"fundamental guarantees" of humane treatment under the Additional Protocol. This prohibition was, in turn, based on Article 33 of the Fourth Geneva Convention which prohibited "all measures of intimidation or of terrorism" of or against protected persons.

169. Article 51(2) of Additional Protocol I and Article 13(2) of Additional Protocol II further prohibit "acts or threats of violence the primary purpose of which is to spread terror among the civilian population". The Chamber concurs with the ICTY Appeals Chamber in *Galic*, where it found that the prohibition of terror against the civilian population was a part of customary international law from at least the time it was included in those treaties[213] and that the offence gave rise to individual criminal responsibility pursuant to customary international law.[214]

170. In addition to these general elements, the specific elements of crime of acts of terrorism can be described as follows:

> (i) Acts or threats of violence directed against persons or property;
>
> (ii) The Accused intended to make persons or property the object of those acts and threats of violence or acted in the reasonable knowledge that this would likely occur; and
>
> (iii) The acts or threats of violence were committed with the primary purpose of spreading terror among persons.

171. The first element relates to the *actus reus* of the offence. In *Galic*, the Appeals Chamber of the ICTY addressed the elements of the crime of acts or threats of violence the primary purpose of which is to spread terror among the civilian population. The Chamber held:

> The acts or threats of violence constitutive of the crime of terror shall not however be limited to direct attacks against civilians or threats thereof but may include indiscriminate or disproportionate attacks or threats thereof. The nature of the acts or threats of violence directed against the civilian population can vary; the primary concern [...] is that those acts or threats of violence be committed with the specific intent to spread terror among the civilian population.[215]

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[213] *Prosecutor v. Galic*, IT-98-29-A, Judgement (AC), 30 November 2006, paras 87-90 [*Galic* Appeal Judgement].
[214] *Ibid.*, paras 93-98. Justice Schomburg dissented on this finding and concluded that there is no basis to find that this act was penalised beyond any doubt under customary international criminal law at the relevant time, *see* para. 2 of the Separate and Partially Dissenting Opinion of Judge Schomburg.
[215] *Galic* Appeal Judgement, para. 102.

172. The offence of acts of terrorism under Article 4(2)(d) of Additional Protocol II is very broad. The Chamber is satisfied that this prohibition includes both acts and threats of violence.[216]

173. Indeed, as the Chamber held in the Rule 98 Decision in this case, the offence "extend[s] beyond acts or threats of violence committed against protected persons to 'acts directed against installations which would cause victims terror as a side-effect'".[217] Thus, if attacks on property are carried out with the specific intent of spreading terror among the protected population, this will fall within the proscriptive ambit of the offence of acts of terrorism. The Chamber emphasises that all types of civilian property, including that which belongs to individual civilians, are protected. The focus of the offence is clearly on protecting persons from being subjected to acts of terrorism and the means used to spread this terror may include acts or threats of violence against persons or property.

174. The *mens rea* requirement of the offence of the acts of terrorism is found in the next two elements. To satisfy these elements, the Prosecution need only establish that the Accused intended to spread terror and does not need to demonstrate that the protected population actually was terrorised. The argument that actual terrorisation of the civilian population is a required element of the offence was rejected by both the Trial Chamber and the Appeals Chamber of the ICTY in *Galic* based on the rejection of attempts in the *travaux préparatoires* to Additional Protocol I to replace the intent to terrorise with actual terror.[218] The Chamber is persuaded by this reasoning and finds that the actual infliction of terror is not a required element of the offence.

175. As the Chamber has already observed, the defining element of the offence of acts of terrorism is the specific intent to spread terror among the protected population. It is clear that civilian populations are frightened by war and that legitimate military actions may have a consequence of terrorising civilian populations. This offence is not concerned with these types of terror: it is meant to criminalise acts or threats that are undertaken for the primary purpose of spreading terror in the protected population. Thus, the specific intent to spread terror must be proven as an element of the offence. This is not to say, however, that the intent to spread terror

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[216] Following the wording of Article 4(2) of Additional Protocol II, Article 3(h) of the Statute specifically provides that threats to commit any of the acts listed in Article 3 are also included. *See further Galic* Appeal Judgement, para. 102.
[217] Rule 98 Decision, para. 112. *See also* ICRC Commentary on Additional Protocols, para. 4538.
[218] *Galic* Appeal Judgement, paras 103-104 and *Galic* Trial Judgement, para. 134.

must be established by direct evidence or that it needed to have been the only purpose behind the act or threat.[219]

3.3.7. Collective Punishments (Count 7)

176. The Indictment under Count 7 charges the Accused with the offence of collective punishments as a serious violation of Common Article 3 and of Additional Protocol II pursuant to Article 3(b) of the Statute. This Count relates to the Accused's alleged responsibility for the commission by the CDF, largely Kamajors, of the crimes charged in Counts 1 through 5 in order to punish the civilian population for their support to, or failure to actively resist, the combined RUF/AFRC forces.

177. The prohibition against collective punishments in Article 3(b) of the Statute derives from Article 4(2)(b) of Additional Protocol II, which is in turn based on the first paragraph of Article 33 of Geneva Convention IV.

178. The prohibition on collective punishments has been included in conventions on international humanitarian law since 1899[220] and was relied on by the ICTY Trial Chamber in *Martic* to find that the prohibition on reprisals is also part of customary international law.[221] In light of the above, the Chamber finds that there is individual criminal responsibility for the offence of collective punishments at customary international law.[222]

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[219] In addressing the specific intent requirement, the Appeals Chamber of the ICTY stated "[T]he purpose of the unlawful acts or threats to commit such unlawful acts need not be the only purpose of the acts or threats of violence. The fact that other purposes may have coexisted simultaneously with the purpose of spreading terror among the civilian population would not disprove this charge, provided that the intent to spread terror among the civilian population was principal among the aims. Such intent can be inferred from the circumstances of the acts or threats, that is from their nature, manner, timing and duration" (*Galic* Appeal Judgment, para. 104)

[220] *See* Article 50 of the Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899 [Hague Regulations, 1899]; Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907 [Hague Regulations, 1907]; Article 33 of Geneva Convention IV; Article 87 of Geneva Convention III; Article 75(2)(d) of Additional Protocol I; and Article 4(2)(b) of Additional Protocol II. *See also* Article 75(4)(b) of Additional Protocol I and Article 6(2)(b) of Additional Protocol II which provide that no one shall be convicted of an offence except on the basis of individual penal responsibility.

[221] *Prosecutor v. Martic*, IT-95-11-R61, Decision (TC), 8 March 1996. The Chamber found that the argument that the prohibition of reprisals against civilians in non-international armed conflicts is part of customary international law is "strengthened by the inclusion of the prohibition of 'collective punishments' in paragraph 2(b) of Article 4 of [Additional] Protocol II."

[222] While the offence of collective punishments has not yet been prosecuted by either the ICTY or the ICTR, this Chamber has considered relevant jurisprudence from the cases of the international military tribunals from World War

179. The Chamber notes that the prohibition against collective punishments is identified broadly as one of the fundamental guarantees of humane treatment in Article 4 of Additional Protocol II. The Chamber finds that this prohibition is to be understood as encompassing not only penal sanctions but also any other kind of sanction that is imposed on persons collectively.[223]

180. Based on Article 4 of Additional Protocol II to the Geneva Conventions and Article 33 of the Fourth Geneva Convention, the Chamber is of the view that the constitutive elements of the crime of collective punishments under Article 3(b) of the Statute are:

> (i) A punishment imposed collectively upon persons for omissions or acts that they have not committed; and

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11. *See*, for example, *Haas and Priebke case*, Italy, Military Court of Appeal of Rome, Judgement, 22 July 1997 (available at http://www.difesa.it/GiustiziaMilitare/RassegnaGM/Processi/Priebke+Erich/08_22-07-97.htm, last visited July 2007); *In re von Mackensen and Maelzer* (Ardeatine Caves Massacre Case), Rome British Military Court, 30 November 1946, in Hersch Lauterpacht, ed., *Annual Digest and Report of Public International Law Cases*, Year 1946 (London: Butterworth & Co., 1940-1955) pp. 258-259; *The Trial of Albert Kesselring*, British Military Court at Venice, 17 February - 6 May 1947, United Nations War Crimes Commission, *Law Reports of Trials of War Criminals* (London: H.M.S.O., 1947-1948), vol. 8, 1949, pp. 9-14; and *In re Kappler*, Military Tribunal of Rome, 20 July 1948, in Hersch Lauterpacht, ed., *Annual Digest and Report of Public International Law Cases*, Year 1946 (London: Butterworth & Co., 1940-1955), pp. 471-482; R. John Pritchard and Sonia Magbanua Zaide, eds., *The Tokyo War Crimes Tribunal* Volume 20, annex No. A-6 (New York: Garland Publishing, 1981), pp. 59, 49, and 705; M.J. Thurman and Christine A. Sherman, *War Crimes: Japan's World War II Atrocities* (Paducah: Kentucky: Turner Publishing Company, 2001), p. 245. Furthermore, this Chamber takes the view that the prohibition of collective punishments in international humanitarian law is based on one of the most fundamental principles of domestic criminal law that is reflected in national systems around the world: the principle of individual responsibility. The principle of individual criminal responsibility requires that, whether an accused be tried singly or jointly, a determination must be made as to the penal responsibility and appropriate punishment of each individual on trial. Most civil law and Islamic states contain explicit references to this principle in their constitutions or penal legislation. *See*, for example, *Loi No. 92-1336 du 16 décembre 1992 relative à l'entrée en vigueur du nouveau code pénal et à la modification de certaines dispositions de droit pénal et de procédure pénale nécessaires à cette entrée en vigueur*, published in the Journal Official de la République française, No. 292, 23 December 1992, pp. 17563-17595, Article 121-1 (France); *Costituzione della Repubblica Italiana*, effective since 1 January 1948, published in La Gazzetta Ufficiale 27 dicembre 1947, No. 298, at Article 27(1) (Italy); *Constitución de la Nación Argentina*, adopted on 22 August 1994, Section 119 (Argentina); *Constitución de la República Bolivariana de Venezuela*, adopted on 30 December 1999, published in La Gaceta Oficial del jueves 30 de diciembre de 1999, No. 36.860, Article 44(5) (Venezuela); *Constitution of the Arab Republic of Egypt*, 11 September 1971, Article 66 (Egypt); *The Constitution of the Kingdom of Saudi Arabia*, adopted by Royal decree of King Fahd bin Abdul Aziz in March 1992, Article 38 (Saudi Arabia); *The Constitution of Tunisia*, adopted on 1 June 1959, Article 13 (Tunisia). In common law countries, on the other hand, the principle is implicit and is considered as a corollary to the principle of *nullum crimen sine lege* and the requirement of proof of *mens rea* to establish criminal responsibility. This principle is also contained in international human rights treaties, including Article 5(3) of the American Convention on Human Rights, (1978), 1144 U.N.T.S. 123 and Article 7 of the African Charter on Human and Peoples' Rights, (1986), O.A.U. Doc. CAB/LEG/67/3 Rev. 5).

223 *See* ICRC Commentary on Geneva Convention IV, Article 33, p. 225 and ICRC Commentary on Additional Protocols, paras 4535-4536.

(ii) The Accused intended to punish collectively persons for these omissions or acts or acted in the reasonable knowledge that this would likely occur.

181. As noted above, the term punishment in the first element is meant to be understood in its broadest sense and refers to all types of punishments. It does not refer only to punishments imposed under penal law.

3.3.8. Enlisting Children under the Age of 15 into Armed Forces or Groups or Using Them to Participate Actively in Hostilities (Count 8)

182. The Indictment under Count 8 charges the Accused with the offence of enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities as an "other serious violation of international humanitarian law" pursuant to Article 4(c) of the Statute.[224] This Count alleges that the Accused are responsible for the initiation or enlistment of children under the age of 15 into armed forces or groups, or the use of children under the age of 15 to participate actively in hostilities, throughout the Republic of Sierra Leone, at all times relevant to the Indictment.[225]

183. The Chamber observes that the offences related to child soldiers, viewed against the background of the Statutes of the ICTY and the ICTR where no such provisions exist, are novel in the Statute of the Special Court for Sierra Leone that came into force on 16 January 2002.[226]

184. In this regard, the Chamber recalls the preliminary motion filed by the Accused Norman, challenging the jurisdiction of the Special Court to try him for any offence under Article 4(c) of the Statute, on the basis that it would violate the principle of *nullum crimen sine lege*, since it did not amount to a crime under customary international humanitarian law at the time of the alleged offence. The Chamber determined that the motion raised a serious issue relating to jurisdiction under the mandatory provisions of Rule 72(E) of the Rules, and referred the matter to the Appeals Chamber. The Appeals Chamber dismissed the motion, and ruled that the offence of recruitment

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[224] Indictment, para. 29.
[225] Indictment, paras 9, 16-17.
[226] These offences were later codified in the Rome Statute instituting the International Criminal Court that came into force on 1 July 2002, respectively in its Article 8(2)(b)(xxvi) as war crimes in relation to international armed conflicts, as well as under its Article 8(2)(e)(vi), as war crimes in respect of armed conflicts not of an international character.

of child soldiers below the age of 15 did in fact constitute a crime under customary international law which entailed individual criminal responsibility prior to the time frame of the Indictment.[227]

185. The Chamber is cognisant of the fact that there are no express treaty provisions in the Geneva Conventions of 1949 proscribing the recruitment, conscription and enlistment, or use of children under the age of 15 to participate actively in hostilities except to the extent only of a prohibition under Article 51(1) of the Fourth Geneva Convention on "compelling protected persons to serve in the armed or auxiliary forces."

186. The Chamber notes that the Geneva Conventions do not directly address the recruitment of children for the following reason:

> Where children had participated in hostilities [during World War II] it had been as irregulars – partisans or resisters. Such participation was consequently seen by the Allied powers as voluntary and heroic or (at best) an unfortunate necessity. *It was seen as something exceptional and not, consequently, requiring legal regulation; being unlikely to be repeated.*[228]

187. The Chamber considers that, by the time the Additional Protocols were negotiated, the need to explicitly prohibit the recruitment of children had emerged. As noted by the Appeals Chamber, both Additional Protocol I and Additional Protocol II explicitly proscribe the recruitment of children under the age of 15. Article 4(3)(c) of Additional Protocol II states categorically that "children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities".[229] Although the prohibition in Article 77(2) of Additional Protocol I is more narrowly circumscribed, it also clearly prohibits the recruitment of children "[t]he Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces."[230]

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[227] Appeal Decision on Child Recruitment, para. 53.

[228] Matthew Happold, *Child Soldiers in International Law* (Manchester: Manchester University Press, 2005), p. 55 (emphasis added) [Happold, *Child Soldiers*]. Happold also cites the perception, prevalent during the period when the Additional Protocols were drafted, that "the regulation of children's participation in hostilities was ... primarily an internal matter."

[229] Additional Protocol II, Article 4(3)(c).

[230] Additional Protocol I, Article 77(2). The second sentence of Article 77(2) states: "In recruiting among those persons who have attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest."

