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With the exception of the defendant's name, the names of persons and other entities mentioned in this anonymized judgment are fictitious. Any resemblance to real names is purely coincidental and unintentional.

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Federal Criminal Court

Federal Criminal Court

Federal Criminal Court Federal

Criminal Court

Case Number: SK. 2019. 17

Judgment of June 18, 2021, Criminal Court

Composition

Federal Criminal Judges
Jean-Luc Bacher, Presiding Judge,
Stephan Zenger, and David Bouverat; Clerk Marine Neukomm

Parties

PUBLIC PROSECUTOR'S OFFICE OF THE CONFEDERATION, represented by Andreas Müller, federal prosecutor,

and

plaintiffs:

1. **Georges,** residing in Liberia, represented by Attorney Alain Werner,

2. **Coralie,** residing in Liberia, represented by Attorney Zeina Wakim,

3. **Jérôme,** a resident of Liberia, represented by Attorney Hikmat Maleh,

4. **Louis Z.,** residing in Liberia, represented by Attorney Alain Werner,

5. **Raoul,** residing in Liberia, represented by Attorney Raphaël Jakob,

6. **Antoine W.,** residing in Liberia, represented by Attorney Alain Werner,

7. **Paul,** a resident of Liberia, represented by Attorney Alain Werner,

v.

Alieu KOSIAH, a Liberian national, currently detained at Prison V, represented by Attorney Dimitri Gianoli,

Subject

Violations of the laws of war (Art. 108 and 109 of the Military Penal Code, *in conjunction with* Art. 3 common to the General Provisions and Art. 4 of Protocol II)

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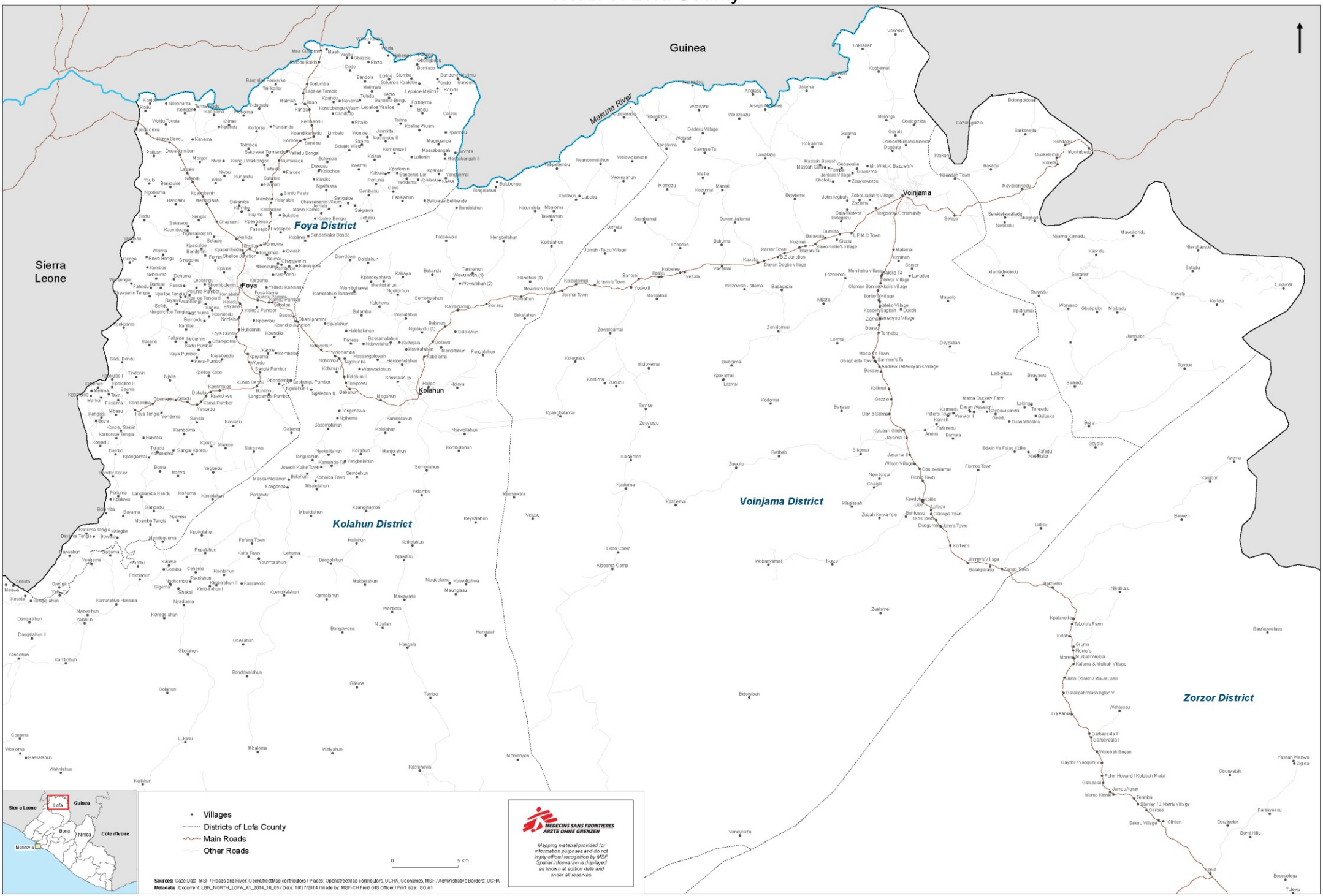
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North of Lofa County



