai Wai Karim," Lieutenant Eldred Collins and Colonel Mike Lamin.³⁹⁴

310. George Johnson testified that the government formed after the Coup, the Armed Forces Revolutionary Council, was made up of the 16 men [sic] who carried out the coup and most of the RUF commanders who had come to Freetown.³⁹⁵

311. Gibril Massaquoi testified that both the army and the RUF were represented on the Supreme Council. He testified that army members of the Supreme Council fell into two groups: the 'other ranks' who carried out the Coup, and Major Johnny Paul Koroma, who was head of the Supreme Council, the Chief of Defence Staff, Brigadier SFY Koroma, the

³⁸⁸ Sankoh had been arrested in Nigeria in March 1997 along with Prosecution witness Gibril Massaquoi. He was, at the time of the coup, staying at the Sheraton Guest House in Abuja. He was free to leave the guest house, but was not free to leave Abuja. Gibril Massaquoi, Transcript 7 October 2005, pp. 32-33, 36.

³⁸⁹ TF1-334, Transcript 16 May 2005, p. 77. Corroborated by George Johnson, save that Johnson says that Sam Bockarie, aka Mosquito, took over as Vice-President in Sankoh's absence, and further that Issa Sesay took over from him when Bockarie went to Kenema, Transcript 15 September 2005, p. 18. Corroborated by Gibril Massaquoi, Transcript 7 October 2005, p. 81.

³⁹⁰ TF1-334, Transcript 16 May 2005, p. 56, 66.

³⁹¹ Exhibit P93, Clipping from The Pool newspaper, 11 July 1997, entitled "The Full AFRC Cabinet", front and back pages. A Secretary-General, Colonel AK Sesay, who chaired meetings of the Supreme Council, was appointed later on, TF1-334, Transcript 16 May 2005, pp. 66-67; Exhibit P4, para. 1(4).

³⁹² TF1-334, Transcript 16 May 2005, p. 57, 92. Corroborated by George Johnson, Transcript 15 September 2005, p. 15. Corroborated by Exhibit P88, Statement of Alfred Abu Sankoh alias Zagallo, 27 March 1998, p. 13.

³⁹³ TF1-334, Transcript 17 May 2005, pp. 2-3.

³⁹⁴ TF1-334, Transcript 17 May 2005, pp. 6-8.

³⁹⁵ George Johnson, Transcript 15 September 2005, pp. 17-18.

Chief of Army Staff,³⁹⁶ Colonel SO William and SAJ Musa, Chief Secretary of State.³⁹⁷

312. He named 'other ranks' members of the Supreme Council as follows: Tamba Brima, aka Gullit, Abu Sankoh, aka Zagallo, Ibrahim Bazzy Kamara, aka Bazzy, Bioh Sesay, Woyoh, Bomb Blast and Santigie Kanu, aka Five-Five.³⁹⁸ Gibril Massaquoi was nominated to the Supreme Council by Sam Bockarie. Other RUF members were Mike Lamin, Issa Sesay, Denis Mingo, and Bockarie.³⁹⁹ Foday Sankoh and his advisor Daniel G. Kallon were also members of the Supreme Council.⁴⁰⁰

313. The evidence of Prosecution insider witnesses is further corroborated as follows:

- a. Prosecution Exhibit P6 is a Government Notice of the AFRC naming members of the "Armed Forces Revolutionary Council" with effect from 25 May 1997.⁴⁰¹ All the Accused are named as members.
- b. "Supreme Council" members named in a newspaper announcement of members of the "Full AFRC Cabinet", dated 11 July 1997, include all the Accused".⁴⁰²
- c. On the evidence of Prosecution insider witnesses and other documentary evidence tendered by the Prosecution, the only inference is that numbers (6) to (22) inclusive on this list are the 17 'other ranks' SLAs who plotted and carried out the coup. The list is strikingly similar to the complete list of names provided by witness TF1-334 of the 17 coup plotters.
- d. In August 1997, Gibril Massaquoi attended a meeting at Cockerill military headquarters attended by all the Accused.⁴⁰³ Prosecution Exhibit P34 is a set of Minutes of an "Emergency Council Meeting of the AFRC" held at State House on

³⁹⁶ Or the Army Chief of Staff – used by witnesses alternately. For example, TF1-045, Transcript 19 July 2005, p. 58; and TF1-045, Transcript 19 July 2005, p. 61.

³⁹⁷ Gibril Massaquoi, Transcript 7 October 2005, pp. 72-73.

³⁹⁸ Gibril Massaquoi, Transcript 7 October 2005, pp. 76-79, 83.

³⁹⁹ Gibril Massaquoi, Transcript 7 October 2005, pp. 79-80.

⁴⁰⁰ Gibril Massaquoi, Transcript 7 October 2005, p. 80.

