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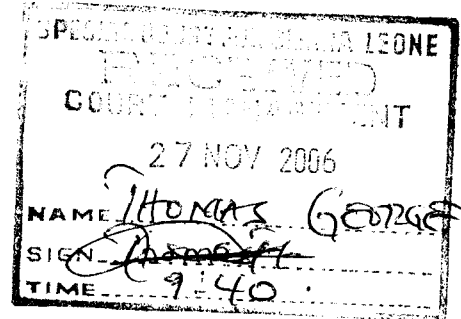
20458

**SPECIAL COURT FOR SIERRA LEONE**

Before: Hon. Justice Bankole Thompson, Presiding Judge  
Hon. Justice Benjamin Mutanga Itoe  
Hon. Justice Pierre Boutet,

Registrar: Mr. Lovemore G. Munlo, SC

Date: 27<sup>th</sup> November 2006



**THE PROSECUTOR**

**Against**

**SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA**

CASE NO. SCSL-2004-14-T

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**FINAL TRIAL BRIEF OF THE THIRD ACCUSED ALLIEU KONDEWA**

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Office of the Prosecutor:

Christopher Staker  
Joseph Kamara  
Mhammed Bangura

For Allieu Kondewa

Charles Margai  
Yada Williams  
Susan Wright  
Ansu Lansana

For Samuel Hinga Norman

Dr. Bu-Buakei Jabbi  
John Wesley-Hall, Jr.  
Alusine Sani Sesay

For Moinina Fofana:

Victor Koppe  
Arrow Bockarie  
Michiel Pestman  
Steven Powles

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## I. General Introduction and Commentary on Evidence

The foundation of criminal responsibility is the principle of *personal culpability*<sup>1</sup> and a finding of guilty may be reached only when a majority of the Trial Chamber is satisfied that it has been proved beyond reasonable doubt.<sup>2</sup> This requirement is shared by the Special Court for Sierra Leone, the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia.<sup>3</sup> Proof beyond a reasonable doubt has also been interpreted to be required under the fair trial provisions of the International Covenant on Civil and Political Rights, to which Sierra Leone is a party. “By reason of the presumption of innocence... [n]o guilt can be presumed until the charge has been proven beyond reasonable doubt.”<sup>4</sup> This is ever more poignant when the case against the accused can be characterised as largely circumstantial.

“A circumstantial case consists of evidence of a number of different circumstances which, taken in combination, point to the guilt of the accused person because they would usually exist in combination only because the accused did what is alleged against him...Such a conclusion must be established beyond reasonable doubt. It is not sufficient that it is a reasonable conclusion available from the evidence. It must be the *only* reasonable conclusion available. If there is another conclusion which is also reasonably open from that evidence, and which is consistent with the innocence of the accused, he must be acquitted.”<sup>5</sup>

*Bulk of evidence lacking specificity which enables it to be challenged or rebutted.*

Very few of the witnesses called by the prosecution gave names of the perpetrators whose acts they described and even fewer gave details about dates and locations. While understandable, given the time which has passed and the nature of the events being recounted, it seriously limits the ability of the accused to identify and interview potential witnesses to the events described, in order to test the credibility of the account given. Where Kamajor perpetrators names were provided by prosecution witnesses and they could be located, many came to give evidence before the Court and of them nearly all contradicted accounts of their behaviour.

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### *Hearsay*

While the Rules of Procedure and Evidence do not bar the admission of hearsay evidence, as the Trial Chamber seeks to attribute weight to the evidence before it a rehearsal of the policy which militates against reliance on hearsay of evidence may be useful.

The following reasons for excluding hearsay have been articulated:

- Evidence that is given second-hand is likely to be unreliable or subject to distortion;
- Evidence not given under oath and not the subject of cross-examination is more likely to be unreliable as the court cannot test its reliability, or observe the sincerity or demeanour of the witness.
- There is a danger that if the rule were relaxed there would be a proliferation of evidence directed to proving or negating hearsay.<sup>6</sup>

### *Credibility of witnesses*

Although the Trial Chamber will naturally form an opinion as to the credibility of the witness during his or her testimony, the final assessment of credibility must be considered in light of the entire trial record.<sup>7</sup> Examples of how the credibility of each witness is assessed can be found in the case of Bagilishema, which resulted in a judgment of acquittal. The Trial Chamber assessed the various witness testimonies on the:

- Credibility in terms of internal consistency and detail;
- Strength under cross-examination;
- Consistency against prior statements of the witness;
- Credibility vis-à-vis other witness accounts or other evidence submitted in the case;
- Possible motives on behalf of the witness.<sup>8</sup>

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Where the testimony was weak on any of these points the Trial Panel looked for corroboration and if the corroboration was itself based upon hearsay the Panel would not use the testimony as a basis for conviction.<sup>9</sup>

### *Impeachment*

Evidence of witnesses can be impeached on a number of grounds, including the following:

- *Prior inconsistent statements.* These should be put to the witness in cross-examination. Where relied upon, this Trial Chamber has even allowed them to be admitted into evidence. During the course of the trial, inconsistencies have been noted by counsel for each of the accused. In considering inconsistencies regard is given to factors such as the difficulties in recollecting precise events years later, the impact of trauma and the literacy of the witness.<sup>10</sup>
- *Character evidence* (of reputation for truthfulness or of specific misconduct).<sup>11</sup> During the course of the trial, such evidence has been lead by counsel for each of the accused.
- *Bias.* During the course of the trial, witnesses for the prosecution and defence were attacked on bias, including relationships with the other witnesses and with the accused, personal disputes with other witnesses and with the accused and identification with or sympathy for the prosecution or with the accused as well as financial motivation. While witnesses for the defense withstood these attacks, it is respectfully submitted that those for the prosecution did not.
- *Sensory deficiencies.* During the course of the trial witnesses were attacked on the basis of not having been able to clearly see or hear the events about which they were giving evidence.

### *Prosecution witnesses whose evidence has been contradicted*

The testimony of a number of prosecution witnesses was contradicted, either by other prosecution witnesses or by defense witnesses. The details of these contradictions are recounted below, in the applicable sections setting forth evidence by count.

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Counts 1 and 2

## Prosecution

A farmer from Sorgia saw his village attacked twice. The second time was by Kamajors who included one named Conteh who threw the witness's mother in a fire. Witness was not, however, tortured or even bothered. Joseph Lansana (28/9/06 - pages 62 and 63)(contradicting TF2-014 (10/3/05) pages 44, 45 & 46)

The brother of Mustapha Fallon testified that Mustapha took part in an attack on Koribondo and as part of that attack he saw his brother killed in Koribondo, long before time mentioned by Nallo. Mohammed Fallon (27/9/06 pages 29-31) (contradicting Albert Nallo (10/3/05 pages 50-54)

Another witness also refutes Nallo's evidence and denied that Norman, Fofana and Kondewa killed Mustapha Fallon. He denied there was anyone named Mustapha Fallon at Talia. Witness was born in Talia, grew up there, knew everyone there and knew no Mustapha Fallon. "If it happened I would know. We owned that place, our parents are chiefs." Haroun Aruna Collier a.k.a. Hardway (15/5/06 page 26 lines 15-17) It is noteworthy that this is entirely consistent with the testimony of Fallon's brother's.