In the matter of

A. Proceedings:

A.1 On July 3, 2014, through their counsel, Attorney Alain Werner, five Liberian nationals named Paul, Antoine W., Louis Z., Rémy, and C. filed a criminal complaint with the Office of the Attorney General of Switzerland (hereinafter: OAG) against Alieu Kosiah for crimes against humanity and war crimes (05-01-0001 et seq.).

A.2 On August 21, 2014, Raoul, a Liberian national, also filed a criminal complaint with the OAG through Attorney Raphaël Jakob against Alieu Kosiah for crimes against humanity and war crimes (05-02-0001 et seq.).

A.3 On August 22, 2014, Jérôme, a Liberian national, in turn filed a criminal complaint with the MPC, through attorney Hikmat Maleh, against Alieu Kosiah for crimes against humanity and war crimes (05-03-0001 et seq.).

A.4 On August 28, 2014, the OAG opened, under reference number SV.14.0828, criminal proceedings against Alieu Kosiah for war crimes committed during the first civil war in Liberia, specifically the murder of civilians, rape, and acts intended to enslave and terrorize the population (Art. 108 and 109 of the former Military Penal Code of June 13, 1927 [CPM; RS 321.0], incorporated into Art. *264b* et seq. of the Swiss Criminal Code (CP), in conjunction with Art. 3 common to the Geneva Conventions of August 12, 1949 [RS 0.518.12, 0.518.23, 0.518.42, and 0.518.51; GC] and Art. 4 of the
Additional Protocol of June 8, 1977, to the Geneva Conventions relating to the protection of victims of non-international armed conflicts [RS 0.518.522; AP II]) (01-01-0001 et seq.).

A.5 Following an arrest warrant issued on November 10, 2014, Alieu Kosiah was arrested in U. on the same day and placed in custody at the V. Regional Prison (06-01-0001 et seq.). His pretrial detention was regularly extended.

A.6 By order dated September 2, 2015, the Office of the Attorney General (MPC) expanded the investigation to include the offenses of recruiting child soldiers and looting (01-01-0005).

A.7 On June 23, 2016, Georges, a Liberian national, filed a criminal complaint with the MPC through his attorney, Maître Alain Werner, against Alieu Kosiah for war crimes (05-01-0017 et seq.).

A.8 On August 23, 2016, Coralie, a Liberian national, filed a criminal complaint with the MPC through her counsel, Maître Zeina Wakim, for war crimes and crimes against humanity (05-04-0001 et seq.).

A.9 By order dated November 3, 2016, the MPC expanded the investigation to include the offense of violating human dignity, specifically humiliating and degrading treatment (01-01-0006).

