

195. In *Celebici*, the ICTY determined that control is the key element in establishing superior responsibility. It gave the element of control the place it deserves in the law on superior responsibility:

“The doctrine of command responsibility is ultimately predicated upon the power of a superior to control the acts of his subordinates. A duty is placed upon the superior to exercise this power so as to prevent and repress the crimes committed by his subordinates, and a failure by him to do so in a diligent manner is sanctioned by the imposition of individual criminal responsibility in accordance with the doctrine. It follows that there is a threshold at which persons cease to possess the necessary powers over the actual perpetrators of offences and accordingly, cannot properly be considered their ‘superiors’ within the meaning of Article 7(3) of the Statute.”<sup>235</sup>

196. Command and control are inseparable. To hold a person liable on the basis of superior responsibility there needs to be proof of both command and control. This applies to both *de facto* and *de jure* superiors.<sup>236</sup> Being called a ‘commander’ in and of itself is not sufficient: there must be exercise of superior authority over the institution and its personnel.<sup>237</sup> As to the capacity to issue orders, a person’s signature can indicate authority and can, therefore, be considered as evidence of *de facto* command. However, the signature in itself is not enough. To establish the command status of a signatory, the authority and executive capacity of the latter need be put forward as supporting evidence.<sup>238</sup>

197. When defining control, command needs to be *exercised* through control.<sup>239</sup> This is illustrated in the case of *Delalic*. Delalic was a ‘co-ordinator of operations’ and as such liaised between the war Presidency and the military forces. The ICTY Trial Chamber found that there was no evidence of a superior-subordinate relationship and, therefore found him not responsible under Article 7(3) of the ICTY Statute. The Trial Chamber found that providing logistic support, being in weapons delivery,

<sup>235</sup> *Celebici* Judgment, para. 377.

<sup>236</sup> van Sliedregt, *supra* note 226, p. 152.

<sup>237</sup> *Celebici* Judgment, para.765.

<sup>238</sup> van Sliedregt, *supra* note 226, p. 155.

<sup>239</sup> *Ibid.*, p.152.

exercising administrative functions, and signing orders were not sufficient evidence of authority pertaining to a superior status.<sup>240</sup>

198. It follows that the essential element is not whether a superior had authority over a certain geographical area, but whether he or she had *effective control* over the individuals who committed the crimes, and whether he or she knew or had reason to know that the subordinates were committing or had committed a crime under the Statutes. Although an individual's command position may be a significant indicator that he or she knew about the crimes, such knowledge may not be presumed on the basis of his or her position alone.<sup>241</sup> Thus, control has to be *effective*. According to Fenwick, this word 'is intended to encompass both *de [j]ure* and *de facto* command and to ensure that, when multiple chains of command appear to exist, responsibility is assigned to the chain of command wherein resides the power to give orders...'<sup>242</sup>

199. Article 6(3) of the Statute of the SCSL states that a superior is expected to take "necessary and reasonable measures" to prevent or punish crimes under the Statute. In *Bagilishema*, the Trial Chamber held "necessary" to be those measures required to discharge the obligation to prevent or punish in the circumstances prevailing at the time; and "reasonable" to be those measures which the commander was in a position to take in the circumstances.<sup>243</sup> In *Celebici*<sup>244</sup>, the Trial Chamber held that a superior may be held responsible for failing to take only such measures that were within his or her powers to take. In *Bagilishema*, the Chamber held that it is the commander's degree of effective control which will guide the Chamber in determining whether he or she took reasonable measures to prevent, stop, or punish the subordinate's crime. Such a material ability must not be considered abstractly, but must be considered on a case-by-case basis, considering all the circumstances.<sup>245</sup>

200. There seems to be general agreement amongst the Trial Chambers that '*knew*' can be proved through direct and circumstantial evidence.<sup>246</sup> The Prosecutor's

<sup>240</sup> *Celebici Judgement*, para. 668.

<sup>241</sup> *Ibid*, para. 45.

<sup>242</sup> Cassese et al: *The Rome Statute of the International Criminal Court: A Commentary* Vol. 1, p.858

<sup>243</sup> *Blaskic Judgment*, para. 333.

<sup>244</sup> *Celebici Judgement*, para. 395.

<sup>245</sup> *Bagilishema Judgment*, para 48.

<sup>246</sup> van Sliedregt *supra* note 226, page 158.

contention in *Celebici* that knowledge may be presumed when the crimes are a matter of public notoriety, are numerous, and occurred over a prolonged period, or over a wide geographical area was not accepted. The Trial Chamber was of the view that no such general presumption could be made. The Trial Chamber adopted from the Commission of Experts the list of indicia that serves to establish by way of circumstantial evidence if a superior knew offences were committed by his subordinates.<sup>247</sup>

201. In *Aleksovski*, the Trial Chamber expressed the view that a superior's position may be an indication of knowledge. It needs, however, to be coupled with other indicia such as the geographical and temporal circumstances:

“This means that the more physically distant the commission of the acts was, the more difficult it will be, in the absence of other indicia, to establish that the superior had knowledge of them.”<sup>248</sup>

202. The second part of the knowledge element of Article 6(3) of the Statute of SCSL contains the clause ‘had reason to know’. In *Celebici*, the Trial Chamber interpreted ‘*had reason to know*’, as follows:

“[t]hat a superior can be held criminally responsible only if some specific information was in fact available to him which would provide notice of offences committed by his subordinates. This information need not be such that it by itself was sufficient to compel the conclusion of the existence of such crimes. It is sufficient that the superior was put on further inquiry by the information, or, in other words, that it indicated the need for additional

<sup>247</sup> *Celebici*, Judgement, para 386: Commission of Experts in its Final Report:

- I. The number of illegal acts;
- II. The type of illegal acts;
- III. The scope of illegal acts;
- IV. The time during which the illegal acts occurred
- V. The number and type of troops involved, if any;
- VI. The logistics involved, if any;
- VII. The geographical location of the acts;
- VIII. The widespread occurrence of the acts
- IX. The tactical tempo of operations;
- X. The modus operandi of similar illegal acts;
- XI. The officers and staff involved;
- XII. The location of the commander at the time.

<sup>248</sup> *Aleksovski* Judgment, para. 80.

investigation in order to ascertain whether offences were being committed or about to be committed by his subordinates.<sup>249</sup>

203. Therefore a superior can only be required to take such measures as are within his powers. International law cannot oblige a superior to perform the impossible.<sup>250</sup>

### **Prosecution's Theory on Command Responsibility of the First Accused**

204. The Prosecution alleges that the co-accused were seen and known as the top leaders of the CDF and that Moinina Fofana and Allieu Kondewa took directions from and were directly answerable to Hinga Norman. They took part in planning and operational decisions of the CDF.<sup>251</sup> Individually or in concert the three accused are alleged to have exercised authority, command and control over all subordinate members of the CDF.<sup>252</sup>

205. In its Pre-Trial brief the Prosecution states that criminal liability of the First Accused under Article 6(3) can be inferred from:

- His position of authority within the CDF and his leadership role within the Kamajor structure;
- The fact that during the relevant times in the indictment, Samuel Hinga Norman was in regular communication with other commanders at the various battle fronts where the CDF and Kamajor combatants were deployed;
- The fact that during the relevant times in the indictment he provided logistical support to the CDF in the field;
- The fact he received regular status reports of war operations and frequently visited Kamajor bases in and around Tongo [and other

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<sup>249</sup> *Celebici* Judgment, para. 393.