188. The Appeals Chamber also derived some support for its conclusion as to the proscription of the offences in question from the *Convention on the Rights of the Child*[231] which prohibits the recruitment of children under the age of 15 as soldiers.[232]

189. Relying on the Appeals Chamber Decision, this Chamber acknowledges, as existing law, that "child recruitment was criminalised before it was explicitly set out as a criminal prohibition in treaty law and certainly by November 1996, the starting point of the time relevant to the Indictment", the implication being that "the principle of legality and the principle of specificity are both upheld".[233]

190. In this Decision, the Appeals Chamber dealt specifically with the offence of "recruitment" of child soldiers. The actual language of Article 4(c) of the Statute uses the terms "conscription," "enlistment" and "using [children] to participate actively in hostilities". Count 8 of the Indictment, however, makes reference to the concepts of "enlistment", "using children to participate actively in hostilities", and also "initiation" of children into the armed forces or groups. The Chamber deems it necessary to examine these terms and their relevance to this case, specifically, whether "enlistment", "using children to participate actively in hostilities", and also "initiation" of children into the armed forces or groups, are prohibited under customary international law.

191. The Chamber notes that "recruitment" is the subject of the proscription under the Geneva Conventions of 1949 and the Additional Protocols of 1977 rather than "enlistment", "conscription" or "use" of child soldiers, the terms used in the Statute. However, it is pertinent that the notion of "recruitment", is interpreted in the ICRC Commentary to Article 4(3)(c) of Additional Protocol II compendiously to encompass "conscription", "enlistment" and the "use of children to participate actively in hostilities". To this effect, paragraph 4557 of the Commentary states:

> The principle of non-recruitment also prohibits accepting voluntary enlistment. Not only can a child not be recruited, or enlist himself, but furthermore he will not be 'allowed to take part in hostilities', i.e. to participate in military operations such as gathering information,

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[231] *Convention on the Rights of the Child*, United Nations, Treaty Series, Vol. 1577, p. 3, 20 November 1989.
[232] See also the *African Charter on the Rights and Welfare of the Child*, OAU Doc. CAB/LEG/24.9/49 (1990), Articles 22(1) and 22(2).
[233] Appeal Decision on Child Recruitment, para. 53.

> transmitting orders, transporting ammunition and foodstuffs, or acts of sabotage.[234]

192. Both in everyday language,[235] and in the commentary quoted above, it is clear that voluntary enlistment is but one type of enlistment. The Chamber therefore finds that the term "enlistment" could encompass both *voluntary* enlistment and *forced* enlistment into armed forces or groups, forced enlistment being the aggravated form of the crime. In the Chamber's opinion however, the distinction between the two categories is somewhat contrived. Attributing voluntary enlistment in the armed forces to a child under the age of 15 years, particularly in a conflict setting where human rights abuses are rife, is, in the Chamber's view, of questionable merit. Nonetheless, for the purposes of the Indictment, where "enlistment" alone is alleged, the Accused is put on notice that both voluntary and forced enlistment are charged.

193. In defining the phrase "using children to participate actively in hostilities", the Chamber has considered the Commentary given on the relevant statutory provision in the Rome Statute establishing the ICC on the issue, which states *inter alia*:

> The words "using" and "participate [actively]" have been adopted in order to cover both direct participation in combat and also active participation in military activities linked to combat such as scouting, spying, sabotage and use of children as decoys, couriers or at military checkpoints. It would not cover activities clearly unrelated to the hostilities such as food deliveries to an airbase or the use of domestic staff in an officer's accommodation. However, use of children in a direct support function such as acting as bearers to take supplies to the front line, or activities at the front line itself, would be included within the terminology.[236]

194. The Chamber recognises that the phrase "armed forces or groups" has been the subject of a variety of legal interpretations. Noting some treaty variations in the use of this phrase, as is the case with the reference in the Brussels Declaration of 1874 of "militia and volunteer corps" and *levées en masse* as loyal combatants, and similar usages in the Hague Convention II of 1899, the Hague Convention IV of 1907, and the Geneva Conventions of 1949, the Chamber deems it appropriate to adopt the definition of "armed groups" given in the *Tadic* Appeal Judgement to the effect that:

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[234] ICRC Commentary on Additional Protocols, para. 4557.
[235] The Concise OED gives the definition of "enlist" as "enroll or be enrolled in the armed service" (Concise Oxford English Dictionary, 10th Edition, Revised (New York: Oxford University Press, 2002)).
[236] Report of the Preparatory Committee on the Establishment of an International Criminal Court, A/CONF.183/2/Add.1, 14 April 1998, p. 21, fn 12.

> One should distinguish the situation of individuals acting on behalf of a State without specific instructions, from that of individuals making up *an organised and hierarchically structured group*, such as a military unit or, in case of war or civil strife, armed bands of irregulars or rebels. Plainly, an organised group differs from an individual in that the former normally has a structure, a chain of command and a set of rules as well as the outward symbols of authority. Normally a member of the group does not act on his own but conforms to the standards prevailing in the group and is subject to the authority of the head of the group.[237]

In the Chamber's view, such a group may be either State or Non-State controlled.

195. The Chamber concludes that the specific elements of enlisting children under the age of 15 years into armed forces or groups are:

(i) One or more persons were enlisted, either voluntarily or compulsorily, into an armed force or group by the Accused;

(ii) Such person or persons were under the age of 15 years;

(iii) The Accused knew or had reason to know that such person or persons were under the age of 15 years; and

(iv) The Accused intended to enlist the said persons into the armed force or group.

196. The specific elements of using children under the age of 15 years to participate actively in hostilities are as follows:

(i) One or more persons were used by the Accused to actively participate in hostilities;

(ii) Such person or persons were under the age of 15 years;

(iii) The Accused knew or had reason to know that such person or persons were under the age of 15 years; and

(iv) The Accused intended to use the said persons to actively participate in hostilities.

197. The Appeals Chamber ruled that the offence of recruitment of child soldiers had crystallised under customary international humanitarian law prior to the events alleged in the Indictment. In so finding, it dismissed the applicant's argument that the offences listed under Article 4(c) of the Statute did not constitute crimes during the time of the events. Enlistment is clearly a form of recruitment. However, the "use" of child soldiers, in ordinary language, could not

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[237] *Tadic* Appeal Judgement, para. 120 [emphasis in original].

be said to be a form of recruitment. Whilst the Appeals Chamber did not enunciate specifically on "using child soldiers to participate actively in hostilities" the Chamber, having considered the dismissal by the Appeals Chamber of the whole Motion relating to Article 4(c) in its totality, and having considered the available authorities, considers that "using child soldiers to participate actively in hostilities" was also proscribed under customary international humanitarian law prior to the events charged in the Indictment.[238] Indeed, this is the only logical conclusion. For it would make no sense to say that recruiting children under 15 years of age for the armed forces was prohibited, but using them to fight was not.

198. The Indictment also charges the Accused with "initiation" of child soldiers, which is not listed as an offence in the Statute. However, it is the opinion of the Chamber that evidence of "initiation" may be of relevance in establishing liability under Article 4(c) of the Statute.

199. It is the Chamber's view that the rules of international humanitarian law apply equally to all parties in an armed conflict, regardless of the means by which they were recruited.[239] Furthermore, the Chamber is mindful that the special protection provided by Article 4(3)(d) of Additional Protocol II remains applicable in the event that children under the age of 15 are conscripted, enlisted, or used to participate actively in the hostilities.

4. Law on the Forms of Liability Charged

200. In order to assess and determine the culpability or otherwise of each Accused, it is necessary for the Chamber to examine the criminal responsibility of each Accused on all the forms of liability which have been alleged against them in the Indictment, either collectively or individually. In this regard, it is alleged that the Accused are responsible, pursuant to Article 6(1) of the Statute, for planning, instigating, ordering, committing (including through participation in a joint criminal enterprise) or otherwise aiding and abetting the planning, preparation, or execution of the crimes charged in the Indictment.[240] In addition or in the alternative, the Accused

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[238] Article 4(3)(c) of Additional Protocol II provides that "children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups *nor allowed to take part in hostilities*" (italics added), which would appear to proscribe the "use" of child soldiers. The Appeals Chamber found that this formed part of customary international law (Appeal Decision on Child Recruitment, para. 18).

[239] Peter Rowe, *The Impact of Human Rights Law on Armed Forces* (Cambridge: Cambridge University Press, 2006), p. 21: "[I]nternational humanitarian law draws no distinction between volunteer and conscript soldiers."

[240] Indictment, para. 20.

are also alleged to be criminally responsible pursuant to Article 6(3) of the Statute, as superiors of members of the CDF.[241]

201. The relevant paragraphs of Article 6 of the Statute provide as follows:

> 1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime. [...]
>
> 3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior had failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. [...]

202. The Chamber is of the view that the principle of legality demands that the Court shall apply the law which was binding upon individuals at the time of the acts charged.[242] The application of the law of Sierra Leone to the forms of liability within the jurisdiction of the Special Court is restricted to the crimes envisaged in Article 5 of the Statute. As stated earlier, no Accused has been charged with any crime under this article.[243] The Chamber finds that for the purposes of the crimes envisaged in Articles 2 to 4 of its Statute, the Court has jurisdiction to consider only modes of liability which both (a) are contemplated by its Statute, and (b) existed in customary international law at the time of the alleged offences under consideration.[244] The Chamber finds that all modes of liability listed in the indictment are contemplated by the Statute of the Special

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[241] Indictment, paras 21, 18.

[242] *See, for example, Prosecutor v. Milutinovic, Sainovic and Ojdanic*, IT-99-37-AR72, Decision on Dragoljub Ojdanic's Motion Challenging Jurisdiction - Joint Criminal Enterprise (AC), 21 May 2003, para. 10 [*Ojdanic* Appeal Decision on Joint Criminal Enterprise].

[243] Article 6(5) of the Statute provides that: "[i]ndividual criminal responsibility for the crimes referred to in Article 5 shall be determined in accordance with the respective laws of Sierra Leone".

[244] *Prosecutor v. Karemera, Ngirumpatse and Nzirorera*, ICTR-98-44-AR72.5, ICTR-98-44-AR72.6, Decision on Jurisdictional Appeals: Joint Criminal Enterprise (AC), 12 April 2006, para. 15 [*Karemera* Appeal Decision on Joint Criminal Enterprise]; *see also Prosecutor v. Bagilishema*, ICTR-95-1A-1, Judgement (Reasons) (AC), 3 July 2002, para. 34 [*Bagilishema* Appeal Judgement]: "[T]he Statute does not provide for criminal liability other than for those forms of participation stated therein, expressly or implicitly. In particular, it would be both unnecessary and unfair to hold an accused responsible under a head of responsibility which has not clearly been defined in international criminal law." See also *Prosecutor v. Milutinovic, Sainovic and Ojdanic*, IT-05-87-PT, Decision on Ojdanic's Motion Challenging Jurisdiction: Indirect Co-Perpetration (TC), 22 March 2006, para. 15.

Court and were recognized as such under customary international law at the time of the acts or omissions alleged in the Indictment.[245]

203. The Chamber is of the opinion that to establish individual criminal responsibility under Article 6(1) of the Statute for committing, planning, instigating, ordering or otherwise aiding and abetting in the planning, preparation or execution of a crime over which the Special Court has jurisdiction, or under Article 6(3) of the Statute, the Prosecution must prove that the crime in question has been completed by the Accused.[246]

4.1. Responsibility under Article 6(1) of the Statute

4.1.1. Committing

204. The Chamber notes that the Prosecution charges the Accused pursuant to Article 6(1) of the Statute with committing the crimes referred to in the Indictment.[247]

205. Consistent with established jurisprudence, the Chamber adopts the definition of "committing" a crime as "physically perpetrating a crime or engendering a culpable omission in violation of criminal law".[248] The *actus reus* for committing a crime consists of the proscribed act of participation, physical or otherwise direct, in a crime provided for in the Statute, through positive

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[245] See *Prosecutor v. Hadzihasanovic, Alagic and Kubura*, IT-01-47-AR72, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility (AC), 16 July 2003, para. 44 [*Hadzihasanovic et al.* Appeal Decision on Command Responsibility]: "it has always been the approach of this Tribunal not to rely merely on a construction of the Statute to establish the applicable law on criminal responsibility, but to ascertain the state of customary law in force at the time the crimes were committed." *See also Tadic* Trial Judgement, paras 663-669. The *Tadic* Trial Chamber went through a number of sources and reached the following conclusion at para. 669: "the foregoing establishes the basis in customary international law for both individual responsibility and of participation in the various ways provided by Article 7 of the [ICTY] Statute. The International Tribunal accordingly has the competence to exercise the authority granted to it by the Security Council to make findings in this case regarding the guilt of the accused, whether as a principal or an accessory or otherwise as a participant." This finding has been followed in trial judgements of the ICTY and ICTR and has never been altered on appeal; *see Furundzija* Trial Judgement, para. 226; *Prosecutor v. Aleksovski*, IT-95-14/1-T, Judgement (TC), 25 June 1999, para. 60 [*Aleksovski* Trial Judgement]; *Celebeci* Trial Judgement, para. 321; *Kordic and Cerkez* Trial Judgement, para. 373; and *Oric* Trial Judgement, para. 268. For further discussion of the status at customary international law of joint criminal enterprise, see paras 209 *infra*, and command responsibility, see paras 233 *infra*.

[246] *Semanza* Trial Judgement, para. 378: "[p]ursuant to Article 6(1), a crime within the Tribunal's jurisdiction must have been completed before an individual's participation in that crime will give rise to criminal responsibility. Article 6(1) does not criminalize *inchoate* offenses" [italics in original]. *See also Akayesu* Trial Judgement, para. 473; *Brdjanin* Trial Judgement, para. 267, and accompanying references.

[247] Indictment, para. 20.

[248] *Tadic* Appeal Judgement, para. 188; *Kunarac et al.* Trial Judgement, para. 390; *Limaj et al.* Trial Judgement, para. 509; *Rutaganda* Trial Judgement, para. 41.

acts or culpable omissions, whether individually or jointly with others.[249] The Chamber takes the view that the *mens rea* requirement for committing a crime is satisfied if the Prosecution proves that the Accused acted with intent to commit the crime, or with the reasonable knowledge that the crime would likely occur as a consequence of his conduct.

4.1.2. Committing through Participation in a Joint Criminal Enterprise

206. The Indictment charges the Accused with participating in a common purpose, plan or design. The Chamber notes that the phrases "common purpose doctrine" on the one hand, and "joint criminal enterprise" on the other have been used interchangeably in the international jurisprudence and they refer to one and the same thing. The latter term, which this Chamber adopts, refers to the same form of liability as that known as the common purpose doctrine or liability.[250]

207. For the Court to exercise its jurisdiction on the basis of this form of liability, it must conclude that, even though Article 6(1) does not make a specific reference to joint criminal enterprise, it is indeed included in Article 6(1) as a means of "committing".[251]

208. The Chamber adopts the position that, although "committing" in Article 6(1) of the Statute "covers first and foremost the physical perpetration of a crime by the offender himself, or the culpable omission of an act that was mandated by a rule of criminal law,"[252] the verb "commit" is sufficiently protean in nature as to include participation in a joint criminal enterprise to commit the crime.[253] The view that 'committing" also describes participation in a joint criminal enterprise is reinforced "to the extent that, insofar as a participant shares the purpose of the joint criminal enterprise (as he or she must do) as opposed to merely knowing about it, he or she cannot be

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[249] *Limaj et al.* Trial Judgement, para. 509; *Kvocka et al.* Trial Judgement, para. 251; *Kordic and Cerkez* Trial Judgement, para. 376; *Kunarac et al.* Trial Judgement, para. 390; *Prosecutor v. Stakic*, IT-97-24-T, Judgement (TC), 31 July 2003, para. 439 [*Stakic* Trial Judgement]; *Musema* Trial Judgement, paras 122-123; *Semanza* Trial Judgement, para. 383.