A.10 By order dated June 19, 2017, the MPC ordered the consolidation, under reference SV.14.0828, of proceedings initiated by the Central Public Prosecutor's Office of the Canton of Vaud against Alieu Kosiah for fraud and forgery of documents (01-01-0007 et seq.).

A.11 By decision of December 11, 2018, the OAG revoked Rémy's status as a complainant with respect to the facts set forth in section 1.3.3 of the indictment (15-01-0730 et seq.; see *below*, para. 7.3). Rémy filed an appeal on December 24, 2018 (21-10-0003 et seq.). It was dismissed by a decision of the Complaints Chamber of the Federal Criminal Court on May 22, 2019 (BB.2019.3; 40.510.012 et seq.).

A.12 Also by decision of December 11, 2018, the Office of the Attorney General (MPC) revoked Antoine W.'s status as a complainant with respect to the facts set forth in section 1.3.17 of the indictment (15-01-0737 et seq.; see *below*, para. 7.11).

A.13 By decision of January 7, 2019, the MPC revoked Raoul's status as a complainant with respect to the facts set forth in section 1.3.5 of the indictment (15-01-0951 et seq.; see *below*, para. 7.4). Raoul filed an appeal on January 18, 2019 (21-12-0003 et seq.). It was dismissed by a decision of the Complaints Chamber of the Federal Criminal Court on May 22, 2019 (BB.2019.14; 40.510.027 et seq.).

A.14 By indictment dated March 22, 2019, the Office of the Attorney General of Switzerland (OAG) committed Alieu Kosiah for trial before the Criminal Division of the Federal Criminal Court (hereinafter: the Court) for violations of the laws of war within the meaning of Art. 109(1) aCPM in conjunction with Art. 108(2) aCPM, as well as Art. 3 common to the General Provisions and Art. 4 PA II.

A.15 By order of April 8, 2019, Alieu Kosiah was placed in pretrial detention for security reasons (40.231.7.011 et seq.). The defendant remains in pretrial detention for security reasons to this day.

A.16 On May 7, 2019, the Office of the Attorney General issued two orders dismissing the charges regarding sixteen counts initially attributed to Alieu Kosiah. The first order concerns acts prosecuted for violations of the laws of war under Art. 109(1) aCPM in conjunction with Art. 108(2) aCPM, as well as Art. 3 common to the General Provisions and Art. 4 PA II (40.110.008 et seq.); the second order concerns acts constituting fraud (Art. 146 of the Swiss Criminal Code) and forgery of documents (Art. 251 of the Swiss Criminal Code) (40.110.066 et seq.). Since the allegations made by C. have been dismissed,

he is no longer a party to the proceedings. On May 17, 2019, the complainant, Coralie, filed an appeal against the first order dismissing the case. The appeal was dismissed by a decision of the Complaints Chamber of the Federal Criminal Court on November 7, 2019 (BB.2019.106; 40.510.126 et seq.).

A.17 On June 14, 2019, the Court invited the parties to submit their evidence (40.400.009).

A.18 On August 19, 2019, the Court received from the Federal Office of Justice the transcript of the hearing of D., a former member of the Truth and Reconciliation Commission of Liberia (hereinafter: TRC), in response to a request for mutual legal assistance made by the Office of the Attorney General on March 16, 2017 (40.261.1.020 et seq.).

A.19 By order of September 6, 2019, the Court ordered, as evidence, the hearing during the trial of Alieu Kosiah regarding his personal circumstances and the facts of the indictment; the hearing of Georges, Coralie, Jérôme, Louis Z., Raoul, Antoine W., and Paul in their capacity as complainants; and the hearing of Pierre, alias
"Pégase" as a person called to provide information; the examination of Rémy, Olivier, Robert, Jean, alias "Cassiopée," Victor X., Didier X., André, E., Alfred, and Raoul's cousin, whose name is unknown, as witnesses; and the production of the transcript of Alieu Kosiah's hearing held on May 1May 2019 in connection with the execution of a letter rogatory with Norway. Furthermore, the Court rejected the parties' motions for the admission of evidence (40.250.001 et seq.).