<sup>250</sup> *Ibid*, para. 395.

<sup>251</sup> Indictment para 14.

<sup>252</sup> Indictment para 18.

geographic locations] as well as the other areas in Sierra Leone where the war was being prosecuted.<sup>253</sup>

206. The Defence submits that the Prosecution has failed to prove that the Accused bears criminal responsibility for any of the crimes charged in the indictment under Article 6(3).

#### **The Position of the Accused and Establishment of the CDF:**

207. The Accused was appointed Deputy Minister of Defence by President Kabbah in 1996. As stated above, this government was ousted by a coup of the AFRC on the 25th of May 1997. Following near universal condemnation of the coup, ECOWAS took steps to assist in reinstalling the democratically elected government of Kabbah. In his evidence, Hinga Norman said the Chairman of ECOWAS was prepared to ask ECOWAS members to assist Sierra Leone if he was convinced it was the wishes of the people not to accept a military government. Hinga Norman stated that President Kabbah said "Chief, that is where we need the support of the hunters of Sierra Leone to support their people in rejecting the military government."<sup>254</sup>

208. That is the purport of Exhibit 158, a letter from President Kabbah to CSO Mustapha of Nigeria about his discussion with General Abacha whereby he stressed the need to enhance the capacity of the Kamajors and the necessity of ECOMOG commanders to work with the Deputy Minister of Defence. Exhibit 158 shows that the government had a strategy in place to remove the junta through a carefully planned and executed action in collaboration with ECOMOG. This shows that at all times material to this conflict, the government and ECOMOG were in command and control of the Kamajors and the CDF. The first accused was not in a position of control and therefore never had a duty to act.

209. The Accused further testified that the President told him that there was an arrangement that he should "move from Guinea to join the officers of the Nigerian

<sup>253</sup> PTB para 279 para (a) – (d), para 288 (a) – (d), para 296 (a) – (d), para 304 (a) – (d), para 312 (a) – (d), para 328 (a) – (d), para 335 (a) – (d), para 342 (a) – (d), para 349 (a) – (d), 356 (a), (g), (h), (i), para 362 (a) – (d), para 371 (a) – (d), 378 (a) – (d), para 386 (a) – (d), para (a)– (b).

<sup>254</sup> Transcript, Hinga Norman, p. 25, Jan. 25. 2006.

army in Liberia.” The Accused also testified that the President said he was going to announce to the people of Sierra Leone (over BBC) that he had been appointed National Coordinator. This was the first time the words “Civil Defence Force” were used by the President, to embrace all defences by civilians to support the military effort.<sup>255</sup>

210. As stated by Defence witness Peter Penfold, there were various civil militias actively working for the restoration of democracy and there was need to coordinate these activities both within these various groups and with ECOMOG. There was also a need for President Kabbah in Conakry to have control over efforts to re-establish his government.<sup>256</sup> There is unchallenged evidence that President Kabbah while in Conakry told Peter Penfold that the CDF will be the organisation to coordinate and the Chairman of the CDF Committee would be Vice President Demby answerable directly to the President with various other patronage to be appointed.<sup>257</sup>

211. The Accused testified that while in Monrovia he was picked up by General One Mohammed of ECOMOG who briefed him that it was for a mission that was of military importance to the situation in Sierra Leone and flew him to Monrovia. He was taken to his boss General Victor Malu who arranged for a meeting the following day and gave him a place to lodge and a vehicle.<sup>258</sup> Hinga Norman was told that some Kamajors were already at Bo Waterside, on the Liberian side of the border across from Sierra Leone. Hinga Norman said he requested a group of Kamajors to be conveyed to attend the meeting amongst including Eddie Massalay who had earlier denounced the military takeover over BBC.<sup>259</sup>

212. The Accused testified that at the meeting held on 17 June 1997 senior Nigerian officers with ECOMOG Liberia stated that they had been instructed by the Head of State of Nigeria to assist all civilian efforts to reinstate the democratic government of Sierra Leone. They further stated that the hunters who knew their terrain and their communities were being told by ECOMOG to assist in anyway they

<sup>255</sup> Transcript, Hinga Norman, pp.27,31, Jan. 25, 2006.

<sup>256</sup> Transcript, Peter Penfold, pp. 26-27, Feb. 8 2006.

<sup>257</sup> Ibid, pg. 27.

<sup>258</sup> Transcript, Hinga Norman, pp. 31-33, 25 Jan 2006

<sup>259</sup> Ibid, pp.33-34

could to make the work of ECOMOG less burdensome.<sup>260</sup> The Accused also said their discussion at the meeting covered logistical supplies including arms and ammunition, food, medicine, transportation by land and air by ECOMOG Liberia and for hunters to facilitate civilian support to ECOMOG Liberia while they were operating inside Sierra Leone.<sup>261</sup>

213. The Accused testified that the official designation of the CDF came about in May 1998 and that a request was made through the Chief of Defence Staff to the government-in-exile to provide financial resources so that the hunters could adequately be taken care of in the 149 chiefdoms.<sup>262</sup> Although Chief Norman was designated the coordinator, there was no one head, each unit, each chiefdom had their own respective civil defence which was headed by the chiefs and sub-chiefs.<sup>263</sup> In answer to a question about there being no centre from which pronouncements came from the CDF, defence expert witness Dr Hoffman said logistically, there was nobody who could occupy that position and there was nothing logistically that could facilitate it.<sup>264</sup>

214. The Accused testified that the information provided by Exhibit 112 (CDF Calendar) under his picture stating that he is the founder of the Kamajors is not true, but there was no way to correct it and that the information on every individual was provided by the Director of Personnel.<sup>265</sup> The Director of Logistics Mustapha Lumeh testified that the information on Exhibit 112 is misleading and that is why the calendars were not distributed.<sup>266</sup>

215. An assessment of the effectiveness or otherwise of Chief Norman's role by Lt. Gen David Richards was that 'he was very determined, kept talking about this was for everybody, not just ECOMOG. And did have a view of some of the detail'. But General Richards supposed he had 'already formed the opinion on his first visit that he was a very effective Minister. He was dynamic. He took decisions and had the

<sup>260</sup> Ibid, p. 36,

<sup>261</sup> Ibid, p.37.

<sup>262</sup> Transcript, Hinga Norman, p. 76, Jan.26, 2006.

<sup>263</sup> Transcript, Dr. Demby, p. 6. Feb. 16 2006.

<sup>264</sup> Transcript, Dr Hoffman, p.100, Oct. 9 2006.

<sup>265</sup> Transcript, Hinga Norman, p.57, Feb. 6 2006.