Witness refutes evidence of TF2-047 and denies that he ordered TF2-047 to bury 150 corpses in Tongo. B.J.K. Sei (16/5/06 page 7) (contradicting TF2-047( 22 /2/05 pages 59 - 62))

Witness refutes evidence of TF2-027, 22 February 2005 (pages 3 & 4) and testifies that he never ordered Kamajors in Konia to bury 30 corpses under a coffee tree. Likewise testifies that he never controlled Konia region. Keikula Amara a.k.a. Kamabotie (17/5/06) (contradicting TF2-027 (22/2/05 Pages 3 & 4)

Witness knew Soko Doguba in Kombema Town and himself found Doguba's dead body on the ground in Kombema after an attack by juntas. Witness saw mortar pestles nearby and testifies that juntas had beaten Doguba to death. Fallah Bindi (23/5/06 page 70)

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Witness knew Mr. Thomas, a treasury clerk killed in Moyamba. Although witness was not in Moyamba at time of Mr. Thomas's death, Mustafa Ngobea reported to witness that Thomas was writing to rebels at Camp Charlie in order to coordinate an attack on Moyamba and Kamajors had recovered one of the letters. The next day, witness saw boys carrying Thomas's head in a wheelbarrow, singing and went to Ngobea to ask why he had done this. Ngobea told him the civilians had done it. Witness testified that in fact no Kamajors among the crowd who killed collaborator Mr. Thomas. Kini Torma (2/6/06 PAGES 27 - 34)

Witness was in Kenema for two weeks during the period in question and testifies that no initiator took part in combat in Kenema. He likewise denies that Mr. Fofana and Mr. Kondewa were in charge of Kamajors at Kenema. Fallah Bindi (23/5/06 page 76) (contradicting TF2-223 (28/9/04 page 98))

Witness testifies that no Kapra was killed at Base Zero and that no Kapra named Alpha Dauda Kanu came to Base Zero. Moses Bangura (17/10/06) (14-15). Witness testifies that Kapras slept together in the mosque and assembled each morning. He is confident that if one had been killed, he would have known. (17)

#### Count Five: Looting

Describes the attacks at Kenema, Gofor, and SS camp (23/5/06 page 62). On 15 February civilians saw Kamajors entering Kenema, recognized their glittering mirror-adorned Kamajor dress. There was rejoicing and dancing. On the same day witness saw civilians setting fire to houses in Kenema. Civilians said they were houses of those who had burnt the civilians' own houses. Fallah Bindi (23/5/06 page 67)

#### Multiple counts

Witness is a Kamajor from Bonthe district and denies there were any trade fairs in Baoma Kpengh and that the fairs were in fact in Gbap). Witness knows no other Kamajor with his name, Junisa Conneh and testifies he never saw Albert Nallo at Baoma Kpengh. Junisa Conneh (28/9/06 page 16 & 17)

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Witness has been town chief since 1996 and denies that a trade fair was there. Likewise testifies that he never heard of death of Fullah trader. Tommy Jabbi (28/9/06 pages 31 & 32)

Witness denies that three Kamajor prisoners were burned with tires, saying that he saw these people being put in a vehicle and taken to Shenge. Kini Torma (2/6/06 pages 43 & 44) (contradicting TF2-165 (7/3/05 pages 15 & 16)

Witness was chiefdom speaker and regent chief of Gambia during the coup. Testifies that there is in fact no playing field in Gambia. Denies there is a Vaahun village near Gambia and says that Norman has not been in Gambia in more than 15 years. He describes the visit of Mr. Kondewa and states that no helicopter landed during his visit. Remarks that as chiefdom speaker any killing would have been reported to him but he received no such reports. Alhaji Joe Soma Kpana Lewis (10/10/06) (92-99). (contradicting TF2-187 (1/6/05 page 11)

Witness is a midwife, dealing with pregnant women and delivering babies in Gambia. If pregnant women had been killed she would have known. Denies any such deaths. Yeama Lewis (11/10/06) (123)

Witness was part of group that was not in fact attacked while traveling from Kpandebu to Bumpe and reached Talama without incident. Kamabotie introduced the group to hunters there and witness was searched, along with others who were searched at random in groups of mixed tribes. Witness refutes evidence alleging a checkpoint in Talama and denies that people were separated according to tribal groupings. Denies that Temnes, Lokos and Limbas were separated from group and killed. After the search, Witness returned to her home town Panguma and no one was left behind. (51) Does Kelfella (17/10/06) (47-51)

#### Contradicts aspects of role and responsibility of individual Kamajors

Witness refutes evidence and denies that Norman, Fofana, Kondewa, Orinko, Koroma and Nallo sent people to fight, saying it was not their job. Mohamed Turay Collier -17<sup>th</sup> February 2006 at page 17 lines 3 to 19, page 18 lines 15 to 29, page 19 lines 1 to 29, (contradicts TF2-005 (15/2/05 page 102)

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Witness refutes evidence and maintains there was no report or complaint made of Alpha Dauda Kanu being hacked to death and skinned by Norman, Fofana and Kondewa. Mohamed Turay Collier 17<sup>th</sup> February 2006 at page 20 lines 13 to 29, page 21 lines 1 to 29, page 22 lines 1 to 29 and page 23 lines 1 to 29 (contradicts TF2-014 10/3/05 pages 54 & 55)

Witness refutes evidence and denies that Kondewa had commanders or provided logistics for commanders. Mohamed Turay Collier - 17<sup>th</sup> February 2006, page 25 and 26 (contradicts TF2-079 (26/5/05 page 43)

Witness never saw anyone bringing guns or food for Mr. Kondewa. Mohamed Turay Collier 17<sup>th</sup> February 2006, page 25 and 26 (contradicts TF2-189 (3/6/05 page 14)

Witness refutes evidence and maintains that in the area Mr. Kondewa conducted initiations only in McKasi, 3 miles from Talia and at Tihun Sogbini, 14 miles from Talia. Mohamed Turay Collier 17<sup>th</sup> February 2006, page 25 and 26 (contradicts Albert Nallo (10/3/05 pages 16 - 17)

Denies that anyone died during initiation at Tihun and denies that Mr. Kondewa used deceased's ashes in initiation. Haroun Aruna Collier a.k.a. Hardway (12/5/06) (contradicts Albert Nallo (10/3/05 16 – 17 & 28)

Witness never saw or heard about Kondewa attending any meeting at Tihun Sogbini. "If the chiefdom people will even hold any meeting, if they called any meeting, he would not attend it." Sampha Sesay a.k.a. Carpenter 12/10/06 (96). (contradicts TF2-190 (10/2/05 pages 14 & 15)

Denies Kamajor forces handed over seized arms to Kondewa at his house in Tihun. Kondewa "had no business with guns." Sampha Sesay a.k.a. Carpenter 12/10/06 (99-100)

*Prosecution witnesses who have been impeached*

There are a number of prosecution witnesses who have been impeached on terms consistent with

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the aforementioned jurisprudence. As the Trial Chamber now considers what if any weight to give the r testimony, it is respectfully submitted that reference should be made to the following examples:

Witness TF2-017

“Let me rephrase the question to you then. In your mind, it is okay to make up facts if you are hesitant about the facts; is that correct? A. Yes, you are correct.” TF2-017 (22/11/04) (44)

“Mr Witness, you will agree with me that the Court has expended a considerable amount of money on you during your twenty-two month stay in Freetown. A. Yes, because I have been here for a long time. Mr Witness, these people, meaning Auntie Sue and Henry Tucker and your sister Rosaline, they were very much concerned when your father was hospitalised at the Bo Government Hospital; am I correct? A. Yes. [...] Q. Mr Witness, did you inform any one of them that you had been given \$1,000 towards your father's medication?” TF2-017 (22/11/04) (53)

Albert Nallo

Albert Nallo was suspended by the War Council “because of the bad commands he used to give us.” Joe Nunie (11/5/06 page 42)

Nallo claims that there were disputes with Mr. Hinga Norman when he tried to enforce discipline but was unable to provide a single example of someone who was punished for failing to carry out orders. TF2-014 (10/03/05 page 39).

B.J.K. Sei

BJK Sei testified at length about his involvement in the attacks at Tongo and was later contradicted by a Kamajor insider who said “he had no hands in it.” This affects his overall credibility, including but not limited to events to which he testified relative to Tongo attacks. Siaka Lahai (17/5/06) (11)

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TF2-057

The witness was impeached on the basis of denying that he knew an individual who he later admitted to be his son. TF2-057 (30/11/04) (63)

TF2-005

Witness testified in detail about the work of the Death Squad and was emphatic that they were only answerable to Mr. Hinga Norma, Mr. Fofana and Mr. Kondewa. TF2-190 (10/2/05) (31) testified that he was in fact that head of the Death Squad, not the three accused. Given the allegations of wrongdoing attributed to the Death Squad, Mr. Tucker has no motive to lie about or exaggerate his role in its work. The inescapable conclusion is therefore that witness TF2-005 (15/02/05 page 95) purposely misled the Trial Chamber.