A.20 On October 8, 2019, the Court also ordered the production of the transcript of Alieu Kosiah's hearing, which took place on August 30, 2019, pursuant to a letter rogatory with France in connection with the criminal proceedings against Pierre for war crimes allegedly committed during the First Liberian Civil War. Some of the alleged acts are said to coincide with those alleged against Alieu Kosiah in the present proceedings (40.250.017 s.).

A.21 By order dated October 25, 2019, the Court rejected the defense's motions for the production of evidence seeking the production of a criminal complaint filed by Georges against Pierre, the testimony of F., the imam of Pasolahun, the transcripts of the hearings conducted in the French criminal proceedings against Pierre, and all documents related to the investigation or to "possible verifications" in the context of the French criminal proceedings against Pierre, and to the disclosure of the names of all complainants heard in the context of said proceedings (40.250.022 et seq.).

A.22 On December 12, 2019, the Court sent a request for mutual legal assistance to the Paris National Anti-Terrorism Prosecutor's Office (hereinafter: PNAT) in connection with the criminal proceedings it is conducting against Pierre. The Court thus requested the production of the criminal complaint filed against Pierre by Civitas Maxima, an organization defending victims of war crimes; all transcripts of the hearings conducted by the French authorities in connection with the aforementioned proceedings; any psychological evaluations performed on the individuals interviewed;

the report prepared by the French authorities following the judicial reconstruction that took place in Liberia; and any other document that may be relevant to the charges against Alieu Kosiah in the indictment of March 22, 2019 (40.261.3.0011 et seq.). On February 4, 2020, the PNAT submitted to the Court a portion of the documents requested in the motion of December 12, 2019 (40.261.3.014 et seq.).

A.23 By order dated February 14, 2020, the Court admitted the documents received from the PNAT into the present proceedings. It also once again rejected the defense's motion for evidence seeking to hear testimony from F., the imam of Pasolahun, and admitted into the record a photographic report submitted by the organization Civitas Maxima on February 7, 2020. Finally, it canceled the scheduled hearings of Raoul's cousin (whose contact information remained unknown to the Court) and of E. (who had exercised her right to refuse to testify in her capacity as the defendant's ex-wife) (40.250.029 et seq.).

A.24 On February 28, 2020, the Court sent the PNAT a request for mutual legal assistance supplementing the one dated December 12, 2019, in which it requested the production of certain hearing transcripts that had not been forwarded to it on February 4, 2020, a photo lineup that had been presented to several participants in the French proceedings, and Pierre's psychiatric evaluation. Furthermore, the Court noted that none of the hearing transcripts requested on February 12, 2019, had been provided, and informed the PNAT that it would refrain from requesting them if the PNAT confirmed that they were unrelated to the present proceedings (40.261.3.1029 et seq.). On March 11, 2020, the PNAT submitted the requested documents to the Court, with the exception of the psychiatric evaluation and another hearing transcript that was not relevant to the present proceedings (40.261.3.1031 et seq.).

A.25 By order of March 17, 2020, the Court entered the supplementary documents submitted by the PNAT into the record and waived its request for the hearing transcripts initially sought in the request of December 12, 2019, which had not been provided by the French authorities, as the latter had confirmed that the transcripts in question did not pertain to the facts of the present proceedings. The Court also waived its request for the psychiatric expert report following the French public prosecutor's office's refusal to provide it. Furthermore, the Court once again rejected the request for evidence submitted by Attorney Alain Werner seeking to hear testimony from G., commander of the Central Office for the Fight Against Crimes Against Humanity, Genocide, and War Crimes, as well as the defense's request to hear testimony from F., the imam of Pasolahun. However, it did admit into the record a video submitted by Attorney Alain Werner on February 28, 2020, regarding the
"tabé" (40.250.029 et seq.).

A.26 Given the sexual nature of the offense with which the defendant is charged under item
1.3.24 of the indictment (see *below*, para. 7.17), the Court ordered that the proceedings be held in partial closed session pursuant to Art. 70(1)(a) of the Swiss Criminal Procedure Code.