<sup>266</sup> Transcript, Mustapha Lumeh, pp 90-91 May 5, 2006.

courage of his convictions. He was a Minister who understood not to get into the tactical issues, but to keep at the right level for him, let the military get on and run their own affairs in line with the policy that had been agreed by the government.<sup>267</sup>

### **The Prosecution's Allegations of Effective Control over the CDF**

216. The Prosecution alleges that the Accused, in his position as the National Coordinator of the CDF, “was the principal force in establishing, organising, supporting, providing logistical support, and promoting the CDF. He was also the leader and Commander of the Kamajors and as such had de jure and de facto command and control over the activities and operations of the Kamajors.”<sup>268</sup>

217. The Defence submits that this is erroneous. In suggesting that Hinga Norman was the principal force, the Prosecution is alleging that the First Accused was the primary or the main force in establishing, organising, supporting, providing logistical support and promoting the CDF. The evidence suggests otherwise. In fact there were a number of other individuals and organisations who played an active role in supporting the CDF and specifically in supplying key logistical support to the CDF.

218. The Prosecution itself conceded that the CDF received logistical support from ECOMOG<sup>269</sup> and a number of other sources. It is ludicrous to suggest the Hinga Norman was the principal force in providing logistical support when it is clear from the evidence that in fact ECOMOG, a body formed out of a regional organisation with the support of sixteen West African countries, played a significant role in supporting the CDF in its objective of reinstalling the democratically elected government of President Kabbah<sup>270</sup>. It is also clear that the CDF was receiving support from the American and the British Governments, through ECOMOG<sup>271</sup>. President Kabbah was

<sup>267</sup> Transcript Lt. Gen. David Richards, pp.24-25, Feb. 21 2006.

<sup>268</sup> PTB para. 269, paragraph 13 Indictment.

<sup>269</sup> Transcript, May 8 2005 pg 2 – line 19 – pg 4 line 8: Q. Thirdly, there is no dispute, nor is there any challenge, that the Kamajor fighters received aid from ECOMOG. Again that is something you were telling us about. A. Exactly. Q. What may be in dispute is the period, but in general terms there is no dispute about the fact that indeed the Kamajors in the CDF received aid from a number of sources.

<sup>270</sup> Transcript, Kenneth Koker 20 February 2006, page 57 lines 1-3: “[Daramy Rogers] was mainly with the ECOMOG. Food that was coming through the ECOMOG, it was he and the ECOMOG who had been distributing this food to us, rice.”

<sup>271</sup> “The bulk of arms came from ECOMOG” Transcript, Arthur Koroma May 3 2006 pg 43, lines 6-7.



also playing a significant role on diplomatic fronts to ensure that there were logistical supplies coming through to the CDF.<sup>272</sup> It can hardly be suggested that Hinga Norman was the principle supporter of logistics to the CDF.

219. There is also significant evidence which demonstrates that the Accused was not the principal force in establishing, organising, or supporting the CDF in the relevant time frame. In this regard, there is evidence which demonstrates that in fact it was ECOMOG who was playing this principle role.

220. Arthur Koroma, a former CDF administrator, testified that from December 1997 to February 1998 while he was based at Lungi, he had significant interaction with ECOMOG and with General Khobe.<sup>273</sup> In 1998 he received a letter from ECOMOG informing him that the Kenema District CDF was under the 15<sup>th</sup> ECOMOG brigade and that all operational matters were to be dealt with through them.<sup>274</sup> This witness further testified to requests for ammunition being processed through ECOMOG.<sup>275</sup>

221. The role of the CDF in the attack on Kenema in February 1998 was that the CDF was an auxiliary force to ECOMOG. While the CDF went in front, ECOMOG was clearly in command.<sup>276</sup> Prosecution witnesses confirmed that ECOMOG came into Kenema just after the CDF.<sup>277</sup> The central role of ECOMOG became much stronger after the 10<sup>th</sup> March 1998 when the government was restored.<sup>278</sup>

222. Another Prosecution witness testified that Hinga Norman seen in Bonthe with ECOMOG officers, but that ECOMOG was continually in Bonthe at that time.<sup>279</sup>

<sup>272</sup> There is evidence that the Kamajors in the northeastern corner of Kenema district and the northern part of Kailahun district had direct contact with the government in exile and received supplies directly from there. There is further evidence that the weapons used in the attack on Tongo in January 1998 came directly from the President in Conakry at the time (Transcript, Arthur Koroma, May 3<sup>rd</sup>, pg 43, lines 6-7).

<sup>273</sup> Transcript, Arthur Koroma, May 3 2006, pg 26, lines 20-28.

<sup>274</sup> Transcript, Arthur Koroma, May 3 2006 pg 46, lines 13-16. See also Exhibits 135 and 136

<sup>275</sup> See Exhibits 137, 138, 140.

<sup>276</sup> Transcript, Arthur Koroma, May 3 2006 pg 32 lines 21-29.

<sup>277</sup> Transcript, TF2-042, 17 September 2004 pg 97 lines 22-27, Transcript TF2-033, 20 September 2004 pg 27 lines 24-28, Transcript TF2-040, 21 September 2004 pg 33 lines 23-25, Transcript TF2-223, 28 September 2004 pg 102 lines 25-29.

<sup>278</sup> Transcript, Arthur Koroma, May 3 2006 pg 43 lines 1-8.

<sup>279</sup> Transcript, TF2-116, 9 November 2004 pg 31 lines 19-29: A. I saw once Chief Hinga Norman. That was in fact at the Bonthe airfield. He was accompanied by, I think, two ECOMOG officers at that time. I cannot tell

Former British High Commissioner, Peter Penfold, testified to being in Bo and going to the CDF office where he was introduced to Mr Daramy Rogers who briefed him on how the Kamajors, in conjunction with ECOMOG, had mounted a resistance against the junta in Bo.<sup>280</sup> Defence witness Ishmael Koroma stated that after the takeover of Kenema the entire Kenema District, including SS Camp, was under the control of ECOMOG under a Lieutenant Uma.<sup>281</sup>

223. This evidence and others demonstrates that clearly Hinga Norman was not a principal force in establishing, organising, or supporting the CDF. Further details as to the logistical support and promotion of CDF are set out below.

### **Provision of Logistical Support and Promotion of CDF**

224. The Accused said he was told by the ECOMOG Chief of Staff to Gen. Malu, that he was always disposed to requests being made if and when they were needed in the areas of arms, ammunition, food, medicine, transport and the sustaining requirements for transports.<sup>282</sup> As far back as August 1997<sup>283</sup>, ECOMOG started supplying the CDF with arms and ammunition and funds for rations, condiments and miscellaneous expenses. At various phases in the conflict ECOMOG supplied arms and ammunition to the CDF as shown in Exhibits 137, 139, 140 and 158. In his evidence, Arthur Koroma testified that from the 10<sup>th</sup> March 1998, all the arms they used came from two sources, the bulk of which came from ECOMOG in the form of rifles and ammunition while in Gendema they received their arms and ammunition

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precisely whether he travelled by plane or helicopter, but it was by air. At that time we are in a situation of receiving ECOMOG, so any time we hear the sound of a plane or helicopter, almost half of Bonthe would run to the airstrip to see whether ECOMOG had arrived, but this time when we went -- I went there personally, because we were all eager to receive ECOMOG -- we only saw Chief Hinga Norman and the two ECOMOG officers.; Transcript, TF2-071, 11 November 2004 pg 93 line 25-- pg 94 line 14): Q. Okay. Did you ever see any other of the Kamajor leaders at the highest level in Bonthe? A. Yes. Eight days after the incident occurred the soldiers fled and the Kamajors took over Bonthe, Chief Sam Hinga Norman came by helicopter with two ECOMOG officials on board.