*Evidence of rebels disguised as Kamajors*

Evidence of rebels dressed like civilians is relevant to question of the presence of civilians. Evidence of rebels disguised as Kamajors is relevant to the question of whether there are other inferences to be drawn from the evidence before the Trial Chamber and whether those inferences amount to reasonable doubt of Mr. Kondewa's guilt. As the Trial Chamber now considers that issue it is respectfully submitted that reference should be made to the following examples, many of which came from Prosecution witnesses:

"This is just an example, My Lord. I am saying that the rebels wore military -- sorry, Kamajor dress, disguised themselves and attacked villages." Albert Joe Edward Demby (13/2/06) (27)

"[P]eople were caught manufacturing these dresses. One Mr Konneh in Koribondo. [...] Yes, in Koribondo. One Jalloh in Bo, and MB Sesay in Bo, Bo Town." Albert Joe Edward Demby, (13/2/06) (28)

"And you recounted that battle as being fierce because the junta disguised themselves as

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Kamajors; correct? A. Yes. I said it was difficult because they were wearing an attire that looks like Kamajor attire. So it was very difficult.” Ishmael Koroma (23/2/06) (30)

Soldiers used Kamajor uniforms they had seized, wore them to loot villages. Fallah Bindi (23/5/06 page 61)

As a commander, Witness knew of soldiers/rebels dressing in Kamajor ronkos, causing havoc. Heard it happened in other towns and it happened to Witness himself. Mohamed Kineh Swaray (26/5/06 page 24)

JUDGE BOUTET: Again, Mr Witness, the question is relatively simple. You have described the dress, some of the dress of rebels to be of native clothing. THE WITNESS: Yes, similar to the Kamajors. JUDGE BOUTET: Was this similar to the dress of the Kamajors? THE WITNESS: Yes, My Lord. TF2-222 (18/2/05) (24)

Mr Witness, isn't it true that in that takeover the juntas disguised themselves as Kamajors wearing the Kamajor ronko? A. You are right. TF2-014(14/3/05) (54)

“There are also reports that Mende speakers were dressed in Kamajor clothing and infiltrated behind the CDF position to cause additional panic and confusion. This has been confirmed by AFRC sources.” Colonel Iron report, D7.9.

During the fight for Bo, junta forces disguised themselves as Kamajors. TF2-001 (15/2/05) (5)

AFRC wore Kamajor clothes to attack Bo. TF2-162 (8/9/04) (91). Heard of soldiers dressing in ronkos and attacking Bo. TF2-032 (9/9/04) (51); When the junta took over Bo some were disguised as Kamajors. TF2-001 (15/2/05) (5); Sometimes similar to Kamajor dress. TF2-222 (13/2/05) (24).

*Placing 92 bis materials in context*

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In ruling on the admissibility of 92 *bis* materials, this Trial Panel has said, “[t]he rules favour a flexible approach to the issue of weight to be determined at the end of the trial when assessing probative value of the totality of evidence.”<sup>12</sup> Among the materials admitted, there are numerous references to wrongdoing which is in line with the charges alleged in the indictment but it should be noted that no reference is made to CDF or the Kamajors:

“Women and girls reported atrocities committed by all fighting forces during the war. Early in the conflict the RUF perpetrated widespread violence across southern and eastern Sierra Leone. Violence against women and children and general terror in rural and urban centers quickly became cornerstones of the movement and were encouraged by RUF leadership. As government revenues fell from the loss of mineral sales, so too did the salaries and the resolve of the SLA. Soldiers committed gross human rights violations, including rape, mutilations, looting, property destruction, and murder. They forced women and girls to exchange sex for “protection: and used them as prostitutes.”<sup>13</sup>

The same report cites examples of girls who had been abducted and forced to be “captive wives” and there is likewise no reference to CDF or Kamajors.<sup>14</sup>

### **1. Legal defects in evidence before the Trial Chamber**

*Evidence which fails to comport with geographical areas set forth in indictment.*

Despite having filed an indictment, an amended indictment, a Bill of Particulars, a Pre-Trial Brief and a Supplemental Pre-Trial Brief, the Prosecution has never alleged criminal wrongdoing in a number of geographical areas about which evidence was lead. When this issue was raised by counsel for Mr. Kondewa during the proceedings on 1 June 2005, relative to a witness testifying to events alleged to have taken place in Gambia, the Prosecution averred that since the indictment uses the word *including* “there certainly does not close the categories.” But as the Trial Chamber has indicated in previous rulings, the language “included but not limited to” is “impermissibly broad and also objectionable in not specifying the precise allegations against the Accused.”<sup>1</sup>

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<sup>1</sup> The Prosecutor v. Allieu Kondewa, SCSL-2003-12-PT, Bill of Particulars, 5 December 2003, para. 11 quoting The prosecutor v. Santigie Borbor Kanu, SCSL-2003-13-PT) Decision and Order on Defence Preliminary Motion for Defects in the Indictment, 19 November, 2003, para. 33.

If the Trial Chamber were inclined to this broad interpretation it would have accepted the argument proffered by the Prosecution in its Rule 98 oral argument and would not likely have reached the conclusion it did in its Ruling on Motions for Acquittal, granting judgment relative to sections of indictment which related to specific crimes bases.

As the Trial Panel now considers whether the language is impermissibly broad, it is respectfully submitted that reference should be made to the following examples:

- In mid-February 1998 at Dassama, witness saw an unidentified “batch of Kamajor” chasing a man and accusing him of being a collaborator; they hacked the man and mutilated his body TF2-079 (26/5/05) (69)
- There were burned houses in Combema. Civilians said it was rebels. TF2-201 (5<sup>th</sup> November 2004 page 18 lines 26 to 29, page 19 lines 1 to 3)
- Saw Kamajors burning houses and killing people in Maka. TF2-004 (9<sup>th</sup> November 2004 page 67 lines 10 to 14)
- Witness alleges that Yamorto base was where they ate human beings. Witness TF2-152 (27<sup>th</sup> September 2004 page 118)
- In Sorgina, Bangura pointed at Jospheh Lansana and said he’s RUF, he was tortured, we cut off his ear, lit plastic and dripped it on his body. His mother, an old woman came and they accused her of cooking for the juntas. She was chopped. Compound burned and old woman thrown on the fire. TF2-014 (10<sup>th</sup> March 2005 pages 43 to 46)
- Relative to counts six through eight, the crimes were alleged to have taken place on the entire territory of Sierra Leone an accusation which is so broad as to make it virtually impossible for the accused to answer the charge.

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Based upon the foregoing the accused submits that the language of the indictment is impermissibly broad and objectionable in not specifying the precise allegations against the Accused relative to foregoing geographical locations and respectfully asks the Trial Chamber to enter a judgment of acquittal with regard to said evidence.

*Evidence which fails to comport with temporal period provided for in indictment*

Prosecution witness alleges that Fofana and Kondewa were in charge of Kamajors in Kenema but cannot establish timeframe. Witness TF2-223 (28<sup>th</sup> September 2004 pages 98 & 99)

Based upon the foregoing the accused submits that the evidence fails to comport with the temporal period provided for in the indictment and respectfully asks the Trial Chamber to enter a judgment of acquittal with regard to said evidence.

*Charges about which there are no agreed elements and no jurisprudence (collective punishment and child soldiers)*

Relative to the charges of collective punishment and the recruitment of child soldiers the accused respectfully submits that the indictment fails to provide sufficient detail so as to notice the accused on the offences he is charged with in such a way that he can adequately prepare his defense. Without the benefit of jurisprudence which elaborates the elements of these purported offences he is unable to properly respond. Relative to recruitment of child soldiers, while the elements arrived at by the parties to the Rome Statute bind the International Criminal Court, they have no such weight for this tribunal.

Based upon the foregoing the accused submits that the language of the indictment is impermissibly broad and objectionable in not specifying the elements of counts seven and eight and respectfully asks the Trial Chamber to enter a judgment of acquittal with regard to these counts.

*No service of amended indictment*

Mindful and fully respectful of the fact that the Chamber has ruled on this issue, as has the Appeal

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Chamber, counsel for the accused respectfully renews its objection to the amended indictment on the grounds that he has not been served with a copy of the amended indictment in this case which is in some aspects materially different from the original indictment. The date for service having passed, counsel respectfully requests that the Trial Chamber limits its findings to those charges which formed the original indictment, with which Mr. Kondewa has been served.

### **III. Failure to establish that Mr. Kondewa bore the “greatest responsibility”**

The Trial Chamber in its ruling on the Preliminary Defence Motion on the Lack of Personal Jurisdiction, 14<sup>th</sup> November 2004 Prosecutor V Norman et al SCSL -2004-14-PT-110 held that, “in the ultimate analysis, whether or not in actuality the Accused is one of the persons who bears the greatest responsibility for the alleged violations... is an evidentiary matter to be determined at the trial stage”.

The Prosecution must not only lead evidence to prove beyond reasonable doubt the allegations contained in the Indictment, superior responsibility under Article 6(3) of the Statute but also that the Third Accused is one of the persons who bears the greatest responsibility for the alleged violations.