[250] *Ojdanic* Appeal Decision on Joint Criminal Enterprise, para. 36.

[251] *Ibid.*, para. 23.

[252] *Tadic* Appeal Judgement, para. 188; *Limaj et al.* Trial Judgement, para. 509.

[253] *Prosecutor v. Milutinovic, Sainovic and Ojdanic*, IT-99-37-AR72, Separate Opinion of Judge David Hunt on Challenge by *Ojdanic* to Jurisdiction – Joint Criminal Enterprise (AC), 21 May 2003, para. 26 [Separate Opinion of Judge Hunt to *Ojdanic* Appeal Decision on Joint Criminal Enterprise], citing *Tadic* Appeal Judgement, para. 188.

regarded as a mere aider and abettor to the crime which is contemplated".[254] The Chamber also recalls that this mode of liability has been routinely applied in the jurisprudence of the *Ad Hoc* Tribunals.[255] The Chamber is therefore satisfied that individual criminal responsibility for participation in a joint criminal enterprise to commit a crime over which the Court has jurisdiction is included within Article 6(1) of the Statute.[256]

209. In *Tadic*, the ICTY Appeals Chamber found that, by 1992, joint criminal enterprise was a mode of liability which was "firmly established in customary international law".[257] The Chamber concurs with this position and finds as a result that joint criminal enterprise existed under customary international law at the time of the acts charged in the Indictment.

210. The jurisprudence of the *Ad Hoc* Tribunals has identified the following three categories of joint criminal enterprise:

> The first category is a "basic" form of joint criminal enterprise. It is represented by cases where all co-perpetrators, acting pursuant to a common purpose, possess the same criminal intention. An example is a plan formulated by the participants in the joint criminal enterprise to kill where, although each of the participants may carry out a different role, each of them has the intent to kill.
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> The second category is a "systemic" form of joint criminal enterprise. It is a variant of the basic form, characterised by the existence of an organised

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[254] *Ojdanic* Appeal Decision on Joint Criminal Enterprise, para. 20. *See also ibid.*, para. 31: "joint criminal enterprise is to be regarded, not as a form of accomplice liability, but as a form of 'commission' and that liability stems not [...] from mere membership of an organization, but from participating in the commission of a crime as part of a criminal enterprise".

[255] *Prosecutor v. Stakic*, IT-97-24-A, Judgement (AC), 22 March 2006, para. 62 [*Stakic* Appeals Judgement] referring to *Kvocka et al.* Appeal Judgement, para. 79; *Prosecutor v. Vasiljevic*, IT-98-32-A, Judgement (AC), 25 February 2004, para. 95 [*Vasiljevic* Appeal Judgement]; *Prosecutor v. Krstic*, IT-98-33-A, Judgement (AC), 19 April 2004, paras 79-134 [*Krstic* Appeal Judgement]; *Prosecutor v. Furundzija*, IT-95-14/1-A, Judgement (AC), 21 July 2000 [*Furundzija* Appeal Judgement], para. 119; *Prosecutor v. Krnojelac*, IT-97-25-A, Judgement (AC), 17 September 2003, paras 29-32 [*Krnojelac* Appeal Judgement]; *Celebici* Appeal Judgement, para. 366; *Tadic* Appeal Judgement, para. 220; *Prosecutor v. Brdjanin and Talic*, IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend (TC), 26 June 2001, para. 24; *Prosecutor v. Babic*, IT-03-72-A, Judgement on Sentencing Appeal (AC), 18 July 2005, paras 27, 38, 40 [*Babic* Judgement on Sentencing Appeal]. *See also Prosecutor v. Gacumbitsi*, ICTR-01-64-A, Judgement (AC), 7 July 2006, paras 158-179 [*Gacumbitsi* Appeal Judgement]; *Prosecutor v. Ntakirutimana and Ntakirutimana*, ICTR-96-10-A and ICTR-96-17-A, Judgement (AC), 13 December 2004, paras 463-468 [*Ntakirutimana* Appeal Judgement].

[256] Rule 98 Decision, para. 130.

[257] *Tadic* Appeal Judgement, paras 220, 226. *See also Ojdanic* Appeal Decision on Joint Criminal Enterprise, para. 29: "[the ICTY Appeals Chamber] is satisfied that the state practice and *opinio juris* reviewed in that decision was sufficient to permit the conclusion that such a norm existed under customary international law in 1992 when Tadic committed the crimes for which he had been charged and for which he was eventually convicted."

> system of ill-treatment. An example is extermination or concentration camps, in which the prisoners are killed or mistreated pursuant to the joint criminal enterprise.
>
> The third category is an "extended" form of joint criminal enterprise. It concerns cases involving a common purpose to commit a crime where one of the perpetrators commits an act which, while outside the common purpose, is nevertheless a natural and foreseeable consequence of the effecting of that common purpose. An example is a common purpose or plan on the part of a group to forcibly remove at gun-point members of one ethnicity from their town, village or region (to effect "ethnic cleansing") with the consequence that, in the course of doing so, one or more of the victims is shot and killed. While murder may not have been explicitly acknowledged to be part of the common purpose, it was nevertheless foreseeable that the forcible removal of civilians at gunpoint might well result in the deaths of one or more of those civilians.[258]

211. In the present case, however, the pleading in the Indictment is limited to an alternative pleading of the first and third categories of joint criminal enterprise.

212. Regardless of the category at issue or the charge under consideration, the *actus reus* of the participant in a joint criminal enterprise is common to each of the three above-mentioned categories and comprises three requirements.[259]

213. First, a plurality of persons is required. They need not be organised in a military, political or administrative structure.[260] However, it needs to be shown that this plurality of persons acted in concert with each other.[261]

214. Second, the existence of a common purpose which amounts to or involves the commission of a crime provided for in the Statute is required.[262] There is no need for this purpose to have been previously arranged or formulated. It may materialise extemporaneously and be inferred from the facts.[263]

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[258] *Vasiljevic* Appeal Judgement, paras 97-99 [footnotes omitted]; *Tadic* Appeal Judgement, paras 196, 202, 204.
[259] *Vasiljevic* Appeal Judgement, para. 100.
[260] *Stakic* Appeal Judgement, para. 64; *Tadic* Appeal Judgement, para. 227.
[261] *Prosecutor v. Krajisnik*, IT-00-39-T, Judgement (TC), 27 September 2006 [*Krajisnik* Trial Judgement], para. 884.
[262] *Stakic* Appeal Judgement, para. 64; *Tadic* Appeal Judgement, para. 227.
[263] *Ibid.*

215. Third, the participation of the Accused in the common purpose is required.[264] "This participation need not involve the commission of a specific crime under one of the provisions (for example murder, extermination, torture or rape), but may take the form of assistance in, or contribution to, the execution of the common purpose."[265] It must be shown that the plurality of persons acted in concert with each other in the implementation of a common purpose.[266] As to the required extent of the participation, the Prosecution need not demonstrate that the Accused's participation is necessary or substantial, but the Accused must at least have made a significant contribution to the crimes for which he is held responsible.[267]

216. The principal perpetrator need not be a member of the joint criminal enterprise, but may be used as a tool by one of the members of the joint criminal enterprise. The Chamber adopts the view of the ICTY Appeals Chamber in *Brdjanin et al.*, that "where the principal perpetrator is not shown to belong to the JCE, the trier of fact must further establish that the crime can be imputed to at least one member of the joint criminal enterprise, and that this member – when using the principal perpetrator – acted in accordance with the common plan".[268]

217. The *mens rea* requirements for liability under the first and third categories of joint criminal enterprise, which are pleaded in the Indictment, are different.

218. In the first category of joint criminal enterprise the Accused must intend to commit the crime and intend to participate in a common plan whose object was the commission of the crime.[269] The intent to commit the crime must be shared by all participants in the joint criminal enterprise.[270]

219. The *mens rea* for the third category of joint criminal enterprise is two-fold: in the first place, the Accused must have had the intention to take part in and contribute to the common purpose. In the second place, responsibility under the third category of joint criminal enterprise for a crime

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[264] *Stakic* Appeal Judgement, para. 64.
[265] *Tadic* Appeal Judgement, para. 227.
[266] *Krajisnik* Trial Judgement, para. 884.
[267] *Prosecutor v. Brdjanin*, IT-99-36-A Judgement (AC), para. 430 [*Brdjanin* Appeal Judgement], citing *Kvocka et al.* Appeal Judgement, para. 97.
[268] *Brdjanin et al.* Appeal Judgement, para. 430. *See also* para. 413.
[269] *Tadic* Appeal Judgment, para. 228, *Brdjanin et al.* Appeal Judgement, para. 365. *See also Vasiljevic* Appeal Judgement, paras 97, 101; *Kvocka et al.* Appeal Judgement, para. 82 (requiring "intent to further the common purpose").
[270] *Tadic* Appeal Judgement, para. 228.

that was committed beyond the common purpose of the joint criminal enterprise, but which was "a natural and foreseeable consequence thereof", arises only if the Prosecution proves that the Accused had sufficient knowledge that the additional crime was a natural and foreseeable consequence to him in particular.[271] The Accused must also know that the crime which was not part of the common purpose, but which was nevertheless a natural and foreseeable consequence of it, *might* be perpetrated by a member of the group (or by a person used by the Accused or another member of the group).[272] The Accused must willingly take the risk that the crime might occur by joining or continuing to participate in the enterprise.[273] The Chamber can only find that the Accused has the requisite intent "if this is the only reasonable inference on the evidence".[274]

4.1.3. Planning

220. The Prosecution charges the Accused pursuant to Article 6(1) of the Statute with planning the crimes referred to in the Indictment.[275]

221. The Chamber adopts the view of the various Chambers of the *Ad Hoc* Tribunals which have consistently stated that "planning" a crime implies that one or several persons plan or design the commission of a crime at both the preparatory and execution phases.[276] The Chamber agrees with the ICTY Appeals Chamber in the *Kordic and Cerkez* case that the *actus reus* of planning a crime requires that one or more persons design the criminal conduct constituting one or more crimes provided for in the Statute, which are later perpetrated.[277] "It is sufficient to demonstrate that the planning was a factor substantially contributing to such criminal conduct."[278] The Chamber is of the opinion that the *mens rea* requirement for planning an act or omission is satisfied if the Prosecution proves that the Accused acted with an intent that a crime provided for

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[271] *Kvocka et al.* Appeal Judgement para. 86.
[272] *Brdjanin* Appeal Judgement, para. 411.
[273] *Kvocka et al.* Appeal Judgement, para. 83; *Vasiljevic* Appeal Judgement, para. 99; *Tadic* Appeal Judgement, paras 204, 227-228; *Stakic* Appeal Judgement, para. 65.
[274] *Brdjanin* Appeal Judgment, para. 429.
[275] Indictment, para. 20.
[276] *Limaj et al.* Trial Judgement, para. 513; *Brdjanin* Trial Judgement, para. 268; *Krstic* Trial Judgement, para. 601; *Blaskic* Trial Judgement, para. 279.
[277] *Kordic and Cerkez* Appeal Judgement, para. 26, citing *Kordic and Cerkez* Trial Judgement, para. 386; *see also Limaj et al.* Trial Judgement, para. 513.
[278] *Kordic and Cerkez* Appeal Judgement, para. 26.

in the Statute be committed or with reasonable knowledge that the crime would likely be committed in the execution of that plan.

4.1.4. Instigating

222. The Prosecution charges the Accused pursuant to Article 6(1) of the Statute with instigating the crimes referred to in the Indictment.[279]

223. The Chamber is of the view that "instigating" a crime means urging, encouraging or "prompting another to commit an offence".[280] The *actus reus* required for instigating a crime is an act or omission, covering both express and implied conduct of the Accused,[281] which is shown to be a factor substantially contributing to the conduct of another person committing the crime.[282] A causal relationship between the instigation and the perpetration of the crime must be demonstrated; although it is not necessary to prove that the crime would not have occurred without the Accused's involvement.[283] To establish the *mens rea* requirement for "instigating" a crime, the Prosecution must prove that the Accused intended to provoke or induce the commission of the crime, or had reasonable knowledge that a crime would likely be committed as a result of that instigation.

4.1.5. Ordering

224. The Chamber notes that the Prosecution charges the Accused pursuant to Article 6(1) of the Statute with ordering the crimes referred to in the Indictment.[284]

225. The Chamber takes the view that the *actus reus* of "ordering" a crime requires that a person who is in a position of authority orders a person in a subordinate position to commit an offence.[285] It is our opinion that no *formal* superior-subordinate relationship between the superior and the

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[279] Indictment, para. 20.
[280] *Kordic and Cerkez* Appeal Judgement, para. 27; *Semanza* Trial Judgement, para. 381; *Krstic* Trial Judgement, para. 601; *Limaj et al.* Trial Judgement, para. 514.
[281] *Brdjanin* Trial Judgement, para. 269; *Blaskic* Trial Judgement, para. 280; *Limaj et al.* Trial Judgement, para. 514; *Oric* Trial Judgement, para. 273.
[282] *Kordic and Cerkez* Appeal Judgement, para. 27; *Gacumbitsi* Appeal Judgement, para. 129; *Limaj et al.* Trial Judgement, para. 514.
[283] *Kordic and Cerkez* Appeal Judgement, para. 27; *Limaj et al.* Trial Judgement, para. 515; *Brdjanin* Trial Judgement, para. 269; *Bagilishema* Trial Judgement, para. 30.
[284] Indictment, para. 20.
[285] *Kordic and Cerkez* Appeal Judgement, para. 28; *Limaj et al.* Trial Judgement, para. 514.

subordinate is required. It is sufficient that there is proof of some position of authority on the part of the Accused that would compel another to commit a crime in compliance with the Accused's order.[286] Such authority can be *de jure* or *de facto* and can be reasonably implied.[287] The Chamber is of the view that a "causal link between the act of ordering and the physical perpetration of a crime [...] also needs to be demonstrated as part of the *actus reus* of ordering" but that this "link need not be such as to show that the offence would not have been perpetrated in the absence of the order."[288]

226. The Chamber finds that to establish the *mens rea* requirement for "ordering" a crime, the Prosecution must prove that the Accused either intended to bring about the commission of the crime or that the Accused had reasonable knowledge that the crime would likely be committed as a consequence of the execution or implementation of that order.

4.1.6. Aiding and Abetting:

227. The Chamber notes that the Prosecution charges the Accused pursuant to Article 6(1) of the Statute with aiding and abetting in the planning, preparation or execution of the crimes referred to in the Indictment.[289]

228. It is the view of the Chamber that "aiding and abetting" consists of the act of rendering practical assistance, encouragement or moral support, which has a substantial effect on the perpetration of a certain crime.[290] "Aiding and abetting" can include providing assistance, helping, encouraging, advising, or being sympathetic to the commission of a particular act by the principal offender.[291]

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[286] *Gacumbitsi* Appeal Judgement, paras 181-182; *Prosecutor v. Semanza*, ICTR-97-20-A, Judgement (AC), 20 May 2005, para. 361 [*Semanza* Appeal Judgement], referring to *Kordic and Cerkez* Appeal Judgement, para. 28. *See also Prosecutor v. Kamuhanda*, ICTR-99-54A-A, Judgement (AC), 19 September 2005, para. 75 [*Kamuhanda* Appeal Judgement]: "To be held responsible under Article 6(1) of the Statute for ordering a crime, on the contrary, it is sufficient that the accused have authority over the perpetrator of the crime, and that his order have a direct and substantial effect on the commission of the illegal act." [Footnotes omitted].