A.27 After several postponements caused by the COVID-19 pandemic, the first phase of the trial began on December 3, 2020. Appearing in court were the Office of the Attorney General, represented by Federal Prosecutor Andreas Müller and Assistant Federal Prosecutor Julien Wenger; the defendant Alieu Kosiah, represented by Attorneys Dimitri Gianoli and Sébastien Weibel (a trainee attorney); and Attorneys Alain Werner and Romain Wavre on behalf of the plaintiffs Georges, Louis Z., Antoine W., and Paul; Attorney Zeina Wakim for the plaintiff Coralie; Attorney Hikmat Maleh for the plaintiff Jérôme; and Attorney Raphaël Jakob for the plaintiff Raoul. The plaintiffs did not appear in court; since the first part of the proceedings was devoted to hearing the defendant, the Court considered that the presence of the plaintiffs—all of whom reside in Liberia—was not required given the health situation in Switzerland. They were therefore merely invited to appear voluntarily.

A.28 At the opening of the proceedings, the Court gave the parties the opportunity to raise preliminary issues, particularly regarding the validity of the indictment, the conditions for initiating criminal proceedings, obstacles to proceeding, the case file, and the evidence submitted.

The Office of the Attorney General did not raise any preliminary questions.

Attorney Alain Werner raised the following preliminary issues:

- Request to postpone the proceedings to allow the plaintiffs to attend the hearings;
- A renewed request to hear G. as a witness.

Attorney Raphaël Jakob supported the preliminary issues raised by Attorney Alain Werner and raised the following preliminary issues:

- Application of Art. *264a* of the Swiss Criminal Code (crimes against humanity) to the charges set forth in the indictment in conjunction with Art. 344 of the Swiss Criminal Procedure Code;
- Application of Articles *264b* et seq. of the Swiss Criminal Code (CP) in lieu of Articles 108 and 109 of the former Military Criminal Code (aCPM);
- Application of Article *264k* of the Swiss Penal Code (liability of a superior).

Attorneys Zeina Wakim and Hikmat Maleh concurred with the preliminary questions raised by Attorneys Alain Werner and Raphaël Jakob.

Finally, Attorney Dimitri Gianoli raised the following preliminary questions:

- Inability of the attorneys for Civitas Maxima to represent the plaintiffs in the proceedings due to a lack of sufficient independence;

- The inadmissibility of certain evidence;

- Removal from the case file of documents related to the identification of witnesses Victor X. and Didier X. by the plaintiffs Louis Z. and Antoine W.

Attorney Dimitri Gianoli also requested permission to file a brief consisting of an analysis of the statements and contradictions that emerged during the Public Prosecutor's Office's questioning of the witness Benoît.

On Friday, December 4, 2021, the Court notified the parties of its decisions on the preliminary questions. Regarding the hearing of G., the Court invited Attorney Alain Werner to renew his request at the time of the presentation of evidence. Regarding the brief that Attorney Dimitri Gianoli wished to file, the Court dismissed it at this stage. Furthermore, the Court dismissed the preliminary questions raised. The grounds for its decisions are set forth in paragraph 2 below.

A.29 Following the Court's notification of its decisions regarding the preliminary questions raised, Counsel Jakob formulated a new preliminary question seeking the remand of the indictment so that the Office of the Attorney General (MPC) could amend it, thereby enabling the Court to assess the facts under Article *264a* of the Swiss Criminal Code (crimes against humanity). After consulting the parties—and in particular the MPC, which indicated that it did not wish to amend its indictment—the Court rejected the preliminary question. The grounds for its decision are set forth in paragraph 2 below.

A.30 The Court then commenced the evidentiary phase and heard the defendant Alieu Kosiah (December 4–9, 2020). During his hearing, the MPC requested that the following two news articles be admitted into the record, which were granted:

- "Liberia: Foya Wants Death Sentence for Alieu Kosiah in War Crimes Trial" by James Harding Giahyue, published in the newspaper Front Page Africa on December 8, 2020 (40.721.005 et seq.);
- "Alieu Kosiah Is Alleged to Have Enslaved, Killed, and Even Eaten People. But His Friends Say He Is a Hero" by Michael Schilliger, published in the Neue Zürcher Zeitung on November 28, 2020 (40.721.014 et seq.).