In other words it is insufficient to prove the allegations in the Indictment and to establish superior responsibility under Article 6(3) of the Statute. The Prosecution must also prove by way of evidence to the Trial Chamber that there are no other persons more extraordinarily culpable than the Third Accused.

Counsel for Kondewa submits that even if and assuming without conceding that the allegations in the Indictment have been proved the Prosecution have failed woefully to establish by way of evidence or otherwise that the Third Accused is one of the persons who bears the greatest responsibility for the alleged violations. We have been unable to find any evidence which goes at establishing greatest responsibility. Not even the discredited ‘holy trinity evidence’ (a figment of Nallo’s imagination) proves the issue of ‘greatest responsibility’.

We would submit that *even if* (which is not conceded) the Third Accused is most responsible he

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should be acquitted if he is not one of the persons who bears the greatest responsibility for the alleged violations. 'Greatest Responsibility' requires a much greater threshold of proof and is limited to the most narrow class of offenders.

Ralph Zacklin, UN Assistant Secretary-General Office of Legal Affairs, on the 25<sup>th</sup> September 2000 in a press briefing said as follows:

"In terms of those who bear the greatest responsibility for the crimes, in our report we will be suggesting a slightly different variation of this formula. That would be 'those most responsible.' The reason for this is that we feel that the formula 'greatest responsibility' probably pitches the personal jurisdiction very narrowly and probably too high to capture all of those who bear some degree of command or leadership responsibility that may have committed crimes"

The Prosecution have failed to show that the Third Accused in law and on the evidence belongs to the category of people who bear the greatest responsibility for the alleged violations of International Humanitarian Law and he must be acquitted.

#### **IV. Allieu Kondewa, the Kamajors and the Civil Defence Force**

##### **Allieu Kondewa**

##### *History of initiation*

Initiation developed over time. People applied "mystic medicinal herbs" to become immune to bullet wounds. "Initiators" applied mystical herbs. "Initiates" were those who received herbs. There is a popular view that initiation is immunization. Initiation provided immunization against bullet wounds. Initiators are "like private medical doctors who sit in their homes or places of practice, and people who want to be immunized or be initiated go to them, pay them before they are immunized." Civilians and non-combatants sought immunization, individually or in family groups. Women and children sought immunization. Paramount chiefs, sub-chiefs paid initiators to immunize existing chiefdom Kamajor groups en masse. Dr. Albert Joe Demby (10<sup>th</sup> February 2006 pages 11,12,13,14)

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### *Role as initiator*

The Trial Chamber heard a great deal of evidence of Mr. Kondewa's role as initiator. Much of this evidence is corroborated by both prosecution and defence witnesses. The following are representative examples:

- Mr. Kondewa began initiating even before the war. TF2-82 (17/9/04) (2)
- Mr. Kondewa didn't take part in combat. No initiators took part in planning, fighting war. Kondewa not involved with distribution of arms, ammunition. Joe Nunie (11/5/06 page 53)
- Initiators did not go into combat and Mr. Kondewa did not have troops under his command, only aides or bodyguards. TF2-011 (8/6/05) (54-55) It is worth noting that bodyguards in this context play a very different role than might be imagined. As the evidence showed, Mr. Kondewa had some bodyguards who were young unarmed children, an unlikely choice given his size. It was pointed out that the term bodyguard is used to describe clients for whom the patron was responsible for and whose loyalty could be counted upon rather than persons provided protection in a physical sense. Dr. Daniel Hoffman (9/10/06) (122)
- The "[s]ole task of Kondewa and his co-initiators was to prepare you people, the fighters, for the battlefield... to immunize you, the fighters, against bullets." TF2-190 [10<sup>th</sup> February 2005 page 86 lines 11 to 21 (86)]
- Kondewa meant so much to Kamajor society that Kamajors overprotected him to ensure no harm befell him. Kondewa was never present during planning for war. Osman Vandy (Vanjawai) (17<sup>th</sup> February 2006 page 105 lines 9 to 23)
- Kondewa did not do business with Kamajors after initiation. He didn't have command or control of Kamajors and didn't go to warfront. Witness never saw Kondewa punish a

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Kamajor. Kondewa had nothing to do with Witness after initiation. Kini Torma (2/6/06 page 41)

- Kondewa would say "I am going to give you my blessings. I'm going to give you the medicines, which would made you to be fearless if you didn't spoil the law...I will give it to you. I will prepare you." TF2-201 (4/11/04) (113-114)
- "Kondewa told us that all these powers that he has in him has been transferred to us so that nothing will be wrong with us, no cutlass will strike us. He's now satisfied. So all of us will go to the war front and come back with happiness, and let no one be afraid." TF2-190 (10/2/05) (43-48)
- "I give you my blessings; go my boys, go." TF2-222 (17/2/05) (119-120)
- Kondewa had no commanders attached to him, had nothing to do with Kamajors after initiation unless one approached him for help. Kondewa did not have power to punish Kamajors who broke the rules. Only the War Council had this power. No commander would report Kamajor atrocities to Kondewa. Haroun Aruna Collier a.k.a. Hardway (15/5/06 page 52)
- Advice was also given by Kondewa for the renewal of the initiation ceremony. Renewal of initiation was to strengthen the soldiers and give them zeal and ambition . Witness TF2-223 (26<sup>th</sup> September 2004 pages 57 and 58)
- Witness says that initiators did not take part in fighting or in the planning of war. Mohamed Bhonie Koroma (22/5/06 pages 39 & 40)
- Initiators did not command troops, did not go into combat, did not sit down with commanders and plan battles. Did not supply arms, ammunition to fighters. Keikula Amara a.k.a. Kamabotie (18/5/06 page 70)

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- Initiators never went to the warfront. They never commanded troops and were only there to initiate. Kamajors loyal to chiefdom authorities. Not initiators. Keikula Amara a.k.a. Kamabotie (18/5/06) Pages 70 and 71
- Never saw initiators command troops; “they hadn’t that right.” Keikula Amara a.k.a. Kamabotie (17/5/06) (22-23)
- Initiators never in combat. Initiators never supplied logistics, arms, ammunition to combatants. Brima Moriba (23/5/06 pages 23 & 24)

### *Rules*

Initiates were given laws during initiation. Laws were to protect their lives. If they did not comply they would die at the warfront. Mohamed Kaineh (19/5/06) page 11. The rules had their roots in the Bible. Samuel Hinga Norman

Witness recounts laws given to him upon initiation:

- Respect elders. Abibu Brima (12/10/06) (35)
- Fear women, don’t have affairs. (35)
- Don’t touch civilian property. (35)
- Don’t leave wounded fighters at the warfront. (35)
- Retrieve guns dropped by the enemy at the warfront. (36)
- Don’t harm surrendering combatants. Hand them to chiefdom authorities. (36)
- Don’t play with corpses. (37-38)
- We shall not kill any innocent person. TF2-005 (15/2/05) (82)
- We should not harass civilians whom we were meant to defend. (83)

These rules were seen by Kamajors as a code of conduct and everyone told not do anything to bring Kamajors into disrepute:

And you'd also agree with me that the Kamajors did not fight that war to enrich themselves?

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A. That was not the plan. Q. That was not the plan, thank you. And even though it was a very serious and fierce war, you the Kamajors had rules of engagement. In other words, you had a code of conduct to go by? A. Yes, there were laws, Q. Yes, thank you, yes. And please listen to me very carefully. If you don't understand say so, okay? A. Yes, sir. Q. One of the rules was that you must avoid harming civilians; you'd agree me? A. Yes, the law said that. TF2-190 (10/2/05) (91)

Outsiders did not recognise initiation rules as code of conduct:

"Now, General, in the British Army I take it that there are rules of engagement, no doubt? A. Yes. Q. And are these rules made known to every military personnel? A. Yes, very strictly. Q. Very strictly. And naturally you would expect strict adherence? A. It's a disciplinary offence not to adhere to them. Q. Thank you very much. In your strategising with General Khobe, General Shelpidi, were you at any time told about rules of engagement for the CDF? A. Not to my knowledge. I can't remember any discussion of them." Lt. General David Richards (21/2/06) (63).