<sup>280</sup> Transcript, Peter Penfold, 8 February 2006 pg 44 lines 14-20, See also Transcript Kenneth Koker, 20 February 2006, pg 50 lines 9-16 "Was anything done by ECOMOG in relation to the organisation of the Kamajors in Bo? A. Yes, sir. Q. What was done? A. Because during that time we were in chiefdom orders. So the ECOMOG, they decided to form us into battalions. Q. Who was the head of your own battalion? A. Augustine Sule Ngaoujia."

<sup>281</sup> Transcript, Ishmael Koroma, 23 February 2006 pg 26, lines 6-11.

<sup>282</sup> Transcript, Hinga Norman, p.37-38, Jan 25 2006.

<sup>283</sup> Exhibit 157 "Periodic Report, Civil Defence Force, Kamajors, dated August 1997".

20387  
from the other main source - the government in exile.<sup>284</sup> Mustapha Lumeh also testified that he got logistics from two places, from Lungi where he received arms and ammunition from Gen Khobe and from Monrovia.<sup>285</sup>

225. The Accused described his interaction with ECOMOG as coordination which primarily meant he was to receive the support, whether in the form of arms, ammunition, food, and transport from ECOMOG and then have it delivered to the men on the ground through their commanders. This was done by himself and a MS Kallon as Administrator who received and delivered supplies to Kamajors to assist ECOMOG commanders.<sup>286</sup> The Accused said his duty in addition to that of being a government minister, was to encourage the various chiefdom hunters and other civilian organisations in the effort of restoring the elected government of the people of Sierra Leone.<sup>287</sup>

226. As defence expert witness Dr Hoffman puts it, there were lots of different sources of weapons. In some cases, individuals are using single-barrel shotguns that were the historic firearms of the Kamajors. People are getting weapons from ECOMOG at various points and often they were capturing them.<sup>288</sup>

227. The Accused testified that General Khobe visited Base Zero to discuss the provision of conventional weapons and the Accused also made a corresponding visit in October 1997 to Lungi. At that time he was told that there had been an arrangement by the government to procure arms and ammunition to be used by hunters and that the request was made for the preparation of trainers.<sup>289</sup> The Accused further stated that around November 1997, he was shown a huge quantity of weapons, in a store at Lungi by Gen. Khobe, amongst which were explosives, rocket propelled mortars, general purpose guns and AKs and these were all to be used by the hunters.<sup>290</sup> This piece of evidence was corroborated by Dr. Albert Joe Demby.<sup>291</sup>

<sup>284</sup> Transcript, Arthur Koroma, pp. 43-44, May 3 2006, See also footnote 276.

<sup>285</sup> Transcript, Mustapha Lumeh, pp75-76, May 5 2006.

<sup>286</sup> Transcript, Hinga Norman, p. 41 & 45, Jan. 25 2006, p.75, Feb. 6 2006.

<sup>287</sup> Transcript, Hinga Norman, p.3, Jan. 26, 2006.

<sup>288</sup> Transcript, Dr Hoffman, p.120, Oct.9 2006.

<sup>289</sup> Transcript, Hinga Norman, p 38, Jan 26, 2006, see Transcript Mustapha Lumeh, p.76, May 5 2006.

<sup>290</sup> Ibid, p.96. Feb.6 2006.

<sup>291</sup> Transcript, Dr Demby, p.32, Feb.10.

228. In his evidence TF2-008 alleged that in a meeting at Talia Hinga Norman told them that he got arms and ammunition from his friend General Abdu One Mohammed, an ECOMOG General<sup>292</sup>. The Accused said the request for the supply of conventional weapons by the government came from the hunters and that is what he conveyed to Gen. Khobe and that he travelled to the ECOMOG Chief of Staff in Liberia to make him understand that hunters will be carrying such weapons under the command of ECOMOG.<sup>293</sup>

229. TF2-014 in his evidence alleged that the First Accused told them that President Kabbah had failed to give them arms and ammunition and that President Kabbah didn't believe in the Kamajor movement and that he believes only in the international community for them to fight the war. TF2-014 further alleged that the First Accused told them that all food, arms and ammunition that the national coordinator brought, came from one of his friends, General Abdu One Mohammed of ECOMOG. The Accused rebutted this evidence as false and misleading as he could not have told TF2-014 that those arms and ammunition came from a friend since the arrangement had been put in place by the President of Sierra Leone.<sup>294</sup>

230. The Accused testified that welfare logistics, specifically rice and money went to hunters after the formation of National Coordinating Committee (NCC) every month from July 1998 to 2002.<sup>295</sup> Exhibit 128 details how the government supplied rice to CDF in November 1999.

231. This is corroborated by the former Vice President Dr. Albert Joe Demby and the Director of Logistics Mustapha Lumeh who testified that the NCC saw to it that support in terms of rice was increased<sup>296</sup> and that supplies to the District Administrators in respect of arms and ammunition went straight to General Khobe.<sup>297</sup>

<sup>292</sup> Transcript, TF2-008, p.41& 48, Nov. 16, 2004.

<sup>293</sup> Transcript, Hinga Norman p.45 January 26 2006.

<sup>294</sup> Transcript, Hinga Norman pp 35-36, Jan. 31 2006.

<sup>295</sup> Transcript, Hinga Norman, pp 24, 26, 28, Jan. 27 2006 & p. 96, Feb. 6 2006.

<sup>296</sup> Transcript, Mustapha Lumeh, pp 82-83, May 5.2006.

<sup>297</sup> Ibid p.84.

232. The Accused testified that he was informed by Hon. Pujeh Momoh that the amount of \$10,000 (US Dollars) had been given to him by Lady Patricia Kabbah to be conveyed to him on behalf of the hunters. The Accused said he was helicopter-lifted from Base Zero to Monrovia where he received this amount which he used to purchase a few needs and return to Base Zero. There he informed the Chairman and Members of the War Council of the transaction and handed over the supplies and balance to the Chairman.<sup>298</sup> The Accused said he was told that the money had been sent by "Tegloma" a group in the United States, to President Kabbah as support for all those who were assisting in the restoration of democracy including hunters.<sup>299</sup>

233. Defence witness Peter Penfold testified that before he was about to go on leave in December 1997, he visited the President who showed him a copy of draft contract which had been sent to him by a mining firm. The contract, in essence, was saying in return for certain mining concessions, equipment and training would be provided by a firm called Sandline for use by President Kabbah's forces.<sup>300</sup> Mr Penfold said the Sandline contract allowed for a small amount of arms and ammunition, and that those arms and ammunition arrived at Lungi at the end of February or March 1998 and they were held by ECOMOG.<sup>301</sup> Vice President Demby corroborated this, stating that Gen. Khobe showed him this cache of arms stored at a secret location in Lungi.<sup>302</sup>

234. There is unchallenged evidence from the Director of Logistics Mustapha Lumeh that while in Liberia ECOMOG donated to the CDF logistics.<sup>303</sup> He further testified that the CDF directly requisitioned for arms and ammunition from ECOMOG in pursuit of the war as an allied fighting force and General Khobe was the Chief of Defence Staff and in charge of military matters.<sup>304</sup> The Districts were under various ECOMOG operational commands as indicated in Exhibits 135 and 136 (detailing Kenema under 15 ECOMOG Brigade). Under cross examination, the Accused

<sup>298</sup> Transcript, Hinga Norman p. 12, Jan. 30, 2006.