⁴⁰¹ Exhibit P6, Government Notice 215 dated 3 September 1997, in the Sierra Leone Gazette, No. 52, 4 September 1997, issued pursuant to subparagraph (2) of paragraph 1 of the Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation 1997 (Exhibit P4, above). Government Notice 215 is repeated in a later edition of the Sierra Leone Gazette (No. 64, 18 September 1997), see Exhibit P7.

⁴⁰² Exhibit P93, Clipping from The Pool newspaper, 11 July 1997, entitled "The Full AFRC Cabinet", front and back pages.

⁴⁰³ Gibril Massaquoi, Transcript 7 October 2005, p. 83.

- 11 August 1997. Amongst those present were the First and Second Accused.⁴⁰⁴
- e. Gibril Massaquoi gave evidence that he recognised these as minutes for an emergency Supreme Council meeting which he received as a member of the Supreme Council.⁴⁰⁵ It is notable that the First and Second Accused are identified as present, alongside Major Johnny Koroma, Captain SAJ Musa, and Colonel Mike Lamin; all of whom were said to be members of the Supreme Council by the First Accused,⁴⁰⁶ TF1-334,⁴⁰⁷ and Gibril Massaquoi.⁴⁰⁸
 - f. Gibril Massaquoi attended an “extraordinary” meeting of the Supreme Council at State House in late August/September 1997.⁴⁰⁹ Amongst those present were the Second and the Third Accused.⁴¹⁰
 - g. Massaquoi attended a third meeting of the Supreme Council which was aborted. Present were Johnny Paul Koroma, the AFRC Secretary-General (Col. AK Sesay⁴¹¹), Issa Sesay, “Gullit,” “Five-Five,” Bazzy and the Chief of Defence Staff.⁴¹²
 - h. TF1-045 gave evidence that his RUF Commander Mike Lamin (Commander B) was a member of the “Council” or “AFRC,”⁴¹³ and that he attended a series of meetings of the Council with him in 1997. In September 1997 he attended a meeting at the officers’ mess at Wilberforce where the Second and Third Accused were present.⁴¹⁴
 - i. In around October/November 1997 he attended a meeting at the Youyi Building, again chaired by the Chief of Army Staff and attended by Commander B, Morris Kallon, Denis Mingo, aka Superman, Gibril Massaquoi, CO Isaac, Steve Bioh [sic],

⁴⁰⁴ Exhibit P34, Minutes of an Emergency Council Meeting of the AFRC held at State House on 11 August 1997, 16 August 1997.

⁴⁰⁵ Gibril Massaquoi, Transcript 7 October 2005, p. 102-103.

⁴⁰⁶ Accused Alex Tamba Brima, Transcript 67-68, 3 July 2006.

⁴⁰⁷ TF1-334, Transcript 17 May 2005, pp. 2, 8.

⁴⁰⁸ Gibril Massaquoi, Transcript 7 October 2005, pp. 72-72, 79.

⁴⁰⁹ Gibril Massaquoi, Transcript 7 October 2005, p. 86.

⁴¹⁰ Ibrahim Bah was a General and part of the special forces, and an RUF representative in Burkina Faso, Gibril Massaquoi, Transcript 7 October 2005, p. 37.

⁴¹¹ For example, Exhibit P6.

⁴¹² Gibril Massaquoi, Transcript 7 October 2005, p. 93.

⁴¹³ TF1-045, Transcript 19 July 2005, p. 57.

⁴¹⁴ TF1-045, Transcript 19 July 2005, pp. 57-63.

Morris Kallon, Issa Sesay, “Five-Five,” and General “Bupleh” [sic].⁴¹⁵

- j. There was a meeting towards the end of November 1997 at Johnny Paul’s lodge at Spur Road in Freetown attended by members of the RUF command and amongst others the First Accused from the AFRC.⁴¹⁶
- k. Minutes of a Meeting held on 9 December 1997 list the attendees as including “Hon Abu Sankoh – PLOI,” “Hon” “Tamba Alex Brima – PLOII,” “Hon SB Khanu (Five-Five),” “Tamba Gborie,” “Capt SAJ Musa,” “Lt.-Col Issac H Sesay,” “Col Mike Lamin,” and “Morries Kanou.”⁴¹⁷
- l. Supreme Council members named in a press release issued by the Security Council Committee on Sierra Leone in January 1998 include at (7) “Brima, Alex Tamba/Staff Sergeant Principal Liaison Officer II,” at (16) “Kamara, Brima Bazzy/Staff Sergeant Principal Liaison Officer III,” at (19) “Khanu, S.B./Sergeant,”⁴¹⁸ When confronted with the aforesaid press release, the First Accused, incredibly, responded that the people who had prepared the press release were lying.⁴¹⁹

314. Even Defence witness TRC-01, who was a senior military officer in the SLA at that time, knew that all the three Accused were members of the Supreme Council of the AFRC Government. The Defence did not challenge their own witness on this point, who the Prosecution submits was both a credible and reliable witness.⁴²⁰ According to DBK-005, the Accused were also all members of the AFRC Government Supreme Council prior to the intervention.⁴²¹

⁴¹⁵ TF1-045, Transcript 19 July 2005, pp. 63-66.