This is perhaps not surprising. Kamajors themselves simply understood it as a natural extension of the roles they already played within their communities. Dr. Daniel Hoffman (9/10/06) (123)

### *Difference between initiation and immunization*

There is an important distinction to be made between initiation and immunization as well as between initiation and recruitment, especially within the context of children and the elderly. This was the subject of the following evidence before the Trial Chamber:

- Witness was initiated for protective reasons and he did not fight. He had arranged for two of his children, aged seven and eight, to be initiated for immunization. Joseph Ali Kavura Kongomoh II (1/6/06 page 56)

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- Witness joined Kamajors to become bulletproof and saw no link between initiation and military training. (TF2-068 page 79 lines 1 to 18)
- Witness notes that it is possible to be initiated just for protection, not as a combatant and that this would involve the same rites of initiation. Those initiated for protection only were not given a uniform after initiation but the rules were recounted. Arthur Koroma (3/5/06 page 4)
- In early 1996, Sherbros from Bonthe Chiefdom brought young boys to Mokosi. Kondewa immunized them against bullets and none were hurt in subsequent rebel attack. Witness's own son was immunized. Witness allowed his son to be initiated to protect him in times of trouble. Son was ten years old when initiated and never took part in combat. Witness maintains that more people were initiated as Kamajors for safety than were initiated for combat. Haroun Aruna Collier a.k.a. Hardway (12/5/06 page 18)
- Witness agrees that immunization prevented people dying in battle. Saw people shot at to test immunization. Bullets never pierced people. Witness saw water come out of guns. Haroun Aruna Collier a.k.a. Hardway (12/5/06 page 43)
- Witness was initiated but did not fight. Was told during initiation to protect civilians. TF2-012 (21<sup>st</sup> June 2004 pages 59 and 62 lines 21 to 29)
- Agrees one is made bullet-proof through immunization. Witness benefited immensely from immunization. Joe Nunie (11/5/06) (52)
- "In fact, for that reason, myself sitting down here, I allowed my own son to be initiated just for him to be immunised against bullets. I saw that. It had happened." Haroun Collier (12/5/06) (20-21)
- Witness explains there is a difference between initiation and recruitment into Kamajor society. Not every initiate becomes a combatant. Witness himself was initiated but was never a combatant. TF2-011 (8/6/05) (42-43)

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- Some would be initiated just to protect themselves from bullets. TF2-011 (8/6/05) (44)

*Belief in initiation and immunization*

Although it is perhaps understandably difficult to believe the claims of immunization and bulletproofing, prosecution and defence witnesses have universally expressed their beliefs and shared their personal experiences:

- Witness and other Kamajors believed "...all these powers that [Kondewa] has in him has been transferred to us so that nothing will be wrong with us, no cutlass will strike us. He's now satisfied. So all of us will go to the war front and come back with happiness and let no one be afraid." TF2-190 (10<sup>th</sup> February 2006 page 45 lines 16 to 20)
- Witness believes in the mystical powers that initiators give initiates. Witness could disable the guns of his enemies. No bullet could pierce him or even burn his shirt. Keikula Amara a.k.a. Kamabotie (17/5/06) (69)
- Witness believes "[v]ery seriously" in powers he gained from initiation. Fought at warfront and was never pierced by bullet. Keikula Amara a.k.a. Kamabotie (17/5/06) (22-23)
- Witness believes in mystical powers of initiators. Soldiers fired at him and no bullet ever pierced him or hurt him. Knew immunization to be effective. Believes he was unhurt because he adhered to laws given by Lahai Koroma (25/5/06 page 7)
- Kamajors met rebels and soldiers at Gofor, although they hadn't guns they trusted to medicines. Mohamed Kineh Swaray (25/5/06 page 104)
- Witness observed that members of CDF seemed "almost stupidly brave", convinced of their own invincibility. Lt. General David Richards, (21<sup>st</sup> February 2006 page 38 lines 26 to 29). He testified that this made CDF soldiers braver but noted that there was in fact no

reason to believe that this bravery led to more casualties. Lt. General David Richards (21<sup>st</sup> February 2006 page 106 lines 16 to 22).

In its opening statement the Prosecution sought to familiarize the Trial Chamber with the Kamajors:

“The Kamajors, it must be noted, were merely a group of ordinary local hunters before the emergence of Allieu Kondewa; simple folks of the countryside used to hunting deer, rodents, and other bush animals for domestic consumption. There were no special initiation rites, nor military objectives. Hinga Norman, Monina Fofana and Allieu Kondewa schemed to take a traditional spiritual belief system and manipulated it to their own ends. Vulnerable young men, desperate for survival in a devilish war, fall easy prey to these men.” (3/6/05) (16).

Skepticism about the motivations of initiators who were receiving payment is understandable. But it is worth noting that no witness expressed the belief that having paid for (or having one’s chieftdom pay for) initiation undermined its effect in any way. Even if an initiator were in part motivated by the desire to earn money, it is not “contradictory to say that an initiator could take advantage of this opportunity for some kind of personal enrichment and simultaneously be performing this very important function for the CDF that people recognize as necessary...[it] is no less meaningful for the initiate, the initiator or the community.” Dr. Daniel Hoffman (9/10/06) (117)

And relative to the immunization itself, there is nothing criminal or nefarious about providing Kamajors with reassurance as they go off to battle. There are numerous examples the world over of exactly the same phenomenon. Some use bullet proof vests, advanced technology which ensures against detection by the enemy, chaff deployed during dangerous flights and the distribution of incomplete or misleading information to soldiers, all of which are routine and legitimate tactical practices during times of war. The Kamajors should not be patronized or judged more harshly for using means that seem less advanced or more unbelievable to others.

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### *Consequence of breaking rules or taboos*

A clear understanding and acceptance was vital to the initiation and each initiate understood the consequence of not following them:

- Initiation rules given – not following means you will die. TF2-004 (9<sup>th</sup> November page 114 line 22)
- If one violated these rules, one would be pierced or killed by bullets. Ishmael Senesie Koroma (22<sup>nd</sup> February 2006 page 37 lines 17 to 24)
- Kondewa conducted Witness's initiation at Mokasi and said if one broke the rules, one would die in war. Witness adhered to rules. No bullet hit him. Kini Torma (2/6/06 page 19)
- Initiation rules were important for magic to work. TF2-140 (14/9/04) (127)
- Kondewa told witness the laws and that the consequences of breaking laws was that you would die if shot at. TF2-82 (17/9/04) (8)
- If you did not obey Kamajor laws you would die in battle – this was your punishment. Kamajors themselves did not need to punish; TF2-140 (14/9/04 page 172)
- “[I]f you follow the laws you will not be caught by a bullet.” Witness says that when he followed the laws he was shot and nothing happened. TF2-013 (24/2/05) (31)
- Kamajors were strictly adhering to those rules because “if you could adhere to the rules God will help you.” TF2-013 (24/2/05) (37)

Just the same, the rules were not universally complied with:

- Now, my question is -- and also you agree with me that some Kamajors strictly adhered to these rules. My question is -- A. Yes. Q. -- there were some recalcitrant Kamajors who completely ignored these rules; isn't it? A. There was some of them who'd never adhere to the rule. TF2-013 (24/3/05) (30-37)
- So many of hunters never returned, who went against that truth, those rules. You receive your punishment in the battlefield. If you breach [above rules] you bear the consequences. Samuel Hinga Norman (27<sup>th</sup> January 2006 page 48 lines 1 to 23)

It is easy to conflate the consequence of breaking the rules and the issue of discipline. Some believed that the consequence of breaking rules vitiated the need for discipline, since death would come to those who broke the rules. See, e.g. TF2-140, "[i]f you did not obey Kamajor laws you would die in battle – this was your punishment – Kamajors themselves need not punish.

Others made sincere attempts to bring discipline to bear, sometimes at great personal sacrifice to themselves and almost always without success. This will be discussed in further detail later in the section of the brief dealing with Superior Responsibility.

#### *Ongoing role of initiator*

As significant as the role of initiator is, he or she has no ongoing role or responsibility vis-à-vis initiates. They return to their chiefdoms, falling outside the influence of their initiators.

#### **Kamajors**

##### *Kamajors and CDF- chiefdom centrality*

The Kamajors played an unexpectedly significant role in the defence of civilians in Sierra Leone, although by virtually every measure they were ill equipped to do so. Theirs was a role that is best

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described as entirely reactant. “As the war proceeded and the relationship between [rebels] and the state military deteriorated, the Kamajors were a logical focal point around which rural communities could organize their own defense.”<sup>15</sup> Although the threats they were facing continued to change as the conflict wore on, the Kamajors’ role as protector of the community remained fairly consistent.<sup>16</sup> Witnesses described it as follows:

“We [my chiefdom] decided to establish contact with the group of Kamajors who had already started resisting the AFRC at Gendema.” (7:1-2) “I was assigned the task of actually establishing the contact, because I was myself a Kamajor, though I had been initiated into the society for protection only. So I made the journey.” Arthur Koroma (3/5/05) (7)

“I didn’t join it to go and fight. I joined it in order to protect my own life.” “Many, many, many, many” others joined for same reason. Mohamed Turay Collier (16<sup>th</sup> February 2006 page 69 lines 1 to 14).