<sup>299</sup> Ibid p.15 Jan. 30, 2006.

<sup>300</sup> Transcript, Peter Penfold, pp. 40-41, Feb. 8, 2006.

<sup>301</sup> Ibid p. 42.

<sup>302</sup> Transcript Dr. Demby, p.32. Feb. 10 2006.

<sup>303</sup> Transcript of Mustapha Lumeh, p.24, May 8 2006.

<sup>304</sup> Ibid p. 68.

confirmed that the Kamajors got their weapons from ECOMOG (Exhibits 137, 138, 139, 140) or from General Khobe who was in charge of ECOMOG Freetown.<sup>305</sup>

### **The Prosecution's allegations regarding the Accused's Effective Control Over all Units**

235. The Prosecution alleges that the CDF was "an organised armed force comprising various tribally based traditional hunters"<sup>306</sup> and that the first accused was the National Coordinator of the CDF. The Prosecution is essentially charging that the CDF was a highly organised and structured military organisation with the first Accused as the apex.

236. To establish this, the Prosecution has to prove beyond a reasonable doubt that all the Kamajors, and less dominant groups including the Gbethis, the Kapras, the Tamaboros, and the Donsos were integrated into an organised military structure, over which the Accused was the commander. The Prosecution has failed to do this.

### **The Accused Was Not the Overall Commander – He Had No Control Over Self Organized Groups Of Kamajors**

237. The Prosecution alleges that the First Accused was "also the leader and commander of the Kamajors and as such had *de jure* and *de facto* command and control over the activities and operations of that group within the CDF. In the pursuit of accomplishing these tasks he both issued orders and received reports operation operations from subordinate commanders."<sup>307</sup>

238. The Prosecution's case is premised on the position that every single kamajor and traditional hunter in Sierra Leone was a subordinate of Mr Norman. This is an extreme premise which is false. The evidence has shown that the groupings of Kamajors were under the control of the chiefs. And often there were Kamajors who appeared to be under the control of no one.

### **The conditions for command and control did not exist**

<sup>305</sup> Transcript, Hinga Norman, p.96, Feb. 6 2006

<sup>306</sup> Indictment, paragraph 6

<sup>307</sup> PTB para 269 and para 13 of the Indictment.

239. The Prosecution alleges that the “CDF was an organised armed force comprising various tribally-based traditional hunters”.<sup>308</sup> Overwhelming evidence by both the Prosecution and the Defence is that the Kamajors emerged from the chiefdoms in response to the violent attacks by the RUF and the AFRC. These were self organised groups that were essentially autonomous and poorly organized<sup>309</sup>. The following paragraphs provide further detail on the command and control of the Kamajors.

### **Command and Control of the Kamajors and CDF up to May 1997**

240. In his evidence, the former vice President testified that the “kamajor movement” started at the village level then the entire chiefdom. At the village level a leader/commander was appointed, usually from among ex-service men in that area. At the chiefdom level, the paramount chiefs and their sub-chiefs brought all of Kamajors together under one umbrella called ‘Chiefdom Kamajors’. They were then under the chiefdom’s command and control, and supplied food and logistics under chiefdom authorities led by their Paramount Chiefs. This was the case up to 1994.<sup>310</sup>

241. All the fighting by the Kamajors was improvised and on a voluntary basis. As Dr Demby stated:

“... The Kamajor movement was a voluntary mass mobilisation of men, women and children from all walks of life who took up defensive weapons: Shotguns, knife, axe, spear, stick, et cetera, to beat back their enemies -- Q. By “their enemies”, what do you refer to? A. Rebels, sobels, juntas, which I will, as time goes on, tell you that. But those that came to attack them in their localities. So to beat back their enemies in the defence of their lives, their families, their properties and their community. That is the group that we

<sup>308</sup> Indictment, paragraph 6.

<sup>309</sup> If there was any organization of the Kamajors it was done through ECOMOG. See for example Transcript, Kenneth Koker, February 20 2006 pg 50 lines 9-16: “Was anything done by ECOMOG in relation to the organisation of the Kamajors in Bo? A. Yes, sir. Q. What was done? A. Because during that time we were in chiefdom orders. So the ECOMOG, they decided to form us into battalions. Q. Who was the head of your own battalion? A. Augustine Sule Ngaoujia.”

<sup>310</sup> Transcript, Dr Demby, p.7, Feb. 10 2006.

called Kamajor movement. And it became a pride of every man, woman and grown-up child to contribute in the defence of his community -- of the community.”<sup>311</sup>

242. The Kamajors have always worked directly under and for the interest of their chiefs as illustrated in Exhibit 144. This conduct is best described in humanitarian law as a ‘*levee en masse*’, i.e. the rule that civilians spontaneously taking arms on the approach of the enemy and in the absence of regular forces have combat status and a right to participate directly in hostilities.<sup>312</sup> This provision makes it clear that a State is responsible for the conduct, for example violations of international humanitarian law, of such civilians.

243. Contrary to the evidence of some prosecution witnesses that Hinga Norman was the founder of the Kamajors, there is unchallenged evidence from Hinga Norman himself<sup>313</sup> and various witnesses like Peter Penfold who disagreed with Exhibit 112 that Hinga Norman was the founder of the Kamajors. Mr Penfold said his understanding of Kamajors was that they had been called together by their paramount chiefs within the chiefdoms and each chiefdom would have a group who were known as Kamajors.<sup>314</sup> Vice President Demby gave a very detailed analysis of the origins and role of the Kamajors, corroborating the evidence of the First Accused.<sup>315</sup> Likewise Defence Expert witness Dr Hoffman<sup>316</sup> testified that the people leading this effort were community elders, particularly men, who participated collectively in decision making and who came together to discuss ways to protect themselves. This is indicative of the fact that the Kamajors were under the local chiefs.

244. It is equally important to note that after initiation most Kamajors never had weapons. Ishmael Koroma testified that the section chiefs were called by paramount chiefs, that those who had single barrel guns would give them to the Kamajors so that they could prosecute the war and they also gave money to buy single barrel

<sup>311</sup> Transcript, Dr Demby, 10 February 2006 pg 6 lines 6-17.

<sup>312</sup> Art. 4(A)(6) of Convention and Art. 2. of the Hague Regulations, see also Article 9 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts, adopted in 2001.

<sup>313</sup> Transcript, Hinga Norman, p. Jan. 25 2006.

<sup>314</sup> Transcript, Peter Penfold, p. 44, Feb. 9 2006

<sup>315</sup> Transcript, Dr. Demby, p.7, Feb. 10 2006

<sup>316</sup> Transcript, Dr Hoffman, p.65 Oct 10 2006.



cartridges.<sup>317</sup> It was a collective community effort making the best of what resources were available.