⁴¹⁶ TF1-045, Transcript 19 July 2005, pp. 71-72. Mike Lamin (Commander B) told him that Johnny Paul Koroma chaired the meeting and that he spoke about how the AFRC was faring, how both the AFRC and the RUF attacked civilians, how civilians were raped, attacked and how property was looted, and the international pressure for them to hand over power, TF1-045, Transcript 19 July 2005, pp. 72-73.

⁴¹⁷ Exhibit P69, AFRC - Secretariat Minutes of Meeting held on the 9th December 1997, 23 January 1998.

⁴¹⁸ Exhibit P84, Press Release entitled Security Council Committee on Sierra Leone Releases List of Junta Members Affected by Sanctions, 28 January 1998. See also reference to “Sergeant Kanu,” “commonly known as “Honourable 55,” as a member of the “AFRC Supreme Council” in Exhibit P97, Newspaper clipping from Standard Times, 13 December 1997, article entitled “We are merely using politicians.”

⁴¹⁹ Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 92-96 (at pp. 95-96).

⁴²⁰ TRC-01, Transcript 16 October 2006, p. 104.

⁴²¹ DBK-005, Transcript 12 October 2006, pp. 18-19.

315. The Prosecution submits that there is no doubt that the First Accused, as well as the Second and Third Accused, on the evidence of both Prosecution and Defence witnesses as well as exhibited documents, were members of the AFRC Supreme Council.

POWERS OF SUPREME COUNCIL

316. Prosecution witness Gibril Massaquoi was a member of the Supreme Council. He testified that the Supreme Council was the body overseeing the law-making and decision-making of the country.⁴²² As a member of the Supreme Council, he was well-placed to give this evidence.

317. At paragraph 14 of the minutes of a Supreme Council meeting held on 11 August 1997, the Council is described as “the Highest Council of the Land.”⁴²³

318. The First Accused, too, gave evidence that the Supreme Council “made up the Armed Forces Revolutionary Council,”⁴²⁴ and was “the most important body,” that “takes all decisions.”⁴²⁵

319. By paragraph three of the Proclamation of 28 May 1997, the “Council” (in practice known as the Supreme Council) had “power for such purposes as it may think fit, and in the national interest, to make laws which shall become known as decrees.”⁴²⁶ Paragraph six of the Proclamation is illustrative of the power then vested in the Council: “the Council” (or any person or authority appointed by it) displaced references to the former President, Vice-President, Ministers and Cabinet in the Constitution of Sierra Leone and in any legislation existing prior to 25 May 1997.⁴²⁷

320. Legislation was thereafter enacted pursuant to the provisions of paragraph three of the Proclamation of 28 May 1997, including “The Constitution of Sierra Leone, 1991

⁴²² Gibril Massaquoi, Transcript 7 October 2005, p. 72; corroborated by TF1-334, Transcript 16 May 2005, p. 57.

⁴²³ Exhibit P34, Minutes of an Emergency Council Meeting of the AFRC held at State House on 11 August 1997, 16 August 1997.

⁴²⁴ Accused Alex Tamba Brima, Transcript 6 June 2006, p. 79.

⁴²⁵ Accused Alex Tamba Brima, Transcript 6 June 2006, p. 69.

⁴²⁶ Exhibit P4, para. 3 (1).

⁴²⁷ Exhibit P4, para. 6, “Subject to any decree made by the Council, any reference to President, Vice-President, Minister or Cabinet in the Constitution of Sierra Leone which came into operation on 1st October, 1991, or in any enactment continued in existence by virtue of this Proclamation should on and after 25 May 1997, be construed as a reference to the Council or to such person or authority as the Council may by Order appoint”.

(Amendment) Decree, 1997,” which provided for the establishment of a Police Council and of a Defence Council.⁴²⁸ In effect, the Supreme Council even had the power to amend the constitution which they exercised by passing the above decree. Tellingly, both the Police and the Defence Council placed members of the AFRC Government in pivotal roles. The Prosecution submits that by making these amendments to the Constitution the aim of the AFRC was to consolidate its grip on power through its control of the police and all matters relating to defence.⁴²⁹

321. Gibril Massaquoi testified that the Supreme Council met once a month, and also for emergency meetings, as necessary.⁴³⁰ Decisions were made either by simple majority or by the high table comprising senior representatives of the SLAs and the RUF, namely, Johnny Paul Koroma, Abu Sankoh, SAJ Musa, Brigadier SFY Koroma, Sam Bockarie, and Issa Sesay when Sam Bockarie was not in Freetown.⁴³¹

322. Minutes of these meetings indicate the sort of issues that were raised and decided upon by the Supreme Council. The response to the looting problem in Freetown is a demonstration of the legislative powers of the Council, and of the Council’s ability to respond to criminality.