Later on, the movement took on the role of civilian defense:

“I introduced idea of civil militia to Norman, his sub-chiefs.” I said Jiama Bongor, Baoma should cooperate in raising volunteers for civil militia in case either chiefdom were attacked. People were free to volunteer for proposed civil militia, regardless of age, sex, etc. It was not restricted to Kamajoisia. Dr. Albert Joe Demby (9<sup>th</sup> February 2006 page 114 lines 27 to 29, page 115, 10<sup>th</sup> February 2006 page 2 lines 23 to 29)

It was the “pride of every man, woman and grown-up child to contribute in the defence of his community”. Dr. Albert Joe Demby (10<sup>th</sup> February 2006 page 6 lines 11 to 17)

It is important to note that the term defence is being used in a civilian rather than military context and includes references to women and children. Every extended conflict takes a devastating toll on individuals by blocking their access to water food and shelter. And every individual had a role to

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play in fighting that enemy. This is the same phenomena referred to by Dr. Hoffman in explaining why guerilla warfare models (with which Kamajors share some features) are “only successful when civilians are not attacked...because people recognized you couldn’t have a centralized food distribution source, you needed to rely on the peasantry. Dr. Daniel Hoffman (10/10/06) (62-63)

The chieftaincy system in Sierra Leone concentrates a great deal of power on the local level. Since the movement grew organically out of chiefdoms it is not surprising that they maintained their centrality.

- “There was no one leader of all Kamajors. They had leaders in their respective chiefdoms.” Arthur Koroma (3/5/05) (15 –16)
- Although Kamajors were themselves displaced, “[t]here was never a time when ‘local’ [i.e. chiefdom] control over the kamajors broke down as a result of being displaced from their territories of control.”<sup>17</sup>
- Kamajor relationships are described in terms of patronage and it is remarked that these chiefdom based patron-client relationships maintained central even in the face of “business, bureaucratic, political or even military logics.”<sup>18</sup>

#### *Ro'e of Chiefdom in selection and promotion of Kamajors*

- Chiefdom elders screened initiates to ensure they were not criminals, had no bad record. Elders or parents paid for initiation. Initiator smears *moye* on an initiate’s forehead. If it sticks, he is fit for initiation. After this screening, initiator takes initiates to initiation bush. Admonishes initiates; tells them Kamajor rules. If initiate broke rules, he would die in war. Initiator would continue giving rules even after graduation ceremony. Whole chiefdom would attend, dance. Chiefdom elders would give Kamajors further rules. Haroun Aruna Collier a.k.a. Hardway (12/5/06)

- After village burned, section chief called a meeting in Baiama. Requested town chiefs

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supply five people from each town to be initiated into Kamajor society. Kini Torma (2/6/06 page 8)

- Who appointed you or made you a chiefdom Kamajor commander? A. My chiefdom people. BJK Sei (15/5/06) (80)
- Chiefdom people appointed witness commander and he later became overall commander when the chiefdom people came and said "[t]his man has fought so much for this land, so let's give him this position..." Kenei Torma (2/6/06) (49)
- If Kamajors were needed for a task, chiefdoms would be requested to supply a specified number. After task was completed, Kamajors would return to their home chiefdoms.
- Chiefs provided as many soldiers as possible to fight juntas in Blama. (2<sup>nd</sup> June 2006 page 11 lines 25 to 29)

#### *Role of Chiefdom in providing weapons and supplies*

- As chiefdom commander, Witness's duties were to inform chiefs when Kamajors needed food, single-barrel cartridges; and to inform chiefs when soldiers needed Kamajors to assist in operations. Chiefs bought food, cartridges, organized Kamajors to send to soldiers.

As Dr. Hoffman has explained, the question of how and from whom Kamajors received their weapons played a significant role relative to whether they likely yielded to orders of others. He explains the patronage system as the most dominant feature of Kamajor society noting that "everybody in a community requires that somebody stand for them. What we have is a network of relationships that are sometimes referred to as patron/client...you have certain individuals to whom you are indebted as a client and then there are certain individuals who function as patrons...Patrons...will funnel resources as they get outward...as resources come in, they are sent out along these webs to one's client." An ideal world would mean no need to switch patrons, but

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the less ideal the world is the greater the strain is on the patronage and the more likely it is that a client would switch for survival. Dr. Daniel Hoffman (9/10/06) (102-103) This was especially so during war time and among those under 35. Dr. Daniel Hoffman (9/10/06) (118) “[F]or some people, this moment of the war was that opportunity to bypass obstacles they saw set up in front of them to accumulating resource materials.” Dr. Daniel Hoffman (9/10/06) (118)

Receiving a weapon from a chiefdom authority or from an opponent meant you were either accountable (in the case of the former) or autonomous (in the case of the latter.) This phenomenon helps explain the lack of effective control among the actors. Once a Kamajor gained autonomy, the patronage link was often weakened beyond repair and he saw himself as accountable to no one. In fact capturing weapons meant that you could “disperse these along this web of clients and accumulate clients of your own” rather than being answerable to your patron. Dr. Daniel Hoffman (9/10/06) (120). “[F]or many, especially rural young people, young men, you know, an AK-47 was one of the first commodities that they had easy access to, commodities associated with a certain kind of privileged position.” Dr. Daniel Hoffman (9/10/06) (119)

#### *Role of Chiefdom in planning and ordering attacks*

- Received orders from paramount chiefs. Kini Torma (2/6/06 page 17)
- In Blama attack, Witness answered to chiefs. Chief Francis Dawa, Chief Mambu Pawa II. Dawa was head of all section chiefs in Small-Bo. Pawa was paramount chief of Langrama. Did not participate in fighting. Gave order from his own chiefdom. As chiefdom commander, witness took orders from paramount chiefs. Kamajor organization structured in towns: town commanders, section commanders, chiefdom commanders. Witness was answerable to no other commander than CO Sahr and Sahr answered only to chiefs, who gave him the assignment. Lahai Koroma (24/5/06) page 27 and 28

#### *Chiefdom centrality*

In addition to internal Kamajor struggles and the lack of coherence caused by decentralization and poor communication, there were additional problems posed by the fact that chiefdom authorities

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insisted on maintaining a strong hold over the Kamajors they had sent. One witness described the failed attempt for Kamajors to exert control over chiefdoms citing the example of a chiefdom demand that Kamajors remove checkpoints which had to be honoured. Joseph Ali Kavura Kogomoh II (1/6/06 pages 74 & 75)

Dr. Hoffman places the activities of Base Zero in context and explains that even it failed to function as a “forward offensive base” as intended. Dr. Daniel Hoffman (9/10/06) (73)

*Kamajor structures – planning, ordering, housing prisoners*

In addition to the challenges posed by having such strong local authority, Kamajors suffered from a lack of central command or structure, a fact that was noticed by the Kamajors themselves:

- Witness went to Base Zero to assist, had heard there was no command structure there. Did not succeed in establishing command structure. Alhaji Daramy Rogers (8/6/05) (41)
- “[T]he area of operation was so wide that in some cases, some fighters acted on their own, without the central command knowing. TF2-005 (16/2/05) (70)
- I saw that the whole organisation had an ineffective command and control. TF2-222 (17/2/05) (90)
- Witness testified that he had no commander and simply went where he wished. TF2-080 (6<sup>th</sup> June 2005 page 31 lines 5 to 14 )
- Kamajors came in March 1998 in different groups, all mixed up as they came. TF2-168 (3<sup>rd</sup> March 2005 page 46)
- Kamajors were a “faction that was created by Hinga Norman with the aim of saving us, but these Kamajors were disorganised. They are not under control.” TF2-088 (25<sup>th</sup> November 2004 page 93 lines 11 to 13)

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- “I didn’t see any control although Kamajors have a leader” TF2-167 (8<sup>th</sup> March 2005 page 48 lines 21- 29,page 49 line 1)
- Witness described CDF as a “loose organization of various command posts” with attacks directed locally. “Ours was a guerrilla war. You don’t plan it in the centre, you plan it on the spur of the moment. Otherwise it will leak and you are finished.”
- I had no commander. I had nobody who controlled me. Wherever I wished to go that was where I wished to. I had no commander. TF2-080 (6/6/05) (32)
- We were not trained. We were not given weapons. Whatever we wished to do is what we did. TF2-080 (6/6/05) (33)

At times not even the fighters themselves were supplied to Kamajors:

- Joe Tamide got the Kamajors for the attack on his own; they were not assigned to him. TF2-082 (15/9/04) (11)

When asked about the effect of poor central communication among Kamajors and its effect Dr. Hoffman notes “...if there is anything that points to this argument of a kind of conglomeration of local dynamics is this particular question. There simply was nobody in a position to make declarations that would be considered the word for the movement as a whole. The communication capacity wasn’t there.” Dr. Daniel Hoffman (9/10/06) (99) This is of additional relevance as the Trial Chamber considers issues of Superior Responsibility, discussed in greater detail hereinafter.