[287] *Limaj et al.* Trial Judgement, para. 515 referring to *Brdjanin* Trial Judgement, para. 270.

[288] *Strugar* Trial Judgement, para. 332.

[289] Indictment, para. 20.

[290] *Krstic* Trial Judgement, para. 601; *Limaj et al.* Trial Judgement, para. 516; *Tadic* Appeals Judgement, para. 229.

[291] *Limaj et al.* Trial Judgement, para. 516; *Kvocka et al.* Trial Judgement, para. 254; *Semanza* Trial Judgement, para. 384; *Prosecutor v. Gacumbitsi*, ICTR-2001-64-T, Judgment (TC), 17 June 2004, para. 286 [*Gacumbitsi* Trial Judgement].

229. The Chamber is of the opinion that the *actus reus* of aiding and abetting requires that the Accused carries out an act specifically directed to assist, encourage or lend moral support to the perpetration of a certain specific crime and that this act of the aider and abettor must have a substantial effect upon the perpetration of the crime.[292] "Proof of a cause-effect relationship between the conduct of the aider or abettor and the commission of the crime, or proof that such conduct served as a condition precedent to the commission of the crime, is not required."[293] Further, taking into account the specific wording of Article 6(1) of the Statute that "[a] person who [...] aided and abetted *in the planning, preparation or execution* of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime", this Chamber is of the opinion that the *actus reus* of aiding and abetting a crime may occur before, during, or after the principal crime has been perpetrated and at a location geographically removed from the location of the principal crime.[294] The Chamber reiterates, however, that the act of the aider and abettor must have a substantial effect upon the perpetration of the crime.

230. Mere presence at the scene of a crime will not usually constitute aiding and abetting. Where, however, such presence provides encouragement or support to the principal offender, that may be sufficient. For example, the presence of a person with superior authority at the scene of a principal crime may be probative to determining whether such person encouraged or supported the principal perpetrator.[295] The Chamber also notes that a superior's failure to punish for past crimes might result in acts that would constitute instigation or aiding and abetting for *further* crimes.[296]

231. The Chamber recognises that the *mens rea* of aiding and abetting is the knowledge that the acts performed by the Accused assist the commission of the crime by the principal offender.[297]

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[292] *Vasiljevic* Appeal Judgement, para. 102; *see also Blaskic* Appeal Judgement, para. 46 referring to *Furundzija* Trial Judgement, para. 249.
[293] *Blaskic* Appeal Judgement, para. 48; *see* also *Gacumbitsi* Appeal Judgement, para. 140.
[294] *Blaskic* Appeal Judgement, para. 48; *see also Vasiljevic* Trial Judgement, para. 70, *Aleksovski* Trial Judgement, para. 62.
[295] *Blaskic* Appeal Judgement, para. 47; *see also Limaj et al.* Trial Judgement, para. 517; *Brdjanin* Trial Judgement, para. 271 and footnoted references; *Aleksovski* Trial Judgement, para. 65.
[296] *Blaskic* Trial Judgement, para. 337;
[297] *Vasiljevic* Appeal Judgement, para. 102; *see also Blaskic* Appeal Judgement, para. 49; *Tadic* Appeal Judgement, para. 229.

Such knowledge may be inferred from all relevant circumstances.[298] The Accused need not share the *mens rea* of the principal offender, but he must be aware of the principal offender's intention.[299] In the case of specific intent offences, the aider and abettor must have knowledge that the principal offender possessed the specific intent required.[300] The aider and abettor, however, need not know the precise crime that is intended by the principal offender. If he is aware that one of a number of crimes will probably be committed by the principal offender, and one of those crimes is in fact committed, then he has intended to assist or facilitate the commission of that crime, and may be guilty of aiding and abetting.[301]

4.2. Responsibility under Article 6(3) of the Statute

232. The Chamber notes that the Prosecution, in addition or in the alternative, alleges that the Accused are responsible pursuant to Article 6(3) of the Statute for the crimes alleged in Counts 1 through 8 of the Indictment since these crimes were allegedly committed while the Accused were holding positions of superior responsibility and exercising command and control over their subordinates.[302]

233. The principle of superior responsibility is today anchored firmly in customary international law.[303] The Chamber endorses the views expressed by the ICTY Appeals Chamber in *Celebici* that the individual criminal responsibility of superiors for failure to prevent or to punish crimes committed by subordinates was already an established principle of customary international law in 1992,[304] whether the crimes charged were committed in the context of an international or an

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[298] *Limaj et al.* Trial Judgement, para. 518 referring to *Celebici* Trial Judgement, para. 328; *Tadic* Trial Judgement, para. 676.

[299] *Prosecutor v. Aleksovski*, IT-95-14/1-A, Judgement (AC), 24 March 2000, para. 162 [*Aleksovski* Appeal Judgement] referring to *Furundzija* Trial Judgement, para. 245; see also *Limaj et al.* Trial Judgement, para. 518; *Brdjanin* Trial Judgement, para. 273; *Kunarac et al.* Trial Judgement, para. 392.

[300] *Krnojelac* Appeal Judgement, para. 52, *Krstic* Appeal Judgement, para. 140, *Vasiljevic* Appeal Judgement, para. 142.

[301] *Blaskic* Appeal Judgement, para. 50, *Furundzija* Trial Judgement, para. 246, *Limaj et al.* Trial Judgement, para. 518.

[302] Indictment, paras 18, 21.

[303] Gerhard Werle, *Principles of International Criminal Law* (The Hague: T.M.C. Asser Press, 2005), para. 372.

[304] *Celebici* Appeal Judgement, para. 195: "[t]he principle that military and other superiors may be held criminally responsible for the acts of their subordinates is well-established in conventional and customary law". See also *Celebici* Trial Judgement, para. 343; *Strugar* Trial Judgement, para. 357; *Limaj et al.* Trial Judgement, para. 519; *Oric* Trial Judgement, para. 291; *Halilovic* Trial Judgement, paras 39-54.

internal armed conflict.[305] The Chamber further concurs with the finding of the Appeals Chamber of the *Ad Hoc* Tribunals that the principle of individual criminal responsibility of superiors is applicable, albeit not exactly in the same way, to both civilian and military superiors.[306]

234. The Chamber is of the opinion that the nature of responsibility pursuant to Article 6(3) is based upon the duty of a superior to act, which consists of a duty to prevent and a duty to punish criminal acts of his subordinates.[307] It is thus the failure to act when under a duty to do so which is the essence of this form of responsibility.[308] It is responsibility for an omission[309] where a superior may be held criminally responsible when he fails to take the necessary and reasonable measures to prevent the criminal act or punish the offender.[310]

235. The Chamber takes the view that the following three elements must be satisfied in order to invoke individual criminal responsibility under Article 6(3) of the Statute:

> (i) the existence of a superior-subordinate relationship between the superior and the offender of the criminal act;
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> (ii) the superior knew or had reason to know that the criminal act was about to be or had been committed; and
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> (iii) the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the offender thereof.[311]

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[305] *See* for the application of the principle of command responsibility to internal armed conflicts, *Hadzihasanovic et al.* Appeal Decision on Command Responsibility, paras 27, 31; *see* also *Brdjanin* Trial Judgement, para. 275; *Strugar* Trial Judgement, para. 357; *Limaj et al.* Trial Judgement, para. 519; *Oric* Trial Judgement, para. 291.

[306] *Bagilishema* Appeal Judgement, paras 35, 51-52; *Celebici* Appeal Judgement, paras 195-197; for the distinction in the application of the principle to civilian and military superiors, *see* para. 163 *infra*.

[307] *Halilovic* Trial Judgement, para. 38; *Celebici* Trial Judgment, para. 334.

[308] *Halilovic* Trial Judgement, para. 38 and footnoted references.

[309] *Halilovic* Trial Judgement, para. 54: "The Trial Chamber finds that under Article 7(3) command responsibility is responsibility for an omission. The commander is responsible for the failure to perform an act required by international law. This omission is culpable because international law imposes an affirmative duty on superiors to prevent and punish crimes committed by their subordinates. Thus "for the acts of his subordinates" as generally referred to in the jurisprudence of the Tribunal does not mean that the commander shares the same responsibility as the subordinates who committed the crimes, but rather that because of the crimes committed by his subordinates, the commander should bear responsibility for his failure to act. The imposition of responsibility upon a commander for breach of his duty is to be weighed against the crimes of his subordinates; a commander is responsible not as though he had committed the crime himself, but his responsibility is considered in proportion to the gravity of the offences committed. The Trial Chamber considers that this is still in keeping with the logic of the weight which international humanitarian law places on protection values."

[310] *Bagilishema* Appeal Judgement, para. 35.

[311] *See Blaskic* Appeal Judgement, para. 484; *Kordic and Cerkez* Appeal Judgement, para. 827; *Aleksovski* Appeal Judgement, para. 72; *Gacumbitsi* Appeal Judgement, para. 143.

4.2.1. Superior-Subordinate Relationship

236. Under Article 6(3) of the Statute, a superior is someone who possesses the power or authority in either a *de jure* or a *de facto* capacity to prevent the commission of a crime by a subordinate or to punish the offender of the crime after the crime has been committed.[312] It is thus this power or authority of the superior to control the actions of his subordinates which forms the basis of the superior-subordinate relationship.[313]

237. The power or authority of the superior to prevent or to punish does not arise solely from a *de jure* status of a superior conferred upon him by official appointment.[314] Someone may also be judged to be a superior based on the existence of *de facto* powers or degree of control. This may often be the case in contemporary conflicts where only *de facto* armies and paramilitary groups subordinated to self-proclaimed governments may exist.[315]

238. In assessing the degree of control to be exercised by the superior over the subordinate, the Appeals Chambers of the *Ad Hoc* Tribunals have determined that the "effective control" test should be applied. According to this test, the superior must possess the "material ability to prevent or punish criminal conduct".[316] The indicators of effective control are more a matter of evidence than of substantive law.[317] The Chamber adopts the view that this is the appropriate test to apply in determining whether a superior–subordinate relationship exists. Mere substantial influence that does not meet the threshold of effective control is not sufficient under customary international law to serve as a means of exercising superior criminal responsibility.[318] Moreover, *de jure* power in and of itself is not conclusive of whether a superior-subordinate relationship exists, although it may be

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[312] *Celebici* Appeal Judgement, para. 192; *Bagilishema* Appeal Judgement, para. 50.
[313] *Kordic and Cerkez* Appeal Judgement, para. 840; *see* also *Celebici* Trial Judgement, para. 377; *Strugar* Trial Judgement, para. 359.
[314] *Celebici* Appeal Judgement, para. 193; *Bagilishema* Appeal Judgement, para. 50; *Gacumbitsi* Appeal Judgement, para. 143.
[315] *Celebici* Appeal Judgement, para. 193.
[316] *Celebici* Appeal Judgement, para. 256.
[317] *Blaskic* Appeal Judgement, para. 69 referring to *Aleksovski* Appeal Judgement, paras 73-74, 76 and *Celebici* Appeal Judgement, para. 206.
[318] *Celebici* Appeal Judgement, para. 266.

evidentially relevant to such a determination.[319] The Chamber is therefore of the view that the effective control test must be satisfied even if the Accused has *de jure* status as a superior.

239. Hierarchy, subordination and chains of command need not be established in the sense of a formal organisational structure as long as the test of effective control is met.[320] The superior can also be found responsible for a crime committed by a subordinate two levels down in the chain of command.[321]

240. The Chamber further endorses the finding of the ICTY Appeals Chamber that an Accused could not be held liable under Article 6(3) of the Statute for crimes committed by a subordinate before the said Accused assumed command over that subordinate.[322] In order to "hold a commander liable for the acts of troops who operated under his command on a temporary basis it must be shown that *at the time* when the acts charged in the indictment were committed, these troops were under the effective control of that commander."[323]

241. A superior-subordinate relationship may be of a military or civilian character.[324] When examining whether a superior exercises effective control over his subordinates, the Chamber must take into account inherent differences in the nature of military and civilian superior-subordinate relationships. Effective control may not be exercised in the same manner by a civilian superior and by a military commander and, therefore, may be established by the evidence to have been exercised in a different manner.[325] Whether the evidence regarding a civilian's *de jure* or *de facto* authority establishes effective control over subordinates must be determined on a case-by-case basis.

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[319] *Celibici* Appeal Judgement, para. 197, *Kayishema and Ruzindana* Appeal Judgement, para. 294. See also *Kunarac* Trial Judgement, paras 396-397.
[320] *Celibici* Appeal Judgment, para. 254.
[321] *Strugar* Trial Judgement, para. 361.
[322] *Hadzihasanovic et al.* Appeal Decision on Command Responsibility. The Appeals Chamber found that individual criminal responsibility for superior command responsibility did not exist at customary international law for crimes that occurred before an accused became a superior. See para. 51: "[The ICTY] Appeals Chamber holds that an accused cannot be charged under Article 7(3) of the [ICTY] Statute for crimes committed by a subordinate before the said accused assumed command over that subordinate. The Appeals Chamber is aware that views on this issue may differ. However, the Appeals Chamber holds the view that this Tribunal can impose criminal responsibility only if the crime charged was clearly established under customary law at the time the events in issue occurred. In case of doubt, criminal responsibility cannot be found to exist, thereby preserving full respect for the principle of legality".
[323] *Halilovic* Trial Judgment, para. 61 [emphasis added]; *Kunarac et al.* Trial Judgement, para. 399.
[324] *Celebici* Appeal Judgement, para. 195; *Celebici* Trial Judgement, paras 735-736; *Kayishema and Ruzindana* Trial Judgement, para. 216; *Aleksovski* Appeal Judgement, para. 76.
[325] *Bagilishema* Appeal Judgement, para. 52.