The attorneys for the plaintiffs wished to reserve their questions for the defendant for the second part of the proceedings, in the presence of their respective clients, which was accepted by the Court.

A.31 Following Alieu Kosiah's testimony, Attorney Dimitri Gianoli requested that the scar on Alieu Kosiah's leg be photographed. The Court granted this request for evidence.

A.32 The proceedings were adjourned on December 9, 2020.

A.33 The proceedings resumed on February 15, 2021. Appearing in court were the Office of the Attorney General (MPC), represented by Federal Prosecutor Andreas Müller and Assistant Federal Prosecutor Julien Wenger; the defendant Alieu Kosiah, represented by Attorneys Dimitri Gianoli and Mélanie Ajac, a trainee attorney; and the plaintiffs Georges, Louis Z., Antoine W., and Paul, represented by attorneys Alain Werner and Romain Wavre; the plaintiff Jérôme, represented by attorney Hikmat Maleh; and the plaintiff Raoul, represented by attorney Raphaël Jakob. The complainant Coralie was unable to travel to Switzerland from Liberia due to maternity leave. She was deemed excused, and her counsel, Attorney Zeina Wakim, represented her.

A.34 During the recess, the Court received various motions from the parties. After giving the parties the opportunity to submit written responses to each of these motions, the Court announced its decisions on them at the opening of the second part of the proceedings.

The incidental issues raised by Attorney Alain Werner are as follows:

- Request for corrections to Alieu Kosiah's transcript;
- Request for an exemption from appearing for Georges on February 19 and 20, 2021;
- Request that the plaintiffs be allowed to question the defendant before being heard themselves.

Attorney Alain Werner also made the following requests for evidence:

- Hearing of G., commander of the French Central Office for the Fight Against Crimes Against Humanity, Genocide, and War Crimes, as a witness;
- Production of the asylum application that Alieu Kosiah filed in France;
- Inclusion in the case file of a map of the city of Foya.

The incidental motions raised by Attorney Raphaël Jakob are as follows:

- A motion requesting that the plaintiffs be allowed to question the defendant before they themselves are heard;
- A motion that the video recordings of Alieu Kosiah's interrogation remain in the case file;
- Motion to obtain the minutes of the second part of the trial proceedings prior to closing arguments;
- A request to obtain the transcript of the first part of the trial containing the decisions regarding the preliminary issues raised.

Attorney Raphaël Jakob also submitted the following request for evidence:

- Inclusion in the case file of three newspaper clippings concerning the capture of the town of Bong Mines by ULIMO, as well as the establishment of a

tribunal by ULIMO to adjudicate the atrocities committed within the faction (40.555.065 et seq.).

The incidental motions raised by Attorney Zeina Wakim are as follows:

- A motion requesting that the plaintiffs be allowed to question the defendant before being heard themselves;
- A motion to amend the transcript of Alieu Ko-siah's interrogation.

The motions raised by Counsel Dimitri Gianoli are as follows:

- A motion to amend the transcripts of Rémy's interrogation dated November 21, 2016, and Coralie's interrogation dated November 7, 2016;
- Motion that the defendant be permitted to submit his own requests to the Court for amendments to his interrogation transcript.

Attorney Dimitri Gianoli also submitted the following requests for evidence:

- A map of the city of Foya to be submitted to journalist Michael Schilliger, author of the article published in the Neue Zürcher Zeitung on November 28, 2020, titled "Alieu Kosiah is said to have enslaved, killed, and even eaten people. But his friends say he is a hero" (40.721.014 et seq.);
- Various cross-examinations between the plaintiffs and witnesses called to testify at the hearings.

With regard to the incidental motions, the Court granted Georges an exemption from appearing on February 19 and 20, 2021, provided that his hearing is not delayed on those dates due to unforeseen circumstances affecting the trial schedule. With regard to the amendments to the transcript of Alieu Kosiah's examination requested by the various attorneys in the proceedings, the Court indicated that it would only agree to correct typographical errors or obvious mistakes. According to the Court, it is up to the attorneys to submit their requests for corrections, not the parties themselves. Finally, regarding the request that the video recordings of Alieu Kosiah's interrogation remain in the case file, the Court grants it, subject to the following conditions:

- Viewing of the videotapes shall take place in a room designated for that purpose at the headquarters of the Federal Criminal Court in Bellinzona.
- Viewing shall take place exclusively using a computer provided by the court, on which the videos have been stored.
- Internet access, Bluetooth, Wi-Fi, USB, etc., are blocked on this computer.
- Access to the recordings is limited to "read-only" mode, meaning that no copies may be made.