This lack of central command resulted in a notable lack of coordination and attacks that were in fact self-planned:

- There were two types of military operation that took place during this period. One were the dispersed defensive operations that took place - [...] Yes, these are the one that took

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place in the regions that the CDF still controlled primarily in the north and east of the country. They were conducted by those forces, those territorial defence forces still in place. *I have not seen evidence that these were coordinated activities.* TF2-EW1 (14/6/05) (33) (emphasis added)

- The attack was at reservation. It was there that the junta was living. Q. Mr Koker, who ordered that attack? A. That attack was just a random attack. It was not ordered by anybody.” Kenneth Koker 20/2/06 (60)
- Who actually gave the order to attack Tongo Field? ... Are you saying that it was you that ordered the attack because there wasn't anyone else? We organised ourselves. We sat down, came together, just to protect our lives and to fight for our lives. We, too, went and attacked those people. Those orders came from us. BJK Sei (16/5/06) (13-14)
- You did say it was a random attack, is it? A. Yes. Q. Could you explain to this Court what do you mean by that random attack? A. Yes. The attack in which we didn't get order from the chiefdom, which we went and did on our own because we wanted -- because we wanted arms and ammunition from them because that was the place they were based. Kenneth Koker 20/2/06 (83) This phenomena is referred to in Dr. Hoffman's aforementioned explanation of the value of the AK-47. This is another example of the militarization which “increasingly presents itself to some as a way to opt out to subvert the injustices of patronage by violently leveling the field. Here, belonging an[d] accumulation become indistinguishable.” Dr. Daniel Hoffman (10/10/06) (6)
- In Witness's Lower Bambara Chiefdom, Kamajor chief, other chiefs planned war. Keikula Amara a.k.a. Kamabotie (17/5/06 pages 41 & 42)
- After coup, Kamajors attacked junta headquarters at Bo reservation. Attack not ordered by anyone.

- How did you decide and plan how the war was to be fought? A. We did the planning amongst ourselves, the commanders. Mohammed Bonnie Koroma (22/5/06) (38)
- Still those of us who planned it were the people who went and attacked Kenema. Nobody gave us orders. Mohammed Swaray (26/5/06) (12)
- Now the attack on Taiama, where was the planning done? A. It is the same Moyamba District, those chiefs who were there, and all those others. Kenei Torma (2/6/06) (36)

Kamajors made several attempts at central structures, none of which were successful:

#### **Chief Defence Committee**

- People of chiefdom formed Civil Defence Committee. Organized chiefdom into sections. Witness was made defence committee chairman for Yumbuma town. Mohamed Kaineh (19/5/06 pages 5 & 6)

#### **NCC**

- The NCC were asked to provide food, condiments for National War Council. NCC had never heard of War Council. Investigators, were told it had existed at Base Zero, “responsible for dealing with all matters concerning the war”, contained appointment committee, logistics committee, etc. NCC abolished War Council as it had been superseded by NCC Dr. Albert Joe Demby (10<sup>th</sup> February 2006 pages 73 to 79, 13<sup>th</sup> February 2006 page 5 lines 11 to 27)

#### **War Council**

- Civilians, traditional rulers traditionally appointed chairman of War Council. TF2-201 (4<sup>th</sup> November 2004 page 87 lines 21 to 29, page 88 lines 1 to 7.)

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- Conflicting testimony about Mr. Kondewa's membership but bulk of evidence indicates he was not a member. See, .e.g. Haroun Aruna Collier a.k.a. Hardway (12/5/06 pages 39 & 40); TF2-014 (10/3/05 (33-34); TF2-008 (16/11/04) (78-79)
- There is evidence that Mr. Kondewa was in fact critical and disrespectful of the council. Witness says Mr. Kondewa accused War Council members of taking shoes, uniforms. Permitted Kamajors to pelt War Council members with stones. Said the Council was fake, was just there to complicate matters. TF2-079 (26<sup>th</sup> May 2005 page 45 lines 8 to 29, page 46 lines 16 to 29)

It should however be noted that even without central structures the Kamajors were able to deal with the prisoners taken after attacks:

- One Kamajor witness testified that he himself was taken to Kamajor HQ where he was questioned and later freed. (TF2-057 30<sup>th</sup> November 2004 page 12)
- Many prisoners were brought to Witness in Panguma from Tongo. Witness released them because they were unarmed, were not junta forces. B.J.K. Sei (16/5/06 pages 20 & 21)
- B.J.K. "said that anybody that was captured, whether it was civilian or rebel, he should be brought over to the headquarters." TF2-027 (18/2/05) (110)

Although much has been made of the lack of detention facilities maintained by Kamajors and the argument put forth that this lack is proof of a Kamajor policy to kill all prisoners. This argument is rebutted more fully hereinafter, but it should be noted that such facilities were only absent in locations where no combatants would be found (e.g. Talia) or where they could easily be transferred to ECOMOG. Prisoners were either brought to Headquarters or turned over to ECOMOG, depending on where they were taken into custody. This clearly contradicts the prosecution's argument that because CDF did not have detention facilities they must have been killing all captured soldiers.

### *Discipline*

The subject of discipline within the Kamajors is complicated, partly as a consequence of the lack of central command. This was of course exacerbated by the competing authority of the chiefdom, commanders and ECOMOG. The results are uneven, inconsistent and chaotic, leaving the clear impression that there was no effective disciplinary system in place.

- It was noted that groups on periphery of main CDF often did what they wanted rather than what they were told. Lt. General David Richards (21<sup>st</sup> February 2006 pages 38 & 39). This is a natural outgrowth of having a society in which the local plays a more significant role than the central.
- “[F]rom the onset as pretty much the day, the Kamajors were not disciplined.” Lack of discipline was responsible for the uncontrollable nature of the activities. TF2-008 (23/11/04) (32-33)
- “On the battlefield we certainly see a lack of discipline.” TF2-EW1 (14/6/05) (37)
- The commanders' authority and responsibility to that extent, discipline -- the disciplining of their men on the ground was entirely their own, My Lord, entirely the responsibility of the commanders.” Samuel Hinga Norman (5/2/06) (73)
- Disciplinary committee handled disciplinary issues. The committee did not inflict punishment but referred to coordinator. In severe cases, coordinator would seek War Council advice. Kamajors' discipline was responsibility of their commanders. Distinction between discipline and punishment.
- Kamajors were under control of paramount chiefs. Dr. Albert Joe Demby (15<sup>th</sup> February 2006 page 30)

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Where disciplinary measures were successful they were meted out by patrons with particular strength and determination as well as localized control.

- Witness's husband investigated reports against Kamajors. Agrees if Kamajors did something bad, her husband would be in trouble. Wuiyatta Sheriff (9/5/06) (54-55)
- Witness was in charge of disciplining Kamajors in his chiefdom. Kamajors who wronged civilians received 12 lashes. Keikula Amara a.k.a. Kamabotie (18/5/06 page 72)
- "Timide established his own system of discipline in his force." Iron report D3.6.