4.2.2. Mental Element: the Superior Knew or Had Reason to Know

242. In order to hold a superior responsible under Article 6(3) of the Statue for crimes committed by a subordinate, the Chamber is of the opinion that the Prosecution must prove that the superior knew or had reason to know that his subordinate was about to commit or had committed such crimes. Responsibility under Article 6(3) of the Statute is not a form of strict liability.[326]

243. The actual knowledge of the superior, *i.e.* that he knew that his subordinate was about to commit or had committed the crime, cannot be presumed and, in the absence of direct evidence, may be established by circumstantial evidence.[327] Various factors or indicia may be considered by the Chamber when determining the actual knowledge of the superior. Such indicia would include: the number, type and scope of the illegal acts; the time during which the illegal acts occurred; the number and type of subordinates involved; the logistics involved, if any; the means of communication available; the geographical location of the acts; the widespread occurrence of the acts; the tactical tempo of operations; the *modus operandi* of similar illegal acts; the officers and staff involved; and the location of the superior at the time and the proximity of the acts to the location of the superior.[328]

244. The Chamber accepts the jurisprudence of the *Ad Hoc* Tribunals that the "had reason to know" standard will only be satisfied if information was available to the superior which would have put him on notice of offences committed by his subordinates or about to be committed by his subordinates.[329] Such information need not be such that, by itself, it was sufficient to compel

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[326] *Celebici* Appeal Judgement, para. 239: "[...] The Appeals Chamber would not describe superior responsibility as a vicarious liability doctrine, insofar as vicarious liability may suggest a form of strict imputed liability."
[327] *Oric* Trial Judgement, para. 319 and footnoted references.
[328] *Celebici* Trial Judgement, para. 386; *Strugar* Trial Judgement, para. 368; *Limaj et al.* Trial Judgement, para. 524; *Blaskic* Trial Judgement, para. 307 endorsed in *Blaskic* Appeal Judgement, para. 57; *see* also *Oric* Trial Judgement, fn 909: "With regard to geographical and temporal circumstances, it has to be kept in mind that the more physically distant the commission of the subordinate's acts from the superior's position, the more difficult it will be, in the absence of other indicia, to establish that the superior had knowledge of them. Conversely, if the crimes were committed close to the superior's duty-station, the easier it would be to establish a significant indicium of the superior's knowledge, and even more so if the crimes were repeatedly committed."
[329] *Galic* Appeal Judgement, para. 184 referring to *Celebici* Appeal Judgement, para. 241; *see also Blaskic* Appeal Judgement, paras 62-63, *Celebici* Trial Judgement, para. 393, *Strugar* Trial Judgement, para. 369, *Krnojelac* Appeal Judgement, para. 154.

the conclusion of the existence of such crimes.[330] It need not, for example, take "the form of specific reports submitted pursuant to a monitoring system" and "does not need to provide specific information about unlawful acts committed or about to be committed".[331] It can be general in nature, but it must be sufficiently alarming so as to alert the superior to the risk of the crimes being committed or about to be committed,[332] and to justify further inquiry in order to ascertain whether indeed such crimes were committed or were about to be committed by his subordinates.[333]

245. The information in question must in fact be available to the superior, who may not be held liable for failing to acquire such information in the first place.[334] In any event, an assessment of the mental element required by Article 6(3) of the Statute should be conducted in the particular circumstances of each case, taking into account the specific situation of the superior concerned at the time in question.[335]

4.2.3. Necessary and Reasonable Measures

246. The Chamber is of the opinion that a superior may be held responsible pursuant to Article 6(3) of the Statute if he has failed to take necessary and reasonable measures to prevent the commission of a crime or punish the perpetrators thereof. The question of whether a superior has failed to take such measures is connected to his possession of effective control. In other words, a superior will be liable if he failed to take measures that are within his material ability.[336] Hence, the question of whether the superior had the explicit legal capacity to do so is irrelevant if it is proven that he had the material ability to act.[337]

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[330] *Celebici* Trial Judgement, para. 393; *Strugar* Trial Judgement para. 369; *Limaj et al.* Trial Judgement, para. 525.

[331] *Galic* Appeal Judgement, para. 184 citing *Celebici* Appeal Judgement, para. 238: "For instance, a military commander who has received information that some of the soldiers under his command have a violent or unstable character, or have been drinking prior to being sent on a mission, may be considered as having the required knowledge".

[332] *See*, for example, *Krnojelac* Appeal Judgement, para. 155.

[333] *Celebici* Appeal Judgement, paras 233, 223; *see also Limaj et al.* Trial Judgement, para. 525 and footnoted references.

[334] *Blaskic* Appeal Judgement, paras 62-63; *Celebici* Appeal Judgement, para. 226.

[335] *Krnojelac* Appeal Judgement, para. 156 referring to *Celebici* Appeal Judgement, para. 239.

[336] *Limaj et al.* Trial Judgement, para. 526; *Halilovic* Trial Judgement, para. 73.

[337] *Celebici* Trial Judgement, para. 395: "lack of formal legal competence to take the necessary measures to prevent or repress the crime in question does not necessarily preclude the criminal responsibility of the superior"; *Limaj et al.* Trial Judgement, para. 526; *Halilovic* Trial Judgement, para. 73.

247. Under Article 6(3), the superior has a duty both to prevent the commission of the offence and punish the perpetrators. These are not alternative obligations – they involve different crimes committed at different times: the failure to punish concerns past crimes committed by subordinates, whereas the failure to prevent concerns future crimes of subordinates.[338] The duty to prevent arises from the time a superior acquires knowledge, or has reason to know that a crime is being or is about to be committed, while the duty to punish arises after the superior acquires knowledge of the commission of the crime.[339] "A superior must act from the moment that he acquires such knowledge. His obligations to prevent will not be met by simply waiting and punishing afterwards."[340]

248. The Chamber is of the opinion that whether a superior has discharged his duty to prevent the commission of a crime will depend on his material ability to intervene in a specific situation. In making this determination, the Chamber may take into account factors such as those which have been enumerated in the *Strugar* case on the basis of the case law developed by the military tribunals in the aftermath of World War II: the superior's failure to secure reports that military actions have been carried out in accordance with international law, the failure to issue orders aimed at bringing the relevant practices into accord with the rules of war, the failure to protest against or to criticise criminal action, the failure to take disciplinary measures to prevent the commission of atrocities by the troops under the superior's command and the failure to insist before a superior authority that immediate action be taken.[341] As part of his duty to prevent subordinates from committing crimes, the Chamber is of the view that a superior also has the obligation to prevent his subordinates from following unlawful orders given by other superiors.

249. The Chamber notes that a causal link between the superior's failure to prevent the subordinates' crimes and the occurrence of these crimes is not an element of the superior's responsibility; it is a question of fact rather than of law.[342] "Command responsibility is

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[338] *Blaskic* Appeal Judgement, para. 83.
[339] *Limaj et al.* Trial Judgement, para. 527 referring to *Blaskic* Appeal Judgement, para. 83 and *Kordic and Cerkez* Trial Judgement, paras 445-446.
[340] *Limaj et al.* Trial Judgement, para. 527; *Strugar* Trial Judgement, para. 373.
[341] *Strugar* Trial Judgement, para. 374 and footnoted references; *see* also *Limaj et al.* Trial Judgement, para. 528; *Oric* Trial Judgement, para. 331; *Halilovic* Trial Judgement, para. 89.
[342] *Blaskic* Appeal Judgement, para. 77; *Kordic and Cerkez* Appeal Judgement, para. 832, *Halilovic* Trial Judgement, para. 78.

responsibility for omission, which is culpable due to the duty imposed by international law upon a commander" and does not require his involvement in the crime.[343]

250. The Chamber is of the opinion that the duty imposed on a superior to punish subordinate offenders includes the obligation to investigate the crime or to have the matter investigated to establish the facts in order to assist in the determination of the proper course of conduct to be adopted.[344] The superior has the obligation to take active steps to ensure that the offender will be punished.[345] The Chamber further takes the view that in order to discharge this obligation, the superior may exercise his own powers of sanction, or if he lacks such powers, report the offender to the competent authorities.[346]

4.3. Conviction under Article 6(1) and Article 6(3) of the Statute

251. The Chamber takes the view that where the Indictment charges the Accused with both Article 6(1) and Article 6(3) responsibility under the same count, and where the legal requirements pertaining to both of these heads of responsibility are met, a Trial Chamber may only enter a conviction on the basis of Article 6(1).[347]

V. FACTUAL AND LEGAL FINDINGS

1. Evaluation of Evidence

1.1. Introduction

252. The Rules confer upon the Chamber discretion to apply rules of evidence which best favour a fair determination of the proceedings.[348] The Appeals Chamber has stated that the

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[343] *Halilovic* Trial Judgement, para. 78; *see also Oric* Trial Judgement, para. 293.

[344] *Strugar* Trial Judgement, para. 376; *Halilovic* Trial Judgement, para. 97; *Kordic and Cerkez* Trial Judgement, para. 446.

[345] *Limaj et al.* Trial Judgement, para. 529; *Halilovic* Trial Judgement, para. 98.

[346] *Kordic and Cerkez* Trial Judgement, para. 446; *Strugar* Trial Judgement, para. 376.

[347] *Blaskic* Appeal Judgement, para. 91; *Kordic and Cerkez* Appeal Judgement, para. 34; *Gacumbitsi* Appeal Judgement, para. 142; *Prosecutor v. Kajelijeli*, ICTR-98-44A-A, Judgement (AC), 23 May 2005, para. 81 [*Kajelijeli* Appeal Judgement]; *Celebici* Appeal Judgement, para. 745.

[348] Rule 89 - General Provisions (A) The rules of evidence set forth in this Section shall govern the proceedings before the Chambers. The Chambers shall not be bound by national rules of evidence. (B) In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law. (C) A Chamber may admit any relevant evidence.

language used in the Rules "should be given its ordinary meaning". However the Rules must be "applied in their context and according to their purpose in progressing the relevant stage of the trial process fairly and effectively".[349] This gives the Chamber a wide discretion, which makes it appropriate for the Chamber to outline some of the basic standards it has applied.

1.2. Admission of "Relevant" Evidence

253. Under the Rules, the Chamber may admit all "relevant evidence".[350] The Chamber understands relevant evidence to be any evidence that could have a bearing on the guilt or innocence of the Accused for the crimes charged under the Indictment. The assessment of evidential weight is a separate issue and, unless otherwise stated, has been made by the Judges during final deliberations.[351] This approach is consonant with established international criminal procedure.[352]

1.3. Standard of Proof

254. Article 17(3) of the Statute enshrines the principle that an Accused person is presumed innocent until proven guilty. The Prosecution alone bears the burden of establishing the guilt of the Accused, and the high standard which must be met before there can be a conviction on any Count is proof *beyond reasonable doubt*. Each fact on which the Accused's conviction is based must be proved beyond a reasonable doubt. However, the standard of proof does not need to be applied to every individual piece of evidence.[353]

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[349] *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Amendment of the Consolidated Indictment (AC), 16 May 2005, para. 45. *See also* para. 46.
[350] Rule 89 (C).
[351] *See*, for example, *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-AR65, Fofana - Appeal Against Decision Refusing Bail (AC), 11 March 2005, paras 22-24 [*Fofana* Bail Appeal]; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on Gbao Application to Exclude Evidence of Mr. Koker (TC), 23 May 2005, paras 4-6.
[352] "The principle... is one of extensive admissibility of evidence - questions of credibility or authenticity being determined according to the weight given to each of the materials by the judges at the appropriate time." (*Blaskic* Trial Judgement, para. 34).
[353] *Ntagerura et al.* Appeal Judgement, paras 174-175. *See also R. v. Morin*, [1988] 2 S.C.R. 345, paras 40-41.

1.4. Circumstantial Evidence

255. The Chamber is composed of professional judges who do not make inferences without proper evidentiary basis or foundation.[354] Where it has been necessary for the Chamber to resort to circumstantial evidence in proof of a fact at issue,[355] the Chamber has been careful to consider whether there is any other reasonable conclusion rather than that which leads to a finding of guilt. If such a conclusion is possible, the Chamber has erred on the side of caution and adopted that explanation which best favours the Accused.[356]

1.5. Credibility and Reliability of Oral Testimony

256. In assessing the credibility and reliability of oral witness testimony, the Chamber has considered factors such as the internal consistency of the witness' testimony, its consistency with other evidence in the case, any personal interest a witness may have that may influence his motivation to tell the truth, as well as observational criteria such as the witness' demeanour, conduct and character.[357] In addition, the Trial Chamber has considered the witnesses' knowledge of the facts on which they testify, and the lapse of time between the events and the testimony.[358]

257. The Trial Chamber has also kept in mind that "the fact that a witness gives evidence honestly is not in itself sufficient to establish the reliability of that evidence. The issue is not

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[354] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT and *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-PT, Decision on the Prosecution Motion for Concurrent Hearing of Evidence Common to Cases SCSL-04-15-PT and SCSL-04-16-PT (TC), 11 May 2004, para. 38; *Prosecutor v. Gbao*, SCSL-03-09-I, Order on the Urgent Request for Direction on the Time to Respond to and/or an Extension on Time for the Filing of a Response to the Prosecution Motions And The Suspension of any Ruling on the Issue of Protective Measures that may be Pending before other Proceedings before the Special court as a Result of Similar Motions Filed to those that have been Filed by the Prosecution in this Case (TC), 16 May 2003, p. 2; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Motion to Admit into Evidence a Document Referred to in Cross-Examination (TC), 2 August 2006, p. 4.

[355] *Limaj et al.* Trial Judgement, para. 10. *See also Halilovic* Trial Judgement, para. 15: "[c]ircumstantial evidence is evidence of circumstances surrounding an event or offence from which a fact at issue may be reasonably inferred."

[356] "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." (*Celebici* Appeal Judgement, para. 458 [emphasis in original]).

[357] *Prosecutor v. Blagojevic*, IT-02-60-T, Judgement (TC), 17 January 2005, para. 23 [*Blagojevic* Trial Judgement]. *See also Brdjanin* Trial Judgement, para. 25.

[358] *Blagojevic* Trial Judgement, para. 23; *Halilovic* Trial Judgment, para. 17.

merely whether the evidence of a witness is honest; it is also whether the evidence is objectively reliable."[359]

258. The Chamber may accept or reject the evidence of a witness in part or in whole, and may find a witness to be credible and reliable about certain aspects of their testimony and not credible or reliable with respect to others.[360]

1.6. Identification Evidence

259. It is well-accepted that identification evidence is affected by the vagaries of human perception and recollection. Its probative value depends not only upon the credibility of the witness, but also on other circumstances surrounding the identification. In assessing the reliability of identification evidence, the Chamber has taken account of "the circumstances in which each witness claimed to have observed the Accused, the length of that observation, the familiarity of a witness with the Accused prior to the identification and the description given by the witness of their identification of the Accused."[361] The Chamber is mindful that the ICTY Appeals Chamber has drawn attention to the need for "extreme caution" in relation to visual identification evidence[362] and has highlighted that the evaluation of an individual witness's evidence, as well as the evidence as a whole, should be conducted with considerations such as those enunciated in *Reg. v. Turnbull* in mind.[363]

260. During the course of the trial, some witnesses have been asked to identify one or more of the Accused in the courtroom. The Chamber is aware that it may be possible for a witness to point out an Accused person (whomever they may be) due to their physical placement in the courtroom

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[359] *Brdjanin* Trial Judgement, para. 25, relying on, *inter alia*, *Celebici* Appeal Judgement, paras 491, 506.
[360] Kupreskic Appeal Judgement, para. 332.
[361] *Vasiljevic* Trial Judgement, para. 16.
[362] *Kupreskic et al.* Appeal Judgment, paras 34-40 and footnoted references.
[363] *Limaj et al.* Trial Judgement, para. 17, citing *Reg v. Turnbull*, [1977] QB 224 (CA) [*Turnbull*]; *Reid v. Reg*, [1991] I AC 363; *Auckland City Council v. Brailey*, [1988] 1 NZLR 103 (New Zealand); *R v. Mezzo*, [1986] 1 SCR 802 ; *Dominican v. R*, [1992] 173 CLR 555. *See also Kupreskic et al.* Appeal Judgement, para. 34. These considerations include the amount of time the witness observed the Accused, the distance between the witness and the Accused, the level of visibility, the presence of any impediments in the line of view, whether the witness had specific reasons to remember the Accused, whether the Accused was previously known to the witness, the time lapse between the original observation and the subsequent identification to the authorities, and any discrepancies between the original description given by the witness and the actual appearance of the Accused (*Turnbull*, pp. 228-229).

and, in multi-Accused trial, to pick out the Accused person who most closely resembles an individual they previously saw.[364]

261. The Chamber considers identification by a witness of someone previously known to be more reliable than identification of someone previously unknown.[365]

1.7. Inconsistencies

262. Minor inconsistencies in testimony do not necessarily discredit a witness. The events in question took place several years ago and, due to the nature of memory, some details will be confused, and some will be forgotten.

