

704. On 6 January, Gibril Massaquoi was released from Pademba Road Prison and taken to State House where the First Accused was in command.¹⁰⁷⁸ Gibril Massaquoi was a senior RUF leader who along with Steve Bio had been arrested by Issa Sesay and jailed in Sept 1997 for attempting to overthrow Johnny Paul Koroma.
705. Prior to leaving State House on 6 January, Gibril Massaquoi, Steve Bio and the First Accused discussed the failure of the RUF to reinforce the AFRC with arms and ammunition before they invaded Freetown.¹⁰⁷⁹ This, the Prosecution submits, is another clear indication that the First Accused waited as long as he could for RUF reinforcements before being compelled to attack Freetown alone without the RUF support he felt he needed.
706. Later the same day Gibril Massaquoi was called by the First and Third Accused to speak to the BBC and clarify that State House was under the control of a group comprised of both the AFRC and the RUF.¹⁰⁸⁰ This is another clear indication that the First Accused was working with the RUF and anticipating their support in order to re-establish the AFRC/RUF Junta Government.
707. If this had not been the First Accused's intention then there is no logical explanation why he would have called a senior RUF member to make the announcement and allow him to say that both the AFRC forces and RUF controlled State House.
708. The Prosecution submits that this statement was also for the consumption of Mosquito and the other RUF leaders so they should know that the plan to re-establish a joint AFRC/RUF Government was being implemented and that the RUF should hurry to Freetown to join them.
709. Gibril Massaquoi was a former senior member of the RUF and member of the AFRC Supreme Council along with the Accused until his arrest in September 1997. After his release on 6 January from Pademba Road Prison he reported daily to State House where he spent about two to three hours each day and drove around Freetown with Steve Bio in a

¹⁰⁷⁸ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, pp. 109-115

¹⁰⁷⁹ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 117

¹⁰⁸⁰ Gibril Massaquoi, TF1-046, Transcript 7 October 2005, p. 122

vehicle given to him by the First Accused.¹⁰⁸¹ This is another indication of the First Accused again striving to work with the RUF.

710. On the second day that Gibril Massaquoi was released from prison he overheard a conversation in State House between the First Accused and Sam Bockarie where the First Accused was discussing with Sam Bockarie his need for reinforcements and ammunition because he was running out. Gibril Massaquoi and Steve Bio also spoke to Sam Bockarie on the issue of sending reinforcements.¹⁰⁸²
711. The next day Gibril Massaquoi heard the Second Accused tell the First Accused that he had spoken to Issa Sesay and Issa Sesay had promised him that Issa Sesay's men were moving to meet the First Accused's forces.¹⁰⁸³
712. Whilst the First Accused's faction were struggling to resist the Nigerians, TF1-167 heard the First Accused speaking to Sam Bockarie. Sam Bockarie told the First Accused to hold their positions and that if the Nigerians were to break through the First Accused was to burn down central Freetown and all important buildings.¹⁰⁸⁴ Through the BBC radio Sam Bockarie sent the same message, namely that if ECOMOG did not stop attacking their position central Freetown its important buildings would be burned down.¹⁰⁸⁵
713. During the second week after the SLA faction had been pushed out of State House by ECOMOG, the First Accused radioed Mosquito and told him that he was still awaiting reinforcements, that ECOMOG were beginning to penetrate and that he had heard about ceasefire talks with the government. Mosquito told the First Accused to ignore any ceasefire talks and to begin to burn some areas in Freetown, especially the important areas.¹⁰⁸⁶
714. Mosquito then announced over the BBC that he was reinforcing the commander in Freetown and had ordered that strategic positions including government buildings,

¹⁰⁸¹ Gibril Massaquoi, TF1-046, Transcript 10 October 2005, p. 5

¹⁰⁸² Gibril Massaquoi, TF1-046, Transcript 10 October 2005, pp. 8-10

¹⁰⁸³ Gibril Massaquoi, TF1-046, Transcript 10 October 2005, p. 9

¹⁰⁸⁴ Geroge Johnson, TF1-167, Transcript 16 September 2005, pp. 40-41

¹⁰⁸⁵ Geroge Johnson, TF1-167, Transcript 16 September 2005, p. 41

¹⁰⁸⁶ TF1-334, Transcript 14 June 2005, p. 49

- commercial buildings and banks should be burned down.¹⁰⁸⁷ Shortly thereafter the First Accused gave the order to burn Freetown as the troop retreated.¹⁰⁸⁸
715. During the third week as the troops were retreating at Shankardass the First Accused radioed Sam Bockarie and told him that the troop were now pulling out of Freetown and that they needed arms, ammunition and reinforcements. Mosquito agreed to send the reinforcements and set the meeting point at the Formex building.¹⁰⁸⁹ No reinforcements however were able to break through.¹⁰⁹⁰ Only SLA Rambo Red Goat was able to break through with about 50 reinforcements.¹⁰⁹¹
716. At Kissy Mental Hospital whilst the SLA faction was pulling out of Freetown the First Accused again contacted Sam Bockarie who told him to protect the politicians which they had freed from Pademba Road Prison so that they could be sent to him in Kailahun. The First Accused agreed to do this.¹⁰⁹²
717. At Allen Town during the retreat the First Accused again contacted Sam Bockarie and told him that Freetown was lost and that no reinforcements had reached them. Sam Bockarie told the First Accused to pull out of Freetown and not get trapped.¹⁰⁹³
718. Eventually the Accused and the SLA faction which had fled from Freetown met up at Benguema. An operation was planned at Benguema whereby a joint RUF and SLA force would ambush Guineans in the Hastings area. The ambush was carried out by the Third Accused and RUF Col. Rambo, whereby arms and ammunition was successfully captured and used as a G4 base under guard of SLAs and RUF.¹⁰⁹⁴
719. Later Issa Sesay, Morris Kallon and Superman came to meet the Accused at Benguema. The First Accused addressed the men and said that he was happy that Issa Sesay had come