#### *Relationship with ECOMOG*

It is difficult to understand how the Kamajors and CDF functioned without understanding their relationship with ECOMOG. There has been a great deal of evidence on this issue, much of it confusing and contradictory. ECOMOG invited Kamajors to a meeting at Kenema, 20 February 1998. They thanked the Kamajors for their cooperation and contribution to Kenema operation and said they didn't know terrain of Sierra Leone and thus wanted Kamajors to continue supporting them. They also promised to provide Kamajors with any fighting implements they needed. At different times and in different parts of Sierra Leone ECOMOG related to Kamajors as follows:

#### *Supplies*

- Witness heard Eddie Massallay on the radio summoning those fighting for exiled government to Bo Waterside. Kamajors went there. Stayed as guests of ECOMOG. ECOMOG provided food. Siaka Lahai (16/5/06 page 93)
- "Colonel Yayah Abu Bakarr gave us about a platoon of ECOMOG troops and two personnel carriers, armoured personnel carriers." Arthur Koroma, 3 May 2005 (31/5/9 page 31)

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- ECOMOG donated to the CDF logistics, including a truck and two Mitsubishi pick-up vans. In addition to that, they used to provide the CDF, through me then at that time, all that was needed for a fighting force, a guerilla fighting force. I would take these materials across the border during weekends into a border village called Fairo in Sierra Leone. Mustapha Lumeh (5/5/06) (71)
- Food that was coming through the ECOMOG, it was he and the ECOMOG who had been distributing this food to us, rice.” Kenneth Koker 20/2/06 (57)
- In Kenema, Witness’s group presented themselves to ECOMOG commander Col. Yayah Abu Bakarr and reported that they had no supplies. Bakarr provided arms, ammunition, medicine, food, and a van. Group returned to Bunumbu with these. Mohamed Kaineh (19/5/06 pages 31 & 32)
- As a number of Kenema witnesses from testified to waiting the arrival of ECOMOG who arrived with a support unit in Kenema five days after the Kamajors. TF2-223 (28/9/04) (102)

### *Planning and Orders*

- While Witness was in Bunumbu, Col. Bakarr sent word that Witness’s Kamajors should meet ECOMOG to take Segbwema. Mohamed Kaineh (19/5/06 page 32)
- “Once we were together with ECOMOG the command was always -- we were just an auxiliary. Arthur Koroma (3/5/05) (31)
- W heard that Ks were working under ECOMOG command at the end of 1997-beginning of 1998. (TF2-068 18/11/04 page 49)
- “But who is commanding this group? Who is in charge of that group? THE WITNESS: The ECOMOG lieutenant. The ECOMOG lieutenant.” Arthur Koroma (3/5/05) (33)

- Now, when there was this joint operation between ECOMOG and CDF who was in command? A. ECOMOG. Q. ECOMOG. A. We supplied them the men. Q. Yes. And they gave the command? A. Yes. Q. Thank you. And this was the general pattern whenever you fought alongside ECOMOG? A. Yes. TF2-005 (17/2/05) (62)
- Witness and his troops were under orders of ECOMOG commander. ECOMOG commander provided food, arms, ammunition to Kamajors. Joe Nunie (11/5/06 page 44)
- ECOMOG was in control of the Kamajors during that period in SS Camp. Lahai Koroma (24/5/06) (54)
- As task force commander, witness worked alongside ECOMOG and took orders from ECOMOG. Osman Vandy (Vanjawai) (17<sup>th</sup> February 2006 page 76 lines 23 to 29, page 88 lines 19 to 29)
- ECOMOG General Khobe “had tactical control of forces, controlled how they were organized.” Lt. General David Richards, (21<sup>st</sup> February 2006 page 14 lines 10 to 13)
- Characterizes Norman as “an inspirational figurehead” who affected people’s morale, but maintains General Khobe exercised “hour-to-hour control of the CDF”. Lt. General David Richards –(21<sup>st</sup> February 2006 page 67 lines 1 to 4 )
- When Witness discussed with the President events of January – February 1999 from a military perspective, it was with General Khobe and General Shelpidi, not with Norman, “...because he wasn’t running the battle. That was their job.” Witness did not see President give military orders to Norman, he gave them to Gen. Shelpidi, Gen. Khobe. Witness saw Norman’s primary task as reconstructing Ministry of Defence, defence policy, re-equipping army, rather than day-to-day defence of Freetown. Lt. General David Richards (21<sup>st</sup> February 2006, page 25, page 65 lines 17 to 25, page 101 lines 1 to 29)

- Letter from Major Omadachi in the office of CDS, 8 August 1998. (48) Letter says Kenema District is under operational command of 15<sup>th</sup> ECOMOG brigade. Says Kamajors should work alongside ECOMOG troops there. Witness notes there are additional similar letters. Arthur Koroma (3/5/06 page 54)
- ECOMOG commanded Kamajors during the attack on Kenema, February 1998. ECOMOG continued commanding Kamajors in Kenema after capture of town. Arthur Koroma (3/5/06) page 46
- ECOMOG held meeting with Kamajors. Said they would dictate whether fighting occurred. Fallah Bindi (23/5/06 page 15)
- When we were at Kpa, we heard that ECOMOG had joined our brothers [, the Kamajors,] from Bo Waterside to come to Kenema, and they were coming, capturing those areas. Kenneth Koker (20/2/06) (41)
- After, when they had captured the whole of the town, they called a general meeting for all of the Kamajor commanders. Q. What happened at that meeting? A. They told us that from that particular point no Kamajor should not do anything by himself; they should take orders from ECOMOG. Q. Who addressed you at that meeting? A. It was one General Buhari Musa. Q. Continue, please. A. He said anything that the Kamajors wanted to do, they should take orders from them. And it was from that very point that we started taking orders from them. Q. Yes? A. We started taking orders from them within the township of Bo.” Kenneth Koker (20/2/06) (50)
- “...all matters relating to combat, to fighting, logistics and everything was actually done in conjunction with ECOMOG, and it was the ECOMOG brigade commander or his subordinates who showed us our targets, what to do and what not to do.” Arthur Koroma (3/5/06) (42)
- Kenema was captured by “ECOMOG and the Kamajors.” Ishmael Koroma (23/2/06) (7)



- The entire Kenema District, including SS Camp, it was under the control of ECOMOG. The lieutenant was called Lieutenant Uma, Lieutenant Uma. He was the one who was there.” Ishmael Koroma (23/2/06) (26)
- Even when it came to general strategy and tactics, there was a time when we decided to attack Zimmi and, in our discussions with Eddie Massallay, he told us that at some appointed time he would talk to ECOMOG to provide fire support, to shell Zimmi before we entered there. Of course, it never actually happened, but ECOMOG was mentioned in the general planning.” Arthur Koroma (3/5/06) (15–16)
- Kamajors fought alongside ECOMOG during the takeover of Bo. TF2-057 (30/11/04) (67)
- By March 1998, ECOMOG was in control of security in Bo. TF2-057 (30/11/04) (79).
- After ECOMOG set up shop at J. Matta’s Compound, joint patrols were conducted searching for arms and ammunition; prior to that, it was the Kamajors alone who executed the patrols. TF2-057 (30/11/04) (67).
- ECOMOG arrived in Bo approximately five days after the Kamajors. TF2-056 (12/6/04) (72)
- CDF fought alongside ECOMOG. TF2-011 (8/6/05) (51)

#### *Surrender of prisoners*

- In Kenema Kamajors took civilians to ECOMOG who told them not to burn houses but to report such junta houses to them. Brima Moriba (23/5/06 pages 15 & 16)
- Witness acknowledges Kamajors arrested junta collaborators. Handed them to ECOMOG, who were in charge of Kenema security. Brima Moriba (23/5/06 page 31)

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- ECOMOG took prisoner from Kamajors. (TF2-079 26/05/05 page 78 lines 11 to 14)
- One Kamajor testified that they had instructions from War Council to turn over captured soldiers, ammunition to ECOMOG. Joe Nunie (11/5/06 page 35)

### *Discipline*

- ECOMOG took disciplinary action against CDF personnel at Bo Waterside, Kenema, Bo Town, Mile 91, Freetown, and Kono. Disciplined CDF personnel who were under their command. Samuel Hinga Norman (30/01/06 pages 34 – 38)
- In April 1998 strong disciplinary measures taken against Kamajors for their excesses. According to minutes of meeting, “War Council formally requests ECOMOG to transfer to SDFSL the specific responsibility of the discipline of CDFSL fighting forces.” (TF2-222 -18<sup>th</sup> February 2005 page 26 lines 27 to 29, page 30 lines 7 to 29 and page 31 lines 1 to 3)
- One witness testified that he saw Kamajors begin looting until ECOMOG intervened to stop them. TF2-057 (29<sup>th</sup> November 2004 page 116)

### **Superior Responsibility, pursuant to Article 6(3)19**

It is argued that as a consequence of holding a position of superior responsibility and exercising command and control over his subordinates, Allieu Kondewa is individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute. He is alleged to be responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinates were about to commit such acts or had done so and he failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

The defence submits that Mr. Kondewa does not bear superior responsibility for any of the

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