263. The Chamber's preference is for oral testimony.[366] It is not expected that a witness' oral evidence will be identical to evidence given in prior statements. As we have stated, "it is foreseeable that witnesses, by the very nature of oral testimony, will expand on matters mentioned in their witness statements, and respond more comprehensively to questions asked at trial."[367] A witness may be asked questions at trial which were not asked before. Also, many witnesses remember, in court, details which they had previously forgotten.

1.8. Hearsay

264. There is no bar to the admission of hearsay evidence at the Special Court.[368] Although admitted during the course of trial, the Chamber is aware that hearsay evidence has inherent deficiencies. It cannot be tested by cross-examination, its reliability may be affected by compounded errors of perception and memory, and its source is not subject to solemn

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[364] *See also Limaj et al.* Trial Judgement, para. 18, citing *Vasiljevic* Trial Judgement, para. 19; *Kunarac et al.* Trial Judgement, para. 562.

[365] *Kayishema and Ruzindana* Trial Judgement, paras 455-458.

[366] *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Disclosure of Witness Statements and Cross-Examination (TC), 16 July 2004, para. 25 [*Norman* Decision on Disclosure of Witness Statements]; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasoned Ruling on Defence Evidentiary Objections Concerning Witness TF1-108 (TC), 15 June 2006, para. 8.

[367] *Norman* Decision on Disclosure of Witness Statements, para. 25.

[368] *Fofana* Bail Appeal, para. 29. *See also Halilovic* Trial Judgement, para. 15, citing *Prosecutor v. Aleksovski*, IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence (AC), 16 February 1999, para. 14 [*Aleksovski* Decision on Hearsay Evidence]: hearsay evidence is "the statement of a person made otherwise than in the proceedings in which it is being tendered, but nevertheless being tendered in those proceedings in order to establish the truth of what that person says."

declaration.[369] However, hearsay evidence is not necessarily without probative value, and the Chamber will consider any indicia of reliability before according appropriate weight to it.

1.9. Corroboration

265. In some instances, only one witness has given evidence on a material fact. While the testimony of a single witness on a material fact does not, as a matter of law, require corroboration,[370] it has been the practice of the Chamber to examine such evidence very carefully, and in light of the overall evidence adduced, before placing reliance upon it.

1.10. Measures to Protect Witnesses

266. Concerns for the safety of certain witnesses and their families necessitated the granting of protective measures, including anonymity during trial.[371] To preserve that anonymity in this Judgement, these witnesses are referred to only by the pseudonym under which they testified.

267. Occasionally, it is also possible to identify a protected witness by the events or knowledge they testified to. To safeguard the anonymity of these protected witnesses, it has on occasion unfortunately proved necessary for the Chamber to omit from this Judgement factual details that might otherwise have been included.

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[369] *Krnojelac* Trial Judgement, para. 70. *See also Aleksovski* Decision on Hearsay Evidence, para. 15, where the ICTY Appeals Chamber clarified that: "[t]he absence of the opportunity to cross-examine the person who made the statements, and whether the hearsay is 'first-hand' or more removed, are also relevant to the probative value of the evidence. The fact that the evidence is hearsay does not necessarily deprive it of probative value, but it is acknowledged that the weight or probative value to be afforded to that evidence will usually be less than that given to the testimony of a witness who has given it under a form of oath and who has been cross-examined, although even this will depend upon the infinitely variable circumstances which surround hearsay evidence".

[370] *Limaj et al.* Trial Judgement, para. 21, citing *Aleksovski* Appeal Judgement, para. 62. *See also Vasiljevic* Trial Judgement, para. 22; *Krnojelac* Trial Judgement, para. 71.

[371] See *Prosecutor v. Norman*, SCSL-03-08-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure (TC), 23 May 2003; *Prosecutor v. Fofana*, SCSL-03-11-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure (TC), 16 October 2003; *Prosecutor v. Kondewa*, SCSL-03-12-PT, Ruling on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure and urgent Request for Interim Measures until Appropriate Protective Measures are in Place (TC), 10 October 2003. *See also Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses (TC), 8 June 2004.

1.11. Expert Evidence

268. During the course of trial, the Chamber ruled that an expert witness is a "person whom by virtue of some specialised knowledge, skill or training can assist the trier of fact to understand or determine an issue in dispute"[372] and that expert testimony is "testimony intended to enlighten the Judges on specific issues of a technical nature, requiring special knowledge in a specific field" whose purpose "is to provide a court with information that is outside its ordinary experience and knowledge".[373]

269. The Chamber admitted testimony from expert witnesses for both the Prosecution and the Defence. The admission into evidence of expert testimony does not mean that the Chamber is bound to accept it. It is the prerogative of the Chamber to assign what probative value to attach to it.[374] In evaluating the probative value of this evidence, the Chamber has considered the professional competence of the expert, the methodologies and reasoning used by the expert, the independence of the expert, whether those facts that the expert opinion is based upon have been introduced into evidence, the truthfulness of those facts, and the credibility of the opinions expressed in light of these factors and other evidence accepted by the Chamber.[375]

1.12. Judicial Notice

270. The Chamber observes that Rule 94(A) of the Rules provides that the Chamber shall not require proof of facts of common knowledge but shall instead take judicial notice of them. In accordance with this provision, the Chamber took judicial notice of a number of facts.[376] Once

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[372] *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution Request for Leave to Call Additional Witnesses and for Orders for Protective Measures (TC), 21 June 2005 [*Norman* Decision on Additional Witnesses], p. 4, citing *Prosecutor v. Galic*, IT-98-29-T, Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Philipps (TC), 3 July 2002, p. 2.

[373] *Norman* Decision on Additional Witnesses, p. 4, citing *Prosecutor v. Akayesu*, ICTR-96-4-T, Decision on a Defence Motion for the Appearance of an Accused as an Expert Witness (TC), 9 March 1998 and Richard May and Marieke Wierda, *International Criminal Evidence* (New York: Transnational Publishers, 2002), p. 199, para. 6.83 [May, *International Criminal Evidence*].

[374] *Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23 & 23/1, Decision on Prosecution's Motion for Exclusion of Evidence and Limitation of Testimony (TC), 3 July 2000, para. 4.

[375] *Vasiljevic* Trial Judgement, para. 20.

[376] See Annex E: Judicially Noted Facts.

judicial notice is taken, such facts cannot be challenged during trial.[377] Those facts that have been judicially noticed by the Chamber are, therefore, conclusively established.[378]

1.13. Documentary Evidence

271. Pursuant to the Rules, the Chamber may admit documentary evidence.[379] During the course of trial, the Chamber admitted documentary evidence from both Prosecution and Defence teams.[380] As with all evidence adduced before the Trial Chamber, "the weight and reliability of such 'information' admitted under Rule 92*bis* will have to be assessed in light of all the evidence in the case."[381] The Chamber will not make use of the evidence admitted under this rule, where it goes to prove the acts and conduct charged against the Accused if there is no opportunity for cross-examination.[382]

272. With this flexible approach to the admission of evidence, there is less scope for the restrictive application of technical rules of evidence sometimes found in national jurisdictions and applied to documentary evidence.[383]

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[377] *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-AR73, Fofana - Decision on Appeal Against "Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence" (AC), 16 May 2005, para. 32 [Appeal Decision on Judicial Notice].

[378] *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence (TC), 2 June 2004, as modified by Appeal Decision on Judicial Notice, paras 41, 43, 45 and 49 [Trial Decision on Judicial Notice].

[379] Rules 89(C), 92*bis* and 92*ter*. Rule 92*bis* was amended on 14 May 2007. Rule 92*ter* was adopted on 24 November 2006.

[380] For example, documents submitted by the Prosecution, such as United Nations and Non-Governmental organisations (*Prosecution v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution's Request to Admit into Evidence Certain Documents Pursuant to Rules 92*bis* and 89(C) (TC), 14 July 2005); Documents submitted by Defence for Norman (*Prosecution v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Norman Request to Admit Documents in Lieu of Oral Testimony of Abdul One-Mohammed Pursuant to Rules 89(C) and 92*bis* (TC), 15 September 2006) and witness statements adduced by Defence for Fofana (*Prosecution v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Fofana Request to Admit Evidence Pursuant to Rule 92*bis* (TC), 9 October 2006).

[381] Appeal Decision on Judicial Notice, para. 27.

[382] *Prosecutor against Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution's Request to Admit into Evidence Certain Documents Pursuant to Rules 92*bis* and 89 (C), 15 July 2005, p. 3; *Prosecutor v Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Decision on the Prosecution Confidential Notice Under 92*bis* to Admit the Transcripts of Testimony of TF1-156 and TF1-179, 3 April 2006, p. 3; *Prosecutor v Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on the Prosecution Confidential Notice Under 92*bis* to admit the Transcripts of Testimony of TF1-023, TF1-104 and TF1-169, 9 November 2005, p. 3.

[383] As the Appeals Chamber has stated, "[t]he so-called "best evidence rule" [...] has no modern application other than to require a party in possession of the original document to produce it. If the original is unavailable then copies may be relied upon - the rule has no bearing at all on the question of whether an unsigned statement or submission is admissible. If relevant, then under Rule 89(C) they may [...] be admitted, with their weight to be determined

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1.14. Article 18 of the Statute – A Reasoned Opinion in Writing

273. Pursuant to Article 18 of the Statute, every Accused has the right to a public judgement accompanied by a reasoned opinion in writing. Although in a case of this size and complexity, a written reasoned opinion will necessarily be fairly lengthy, it is important that it remains readable to the public at large. Cogency, comprehensibility, and conciseness are important qualities. The Chamber has sought to make clear the evidence it has found to be credible, and, more importantly, the evidence it has relied upon in making its legal findings. The Chamber recalls the guidance given by the ICTY Appeals Chamber on this issue:

> With regard to the factual findings, the Trial Chamber is required only to make findings of those facts which are essential to the determination of guilt on a particular count. It is not necessary to refer to the testimony of every witness or every piece of evidence on the record. It is to be presumed that the Trial Chamber evaluated all the evidence presented to it, as long as there is no indication that the Trial Chamber completely disregarded any particular piece of evidence.[384]

274. In handing down its factual findings, the Chamber has consciously opted to present them as a comprehensible narrative. This approach does not comment on the Chamber's evaluation of every piece of evidence on the record. The facts that the Chamber has included within its narration are *only* those facts which it has found established. Furthermore, it includes *only* those established facts that have been seriously considered by the Chamber in determining whether an Accused bears responsibility on the charges against him. Some of the evidence in this case was not useful to the Chamber in determining the liability of the Accused. This can be attributed partly to the wide discretion the Judges gave the parties in adducing evidence, and also because some of the evidence became irrelevant due to the death of one of the original Accused, Norman, prior to Judgement. In adopting this narrative approach, the Chamber has attempted to give as clear a picture as possible of the involvement of the two remaining Accused in the crimes charged against them, and the context in which the relevant actions took place. In so doing, the Chamber has fully

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thereafter. There is no rule that requires, as a precondition for admissibility, that relevant statements or submissions must be signed. That may be good practice, but it is not a rule about admissibility of evidence. Evidence is admissible once it is shown to be relevant: the question of its reliability is determined thereafter, and is not a condition for its admission." (*Fofana* Bail Appeal, para. 24 [original footnotes omitted]).

[384] *Kvocka et al.* Appeal Judgement, para. 23.

taken into consideration, where necessary, the evidence given by the Accused Norman before he died.

275. The ICTY Appeals Chamber also gave useful guidance in determining the level of detail required of a Trial Chamber in its written reasoned opinion as regards how the Trial Judges exercised their discretion to determine that testimony they find credible, and that which they do not:

> Considering the fact that minor inconsistencies commonly occur in witness testimony without rendering it unreliable, it is within the discretion of the Trial Chamber to evaluate it and to consider whether the evidence as a whole is credible, without explaining its decision in every detail. If the Trial Chamber did not refer to the evidence given by a witness, even if it is contradiction to the Trial Chamber's finding, it is to be presumed that the Trial Chamber assessed and weighed the evidence, but found that the evidence did not prevent it from arriving at its actual findings.[385]

276. Adopting this approach, it should be taken that where the Chamber has not discussed the evidence of witnesses who gave testimony at odds with that found as established in the factual narrative, the Chamber has nevertheless fully considered the evidence of each and every witness in light of the evidence of the case as a whole. The Chamber has however determined that such evidence does not meet the threshold of reliability and credibility necessary to make a factual conclusion upon it.

1.15. Credibility Discussion

277. As the Chamber has made clear in the approach outlined above, it does not intend to discuss in this Judgement the credibility of the testimony of each and every witness that testified in the case. However, certain important credibility findings bear highlighting.

278. In its attempt to establish that the Accused bear responsibility under either Article 6(1) or as a superior under Article 6(3) for the crimes charged in the Indictment, the Prosecution brought witnesses that may be regarded as "insider" witnesses. In this case, the Chamber has found that these are witnesses who themselves operated either within the CDF inner circle, or at a fairly high level within the overall CDF structure. The Chamber recalls particularly the evidence of Witnesses

[385] *Kvocka et al.* Appeal Judgement, para. 23.

Albert J Nallo, Bobor Tucker, TF2-017, TF2-201, TF2-005, TF2-008, TF2-011, TF2-079, TF2-082 and TF2-223.[386] Many of these witnesses were directly involved as key participants in the events alleged in the Indictment. With this category of witnesses, who could be considered as co-perpetrators or accomplices, a trier of fact has to exercise particular caution in examining every detail of the witnesses' testimony.

279. Witness Nallo was, in the Chamber's view, the single most important witness in the Prosecution evidence on the alleged superior responsibility of the Accused, particularly Fofana. Nallo was, at the time, the Deputy National Director of Operations and the Director of Operations, Southern Region, and according to the evidence, one of only a few literate Directors within the organisation. The Chamber has found that he was in regular communication with both the senior leadership of the organisation and the Kamajors fighting on the ground. Due to his literacy and his functions in relation to the war front, he regularly prepared reports for the ultimate attention of the National Coordinator, Norman. During his time spent at Base Zero, he worked with and reported directly to Fofana, the Director of War, preparing plans for the war. In short, he was in a unique position.

280. Nallo's frank and public admission of his personal role in the war, including the commission of criminal acts, and his willingness to testify openly (presumably at considerable personal risk) about the activities of his fellow leaders and commanders are important factors that have added to his overall credibility. For the greater part, Nallo testified without hesitation, unambiguously, and, in the Chamber's opinion, through a genuine desire that the truth be known. Parts of his testimony were corroborated by the testimony of TF2-017, one of Nallo's subordinates. Occasionally, however, Nallo appeared equivocal or exaggerated in his responses to questions. The Chamber has rejected those portions of his evidence.

281. The Chamber has also rejected parts of Nallo's testimony for reasons of reliability. Much of this relates to events occurring around Talia. The Chamber, for example, rejected part of the testimony of Nallo describing the attacks on four villages in Bonthe District: Dodo, Sorgia, Pipor and Baomakpengeh. For example, Joseph Lansana, whom the Chamber found to be a largely

[386] The Chamber granted protective measures to almost all Prosecution witnesses. The pseudonym assigned to each witness begins with the letters "TF2".

credible witness, gave evidence about his own mother being thrown into a fire, an event to which Nallo also testified; however Lansana placed this event at a different time than Nallo. Doubts as to Nallo's accurate recollection of this, and other incidents, caused the Chamber to entirely reject this part of his testimony.