¹⁰⁸⁷ TF1-334, Transcript 14 June 2005, p. 48

¹⁰⁸⁸ TF1-334, Transcript 14 June 2005, pp.53-54

¹⁰⁸⁹ George Johnson, TF1-167, Transcript 16 September 2005, pp. 49-51

¹⁰⁹⁰ TF1-334, Transcript 14 June 2005, p. 59

¹⁰⁹¹ TF1-334, Transcript 14 June 2005, pp. 56-59.

¹⁰⁹² George Johnson, TF1-167, Transcript 16 September 2005, p. 58

¹⁰⁹³ George Johnson, TF1-167, Transcript 16 September 2005, p. 58

¹⁰⁹⁴ TF1-334, Transcript 14 June 2005, pp. 107-108

to join the SLA and that a joint attack on Freetown should be planned. Issa Sesay was happy with the idea of a joint attack to retake Freetown.¹⁰⁹⁵

720. A two pronged joint attack on Freetown was planned and carried out. The first group were to force their way into Freetown through Hastings. The Second Accused led this attack which included TF1-167 and RUF Rambo. This attack failed.

721. The second group were to force their way through to Freetown using the peninsula route via Tombo.¹⁰⁹⁶ The First Accused, Second Accused, Morris Kallon and Superman were all part of this attack which also failed.¹⁰⁹⁷

722. After the failed attacks the Second Accused and other SLAs headed into the Westside Jungle in the Port Loko area where they were to form the Westside boys under the command of the Second Accused from at least the end of January 1999 to June 1999. The First and Third Accused pulled out to Makeni with RUF Issa Sesay, Morris Kallon and Rambo.¹⁰⁹⁸

723. It is the case of the Prosecution that the SLA and RUF had been working towards the reinstatement of the joint SLA/RUF Government since the AFRC was driven out of power during the intervention in February 1998.

724. The Prosecution case is that the common plan, purpose or design shared by the Accused with other members of the AFRC and members of the RUF existed continuously from the time that the RUF joined the AFRC to form the Junta in May 1997. During the Junta period, when the Junta controlled large parts of the country but was engaged in an armed conflict with ECOMOG and forces loyal to the Kabbah Government, the common aim was to use any means necessary to retain political power and control over the territory of Sierra Leone, including through the commission of crimes within the jurisdiction of the Special Court. During the post-intervention period from 13 February 1998, those sharing this common plan had suffered a severe reversal, having lost control of large parts of the country and having seen the AFRC and RUF forces initially fall into disarray. However, the common plan, purpose or design persisted, notwithstanding a few misunderstandings

¹⁰⁹⁵ TF1-334, Transcript 14 June 2005, pp. 108-109

¹⁰⁹⁶ George Johnson, TF1-167, Transcript 16 September 2005, pp. 60-62

¹⁰⁹⁷ George Johnson, TF1-167, Transcript 16 September 2005, p.61.

¹⁰⁹⁸ George Johnson, TF1-167, Transcript 16 September 2005, p. 62

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and disagreements between some of the AFRC participants and RUF participants, and between participants within each group: namely to regain and retain political control over the territory of Sierra Leone for the Junta, by any means necessary. In the alternative, the Prosecution submits that if the Trial Chamber is not satisfied that the Accused and other members of the AFRC shared this common plan, purpose or design with members of the RUF, at the very least the evidence establishes beyond a reasonable doubt that the Accused shared this common plan, purpose or design with each other, and with other members of the AFRC.

X. JOINT CRIMINAL ENTERPRISE – POST-INTERVENTION PERIOD

725. The Prosecution submits that on the basis of the evidence presented in relation to the time period following the ECOMOG intervention of February 1998 that removed the AFRC/RUF Junta from power, the Trial Chamber should be satisfied beyond a reasonable doubt of the guilt of the three Accused for the crimes committed for the remainder of the period covered by the Indictment, pursuant to the theory of joint criminal enterprise. It is the Prosecution's case that after the Intervention, as set out in detail above, the AFRC and RUF factions continued to cooperate and plan joint ventures involving the commission of the crimes set out in the Indictment in their bid to regain power.

PLURALITY OF PERSONS

726. The participants in the joint criminal enterprise after the intervention included members of the AFRC, including Brima, Kamara and Kanu, and members of the RUF, including Issa Hassan Sesay, Morris Kallon and Augustine Gbao, as before. The key players in the enterprise following the Junta period included those named in the Indictment as well as other members of the AFRC and RUF, who shared the common design throughout despite shifts in the emphasis on participation in criminal acts by the two groupings in the different locations appearing in the Indictment.