### **Command and control from May 1997 to February 1998**

245. From May 1997 to February 1998, command and control of the Kamajors lay with the chieftdom authorities and ECOMOG.<sup>318</sup> The First Accused had no active role to play in the fighting. However he was kept informed because he was the coordinator and needed to know how the hunters were assisting ECOMOG in the field.<sup>319</sup> Various witnesses testified that at all material times, together with ECOMOG soldiers, they would go out to fight and they fought along side ECOMOG under its command.<sup>320</sup> Under cross examination, the Accused testified that as coordinator, his role was not to initiate attacks on towns or villages in Sierra Leone<sup>321</sup> and that while in Talia he gave no orders that Kamajors should attack towns or villages.<sup>322</sup> This piece of evidence was corroborated by Arthur Koroma who testified that he never saw Chief Norman in combat activities and he never came close to the frontlines.<sup>323</sup> Arthur Koroma testified that by November 1997, there was a significant amount of involvement with ECOMOG in the sense that all the food, the arms and ammunition they used were provided by ECOMOG and even the wounded in hospital were taken to Monrovia and treated in ECOMOG hospitals.<sup>324</sup> Mr Koroma further testified when the Kamajors were together with ECOMOG, they were always an auxiliary to ECOMOG, and ECOMOG was in command. But they, the Kamajors, led the way because they knew the terrain, the people and the language.<sup>325</sup>

246. In his evidence, TF2-201 alleged that the War Council did not function properly. TF2-011 also testified that most of the decisions of the War Council were not implemented because whenever a decision was taken, Norman would confer with

<sup>317</sup> Transcript, Ishmael Senesie Koroma, p.38, Feb. 22 2006.

<sup>318</sup> Transcript, Hinga Norman, p.19, Feb. 6 2006: Under cross examination, witness said after training in Talia, the First Accused addressed the Kamajors and told them 'go into the land. Operate under the advice and direction of ECOMOG troops. They are the ones that will give you the needs for your services'.

<sup>319</sup> Ibid p. 44.

<sup>320</sup> Transcript, Osman Vandi, p. 88 Feb. 17 2006; Transcript Arthur Koroma, p. 16, May 3 2006.

<sup>321</sup> Transcript, Hinga Norman, p.83. Feb.6 2006.

<sup>322</sup> Ibid p.86-87.

<sup>323</sup> Transcript, Arthur Koroma, pp 41-42, May 3 2006.

<sup>324</sup> Ibid p. 16.

<sup>325</sup> Ibid p.31-33.

Mr Moinina and Mr Kondewa and whatever those three decided was implemented. This witness further alleged that the War Council could not force Norman to implement its decisions and that it did not have control over the Disciplinary Committee, headed by Dr. Jibao. TF2-201 also stated that the Kamajors in Base Zero were more loyal to Norman and the initiators than to the Chiefs.<sup>326</sup>

247. The Accused rebutted these allegations when he testified that as far as operational decisions were concerned, it was a matter of advice between the War Council and himself. In the areas before ECOMOG commanders became involved with the activities of the various hunters groups, and eventually the CDF, it was a matter for discussion either at Base Zero with all War Council members or in Guinea with the War Council members in Conakry. Whenever it was decided that a particular action was to be taken by commanders in the field against enemy forces, the directives were given at meetings of the War Council.<sup>327</sup>

248. Contrary to allegation by TF2-011 that Kamajors were more loyal to Norman and initiators, Mustapha Lumeh testified under cross-examination that there was no central command in Base Zero other than the War Council. The War Council were the policy makers for the execution of the war itself, the planning of the war or the implementation of policy was done by the commanders in the field.<sup>328</sup> Mr Lumeh further testified that at Base Zero the undisputed leader was the Chairman of the War Council and Hinga Norman was seen as the government representative and coordinator of the Civil Defence Forces.<sup>329</sup> He emphasised the control of the War Council, stating that it was such a powerful organisation at Base Zero and nobody could have interfered with their work.<sup>330</sup>

249. In his evidence TF2-014 alleged that the First Accused had absolute power at Base Zero, even over the War Council. He also said that when the War Council took decisions, the Accused reversed them. The Accused denied these allegations and

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<sup>326</sup> Transcript TF2-011.

<sup>327</sup> Transcript, Hinga Norman, p.18, Feb. 2 2006

<sup>328</sup> Transcript, Mustapha Lumeh, pp.7-8, May 8 2006

<sup>329</sup> Ibid p.13.

<sup>330</sup> Ibid p. 22.

stated that the War Council was set up with powers and authority to advise him especially as he was far away from the Minister of Defence under whom he served<sup>331</sup>.

250. Under cross examination, Ishmael Senesie Koroma, testified that the attack on Kenema in January/February 1998 was ordered by ECOMOG under Lt. Uma<sup>332</sup>. Under cross examination, Dr. Joe Demby, testified that General Khobe was in charge of the CDF before ECOMOG arrived because he had been appointed Chief of Defence staff and that made him in charge of the CDF and all the allied forces.<sup>333</sup>

251. In his evidence the former Vice President, testified that when General Khobe was appointed Chief of Defence Staff, he had responsibility for all military matters in the country. He was responsible for all deployments, logistical support, arms, ammunition, and food.<sup>334</sup> He further testified that the main purpose of the document shown as Exhibit 134 was that after the return of the democratically elected government, the government wanted to have full control over the way in which the war was being fought. The forces available to government were ECOMOG and CDF, so a delegation was composed to assess the military situation in the East of the country and make recommendations as to how the Government should proceed.<sup>335</sup> In his evidence, the Accused testified that when Gen. Khobe was appointed Chief of Defence Staff, he was introduced to him on the 17th of March 1998 as Deputy Minister of Defence and he had direct interaction with him in that capacity. He further testified that the custody, control and distribution of weapons were the responsibility of General Khobe.<sup>336</sup> As Arthur Koroma put it, when the government returned on the 10<sup>th</sup> March 1998, all matters relating to combat, fighting, logistics and everything was actually done in conjunction with ECOMOG, and it was the ECOMOG Brigade commander or his subordinates who showed them targets, what to do and what not to do.<sup>337</sup>

<sup>331</sup> Transcript, Hinga Norman, pp 44-45 Jan. 30 2006.

<sup>332</sup> Transcript, Ishmael Senesie Koroma, pp.23-24, Feb. 23 2006.

<sup>333</sup> Transcript, Dr. Demby, p.31, Feb. 15 2006.

<sup>334</sup> Transcript, Dr. Demby, p.52, Feb. 10 2006.

<sup>335</sup> Ibid, pg 55, Feb.13 2006.

<sup>336</sup> Transcript, Hinga Norman, p.27 January 27 2006.

<sup>337</sup> Transcript Arthur Koroma, p.42, May 3 2006.

252. Exhibits 135 and 136 also demonstrate that the CDF was under the command and control of ECOMOG and all communications and logistics due were delivered through the chain of command. Exhibit 105, a Report of UN Secretary General<sup>338</sup> corroborates the fact that CDF was under the command and control of ECOMOG. This document confirmed that there was already a functioning government in Sierra Leone and the powers to give orders resided with the government and ECOMOG, certainly not the First Accused.

253. Defence witness Kenneth Koker testified that when ECOMOG captured Bo Town, they called a general meeting. One General Buhari Musa of ECOMOG told the Kamajors that from that moment no kamajor should do anything by himself, that they had to take orders from ECOMOG.<sup>339</sup>

254. As stated in Exhibit 159<sup>340</sup> by Major-General Abdu One Mohammed who was the Chief of Staff ECOMOG and Commander of the Nigerian Contingent in both Liberia and Sierra Leone, ECOMOG collaborated with the CDF operationally especially in the Bo-Kenema axis, supplying arms and ammunition, fuel, food and cash.