282. The Prosecution adduced evidence from former child soldiers. The Chamber found the evidence of TF2-021 pivotal in making its factual findings. According to TF2-021's own testimony, he was nine years old when he was captured by RUF rebels, and eleven years old when the Kamajors captured him from the RUF and initiated him into their society. For this Witness, the events in question occurred when he was very young, and his testimony comes many years after the events in question. Nonetheless, the Chamber found his testimony highly credible and largely reliable. Clearly, the intensity of his experience has left him with an indelible recollection of the events in question.

283. Corroboration, although not required in law, was deemed necessary where the Chamber found that internal inconsistencies and contradictions with other evidence demonstrated a poor, selective, or tainted recollection of events. TF2-057 wildly exaggerated his testimony, perhaps because he has a failing memory, because of the trauma he has suffered, or perhaps for other personal reasons. When juxtaposed with the evidence of TF2-067 it was clear that only those parts of his evidence corroborated by other witnesses could be accepted by the Chamber. TF2-223 is an example of a self-serving witness who seemed more interested in bolstering his own role in the events rather than in assisting the court to establish the truth. The Chamber has accepted the evidence given in this vein only where elsewhere corroborated.

284. Similarly, the Chamber found Kamabote to be an unreliable witness and has accepted his evidence only where corroborated. The Chamber has found that Kamabote was directly involved in the commission of crimes in Tongo Field, however, his blanket denial of any such participation, coupled with his general demeanour in court, has led the Chamber to discount most of his evidence.

285. Some Defence witnesses were clearly testifying with the objective of assisting one of the Accused in his Defence. For example, Joe Kpana Lewis and Yeama Lewis, who testified on behalf of Kondewa, had family and friendship connections to the Accused. Yeama Lewis openly admitted

that she was there to assist him and that she had discussed her evidence with her husband before testifying. Such evidence, which is strongly flavoured with personal motive, is of little value to the Chamber.

286. The Chamber suspected that several witnesses were attempting to mislead the Chamber. Brima Tarawally is one such example. The Chamber found him to be self-interested and deliberately obstructive of the proceedings. The Chamber had similar views on the testimony of Mustapha Lumeh, who was hesitant in answering questions, and whose attitude and behaviour in court led the Chamber to conclude that assisting the Chamber with the discovery of truth was not his primary reason for testifying. Such evidence has been disregarded in its entirety. Several other Defence witnesses, whilst to some extent corroborating each others' testimony, left the Chamber with the distinct impression that they had come prepared with "stock" answers which, at least in part, appeared to be designed to refute the charges against the Accused persons.

287. Finally, the Chamber wishes to reiterate that, regardless of any evidence presented in defence of the Accused persons and the weight the Chamber has attached to such evidence, it is the Prosecution that bears the burden of proving, beyond reasonable doubt, the charges against the Accused.

2. Factual Findings

2.1. Introduction

288. In setting out its factual findings, the Chamber has first dealt with the structure and organisation of the CDF / Kamajors, focussing on the period of time of the existence of Base Zero (i.e. from around 15 September 1997 to 10 March 1998). Base Zero was located in Talia Yawbeko chiefdom and was referred to as the CDF Headquarters and the CDF High Command. This section also briefly describes the structure and organisation of the CDF / Kamajors after the dissolution of Base Zero.

289. Secondly, the Chamber has grouped the factual findings relevant to Counts 1-7 of the Indictment according to geographical area. For the sake of clarity, the Chamber has chosen to consider the facts in chronological order, rather than in the order in which they are listed in the

Indictment. These areas consist of the Towns of Tongo Field, Koribondo, Bo District, Bonthe District, Kenema District, Talia / Base Zero and Moyamba District.

290. The factual findings which have a bearing upon offences relating to Child Soldiers (Count 8 of the Indictment), throughout the timeframe of the Indictment, have been extracted from various geographical locations and grouped together under a separate heading. The Chamber considers that they warrant unified treatment because these crimes were charged for locations "throughout the Republic of Sierra Leone".

291. Despite this grouping, it should be understood that events occurring in one area cannot be understood to be entirely distinct from those occurring in another.

2.2. Structure and Organisation of the CDF / Kamajors

2.2.1. Background to Talia / Base Zero

292. The town of Talia is the Chiefdom headquarters of the Yawbeko[387] Chiefdom in Bonthe District.[388] In 1996, the RUF were in control of Talia and were bringing captured civilians to their base there;[389] however, by late 1996 or early 1997 the Kamajors had taken over.[390] The first Kamajor leaders who came to Talia were Ngobeh and Joe Tamidey. Kondewa, who was an herbalist, came two weeks later with his priests and was performing initiations in Mokusi.[391] By the time of the coup on 25 May 1997, the rebel war had subsided in the area and the Kamajors were in control in Talia and surrounding villages.[392]

2.2.2. Events at Talia Prior to the Set up of Base Zero

2.2.2.1. Meeting in Talia After the Coup

293. After the Coup, the Kamajor initiator Kamoh Lahai Bangura called a meeting in Talia that was chaired by MT Collier. Those present at the meeting included, among others, Fofana, Bobor

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[387] Yawbeko is alternatively spelt Yowbeko, Yohbeko.
[388] Transcript of 4 November 2004, TF2-201, p. 84 (CS); Transcript of 18 February 2005, TF2-222, p. 3; Transcript of 17 February 2006, MT Collier, p. 11; Transcript of 8 November 2004, TF2-096, p. 4.
[389] Transcript of 8 November 2004, TF2-096, pp. 4-8.
[390] Transcript of 16 February 2006, MT Collier, pp. 59-65; Transcript of 17 February 2006, MT Collier, p. 11; Transcript of 8 November 2004, TF2-096, pp. 38 and 59-60; Transcript of 12 October 2006, Baimba Jobai, p. 79.
[391] Transcript of 8 November 2004, TF2-096, pp. 14-16; Transcript of 3 June 2005, TF2-134, pp. 25-27.
[392] Transcript of 16 February 2006, MT Collier, pp. 59-61; Transcript of 17 February 2006, MT Collier, p. 11.

Tucker and Rufus Collier. Everyone present agreed to resist the rule of the rebels. Specifically, Bobor Tucker, a.k.a. Jegbeyama and twenty of his men agreed to fight.[393] This group became known as the Death Squad, and was later responsible for the security in and around Talia.[394] Everyone agreed to hold another meeting with Kondewa, who was the chief initiator at that time.[395]

2.2.2.2. Meetings with Kondewa in Tihun

294. Two weeks later, Kamajors and civilians from Moyamba, Bonthe, Bo and Pujehun Districts met with Kondewa in Tihun, a town 14 miles from Talia in Sogbini Chiefdom.[396] Everyone again agreed that they would not accept the rebels, and that they should find Norman, who had been appointed the National Coordinator of the civil defence on 15 June 1997 by President Kabbah.[397] They sent a delegation of four people to find Norman in Liberia so that he could tell President Kabbah that they supported him and would find the means to return him to power.[398] They also wanted to request logistical support from Kabbah and join with Norman to fight the war on two fronts instead of one.[399]

2.2.2.3. Actions of Kondewa in Tihun

295. Around July-August 1997, and while the delegation was searching for Norman, Kondewa was in Tihun performing initiations.[400] During this time, he ordered Tucker and the Death Squad to mount checkpoints around the area, and specifically, at Bauya Junction, Tobanda Junction and in Bumpeh town. Tucker and the Death Squad were also ordered to launch an attack on the Mokanji soldiers in Bo and were given ammunitions from Kondewa's home in Tihun.[401] Tucker reported to Kondewa that the attack on Bo had failed. The two then travelled to Executive

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[393] Transcript of 10 February 2005, Bobor Tucker, pp. 12-15.
[394] Transcript of 10 February 2005, Bobor Tucker, p. 32-33. See section V.2.2.11.6.
[395] Transcript of 10 February 2005, Bobor Tucker, p. 15.
[396] Transcript of 10 February 2005, Bobor Tucker, pp. 15-16; Transcript of 16 February 2006, MT Collier, p. 78; Transcript of 12 May 2006, Haroun Collier, p. 30.
[397] Transcript of 25 January 2006, Samuel Hinga Norman, pp. 25-28; Transcript of 16 February 2006, MT Collier, pp. 78-80.
[398] Transcript of 16 February 2006, MT Collier, pp. 78-80; Transcript of 12 May 2006, Haroun Collier, p. 31.
[399] Transcript of 10 February 2005, Bobor Tucker, p. 26.
[400] Transcript of 16 November 2004, TF2-008, pp. 47-50; Transcript of 10 March 2005, Albert J Nallo, p. 18; Transcript of 15 May 2006, Haroun Collier, pp. 16-17.
[401] Transcript of 10 February 2005, Bobor Tucker, pp. 16-18.

Outcomes at Mombini Sierra Rutile to collect more ammunitions.[402] Kondewa then ordered Tucker to attack Taiama. The attack was successful and a situation report was made to Kondewa.[403]

2.2.2.4. Meeting with Kondewa and Fofana at Talia

296. The delegation that had been sent to find Norman had not returned by the end of two months. Another meeting was held in Talia and those present including, among others, Kondewa, Fofana, Kamoh Lahai Bangura and Tucker, decided to send another delegation to Norman in Gendema.[404] They sent a letter written by Kondewa and a cassette with Kondewa speaking on it. Fofana was among the members of the delegation that went to find Norman.[405]

2.2.2.5. Delegation from Bonthe to Meet Kondewa

297. As a result of a few meetings held in Bonthe Town around August 1997 to discuss the continuing harassment of civilians by soldiers and the security of the island, a delegation of ten, headed by the district officer Mr. LV Kanneh and attended by Father Garrick[406] was sent to Kondewa, who was considered the supreme head of Kamajors, in Tihun Sogbini.[407]

298. The delegation was ordered to disembark from their boat at Momaya. Kamajors were shooting all around them and threatening them. Kamajor Commander Sheku Kaillie, a.k.a. Bombowai, pleaded on the delegation's behalf to allow them to be heard and eventually led them, under his protection, to Kondewa.[408] They learned that Kondewa was no longer in Tihun, but in Talia. After a meeting with the chiefs and elders of Mattru Jong in the morning of 22 August, the delegation was led to Talia by Ngobeh, the district grand Kamajor commander.[409]

299. The delegation arrived at Kondewa's house on 24 August 1997. A young boy around fifteen years of age was playing guitar and percussion and singing about the greatness of Kondewa and the Kamajor society. Kamajors armed with rifles and guns were guarding the house.[410] The

[402] Transcript of 10 February 2005, Bobor Tucker, pp. 19-22.
[403] Transcript of 10 February 2005, Bobor Tucker, pp. 20-23; Transcript of 12 May 2006, Haroun Collier, p. 31
[404] Transcript of 16 February 2006, MT Collier, pp. 78-79; Transcript of 10 February 2005, Bobor Tucker, pp. 26-27.
[405] Transcript of 10 February 2005, Bobor Tucker, pp. 28-29; See also Transcript of 12 May 2006, Haroun Collier, p. 33.
[406] Transcript of 10 November 2004, Father Garrick, pp. 10-12; Transcript of 11 November 2004, TF2-071, pp. 50-51.
[407] Transcript of 10 November 2004, Father Garrick, pp. 11-12.
[408] Transcript of 10 November 2004, Father Garrick, pp. 13-17.
[409] Transcript of 10 November 2004, Father Garrick, pp. 17-19.
[410] Transcript of 10 November 2004, Father Garrick, pp. 19-20.

delegation was introduced to Kondewa, and they spoke in his veranda. The delegation explained to Kondewa the dreadful effects of the war. In response Kondewa stated: "war means to know that you will die; to know that you have no control over your life; to know that you have no dignity; to know that your property is not yours".[411] Kondewa then called a meeting at the court *barri* that was attended by all of the elders of the region, the paramount chiefs and Kamajor commanders. Kondewa said at the meeting that he was not going to give any of the areas under his control to a military government but to the democratically elected Government of President Ahmad Tejan Kabbah. Kondewa agreed to the cessation of hostilities between the Kamajors and the Soldiers, the stopping of the harassment of civilians and the free movement of boats, and wrote a letter to this effect to all Kamajor commanders around Bonthe.[412] The agreement did not work.[413]

300. The delegation left to return to Bonthe accompanied by Ngobeh. It was stopped in Tihun by a Kamajor who presented a letter, which he demanded to be read in the presence of Kondewa. They returned to Talia. The letter was written by a commander from Gambia and stated that LV Kanneh and his group were responsible for bringing the soldiers to Bonthe. Kondewa declared that if the information was true, all of the delegation would be killed; if it was not true, those responsible for the lie would experience a terrible death.[414]

301. The next morning the delegation proceeded to Gambia in the company of Kondewa, Julius Squire and Bombowai. Kondewa ordered a court sitting in Gambia and placed Pa Lewis, one of the elders of the town, Ngobeh and Bombowai in charge of the investigation. Those responsible for the letter pleaded guilty. They were supposed to be killed, but the delegation pleaded with Kondewa to spare their lives and he agreed.[415]

2.2.3. Arrival of Norman at Talia: Base Zero

302. Around 15 September 1997, Norman arrived in Talia by helicopter.[416] Upon his arrival, he told the crowd that welcomed him that President Kabbah had named him the leader of the

[411] Transcript of 10 November 2004, Father Garrick, pp. 20-21.
[412] Transcript of 10 November 2004, Father Garrick, pp. 21-23.
[413] Transcript of 11 November 2004, TF2-071, pp. 52-53.
[414] Transcript of 10 November 2004, Father Garrick, pp. 23-27.
[415] Transcript of 10 November 2004, Father Garrick, pp. 27-29.
[416] Transcript of 26 January 2006, Samuel Hinga Norman, p. 13; Transcript of 12 May 2006, Haroun Collier, p. 33; Transcript of 16 February 2006, MT Collier, p. 79; See also transcript of 5 November 2004, TF2-201, p. 97 (CS).