COMMON PLAN

727. The common aim of the three Accused, other AFRC members and RUF members was to use any means necessary to *regain* political power and control over the territory of Sierra Leone. Controlling the diamond wealth of the country as a source of revenue continued to be a primary focus. However, acts designed to terrorize the civilian population and collectively punish civilians for failing to support the Junta picked up pace. The plan, design or purpose amounted to an organized system and included the terrorizing and collective punishment of the civilian population through killings, serious physical and mental injury, sexual violence, forced conscription of children, enslavement and pillage, to

meet the objectives of preventing or minimizing resistance of using the population to provide support to the parties to the plan.

728. The existence of the plan may be inferred from all the evidence of a widespread and consistent pattern of crimes committed in all the geographical locations in which the AFRC and RUF forces operated. The means chosen to consolidate and retain control of the population was to terrorize civilians into submission and punish those who failed to cooperate.
729. Following the intervention, during the three days spent regrouping at Masiaka, Johnny Paul Koroma was interviewed on the BBC by Robin White and declared 'Operation Pay Yourself'. From that day looting by both AFRC and RUF members commenced.¹⁰⁹⁹ The group then moved to Makeni. There Johnny Paul Koroma addressed combined RUF and AFRC troops and stated that the troop was headed for Kono which must be made a Junta stronghold.¹¹⁰⁰ On the way to Kono the troop passed through Sewafe village. Johnny Paul Koroma ordered that the village should be burned because it was a suspected Kamajor stronghold.
730. A combined AFRC and RUF force captured Koidu Town in Kono in early March 1998. The need for reinforcements to maintain Koidu Town as a Junta stronghold was communicated by Johnny Paul Koroma to other senior RUF and AFRC commanders in Makeni, including Issa Sesay, Morris Kallon and the Third Accused, during the operation to bring Johnny Paul Koroma to Kailahun, and was again discussed by the commanders at a meeting in Koidu Town.¹¹⁰¹ When he came to Kono, Johnny Paul Koroma stated that it was necessary to secure Kono to get the attention of the international community and to obtain diamonds to support the movement. He further stated that it must become a civilian no-go area as the civilians had betrayed the Junta. He ordered that civilians not ready to join the movement should be executed and all houses burned so that no civilian could settle near the troops.¹¹⁰² Issa Sesay reinforced this order.¹¹⁰³ That very day civilians were

¹⁰⁹⁹ TF1-334, Transcript 17 May 2005, pp. 72-74.

¹¹⁰⁰ TF1-334, Transcript 17 May 2005, p. 87.

¹¹⁰¹ TF1-334, Transcript 17 May 2005, pp. 112-113.

¹¹⁰² TF1-334, Transcript 18 May 2005, pp. 3-6.

¹¹⁰³ TF1-334, Transcript 18 May 2005, p. 3.

pushed from Koidu and the burning of the town commenced.¹¹⁰⁴ Civilians were also pushed from other Kono towns, such as Tombodu and Yomandu.¹¹⁰⁵ Some civilians were captured, especially strong men, young women and children aged 8 to 12. The men were used to carry food and wood. The women were used to cook and for sexual purposes. Some men and women were given military training along with the children. The latter were trained to be members of Small Boy Units (SBU) and were particularly responsible in Kono for carrying out amputations on civilians.¹¹⁰⁶

731. A hierarchical and organized Junta military organization evolved after the Intervention which military organization defended the Kono territory. There were military supervisors,¹¹⁰⁷ battalion commanders, artillery commanders,¹¹⁰⁸ and a director of operations,¹¹⁰⁹ an operations commander,¹¹¹⁰ the chief of command - the Second Accused¹¹¹¹ - and a Sierra Leone Army Brigade.¹¹¹² Various battalions comprising both AFRC and RUF men were assigned to the villages of Kono, including Jagbwema Fiamu,¹¹¹³ Tombodu,¹¹¹⁴ Bumpu,¹¹¹⁵ Sewafe,¹¹¹⁶ Yengema,¹¹¹⁷ Woama¹¹¹⁸ and Yomandu.¹¹¹⁹

732. During the months that the combined forces were in Kono, other AFRC and RUF forces occupied other parts of Sierra Leone. There is evidence of ongoing communications and co-operation between the forces. For example, Mosquito in Kailahun supplied arms to the

¹¹⁰⁴ TF1-334, Transcript 18 May 2005, p. 9.

¹¹⁰⁵ TF1-334, Transcript 20 May 2005, p. 4.

¹¹⁰⁶ TF1-334, Transcript 20 May 2005, pp. 5-7.

¹¹⁰⁷ Colonel Idrissa Kamara, aka Leatherboot; Colonel Abdul Sesay; Colonel Adams; Colonel Momoh Derty and Colonel Ibrahim Bieh Sesay. See TF1-334, Transcript 19 May 2005, p. 28.

¹¹⁰⁸ Colonel Isaac Mongor (RUF) and Lieutenant Lagah (AFRC). See TF1-334, Transcript 19 May 2005, p. 36-37.

¹¹⁰⁹ RUF Rambo. See TF1-334, Transcript 19 May 2005, p. 34.

¹¹¹⁰ Hassan Papah Bangura. See TF1-334, Transcript 19 May 2005, p. 28 and Transcript 17 May 2005, p. 108.

¹¹¹¹ TF1-334, Transcript 19 May 2005, p. 28.

¹¹¹² See TF1-334, Transcript 19 May 2005, p. 37.

¹¹¹³ Under the command of Captain Junior. See TF1-334, Transcript 19 May 2005, pp. 17-21.