323. Gibril Massaquoi testified to a meeting attended by him in August 1997. SO Williams talked about rampant looting by some Supreme Council members, naming in particular “Five-Five” and his bodyguards.⁴³² A decision was made at the meeting that a body known as the Western Area Security Patrol be set up and empowered to curb looting and other activities in the city.⁴³³

324. This decision had teeth: on November 1997, an anti-looting decree was enacted. It made

⁴²⁸ Exhibit P8, The Constitution of Sierra Leone 1991(Amendment) Decree, 1997, AFRC Decree No. 7, made and issued on 3 December 1997. Other Orders made and issued thereafter by the Supreme Council included Exhibit P9, The Change of Titles Order 1997, Public Notice No. 11 of 1997, made and issued on 3 December 1997; Exhibit P71a, The Bank of Sierra Leone (Amendment) Decree 1997, made and issued on 3 July 1997; Exhibit P71b, The Imposition of Curfew Decree 1997, made and issued on 20 August 1997

⁴²⁹ ⁴²⁹ Exhibit P8, The Constitution of Sierra Leone 1991(Amendment) Decree, 1997, AFRC Decree No. 7, made and issued on 3 December 1997, pp. 2-3.

⁴³⁰ Gibril Massaquoi, Transcript 7 October 2005, p. 72.

⁴³¹ Gibril Massaquoi, Transcript 7 October 2005, pp. 81-82.

⁴³² Gibril Massaquoi, Transcript 7 October 2005, p. 84. Five-Five was present and denied the looting.

⁴³³ Gibril Massaquoi, Transcript 7 October 2005, p. 85. Matters of a purely military nature were also discussed, the military presence, build-up by ECOMOG and deployments.

legislative provision for the establishment and powers of an “anti-looting squad”⁴³⁴ and was enacted “to make provision for the protection of persons against harassment and intimidation.”⁴³⁵

325. The Supreme Council discussed and made decisions on funding for the regime, and on the supply of arms and ammunition. Minutes of an Emergency Meeting on 11 August 1997 indicate that the Council discussed sources of revenue for the government, including sale of petroleum, imports and customs duties, and “proceeds from sale of Diamonds.”⁴³⁶ It is pertinent to note that even at this early stage the Supreme Council realised the importance of diamond mining as being one of the only sources of income in financing the Junta.
326. At a further meeting attended by Gibril Massaquoi in late August/September 1997, the focus of the discussion was on how to get a stock of ammunition and arms held in Burkina Faso to Freetown for use by the AFRC and the RUF. Again, a decision was made with important consequences: the Supreme Council agreed to send Ibrahim Bah with a letter for the Burkina Faso President, Blaise Campaore, asking for his assistance in adding arms and ammunition to the present stock.⁴³⁷ Gibril Massaquoi later travelled to Burkina Faso with the letter, and money for transport of the arms and ammunition back to Sierra Leone.⁴³⁸ Ibrahim Bah’s involvement in acquiring the arms and ammunition for both sides clearly belies his transcripts which were admitted into evidence under Rule 92*bis* without cross-examination.⁴³⁹ Bah’s transcripts can therefore be seen as self-serving lies.
327. Following on from this, TF1-045 testified to a meeting in September 1997 at the officers’ mess at Wilberforce, chaired by the Chief of Army Staff (SO Williams) and attended by RUF members Issa Sesay, Morris Kallon, Superman, Eldred Collins, Rambo and Gibril Massaquoi, and on the “AFRC” side the Army Chief of Staff,⁴⁴⁰ “Five-Five” and Bazzy. Eldred Collins told the group that a corridor was open for ammunition to land at the

⁴³⁴ Exhibit P10, The Armed Forces Revolutionary Council (Anti-Looting) Decree, 1997, AFRC Decree No. 6, made and issued on 17 November 1997, paras. 2 and 5.

⁴³⁵ *Ibid.*, preamble.

⁴³⁶ Exhibit 34, Minutes of an Emergency Council Meeting of the AFRC held at State House on 11 August 1997, 16 August 1997, para. 7. Decisions were made at this meeting, including the appointment of a Governor of the Bank of Sierra Leone (para. 11).

⁴³⁷ Gibril Massaquoi, Transcript 7 October 2005, pp. 87-88.

⁴³⁸ Gibril Massaquoi, Transcript 7 October 2005, pp. 88-89.

⁴³⁹ Exhibit D39, Unredacted interview of Ibrahim Bah, TF1-511.

⁴⁴⁰ TF1-045, Transcript 19 July 2005, p.58.

Magburaka airfield.⁴⁴¹ The above is a good example of how the Supreme Council worked together in arranging this arms and ammunition shipment. In essence, they were working together towards the same common aim of keeping the Junta in power.