Kamajors and told him to join the Kamajors in Talia to fight the war. President Kabbah sent a small amount of logistics, including rice, gari, fuel, guns and ammunitions, to Norman for that purpose.[417]

303. Upon his arrival, Norman gave Talia the code name "Base Zero" because Talia was a common name and its use would alert the rebels to their whereabouts.[418] Base Zero existed from about 15 September 1997 to 10 March 1998 as the headquarters for the Civil Defence Forces High Command.[419] Thousands of civilians and Kamajors travelled to Base Zero for military training and initiation into the Kamajor society during those six months.[420]

2.2.4. Establishment and Functions of the War Council

304. When Base Zero was established, Norman was in charge of all matters other than military training and initiations, which were headed respectively by the trainer Mbogba and Kondewa.[421] The elders were displeased with the situation because many atrocities were then being committed by Kamajors.[422] They approached Norman around mid-October and suggested the establishment of a War Council whereby the elders could be involved in the running of Base Zero as an advisory group. Norman accepted this recommendation.[423] The War Council was to advise Norman on issues such as appointment and promotion of commanders, reports from the frontline, requisitions for arms, ammunition and food from the frontline, settlement of complaints between

[417] Transcript of 16 February 2006, MT Collier, pp. 79-82; Transcript of 10 February 2005, Bobor Tucker, pp. 29-30; See also Transcript of 12 May 2006, Haroun Collier, pp. 33-37.
[418] Transcript of 26 January 2006, Samuel Hinga Norman, p.17.
[419] Transcript of 26 January 2006, Samuel Hinga Norman, p. 61; Transcript of 26 January 2006, Samuel Hinga Norman, p. 17. See also Exhibit 10, confidential (refers to the "Civil Defence Forces of Sierra Leone Headquarters"); Exhibit 11, confidential, (refers to the "Civil Defence Forces High Command").
[420] Transcript of 15 February 2005, TF2-005, p. 90 (CS); Transcript of 27 May 2005, TF2-079, p. 53; Transcript of 23 November 2004, TF2-008, pp. 28-29; Transcript of 10 February 2005, Bobor Tucker, pp. 41-42; Transcript of 16 November 2004, TF2-008, pp. 66-67; Transcript of 17 November 2004, TF2-068, pp. 78-79 (CS); Testimony of 8 June 2005, TF2-011, pp. 16-17 (CS).
[421] Transcript of 15 February 2005, TF2-005, p. 91 (CS).
[422] Transcript of 15 February 2005, TF2-005, p. 91 (CS); See also Transcript of 17 February 2005, TF2-222, pp. 90-93; Transcript of 17 November 2004, TF2-008, p. 9.
[423] Transcript of 15 February 2005, TF2-005, pp. 91-92 (CS); Transcript of 4 November 2004, TF2-201, p. 87 (CS); Transcript of 26 May 2005, TF2-079, p. 45; Transcript of 16 November 2004, TF2-008, p. 75; Transcript of 17 November 2004, TF2-008, p. 9.

the Kamajors and the surrounding communities, and decisions on when and where to go to war and how many Kamajors should be committed to the effort.[424]

305. The War Council had between 15 and 30 members who were recommended by sitting members of the War Council and appointed by Norman.[425] Its members included, among others: Chief William Quee as the Chairman, Paramount Chief Charlie Tucker as the vice-Chairman, Ibrahim FM Kanneh as the Secretary, regional coordinators from the South, North and East and numerous other representatives from every region.[426]

306. The War Council functioned well at the beginning. The members collectively gave advice to Norman and he would approve or deny their suggestions.[427] Norman, however, did not want an effective structure in place to check his power, and therefore began discouraging all proposals from the War Council, often sitting in on the meetings to discourage members from speaking freely.[428] He began calling meetings with the commanders and excluded the War Council from these meetings.[429] Kondewa also opposed the War Council and acted out against them on more than one occasion, once condoning Kamajors "pelting" the members with stones, once shooting amongst the members during a meeting saying, "[w]hen people say war, you say book", and also threatening the members for attempting to investigate complaints of looting and killing made against the Death Squad.[430] The War Council quickly became ineffective and the three Accused and the commanders ultimately did all of the planning for the prosecution of the war without the War Council's involvement.[431]

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[424] Transcript of 15 February 2005, TF2-005, pp. 93-94 (CS); Transcript of 16 February 2005, TF2-005, p. 10 (CS); Transcript of 4 November 2004, TF2-201, pp. 90-91 (CS); Transcript of 18 November 2004, TF2-068, p. 80 (CS); Transcript of 16 November 2004, TF2-008, p. 75.

[425] Transcript of 17 November 2004, TF2-008, p. 8; Transcript of 4 November 2004, TF2-201, p. 94 (CS); Transcript of 16 November 2004, TF2-008, p. 75.

[426] Transcript of 15 February 2005, TF2-005, pp. 92-93 (CS).

[427] Transcript of 15 February 2005, TF2-005, p. 94 (CS).

[428] Transcript of 17 February 2005, TF2-222, pp. 101-102; Transcript of 15 February 2005, TF2-005, p. 94 (CS).

[429] Transcript of 17 February 2005, TF2-222, pp. 102-103; Transcript of 4 November 2004, TF2-201, pp. 91-93 (CS).

[430] Transcript of 26 May 2005, TF2-079, pp. 46-49; Transcript of 4 November 2004, TF2-201, pp. 92-95 (CS); Transcript of 15 February 2005, TF2-005, pp. 95-98 and 100-101 (CS); TF2-011 also testified that Kondewa was calling the War Council a Mende word for "cunning" saying they were trying to cunningly take the power from Norman, Fofana and Kondewa. Transcript of 8 June 2005, TF2-011, p. 31 (CS).

[431] Transcript of 15 February 2005, TF2-005, p. 94 (CS); Transcript of 5 November 2004, TF2-201, pp. 93-99 (CS); Transcript of 16 November 2004, TF2-008, p. 82.

2.2.5. Discipline

307. There was a disciplinary committee of the War Council at Base Zero that was headed by Dr. Jibao.[432] The process would generally begin when a complaint was made to the War Council by a commander or a civilian.[433] The complaint would then be forwarded to the disciplinary committee, which could take one of two measures. If the matter was a minor complaint, the disciplinary committee and the War Council had a free hand to settle the problem themselves or to hand it back to the commanders to settle. If the matter was a major one, the disciplinary committee would make a recommendation to Norman.[434] In the most severe cases, Norman would refer the matter to the War Council for advice. However, Norman would make the final decision on discipline himself.[435]

308. As with their other functions, members of the War Council were afraid of exercising their functions as a disciplinary body and were often prevented from doing so.[436] In particular, they feared reprisals from the Kamajors. For example, Mr. Robert Kajue, a seventy-year-old former Member of Parliament and member of the War Council, was molested by a young Kamajor with a gun and no disciplinary action was taken against the Kamajor.[437] On a separate occasion, Kondewa threatened the War Council, saying that whoever touched a Kamajor would be punished.[438] Norman also routinely refused to implement the War Council's recommendations[439] and despite recommendations by the War Council as serious as the threat of death,[440] the worst punishment

[432] Transcript of 5 November 2004, TF2-201, p. 95 (CS).
[433] Transcript of 16 February 2005, TF2-005, pp. 14-16 (CS).
[434] Transcript of 23 November 2004, TF2-008, pp. 3-5; Transcript of 15 February 2005, TF2-005, pp. 94-95 (CS); Transcript of 6 February 2006, Samuel Hinga Norman, pp. 38-41.
[435] Transcript of 6 February 2006, Samuel Hinga Norman, pp. 38-41.
[436] Transcript 22 November 2004, TF2-017, pp .46-47 (CS).
[437] Transcript of 8 June 2005, TF2-011, pp. 23-24 (CS).
[438] Transcript of 22 November 2004, TF2-017, p. 46 (CS).
[439] Transcript of 23 November 2004, TF2-008, pp. 4-5.
[440] For example, the War Council recommended that Osman Vandi a.k.a. Vanjawai be executed after he killed a pregnant woman named Jeneba in Jiama Bongo Chiefdom. He was instead removed from command and was not permitted to return to the warfront. See Transcript of 11 March 2005, Albert J Nallo, pp.16-23; Transcript of 26 January 2006, Samuel Hinga Norman, pp.31-34; Transcript of 31 January 2006, Samuel Hinga Norman, pp.44-46. Similar actions were taken against Bobor Tucker, a.k.a. Jegbeyama, the commander of the Death Squad. The Death Squad was found to have been killing civilians and looting. It was recommended that Jegbeyama should remain at Base Zero. See Transcript of 16 November 2004, TF2-008, pp. 76-77.

that was actually given was to 'peg' the offender at Base Zero. This meant only that the person had to remain at Base Zero and could not return to combat.[441]

2.2.6. Reports

309. Throughout the operation of Base Zero, reports were delivered to the High Command from the frontlines. However, there was no uniform reporting system in place. There are examples of a written reporting scheme, with reports ranging from two-page requests for logistics[442] to detailed descriptions of attacks, ambushes and summary executions.[443] There was also a system of verbal reporting whereby battalion commanders would report from the warfront to regional operation commanders, who would then report to the War Council.[444]

310. Norman had a satellite phone at Base Zero which was kept at MT Collier's house.[445] He would use the phone only to keep President Kabbah informed and to request assistance from him when necessary.[446] Reports from the warfront were generally conveyed by foot, and rarely, by more efficient forms of transport like bicycle, motorcycles and other vehicles.[447]

2.2.7. Logistics Procurement

311. One of the principal functions of the reporting scheme was as a means for commanders to request more logistics from Base Zero.[448] Base Zero was also, in addition to its other functions, a central storage and distribution site for all of the CDF's logistics, including weapons, ammunitions, fuel, food and other condiments.[449] Whenever possible, victorious commanders would take the weapons of defeated enemies.[450] The primary source of logistics, however, was Base

[441] Transcript of 17 November 2004, TF2-008, p. 46.
[442] Exhibit 147.
[443] Exhibit 86, confidential.
[444] See also section V.2.2.6 below.
[445] Transcript of 12 May 2006, Haroun Collier, pp. 37-39; Transcript of 15 May 2006, Haroun Collier, p. 66.
[446] Transcript of 16 February 2005, TF2-005, pp. 10-11 (CS); Transcript of 27 January 2006, Samuel Hinga Norman, pp. 97-99; Transcript of 30 January 2006, Samuel Hinga Norman, pp. 2-3.
[447] Transcript of 8 June 2005, TF2-011, pp. 27-28 (CS).
[448] See also section V.2.2.6 below.
[449] Transcript of 4 November 2004, TF2-201, pp. 85, 87 and 96-98 (CS); Transcript of 5 November 2004, TF2-201, p. 100 (CS).
[450] Transcript of 16 November 2004, TF2-008, p. 48.

Zero. Norman would take logistics from Liberia by helicopter and store them at Base Zero.[451] President Kabbah would also provide arms and ammunitions when Norman made such requests.[452] After one request that Norman made in October 1997, President Kabbah organised a meeting between himself, Norman and ECOMOG General Maxwell Khobe at Lungi Airport during which President Kabbah assured Norman that arrangements had been put in place to bring weapons to Base Zero by the end the month.[453] Norman and others returned to Lungi in November and received an assortment of conventional weapons.[454]

312. There were two logistics stores at the court *barri* at Base Zero. One was the goods store, which was run by Commanding Officer Jayah.[455] The other was the arms and ammunitions store, which was run by the National Deputy Director of War, Mohamed Orinco Moosa.[456] Norman kept records of everything that he brought to Base Zero and when he wanted arms and ammunitions distributed, he would write out an order and give it to Fofana for his action.[457]

2.2.8. Initiation

313. Initiation into the Kamajor society and immunisation are two distinct but interrelated concepts.[458] The phenomenon of immunisation developed between 1996 and 1997 when some people, called "initiators", were believed to have developed mystical medicinal herbs which rendered people immune to bullet wounds.[459] Most chiefdom authorities not only invited but paid for the initiators, including among others, Kondewa, Mama Munde Fortune, Siaka Sheriff

[451] Transcript of 4 November 2004, TF2-201, p. 87 (CS); Transcript of 16 November 2004, TF2-008, p. 48; Transcript of 15 March 2005, Albert J Nallo, p. 5; Transcript of 5 May 2006, Mustapha Lumeh, pp. 75-76; Transcript of 17 November 2004, TF2-008, p. 8.
[452] Transcript of 27 January 2006, Samuel Hinga Norman, pp. 98-99; Transcript of 26 January 2006, Samuel Hinga Norman, pp. 25-26.
[453] Transcript of 26 January 2006, Samuel Hinga Norman, pp. 37-39.
[454] Transcript of 26 January 2006, Samuel Hinga Norman, pp. 39-42; Transcript of 5 May 2006, Mustapha Lumeh, pp. 75-78.
[455] Transcript of 17 February 2006, MT Collier, pp. 6-7; Transcript of 16 November 2004, TF2-008, pp. 69-70.
[456] Transcript of 16 November 2004, TF2-008, pp.69-70; Transcript of 4 November 2004, pp.96-98 (CS).
[457] Transcript of 4 November 2004, pp. 97-98 (CS).
[458] Transcript of 27 January 2006, Samuel Hinga Norman, pp. 91-95.
[459] Transcript of 10 February 2006, Albert Joe Demby, pp. 10-11; Transcript of 27 January 2006, Samuel Hinga Norman, pp. 91-95.

(Mualemu) K Saddam and Kamoh Lahai Bangura,[460] to immunise their chiefdom Kamajors.[461] In addition to the Kamajors, civilians, including elders, women and children, were immunised.[462]

314. For a period of time before the coup, initiation was a process through which a fighter joined the Kamajor society. Young male fighters of good character were recommended and selected by the local chiefdom authorities for initiation.[463] One of the foremost reasons for being initiated at that time was to protect civilians and territory.[464] During the initiation, Kamajors were given certain rules and prohibitions that they were bound to follow.[465] Some of these prohibitions precluded, *inter alia*, the killing of civilians who were not participating in the conflict; the killing of women; looting; and the killing of a surrendered enemy.[466] The consequence for violating one of these rules was that a Kamajor would lose his immunisation to bullets and would be killed.[467]

315. After the Coup, there was a need to substantially increase the number of hunters in the Kamajor society, which required a marked increase in the number of initiations. The initiation procedure changed tremendously and was no longer coordinated at the local or chiefdom level. Instead of being recommended by the chiefdom authorities, fighters started seeking initiation individually[468] and the rules were not highlighted to the fighters.[469] Chiefs were in disarray and everybody came to Base Zero to seek refuge and join the Kamajors there.[470] The primary purpose of the initiation was still to prepare the fighters for the war and to receive the protection against

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[460] Transcript of 26 May 2005, TF2-079, pp. 12-14; Transcript of 22 February 2006, Ishmael Koroma, pp. 29-35; Transcript of 31 May 2006, Lansana Bockarie p.17; Transcript of 10 March 2005, Albert J Nallo, pp. 6 and 9; Transcript of 15 February 2005, TF2-001, pp. 80-85 (CS); Transcript of 10 February 2006, Albert Joe Demby, p. 13.
[461] Transcript of 10 February 2006, Albert Joe Demby, pp. 13-15.
[462] Transcript of 10 February 2006, Albert Joe Demby, pp. 13-15.
[463] Transcript of 16 November 2004, TF2-008, pp. 51-55; Transcript of 27 May 2005, TF2-079, pp. 6-8.
[464] Transcript of 17 November 2004, TF2-008, pp. 12-14.
[465] Norman was told about these guiding laws when he was initiated by Moalem Sesay. See Transcript of 3 February 2006, Samuel Hinga Norman, pp. 38-39.
[466] Transcript of 27 January 2006, Samuel Hinga Norman, pp. 47-48; Transcript of 3 February 2006, Samuel Hinga Norman, pp. 39-42; Transcript of 17 September 2004, TF2-082, pp. 6-8, (CS); Transcript of 3 November 2004, TF2-021, pp. 49-51; Transcript of 18 February 2005, TF2-222, p. 20; Transcript of 5 November 2004, TF2-021, pp. 106-107 (CS); Transcript of 14 September 2004, TF2-140, pp. 160-162; Transcript of 16 February 2005, TF2-005, p. 4, (CS).
[467] Transcript of 17 September 2004, TF2-082, pp. 7-8 (CS); Transcript of 3 November 2004, TF2-021, p. 51; Transcript 18 February 2005, TF2-222, p. 21.
[468] Transcript of 3 February 2006, Samuel Hinga Norman, pp. 72-75; 6 February 2006, Samuel Hinga Norman, pp. 73-75.
[469] Transcript of 17 November 2004, TF2-008, p. 24; Transcript of 16 November 2004, TF2-008, p.55; Transcript of 26 May 2005, TF2-079, pp.13-14.
[470] Transcript of 8 June 2005, TF2-011, pp. 16-17 (CS).