¹¹¹⁴ Under the command of Colonel Mohamed Savage, aka Mr Die. The Deputy was Staff Alhaji. See TF1-334, Transcript 19 May 2005, p. 21-23.

¹¹¹⁵ Under the command of Lieutenant Kallay. See TF1-334, Transcript 19 May 2005, pp. 23-24.

¹¹¹⁶ Under the command of Lieutenant Mosquito (AFRC). See Witness TF1-334, Transcript 19 May 2005, pp. 24-25.

¹¹¹⁷ Under the command of Lieutenant Tito. See TF1-334, Transcript 19 May 2005, pp. 25-26.

¹¹¹⁸ Under the command of Lieutenant Abubakar Kamara. See TF1-334, Transcript 19 May 2005, p. 26.

¹¹¹⁹ Under the command of Lieutenant Colonel Komba Gbundema (RUF). See TF1-334, Transcript 19 May 2005, p. 32-34.

troops, including those serving under the command of the Second Accused in Kono.¹¹²⁰
There were also radio communications between the two groups.¹¹²¹

733. The three Accused and their AFRC troops moved from Kono to Koinadugu District - first to Mansofinia,¹¹²² and then to Mongor Bendugu, where SAJ Musa and his men were stationed.¹¹²³ There was a brigade administration including the First Accused as the Chief in Command,¹¹²⁴ the Second Accused as the Deputy Chief in Command,¹¹²⁵ the Third Accused as the Chief of Staff,¹¹²⁶ an operation commander,¹¹²⁷ company commanders,¹¹²⁸ military supervisors,¹¹²⁹ an adjutant,¹¹³⁰ a brigade administrator,¹¹³¹ an intelligence officer,¹¹³² a political advisor¹¹³³ and task force commander.¹¹³⁴

734. The three Accused were ordered to establish a base in the North. Along with their troops they left Koinadugu in the Spring/Summer of 1998 and settled in Camp Rosos (Bombali District). Radio communications occurred between the First Accused in Rosos and other senior AFRC and RUF commanders including SAJ Musa, Issa Sesay, Morris Kallon and Brigadier Mani.¹¹³⁵ There was also a communication with Mosquito, in which Mosquito reiterated the position that the RUF and AFRC were brothers.¹¹³⁶

735. The Junta troops based at Camp Rosos moved to Colonel Eddie Town after a jet raid and suspected enemy movement at Batkanu.¹¹³⁷ On arrival at Colonel Eddie Town, the habit of securing the area by distributing companies to surrounding villages¹¹³⁸ was repeated. The

¹¹²⁰ TF1-334, Transcript 20 May 2005, pp. 44-50.

¹¹²¹ TF1-334, Transcript 18 May 2005, pp. 27-28.

¹¹²² TF1-334, Transcript 20 May 2005, pp. 57-83.

¹¹²³ TF1-334, Transcript 20 May 2005, p.84

¹¹²⁴ TF1-334, Transcript 20 May 2005, p. 88.

¹¹²⁵ TF1-334, Transcript 20 May 2005, p. 89.

¹¹²⁶ TF1-334, Transcript 20 May 2005, p. 92.

¹¹²⁷ TF1-334, Transcript 20 May 2005, p. 101.

¹¹²⁸ Captain Tito, Captain Foday Marah, aka Bulldoze, Captain Arthur and George Johnson, aka Junior Lion. See TF1-334, Transcript 20 May 2005, pp. 103-107.

¹¹²⁹ Including the Third Accused as acting military supervisor for Company A. See TF1-334, Transcript 23 May 2005, p26-27.

¹¹³⁰ Captain Charles. See TF1-334, Transcript 23 May 2005, p. 27.

¹¹³¹ Major FAT Sesay. See TF1-334, Transcript 23 May 2005, p. 32.

¹¹³² Captain Sammy. See TF1-334, Transcript 23 May 2005, p. 34.

¹¹³³ Coachy Borno. See TF1-334, Transcript 23 May 2005, p. 38.

¹¹³⁴ Captain Osman Sesay, aka Changabulanga. See TF1-334, Transcript 23 May 2005, p. 36.

¹¹³⁵ TF1-334, Transcript 24 May 2005, pp. 33-41.

¹¹³⁶ TF1-334, Transcript 24 May 2005, p. 56.

¹¹³⁷ TF1-334, Transcript 24 May 2005, pp. 71-72.

¹¹³⁸ TF1-334, Transcript 24 May 2005, pp. 87-89.

military hierarchy was again reorganized following the arrival of Commander 0-Five and his men¹¹³⁹ and again following the arrival of SAJ Musa.¹¹⁴⁰ Military operations to secure arms and ammunitions were conducted, to Kukuna¹¹⁴¹ and Mange Bureh.¹¹⁴² There were also radio communications between the First Accused in Colonel Eddie Town and senior RUF commanders, including Mosquito¹¹⁴³ and Issa Sesay and Morris Kallon.¹¹⁴⁴

736. The Junta troops left Colonel Eddie Town around December 1998 en route to Freetown.¹¹⁴⁵ On or about 22 December 1998 SAJ Musa, the then leader of the AFRC, was killed. He was immediately succeeded as Commander in Chief by the First Accused who elevated the Second Accused to Deputy Commander in Chief and the Third Accused to Chief of Staff and third in command. The symbolic and strategic importance of controlling Freetown to the joint enterprise is evident from the orders given by the First Accused in Allen Town on 5 January 1999. The First Accused stated that the key positions of State House and the ordinance at Murray Town, where military hardware was kept, were to be captured to secure control of the city. Freetown was to be burnt to prove that the troop had entered the city because the SLPP Government had denied the presence of Junta troops in many parts of the country. Any person opposing the AFRC was a collaborator and any collaborator captured was to be executed. Pademba Road Prison was to be opened to release imprisoned soldiers for reinforcement.¹¹⁴⁶ On 6 January 1999, the three Accused led the invasion of Freetown.