255. Under cross examination, Hinga Norman testified that while in Liberia, ECOMOG exercised control over the Kamajors who were on Liberian side of the border. It was from there that arrangement for the coordinated operation was put in place.<sup>341</sup>

256. In his evidence, Mohammed Turay Collier testified that Hinga Norman did not have control of any Kamajors in Talia. Every Kamajor had his own master.<sup>342</sup>

257. At the Chiefdom level, defence witness Paramount Chief Joseph Ali-Kavura Kongomoh II testified that the functions of the command structure of the chiefs in Moyamba was to guide and then give command to the Kamajors or mobilise them

<sup>338</sup> Report of the UN Secretary General, dated 14th August 1998, p. 4.

<sup>339</sup> Transcript, Kenneth Koker, pp. 50-51, Feb 20 2006.

<sup>340</sup> Exhibit 159, statement of Major-Gen. Abdu One Mohammed, dated 2nd March, 2006.

<sup>341</sup> Transcript, Hinga Norman, p. 76 Feb. 6. 2006.

<sup>342</sup> Transcript, Muhammed Turay Collier, p. 91, Feb.16 2006.

whenever there was an attack elsewhere within the district.<sup>343</sup> Every Chiefdom where there were Kamajors had their leaders called chiefdom commanders and district commanders. Under cross examination Mustapha Lumeh described the CDF as a loose organisation of various command posts, that any attack on any particular area was planned and directed by that particular area.<sup>344</sup>

258. Under cross examination, Dr. Joe Demby testified that from May 1997 to March 1998, the CDF was under the command of their paramount chiefs and sub chiefs.<sup>345</sup> Kamajors remained loyal and respectful to the chiefs until the time the war ended<sup>346</sup> but that between 1998 and 1999, the bodies that ensured that laws were obeyed and law and order maintained were the police and ECOMOG.<sup>347</sup>

259. Various witnesses testified that ECOMOG had control wherever Kamajors operated and Kamajors would do nothing that ECOMOG did not approve of.<sup>348</sup>

260. In their evidence TF2-222 and TF2-005 alleged that there were specific instructions for the Tongo operation from Chief Norman who allegedly said that “whosoever takes Tongo and keeps it wins the war.”<sup>349</sup> This was rebutted by Chiefdom commander Brima Sei who testified that he didn’t know anything about the Tongo attack being planned in Base Zero and that the planning was done in his own chiefdom.<sup>350</sup> Brima Sei further testified that the Kamajors had organised themselves to come together to protect and fight for their lives. Siaka Lahai testified that at the time of the attack on Tongo they were working with the War Council.<sup>351</sup>

<sup>343</sup> Transcript PC. Joseph Ali-Kavura Kongomoh II, p. 51, June 1 2006 and Transcript Kenei Torma, p. 88 & 98, June 2 2006.

<sup>344</sup> Transcript, Mustapha Lumeh, p.89, May 5 2006.

<sup>345</sup> Transcript, Dr. Demby, p.32, Feb. 15 2006

<sup>346</sup> Transcript, PC Joseph Ali-Kavura Kongomoh II, P.60, June 1 2006

<sup>347</sup> Ibid, p.73.

<sup>348</sup> Transcript, Mohammed Kineh Swaray, pp. 52-53, May 26 2006; Transcript Ishmael Senesie Koroma, pp.23-24, Feb. 23 2006.

<sup>349</sup> Transcript, TF2-222, p. 10, Feb17 2005 and Transcript TF2-005, p 105, Feb. 15 2005

<sup>350</sup> Transcript, BJK Sei, p.14, May 16 2006.

<sup>351</sup> Transcript, Siaka Lahai, pp.39-40, May 17 2006.

261. The Accused said the Kamajors were directly under the control of the Chief of Defence Staff of the Sierra Leone Army after the reinstatement of the government of President Kabbah - beginning from the 10th of March 1998 right up to when 'di war don don' statement was made. The Chief of Defence Staff was working in liaison with ECOMOG forces and the hunters operated directly under the military orders of whichever forces were in the area.<sup>352</sup> The Accused stated that he received a letter signed by President Kabbah establishing the formation of a body called National Coordinating Committee (NCC) chaired by the President's appointee, the then Vice President, Dr. Albert Joe Demby (see Exhibit 120) to handle all policy matters relating to the National Militia/CDF.

262. As a follow up, Exhibit 123<sup>353</sup> the organogram of the CDF was prepared in fulfilment of the terms of reference of Exhibit 120. Exhibit 129 explains how the War Council was abolished by the National Coordinating Committee by March 1999. Exhibit 130 explains how the NCC increased logistics supply of rice/cash to support CDF operations. In Exhibit 131, the NCC took a decision that the CDF War Front food would go to ECOMOG commanders for distribution to the CDF fighters and the CDF food allocation were being handled by District officers and chiefs in the Northern Province.<sup>354</sup>

263. The Accused testified that from that time the Chief of Defence Staff was the direct coordinator between the government of Sierra Leone and ECOMOG and all logistical support to CDF was channelled through the National Coordinating Committee.<sup>355</sup> This evidence was corroborated by Joe Demby and Lt. General David Richards.

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<sup>352</sup> Transcript, Hinga Norman, p. 83, Jan. 26, 2006.

<sup>353</sup> Exhibit 123 sets out the hierarchical structure of the CDF.

<sup>354</sup> Exhibit 131, p.2, para. B.

<sup>355</sup> Transcript, Hinga Norman, pp 24-25, Jan 27 2006.

264. Defence witness Peter Penfold testified that the British government did not directly supply logistics to CDF but provided assistance to ECOMOG in the form of vehicles, communication equipment, paid for helicopter, training and ammunition.<sup>356</sup>

265. Defence witness Lt. Gen David Richards stated that when he visited Sierra Leone in January 1999 he worked with ECOMOG Brigadier Gen. Khobe who had tactical control of the government forces (CDF and remnants of the loyal SLA), and also Chief Hinga Norman who was the Deputy Minister of Defence.<sup>357</sup> He further said 'Chief Norman might establish policy, but how it was spent in detail, how the forces were organised, that was all Gen. Khobe's job.'<sup>358</sup>

266. As Gen. David Richards rightly said under cross examination, Chief Norman was an inspirational figure head and that had an effect on the people's morale but, the hour-to-hour control of the CDF was exercised by Gen. Khobe, under what the government had established as a coherent defence strategy.<sup>359</sup>

#### **Appointments to Positions within the CDF**

267. During the time the War Council was in operation an Appointment Committee existed that interviewed people and took decisions on promotions and appointments of individuals. The Chairman of the Appointment Committee was Alhaji Daramy Rogers. A recommendation was forwarded to First Accused and the War Council's advice would be sought and the appointment would be either approved or rejected. These appointments did not happen below the battalion level.<sup>360</sup>

268. This fact was corroborated by Dr. Albert Joe Demby who testified that on the 19 September 1997, while he was at Lungi, Eddie Massalay told Hinga Norman that he had not been appointed commander of the Kamajors Southern Region, but Daramy Rogers had been appointed. Dr Demby said Chief Norman responded in his presence that the appointments to positions at Base Zero are by the Appointment Committee of

<sup>356</sup> Transcript, Peter Penfold p. 13, Feb, 9, 2006.