PRINCIPAL LIAISON OFFICERS

328. The First and Second Accused were Principal Liaison Officers (“PLOs”) 2 and 3, respectively, in the AFRC Cabinet.

329. TF1-334 testified that three PLOs worked directly with the president and were also members of the Supreme Council. He testified that they supervised and monitored various ministries of the government.⁴⁴²

330. He gave evidence that the PLO 1 was Staff Sergeant Abu Sankoh, aka Zagallo, the PLO 2 was Sergeant Tamba Alex Brima, aka Gullit, and the PLO 3 was Ibrahim Bazy Kamara.⁴⁴³ That the First accused was a PLO2 and the Second Accused a PLO3 is not denied by the First Accused in his evidence. Defence counsel for the Second Accused did not challenge the First Accused during cross-examination that the Second Accused was not PLO 3 and thus has adopted the evidence of the First Accused on this point.

331. George Johnson testified that the Second Accused was PLO 3,⁴⁴⁴ and had under his control Ministries for Customs, Energy and Power, Lotto and the Queen Elizabeth Quay. People from the ministries would report to him: for example, Hassan Papah Bangura for the Ministry for Energy and Power.⁴⁴⁵ This is corroborated by TF1-334, who as Hassan Papah Bangura’s driver during this period, knew the role that the Second Accused played in the AFRC as his boss (Hassan Papah Bangura) who TF1-334 accompanied, was reporting to the Second Accused.

332. The PLO’s position in government was an extremely important one. They were members of the Supreme Council and superior to all remaining members of that Council, save

⁴⁴¹ 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.

⁴⁴² TF1-334, Transcript 16 May 2005, p. 57.

⁴⁴³ TF1-334, Transcript 16 May 2005, pp. 99-101.

⁴⁴⁴ George Johnson, Transcript 15 September 2005, p. 8.

⁴⁴⁵ George Johnson, Transcript 15 September 2005, p. 20.

Johnny Paul Koroma, SAJ Musa and A.K. Sesay.

333. Exhibit P5.2 is a Decree establishing the office of Principal Liaison Officer.⁴⁴⁶ By paragraph two, the PLOs were appointed from amongst the Supreme Council members.⁴⁴⁷ The Decree provides that they “shall be responsible for supervising, monitoring and co-ordinating the operations of any Department of State or such other business of Government, as may from time to time be assigned to him.”⁴⁴⁸ The First Accused, in his own evidence, even admitted that the three PLOs would report to SAJ Musa in his role as Chief Secretary of State in respect of the ministries,⁴⁴⁹ which they were responsible for supervising, monitoring, and co-ordinating under Exhibit P5.2.
334. Minutes of an “Emergency Council Meeting” held on 11 August 1997 demonstrate the relative superiority of the PLOs over other Supreme Council members.⁴⁵⁰ A Decision was made at this meeting following reports concerning the “attitude and conduct of some Council members.”⁴⁵¹ The Decision was directed to the PLOs (1 to 3) who attended the meeting: “All Principal Liaison Officers must have effective control over the Honourable members of the Council.”⁴⁵²
335. Similarly, in minutes of a meeting held on 9 December 1997, PLOs are asked “to organise the Honourables in consultation with the SOS Trade so that they divide the City into Zones for effective monitoring.”⁴⁵³
336. The Prosecution submits that based on the evidence as a whole regarding the Supreme Council and PLOs, there can be no doubt that PLOs in the AFRC hierarchy were more senior than Honourables and were only beneath Johnny Paul Koroma and SAJ Musa in the AFRC chain of command.

⁴⁴⁶ Exhibit P5.2, Armed Forces Revolutionary Council (Establishment of Office of Principal Liaison Officer) Decree 1997, AFRC Decree No. 3, made and issued on 12 July 1997.

⁴⁴⁷ Exhibit P5.2, Armed Forces Revolutionary Council (Establishment of Office of Principal Liaison Officer) Decree 1997, AFRC Decree No. 3, made and issued on 12 July 1997, para. 2.

⁴⁴⁸ Exhibit P5.2, Armed Forces Revolutionary Council (Establishment of Office of Principal Liaison Officer) Decree 1997, AFRC Decree No. 3, made and issued on 12 July 1997, para. 3.

⁴⁴⁹ Accused Alex Tamba Brima, Transcript 3 July 2006, p. 95.

⁴⁵⁰ Exhibit P34, Minutes of an Emergency Council Meeting of the AFRC held at State House on Monday 11th August 1997, 16 August 1997.

⁴⁵¹ Ibid., para. 14.

⁴⁵² Exhibit P34, Minutes of an Emergency Council Meeting of the AFRC held at State House on Monday 11th August 1997, 16 August 1997, para. 16.

⁴⁵³ Exhibit 69, AFRC - Secretariat Minutes of Meeting held on the 9th December 1997, 23 January 1998, para. 6. Relates to monitoring of rice stores in Freetown.