737. That the attack on Freetown was supported by the RUF is shown by the evidence of radio communications between the parties and statements made on international media. When the troop was at Mamamah, Mosquito announced on BBC radio that troops under his command were moving towards Freetown.¹¹⁴⁷ When the troop was in the jungle near

¹¹³⁹ TF1-334, Transcript 25 May 2005, pp. 40-48.

¹¹⁴⁰ TF1-334, Transcript 25 May 2005, pp. 55-56; TT 13 June 2005, pp. 3-26.

¹¹⁴¹ TF1-334, Transcript 25 May 2005, pp. 51-52.

¹¹⁴² TF1-334, Transcript 25 May 2005, pp. 52-53.

¹¹⁴³ TF1-334, Transcript 13 June 2005, pp. 46-48.

¹¹⁴⁴ TF1-334, Transcript 13 June 2005, pp. 28-29. See also TF1-184, Transcript 29 September 2005, pp. 28-29, who states that the SLAs, RUF and STF at Mongor Bendugu all wore the same uniform and were all working towards the same goal.

¹¹⁴⁵ Witness TF1-334, Transcript 13 June 2005, p. 38.

¹¹⁴⁶ TF1-334, Transcript 13 June 2005, pp. 100-103.

¹¹⁴⁷ TF1-334, Transcript 13 June 2005, pp. 46-47.

York, Mosquito told the First Accused that he would send reinforcements.¹¹⁴⁸ When the troop was in Hastings the First Accused spoke first with Issa Sesay, who said that he had captured Kono and was travelling towards Freetown, and then to Superman who stated that he was moving towards Makeni and would send reinforcements.¹¹⁴⁹

738. The radio communications and media statements continued while the Junta troops were in Freetown. On 6 January 1999 Mosquito made an announcement on Radio France International that troops commanded by the First Accused had captured Freetown and the State House and would defend their position.¹¹⁵⁰ A number of RUF troops were able to break through into Freetown and reinforce the AFRC. The communications between the two groups continued during the occupation of Freetown. During the retreat from Freetown, RUF troops attacked ECOMOG forces in an effort to assist and cover the retreating AFRC forces. Mosquito had also told the First Accused to start burning down Freetown during their retreat.¹¹⁵¹ The First Accused ordered such burning to be carried out.¹¹⁵² Shortly after the AFRC retreat the AFRC and RUF leadership met, planned and organized a second joint effort to invade and capture Freetown. This invasion was rebuffed by ECOMOG forces.¹¹⁵³

739. The actions of the troops in defending their position of control over Freetown further demonstrate the use of any means necessary to control the country, including minimizing resistance to that control and using the population to support it. Civilians who supported ECOMOG, or were perceived to do so, were killed and their houses burnt. Civilians had their arms amputated and were told to “go to Kabbah”.¹¹⁵⁴ Women were captured and used to satisfy the sexual demands of the Junta troops at State House.¹¹⁵⁵

740. As the troop was forced to retreat from Freetown, the manifestation of these objectives intensified. In the effort to support the troops, hundreds of civilians were captured and forced to carry looted goods and arms and ammunitions for the troop and perform

¹¹⁴⁸ TF1-334, Transcript 13 June 2005, pp. 88-89.

¹¹⁴⁹ TF1-334, Transcript 13 June 2005, pp. 91-92.

¹¹⁵⁰ TF1-334, Transcript 14 June 2005, p. 20.

¹¹⁵¹ George Johnson, TF1-167, Transcript 16 September 2005, pp. 40-41.

¹¹⁵² TF1-334, Transcript 14 June 2005, p. 53 & George Johnson, TF1-167, Transcript 16 September 2005, p. 42.

¹¹⁵³ George Johnson, TF1-167, Transcript 15 September 2005, pp. 59-61.

¹¹⁵⁴ George Johnson, TF1-167, Transcript 16 September 2005, pp 54-55 & Transcript 21 September 2005, p. 5.

¹¹⁵⁵ TF1-334, Transcript 14 June 2005, p. 25.

domestic work.¹¹⁵⁶ Throughout Port Loko District the pattern of making areas “fearful” was repeated on the order of the Second Accused.¹¹⁵⁷ Civilians were attacked as the troop attempted to obtain arms and ammunition from Malian ECOMOG troops in Port Loko Town, including amputating both hands of a young girl and sending her with a note to the Malian troops.¹¹⁵⁸

PARTICIPATION OF THE ACCUSED IN THE COMMON PLAN

741. The Prosecution submits that there is evidence of the direct commission of crimes charged in the Indictment by each Accused in furtherance of the joint criminal enterprise. This evidence includes, but is not limited to, the following:

- a. The First Accused convened a meeting following the defeat of the RUF and AFRC in Tombodu and Koidu. He stated that the troops would return to Freetown and not spare any civilian or any town attacked; they should kill or amputate any civilian and burn towns; women were to satisfy sexual desire, as it was ‘Operation Spare No Soul’.¹¹⁵⁹
- b. The First Accused gave an order to the AFRC troops that the village of Karina must be burned down and the people in it killed as it was the home town of President Kabbah. He stated that Karina should be the number one point of demonstration of the Junta forces, especially by his own brigade. The Second and Third Accused were present when the order was given and made no objections to said orders and made no effort to restrain the troops despite their status.¹¹⁶⁰ The AFRC troops attacked Karina, killing civilians and burning buildings.¹¹⁶¹ In Karina the Second Accused set fire to a house containing civilians.¹¹⁶²
- c. The First Accused chaired a meeting to discuss the invasion of Freetown. The Third

¹¹⁵⁶ TF1-334, Transcript 14 June 2005, p. 114-116; TF1-024, Transcript 7 March 2005, pp. 52-53.

¹¹⁵⁷ George Johnson, TF1-167, Transcript 16 September 2005, p. 65.

¹¹⁵⁸ George Johnson, TF1-167, Transcript 16 September 2005, pp. 74-78.

¹¹⁵⁹ TF1-033, Transcript 11 July 2005, pp. 13-14; Transcript 12 July 2005, pp. 34-38 and 56.

¹¹⁶⁰ George Johnson, TF1-167, Transcript 15 September 2005, p. 54.

¹¹⁶¹ TF1-184, Transcript 27 September 2005, p. 37; TF1-334, Transcript 23 May 2005, pp. 57-58.

¹¹⁶² George Johnson, TF1-167, Transcript 15 September 2005, pp. 55-56; TF1-334, Transcript 23 May 2005, pp. 66-67.

Accused, in the presence of the First and Second Accused, reiterated orders that civilians who supported ECOMOG were to be killed and police stations burnt down.¹¹⁶³

- d. As the AFRC troops retreated from the State House in Freetown in 1999, the First Accused gave an order “to do a lot of killing and burning on Fourah Bay Road” as a result of a report by the Second Accused that civilians on Fourah Bay Road had killed a soldier. The order was carried out.¹¹⁶⁴
- e. In Freetown in January 1999 the Third Accused distributed petrol to the AFRC troops following an order from the First Accused that buildings were to be burned. The buildings were burned with the active participation of the Third Accused.¹¹⁶⁵
- f. At Ugun the Third Accused ordered amputations to start and individually amputated the arms of two civilians as a demonstration of “short sleeve” amputation. His subordinates then amputated ten more civilians in his presence.¹¹⁶⁶
- g. At the Kissy Mental Home the Third Accused ordered soldiers in the eastern part of Freetown to amputate up to 200 civilians and send them to Ferry Junction. The order was given in the presence of the First and Second Accused. Soldiers returned from the eastern part of Freetown with many amputated arms and machetes covered in blood.¹¹⁶⁷
- h. In Waterloo during the retreat from Freetown the Second Accused ordered the houses on the highway to be set on fire.¹¹⁶⁸ Near Waterloo the Third Accused ordered a soldier to bury alive a child that was crying. When the child was buried the Third Accused told the child’s mother to laugh.¹¹⁶⁹ Also near Waterloo the Third Accused ordered a captive civilian to be beaten after she lit a cooking fire that produced smoke.¹¹⁷⁰

¹¹⁶³ George Johnson, TF1-167, Transcript 16 September 2005, pp. 16-17.

¹¹⁶⁴ George Johnson, TF1-167, Transcript 16 September 2005, p. 43.

¹¹⁶⁵ TF1-184, Transcript 27 September 2005, p. 65; Transcript 29 September 2005, pp. 70-73.

¹¹⁶⁶ TF1-334, Transcript 14 June 2005, pp. 68-70.

¹¹⁶⁷ George Johnson, TF1-167, Transcript 16 September 2005, pp. 53-54.

¹¹⁶⁸ TF1-334, Transcript 15 June 2005, pp. 11-12.

¹¹⁶⁹ TF1-085, Transcript 7 April 2005, p. 23.

¹¹⁷⁰ TF1-085, Transcript 7 April 2005, p. 28.

- i. At Newton the First Accused gave an order that every commander with a small child should give them basic military training.¹¹⁷¹
- j. In Mamamah, the Second Accused gave an order to make the terrain more ‘fearful’ to slow the movement of the ECOMOG troops. Cyborg carried out the order, killing civilians with a machete and displaying them on the main highway.¹¹⁷² Twenty people were killed and their heads put on sticks.¹¹⁷³ Also in Mamamah the Second Accused ordered a house containing civilians to be burnt. When a teenage boy attempted to escape the fire, the Second Accused fired on the ground in front of the boy to force him back into the house.¹¹⁷⁴
- k. In Kono, the Second Accused participated in and directed his troops to kill civilians and burn homes during the attack of Koidu Town.
- l. At Sumbuya the Third Accused ordered soldiers to go and “jah-jah”, meaning to loot.¹¹⁷⁵

SHARED INTENT

742. The Prosecution submits that the shared intent to commit crimes in furtherance of the common plan may be inferred from the evidence of systematic attacks against civilians in an effort to regain control of the political and economic power of Sierra Leone and the participation of the Accused in those attacks as set out above.
743. The Prosecution submits that the only reasonable conclusion on the basis of the evidence as a whole is that the three Accused all shared the intent to perpetrate the crimes charged in the Indictment relating to the period after the ECOMOG intervention.