<sup>357</sup> Transcript, Lt. Gen. David Richards, p. 14, Feb. 21 2006,

<sup>358</sup> Ibid p. 21.

<sup>359</sup> Ibid p. 67.

<sup>360</sup> Transcript, Hinga Norman, p.42, Feb. 6 2006. See also Exhibits 10 and 59.

the War Council and that incidentally Daramy Rogers was the Chairman of the Appointment Committee.<sup>361</sup>

269. Various witnesses testified how they were appointed by the chieftdom commanders or by the War Council.<sup>362</sup> Under cross examination, Hinga Norman testified that the Chairman of Promotions and Appointment designated or appointed the commander responsible for the attack on Koribundo.<sup>363</sup> This is contrary to the evidence of TF2-014 that he was appointed National Deputy Director of Operations by Hinga Norman, and that he took general and specific instructions from the First Accused and passed it on to the war front. This piece of evidence has been rebutted by various witnesses including the First Accused.<sup>364</sup> Under cross examination, the Accused denied having control over who became a commander.<sup>365</sup>

270. In his evidence, Mohamed Kaineh testified that the War Council appointed him to the position of Director of War, Kailahun District and also appointed the Vandi Songo III, Director of Intelligence, Easter Region, Jambawai Regional Coordinator, Easter Region<sup>366</sup> In his evidence, Kenneth Koker testified that they initially operated under chieftdom orders, and ECOMOG subsequently organised them into battalions. Augustine Ngaoujia was appointed the head of his battalion and Mr Koker became the deputy.<sup>367</sup>

271. Arthur Koroma testified that in May 1998 Vice President Demby decided that the CDF should be administered on the basis of Districts whereupon he was elected as District Administrator for Kenema.<sup>368</sup>

### **Giving and Receiving Reports and Orders about Operations from Commanders**

<sup>361</sup> Transcript, Dr. Demby, p. 30, Feb. 10 2006.

<sup>362</sup> Transcript, Ishmael Senesie Koroma, p. 23, Feb. 21 2006, Transcript Hinga Norman, pp.106-107. Feb, 6 2006; Transcript Kenei Torma, p.55, June 2 2006.

<sup>363</sup> Transcript, Hinga Norman, p. 100, Feb. 6 2006.

<sup>364</sup> Transcript, Hinga Norman, pp 37-38, Jan 31 2006.

<sup>365</sup> Ibid, p. Feb. 6 2006.

<sup>366</sup> Transcript, Mohamed Kaineh, p. May 19 2006.

<sup>367</sup> Transcript, Kenneth Koker, pp.52-53, Feb. 20 2006

<sup>368</sup> Transcript, Arthur Koroma, pp. 40-41, May 3 2006.



272. The Prosecution alleges that Hinga Norman was in regular communication with other commanders at the various battle fronts where the CDF and kamajor combatants were deployed. The Defence submits that this is entirely not the case.

273. Exhibit 157 is indicative of the fact that Kamajors started sending their periodic reports to ECOMOG as far back as August 1997. Also, in his evidence, TF2-079 testified that he left Tongo with a group of Kamajors to Talia to hand over a situation report of Tongo and that upon arrival they met Fofana who told them that Norman had gone to Liberia. As a result the report was given to Siaka Lahai. Siaka Lahai testified that he never gave any report for onward transmission to Base Zero. This was corroborated by Keikula Amara who testified that he sent his reports to his superior BJK Sei and that he was aware that BJK Sei's superior was Chief Amara Gado.<sup>369</sup>

274. TF2-190's testimony was that he used to receive orders from Hinga Norman and that when they were ordered by Norman to reinforce the Kamajors in Moyamba, Norman asked the logistical officer to supply them with fuel, arms, and a vehicle and ammunition.<sup>370</sup> This testimony is not consistent with his statement where he said "we got orders from the War Council. Mr Lumeh would bring orders to us...whatever the War Council would say we would do it."<sup>371</sup> This inconsistency should be noted and less weight given to such unreliable evidence.

275. Various witnesses have testified that Hinga Norman never gave orders to commanders in the field but instead they received orders from the War Council.<sup>372</sup> Defence witness Haroun Collier testified that the Death Squad took orders from the War Council and that no reports were ever made specifically to Hinga Norman. He further said that Exhibit 153 was false because as he himself was Secretary he should have written it.<sup>373</sup> In his evidence TF2-011 alleged that the War Council did not receive reports at Base Zero from commanders but reports went to straight to the Coordinator. This evidence has been rebutted by Lansana Bockarie who said they

<sup>369</sup> Transcript, Keikula Amara, pp 63-64, May 18 2006.

<sup>370</sup> Transcript, TF2-190.

<sup>371</sup> Ibid, p. Feb. 10, 2005

<sup>372</sup> Transcript, Haroun Collier, pp 5-6, May 15 2006.

<sup>373</sup> Transcript, Haroun Collier p.6 May 15 2006.

heard of the position of National Coordinator but and CDF Administrator but there was a War Council so they reported to it.<sup>374</sup>

276. The Accused testified that President Kabbah did not give him orders on how to conduct the war and that his appointment was solely to coordinate -- not to command and control the war.<sup>375</sup>

277. Under cross examination, Haroun Collier as deputy commander of the Death Squad<sup>376</sup>, refuted the evidence of TF2-008<sup>377</sup> and that of TF2-014, that the Death Squad was answerable to Hinga Norman and Allieu Kondewa. The witness equally disagreed with TF2-068<sup>378</sup> that the Death Squad was under the control of Hinga Norman, Fofana and Kondewa and finally refuted the evidence of TF2-190 that he was only finally answerable to Hinga Norman.

### **Investigation and Disciplining of the Kamajors and CDF**

278. The Kamajors and the CDF were investigated and disciplined by the government and ECOMOG for any violations as CDF members were under their command and control. Cases of investigation range from Exhibits 132A and 132B concerning an alleged attack on Marima village was subsequently investigated by the government.

279. Where harassment was alleged against the Kamajors as in the case of Exhibit 133 concerning Fogbo village, the allegation was investigated. Under cross examination, Dr. Albert Joe Demby testified that he conducted investigations and he kept records of such investigations.<sup>379</sup>

280. In his evidence, Arthur Koroma agreed that some CDF members fell short of proper behaviour on several occasions. He cited, as an example one commander James Kallon in Joru who had problems with the chiefs in the township and a

<sup>374</sup> Transcript, Lansana Bockarie, p.15, June 1 2006.

<sup>375</sup> Transcript, Hinga Norman, pp. 25-26, Feb. 6 2006.

<sup>376</sup> Ibid, pp 16, 42.

<sup>377</sup> Transcript, TF2-008, pp. 60-61, 16 Nov. 04 2006.

<sup>378</sup> Transcript, TF2-068, pp.90-91, 17 Nov. 04 2006.

<sup>379</sup> Transcript, Dr. Demby, p 47, Feb. 16 2006