THE SIERRA LEONE ARMED FORCES, SECRETARIES OF STATE AND THE SUPREME COUNCIL

337. Following the Coup, the Sierra Leone Armed Forces retained a military structure and leadership which operated in parallel to the political wing of government, albeit subject to its interference.⁴⁵⁴ The Supreme Council and its members had political authority over the military, which fell under the ultimate command of Major Johnny Paul Koroma.
338. Supreme Council meetings were attended by the military leadership including SFY Koroma (Chief of Defence Staff) and SO Williams (Chief of Army Staff), and evidence relating to Supreme Council meetings shows that often matters of a purely military nature were discussed. TF1-045 testified that the Chief of Army Staff chaired meetings of the Supreme Council attended by him.⁴⁵⁵
339. Johnny Paul Koroma, formerly a major in the Sierra Leone Army, was Commander In Chief of the Sierra Leone Armed Forces.⁴⁵⁶ Colonel Avivavo Kamara was Deputy Defence Minister.⁴⁵⁷ The Director of Defence was Brigadier Mani, the Chief of Defence Staff was Brigadier SFY Koroma, and the Army Chief of Staff was SO Williams.⁴⁵⁸
340. TF1-334 testified that there were three Resident Ministers in the AFRC. They were the Resident Minister of the North, Major Kamara, aka Bush Fall, later promoted to Lt. Col., the Resident Minister of the South, Major AF Kamara, alias Ambush Commander, later promoted to Lt. Col., and the Resident Minister in the East, Captain Eddie Kanneh (previously dismissed from the SLA).⁴⁵⁹ Eddie Kanneh reported directly to Johnny Paul Koroma⁴⁶⁰ and worked closely with Sam Bockarie in the diamond rich areas of both Kono and Kenema.⁴⁶¹

⁴⁵⁴ TF1-184, Transcript 30 September 2005, pp. 47-48

⁴⁵⁵ TF1-045, Transcript 19 July 2005, p. 61.

⁴⁵⁶ TF1-334, Transcript 16 May 2005, pp. 89-90; Exhibit P93, Clipping from The Pool newspaper, 11 July 1997, entitled "The Full AFRC Cabinet."

⁴⁵⁷ TF1-334, Transcript 16 May 2005, p. 99; TF1-184, Transcript 30 September 2005, p. 47.

⁴⁵⁸ TF1-334, Transcript 17 May 2005, pp. 18-19; TF1-184, Transcript 30 September 2005, p. 47. Corroborated by George Johnson, Transcript 20 September 2005, p. 12. SFY Koroma is corroborated by TF1-045, Transcript 19 July 2005, p. 57. SFY Koroma and SO Williams are corroborated by Gibril Massaquoi, Transcript 7 October 2005, p. 73.

⁴⁵⁹ TF1-334, Transcript 17 May 2005, pp. 16-17. Corroborated, in part, by Exhibit P93, Clipping from The Pool newspaper, 11 July 1997, entitled "The Full AFRC Cabinet", front and back pages, under the heading "Regional Secretaries" as follows: "Major A.M. Koroma - North," Major A.F. Kamara - South," "Captain (Retired) E.P. Kanneh - East."

⁴⁶⁰ TF1-045, Transcript 19 July 2005, p. 32; TF1-334, Transcript 17 May 2005, p. 17.

⁴⁶¹ TF1-334, Transcript 17 May 2005, pp. 56-57; George Johnson, Transcript 15 September 2005, p. 17.

341. Prosecution Exhibit P 5.3,⁴⁶² an AFRC Decree made on 12 July 1997, established a Council of Secretaries which was “directly and collectively responsible” to the AFRC.⁴⁶³ The head of the Council was to be the Chief Secretary of State (SAJ Musa) and the Council was to otherwise consist of other Secretaries of State appointed by the AFRC.⁴⁶⁴
342. By paragraph 4(b) of the Decree, the Council of Secretaries was to “execute the policies and directives of the Armed Forces Revolutionary Council.” By paragraph 6(2), the Chief Secretary of State (SAJ Musa) was to be “responsible for communicating the policy decisions and directives” of the AFRC to the Council of Secretaries and “conveying the decisions of the Council of Secretaries” to the AFRC. The Chief Secretary of State was also obliged to submit to the AFRC “regular reports from the Secretaries of State regarding the operations in their respective Departments of State.”⁴⁶⁵
343. According to Exhibit P5.3 therefore, the Secretaries of State North (Major Kamara, aka Bush Fall,), South (Major AF Kamara, alias Ambush Commander) and East (Captain Eddie Kanneh) executed the policies and directives of the Supreme Council via a Council of Secretaries with SAJ Musa at their head.
344. SAJ Musa effectively acted as the conduit for the flow of information between the Secretaries of State and the operations over which they had responsibility, and the Supreme Council. That flow of information was required to be “regular.”
345. The overwhelming inference from the evidence is that the Secretaries of State effectively acted as the link between the political wing of the AFRC (the Supreme Council) and the military (including members of the RUF) that was deployed in the provinces.
346. There were AFRC Secretariats in the provinces headed, for example, in Tongo by an “AFRC” Sergeant Junior.⁴⁶⁶ The AFRC Secretariats were the offices of the relevant regional Secretary of State.⁴⁶⁷ One week after the May 1997 coup, an AFRC/RUF

⁴⁶² Exhibit P5.3, Armed Forces Revolutionary Council (Establishment of Council of Secretaries) Decree 1997, AFRC Decree No. 2, made and issued on 12 July 1997, commenced on 10 July 1997.