¹¹⁷¹ TF1-334, Transcript 15 June 2005, p. 15.

¹¹⁷² George Johnson, TF1-167, Transcript 16 September 2005, p. 65; TF1-334, Transcript 14 June 2005, pp. 66-67.

¹¹⁷³ TF1-023, Transcript 10 March 2005, pp. 36-37. See also TF1-334, Transcript 15 June 2005, pp. 20-21 who states that the Second Accused ordered men to “decorate” Mammah Town and to display executed civilians at Mammah Junction.

¹¹⁷⁴ George Johnson, TF1-167, Transcript 16 September 2005, pp. 65-66; TF1-334, Transcript 15 June 2005, p. 15.

¹¹⁷⁵ TF1-282, Transcript 13 April 2005, p. 21.

CRIMES AS A NATURAL AND FORESEEABLE CONSEQUENCE

744. Alternatively, based upon the evidence of the common design, it was foreseeable that the full extent of the crimes, even if not agreed upon, would be committed and the Accused, with that awareness, nevertheless acted in furtherance of the plan.

OTHER MODES OF LIABILITY

745. The responsibility of the three Accused pursuant to Article 6(1) and 6(3) of the Statute for crimes committed after the Junta period will be addressed by crime-base in the sections that follow.

XI. THE AFRC AS A MILITARY ORGANISATION

GENERAL OBSERVATIONS

746. In assessing the weight, if any, to be afforded to Maj. Gen. Prins's Expert Military Report it is important to analyse:

- i. the sources (both primary and secondary) in terms of reliability and accuracy which Maj. Gen. Prins relied upon throughout his report in reaching his conclusions and,
- ii. the depth and quality of his research and his expertise in certain specialised areas such as military doctrine.

SOURCES

Primary Sources

747. In compiling his report, Maj. Gen. Prins used six primary sources (three retired SLA officers and three serving SLA officers). All of these six officers gave opinion evidence, bar TRC-01, of the condition of the SLA from 1961 to the Coup in May 1997. There is no evidence that they spoke to Maj. Gen. Prins about factual matters on these issues.

748. None of these six officers were a part of the SLA faction with SAJ Musa in the jungle after the Intervention, and as such, were not in a position to observe first hand how the AFRC faction operated in the jungle under SAJ Musa after the Intervention. The information they provided during this period, was again, their opinion.

749. The main primary source, DSK-082, like most of the other primary sources, almost exclusively gave his personal opinions which the Court by its order dated 24 October 2006 held could not form a part of the expert report because they were the opinions of a person not classified as an expert before the Court.

750. On the basis that all of the information which Maj. Gen. Prins received from his primary sources in compiling his report are based on opinion and second hand information, as

regards both the state of the SLA from 1961 to May 1997 and the SLA faction in the jungle after the Intervention, the Prosecution submits that they should be given very little, if any weight, in respect of the parts of Maj. Gen. Prins's Report on which he seeks to rely as forming the basis of his own opinion.

Secondary Sources

751. For the most part Maj. Gen. Prins relied upon the opinions of others as set out in the Truth and Reconciliation Commission (TRC) Report or David Keen's book, *Conflict and Collusion in Sierra Leone*. This court has already ruled that all opinions of others referred to in Maj. Gen. Prins's report shall be disregarded.¹¹⁷⁶
752. Persons who recorded statements before the TRC did not record their statements under oath, their statements were not tested through cross-examination, and they were only asked questions which the commission was interested in finding answers to in terms of its mandate. That mandate was largely to create a historical record of events. It was certainly not focused on the operations of the SLA faction in the jungle under SAJ Musa after the Intervention. The Court has even recognised during the testimony of TRC-01 that the proceedings before the TRC were not to be confused with the Rules of Procedure and Evidence regulating the proceedings of this Court.¹¹⁷⁷
753. Keen, in his own book, states that, "not everyone was telling the truth or remembering events accurately...and that a different set of people would yield a different story...a book like this is a record of perceptions, interpretations and obfuscations as much as it is about facts."¹¹⁷⁸
754. With regard to the state of the SLA from 1961 to May 1997, Maj. Gen. Prins in his report relies almost exclusively on the opinions and views of people who gave evidence before the TRC and David Keen's book.
755. TRC-01 was called by the Defence as a witness of fact and not an expert. He gave evidence of the factual matters of which he was aware of, whilst serving as a senior officer

¹¹⁷⁶ Transcript 24 October 2006, p. 111.

¹¹⁷⁷ TRC-01, Transcript 16 October 2006, p. 96

¹¹⁷⁸ Maj. Gen. Prins, Transcript 19 October 2006, p. 108.

at the front, as well as in various staff positions between 1992 to 1996 as indicated in Defence Exhibit D33. The Defence did not challenge the evidence of TRC-01, who the Prosecution submits was a both credible and reliable witness. Significantly TRC-01 did not support Maj. Gen. Prins in his assessment of the state of the Sierra Leone Army prior to the Coup in 1997.