⁴⁶³ Ibid., para. 2.

⁴⁶⁴ Ibid., para. 3.

⁴⁶⁵ Ibid., para. 6(3).

⁴⁶⁶ TF1-045, Transcript 19 July 2005, pp. 45-46.

⁴⁶⁷ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 107.

Secretariat was established in Kenema Town and remained there until February 1998.⁴⁶⁸

347. There were brigades deployed in the Eastern, Northern and Southern provinces, headed by brigade commanders. The brigade commander in the East was SLA Colonel Fallah Sewa, in the South, SLA Colonel Boissy Palmer, and in the North, SLA Colonel Momodou.⁴⁶⁹ Men working under the brigades included both members of the SLA and RUF.⁴⁷⁰
348. The Resident Ministers could call for the assistance of the brigade commander in their area if need be, for example, if in either Kenema or Kono the Kamajors attacked or otherwise attempted to interrupt the mining operations. The SLAs and RUF jointly guarded the forced mining operations in both Kenema and Kono.

Rank and Appointment

349. There were promotions made of SLA soldiers in the early days of the AFRC period. Johnny Paul Koroma promoted himself from major to lieutenant-colonel.⁴⁷¹ SAJ Musa was promoted from captain to lieutenant-colonel.⁴⁷² Witness George Johnson was promoted by the Second Accused to the rank of sergeant.⁴⁷³ A number of the original coup plotters were promoted to the ranks of sergeant and staff sergeant.⁴⁷⁴
350. The First Accused's emphasis on his rank – corporal, on his evidence – was the basis for an implausible line of defence: namely, that he could not have occupied a senior political position in government during the Junta, or a senior position in the military hierarchy in the bush thereafter, because of the junior rank (corporal) held by him during the period of the Junta.⁴⁷⁵

⁴⁶⁸ TF1-122, Transcript 24 June 2005, pp. 5-7.

⁴⁶⁹ TF1-334, Transcript 17 May 2005, pp. 20-21.

⁴⁷⁰ TF1-334, Transcript 17 May 2005, pp. 21-22; TF1-045, Transcript 19 July 2005, pp. 35-37.

⁴⁷¹ TF1-334, Transcript 16 May 2005, pp. 89-90.

⁴⁷² TF1-334, Transcript 16 May 2005, p. 93.

⁴⁷³ George Johnson, Transcript 15 September 2005, p. 9.

⁴⁷⁴ Contrast, for example, ranks for the 17 as they appear on Exhibit P6, Government Notice 215 dated 3 September 1997, in the Sierra Leone Gazette, No. 52, 4 September 1997, with ranks as given by witness TF1-334 in his evidence of who plotted and carried out the coup. For example, Corporal Adams, Hector Bob Lahai (a civilian), Abdul Sesay (a civilian), Ibrahim "Bioh" Sesay (a civilian) rose to the ranks of sergeant, lance-corporal, lance-corporal, and lance-corporal respectively. See TF1-334, Transcript 17 May 2005, pp. 2-8.

⁴⁷⁵ The First Accused testified that he still, during the Junta period, respected the authority of the army. He testified, for example, that he, as an other ranks soldier, would not have been able to supervise the deputy defence minister, who

351. The First Accused's evidence not only fails to take into account that promotions were given by Johnny Paul Koroma soon after the coup, particularly of those who plotted the coup and/or occupied positions in the political or military administration (it is notable that the First Accused, who refers to himself as a corporal, is named as sergeant and staff sergeant in all documents of the period⁴⁷⁶), but more significantly the military concept known to him and other (former SLA) witnesses who testified that military rank is superseded by appointment. In the period of AFRC rule, political appointment (for example, to the Supreme Council, or as PLO, or as an Honourable) superseded military rank.
352. This concept of position superseding rank is even accepted by at least two Defence witnesses. For example, according to the evidence of DAB-018, Honourable Momoh Derty was more senior than a colonel on account of him being an honourable and the position of honourable overrode military rank.⁴⁷⁷
353. According to the evidence of DAB-018, because of the position as an honourable, Honourable Momoh was able to command a convoy from Kono to Freetown of over 60 SLAs, including officers senior in rank to him.⁴⁷⁸
354. DBK-131 also gave evidence that position superseded rank in the military. At the time of the coup, DBK-131 was a sergeant while Momoh, aka Derty, was only a private, and therefore junior in rank to DBK-131. However, Momoh Derty automatically superseded DBK-131's rank by virtue of the position of honourable.⁴⁷⁹
355. Thus, TF1-184 testified that, during the AFRC period, persons in the military with the