DEPTH AND QUALITY OF RESEARCH, CREDIBILITY AND EXPERTISE IN CERTAIN SPECIALISED AREAS SUCH AS MILITARY DOCTRINAL ISSUES

Depth and quality of research

756. It is the submission of the Prosecution that Maj. Gen. Prins's research was lacking both depth and quality. Apart from relying almost exclusively on opinions contained in the TRC Report, Keen's book, and others, who had little if any first hand knowledge of the events on which Maj. Gen. Prins was opining, there is little evidence to suggest that Maj. Gen. Prins, carried out sufficient independent research in compiling his report to enable his report to be of any significant weight.
757. For example, Maj. Gen. Prins, during his extensive research, had not even taken the time to discover the manner in which the TRC statements were recorded. His approach to his assignment seems to have been based on the one he adopted whilst carrying out his report concerning post-traumatic stress syndrome resulting from Srebrenica – namely an analysis of reports already written by others.¹¹⁷⁹
758. The Prosecution submits that this was a flawed methodology which led to over-reliance on the TRC report. A more reliable approach would have been to interview extensively those who were on the ground at the time and discover the facts from them, rather than relying almost exclusively on the works of others. Surprisingly, Maj. Gen. Prins did not consider it necessary to speak to people who had firsthand personal experience of the AFRC faction and how it worked.¹¹⁸⁰

¹¹⁷⁹ Maj. Gen. Prins, Transcript 19 October 2006, pp. 10-18.

¹¹⁸⁰ Maj. Gen. Prins, Transcript 19 October 2006, p. 72.

759. In addition, Maj. Gen. Prins, in writing his report, visited none of the places or battle sites referred to by Col. Iron in his report and completed his research without even leaving Freetown.
760. Apart from the limited use of reliable sources, Maj. Gen. Prins also reverted to using manifestly unreliable sources such as Wikipedia, an online dictionary which can be changed by any online user. This was demonstrated during cross-examination when the definition on 'irregular warfare', which he had footnoted in his report, had been changed.¹¹⁸¹
761. His knowledge garnered during his research, especially into the history of the conflict, which he underlined as being of importance and devoted a large part of his report to, in cross-examination seemed to be lacking.

Credibility as an Independent Expert Witness

762. The Prosecution also submits that both the credibility and reliability of Maj. Gen. Prins, as an independent expert witness, has been greatly brought into doubt through his apparent inflexibility to shift from his stated position, even when confronted with new evidence which, had he had known before, may have changed his findings.
763. For example:
- i. His reluctance to answer questions when they were directly put to him in areas which were well within the purview of a military expert, if those answers tended to contradict his report.¹¹⁸²
 - ii. His reluctance to accept the new evidence of TRC-01 and other Defence witnesses given under oath, which contradicted his own position and especially as they related to Col. Iron's 13 characteristics.¹¹⁸³
 - iii. His reluctance to accept that battlefield commissions could be awarded without the recipient receiving the requisite training.¹¹⁸⁴

¹¹⁸¹ Maj. Gen. Prins, Transcript 20 October 2006, pp. 69-70.

¹¹⁸² Maj. Gen. Prins, Transcript 24 October 2006, p. 53.

¹¹⁸³ Maj. Gen. Prins, Transcript 24 October 2006, pp. 57-60.

- iv. His reluctance to accept that, due to the exigencies of war time, it was often necessary for countries to reduce the time which it spent training recruits before sending them to the battle front.¹¹⁸⁵
- v. His reluctance to accept that a person, who was not personally present, could not describe or comment upon the situation as well as an eyewitness.¹¹⁸⁶
- vi. His reluctance to accept that the SLA faction, whilst it advanced from Colonel Eddie Town to Freetown, was an effective military organisation. This, despite its ability to defeat the ECOMOG troops en route and capture Freetown, and despite him not having an adequate explanation of how this was otherwise possible.¹¹⁸⁷
- vii. His intransigence on his use of absolutes in his report, such as *no* discipline, *no* training, *no* leadership, *no* hierarchy, and *no* working equipment, when faced with the evidence before the court which clearly indicated that all these existed at least to some degree.¹¹⁸⁸
- viii. In particular, his reluctance to accept that the SLA, during the war with the RUF, could not be overrun for a period of six years by the RUF when the SLA had no functioning equipment. Coming from an independent expert witness, this is nothing short of farcical.¹¹⁸⁹

Lack of Expertise in Military Doctrinal Issues

764. By his own admission, Maj. Gen. Prins was a hands-on soldier with limited academic experience.¹¹⁹⁰ His doctrinal experience broadly extended to coastguard duties in the Caribbean.¹¹⁹¹ His background was naval, with limited experience of land forces.¹¹⁹²

¹¹⁸⁴ Maj. Gen. Prins, Transcript 24 October 2006, pp. 34-36.

¹¹⁸⁵ Maj. Gen. Prins, Transcript 20 October 2006, pp. 11-12.

¹¹⁸⁶ Maj. Gen. Prins, Transcript 19 October 2006, pp. 73-82.

¹¹⁸⁷ Maj. Gen. Prins, Transcript 20 October 2006, p. 116.

¹¹⁸⁸ Maj. Gen. Prins, Transcript 20 October 2006, pp. 60-65.

¹¹⁸⁹ Maj. Gen. Prins, Transcript 20 October 2006, pp. 64-66.

¹¹⁹⁰ Maj. Gen. Prins, Transcript 19 October 2006, p. 37.

¹¹⁹¹ Maj. Gen. Prins, Transcript 19 October 2006, p. 36.