was a colonel and therefore a senior officer in the army: Transcript 20 June 2006, pp. 20-21. The Prosecution submits that this testimony is only true if the appointment of deputy defence minister superseded Brima's appointment to the Supreme Council and as a PLO. The First Accused could not explain why Corporal Gborie would have announced the coup, instead of a more senior officer, or why Gborie said that "other ranks" were the ones who carried out the coup (Exhibit P89, Statement of L/Cpl. Tamba Gborie, p.81), Transcript 29 June 2006, pp. 44-45. The First Accused also denied Gborie's statement that Gborie had received briefings from the First Accused, claiming that he could not make briefings of that nature to Gborie because Gborie was more senior in rank, although both appear to have been corporals, (Exhibit P89, Statement of L/Cpl. Tamba Gborie, p.81), Transcript 29 June 2006, p. 88. The First Accused could not explain why a Staff Sergeant Medical Orderly would be assigned to accompany him, merely a corporal, to Kono: Transcript 3 July 2006, pp. 96-100.

⁴⁷⁶ The Prosecution also notes that the First Accused accepted in cross-examination that President Kabbah annulled all Junta promotions when the SLPP resumed power. Accused Alex Tamba Brima, Transcript 28 June 2006, pp. 56-57.

⁴⁷⁷ DAB-018, Transcript 7 September 2006, p. 57.

⁴⁷⁸ DAB-018, Transcript 6 September 2006, pp. 71-73.

⁴⁷⁹ DBK 131, Transcript 26 October 2006, p.25.

rank of lieutenant-colonel would salute the Third Accused, a member of the Supreme Council.⁴⁸⁰ TF1-334, in explaining the command structure of the AFRC regime, described Johnny Paul Koroma as the head of the AFRC, with the rank of major, later promoted to lieutenant-colonel.⁴⁸¹ Yet the higher ranked Colonel A.K. Sesay reported to Koroma.⁴⁸²

356. Similarly, in Tongo, a Major Eagle of the RUF was deputy to an SLA Captain Kati (major being the higher rank). The appointment/position, rather than the rank, was what mattered.⁴⁸³ The First Accused accepted, in cross-examination, that Major Johnny Paul Koroma was, by virtue of his appointment as defence minister, superior to and able to give orders to Colonel SO Williams.⁴⁸⁴

357. George Johnson testified that Zagallo (Abu Sankoh) was head of the 16 [sic] men who plotted the coup.⁴⁸⁵ He was the most senior amongst the coup plotters and it was he who master minded the plan.⁴⁸⁶ It is notable, therefore, that Zagallo should have been appointed to the position of PLO 1 in the Junta government. The inference, for example from Prosecution Exhibit P6,⁴⁸⁷ is that members of the Council are listed in order of importance.

358. Tellingly, the First Accused on his own evidence states that on his third trip to Kono he was accompanied by Staff Sgt. Komba Mogboi who was a medical orderly in order to mind his health.⁴⁸⁸ Why would a lowly corporal be assigned a staff sergeant, who was senior in rank to him, to go to mind his health? The First Accused's justification of the staff sergeant assisting with language problems is implausible, bearing in mind that earlier in his evidence he testified that he himself acted as an interpreter for a injured Kono soldier.⁴⁸⁹ The only logical explanation is that this is a clear example of the First

⁴⁸⁰ TF1-184, Transcript 30 September 2005, p. 47.

⁴⁸¹ TF1-334, Transcript 16 May 2005, pp. 89-90.

⁴⁸² TF1-334, Transcript 16 May 2005, p. 90.

⁴⁸³ TF1-045, Transcript 19 July 2005, p. 43.

⁴⁸⁴ Accused Alex Tamba Brima, Transcript 4 July 2006, p. 19.

⁴⁸⁵ George Johnson, TF1-167, Transcript 15 September 2005, p. 20.

⁴⁸⁶ Exhibit 89, Statement of Tamba Gborie, 25 March 1998, pp. 76-77.

⁴⁸⁷ Exhibit P6, The Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation 1997, P.N. No. 3 of 1997, 3 September 1997, in The Sierra Leone Gazette, No. 52. Members of the Armed Forces Revolutionary Council are listed in the following order: Koroma, Sankoh, Musa and A. K. Sesay as numbers 1 to 4 respectively, (5) is listed as Abu Sankoh, (6) as Alex T. Brima and (7) as Brima B. Kamara.

⁴⁸⁸ Accused Alex Tamba Brima, Transcript 8 June 2006 pp. 23-24.

⁴⁸⁹ Accused Alex Tamba Brima, Transcript 7 June 2006, pp. 14-15.