- The parties are authorized to take handwritten notes during the viewing and to take these notes with them at the end of the viewing.
- The use of any technical means during the viewing session that would allow the copying of all or part of the video recordings (photographs, videos, scans, etc.) is prohibited.
- The person viewing the recordings is permitted to bring a cell phone during the viewing. Use of the cell phone is permitted solely for the purpose of communicating verbally with their law firm. However, they are prohibited from copying all or part of the recordings using the cell phone.

Regarding requests for evidence, the Court admitted the exhibits proposed by Attorneys Alain Werner and Raphaël Jakob to the extent that they are relevant to the facts of the case. The Court also granted the cross-examinations requested by the defense, provided they prove useful during the proceedings.

Furthermore, the incidental motions and requests for evidence were rejected (see *below*, paras. 2 and 3).

A.35 The Court then proceeded with the evidentiary phase and heard the plaintiffs and witnesses, as well as conducting a supplementary hearing of the defendant, from February 15 to February 26, 2021. The complainant Coralie and the witness Alfred were heard via videoconference from the U.S. Embassy in Monrovia. The other individuals heard as complainants and witnesses traveled to Switzerland from Liberia. Pierre, who is detained in France, was heard via videoconference from Paris.

A.36 Following the hearings of Paul and Raoul, the Office of the Attorney General requested permission to amend the indictment dated March 22, 2019. This request was partially granted by the Court (see *below*, para. 2 for the reasons).

A.37 During the hearings, Attorney Raphaël Jakob requested that a World Bank report from December 1984 and an advertisement for the sale of a “Mirlees Black Stone” generator be entered into the case file. Attorney Alain Werner also submitted to the Court a screenshot showing the location of an institution (Lutheran Training Institute, LTI) that the complainant Paul mentioned during his testimony in connection with the facts set forth in section 1.3.25 of the indictment (see *below*, para. 7.18). Finally, Attorney Dimitri Gianoli requested that a document purporting to establish the genealogy of the X. family—the surname of two alleged victims of the defendant’s actions—be entered into the record (see *below*, paras. 7.10 and 7.11). These documents were admitted insofar as they were relevant to the facts of the case.

A.38 The closing arguments then followed. The Office of the Attorney General of Switzerland (OAG) presented its closing argument first and reached the following conclusions:

The Office of the Attorney General of Switzerland requests that:

1. Alieu KOSIAH be found guilty of serious violations of the laws of war within the meaning of Art. 109(1) and Art. 108(2) of the Military Criminal Code (aCPM), in conjunction with Art. 3 common to the Geneva Conventions and Art. 4 of Protocol II.
2. Alieu KOSIAH be sentenced to 20 years' imprisonment.
3. Alieu KOSIAH be expelled from Swiss territory for a period of 15 years pursuant to Article 40(1) of the Military Criminal Code (aCPM).
4. Alieu KOSIAH be ordered to pay the costs of the proceedings.

The attorneys for the plaintiffs then took turns addressing general issues before proceeding to present their closing arguments on behalf of their respective clients.

Attorneys Alain Werner and Romain Wavre filed the following civil claims on behalf of the plaintiffs Georges, Louis Z., Antoine W., and Paul:

1. Paul, Georges, Louis Z., and Antoine W. are filing civil claims (Art. 122 et seq. of the Code of Criminal Procedure) against the defendant Alieu Kosiah in connection with the facts set forth in sections 1.3.2, 1.3.10, 1.3.12, 1.3.14, 1.3.15, 1.3.16, and 1.3.25 of the indictment.
2. They request that Alieu Kosiah be ordered to pay them the sum of CHF 8,000 each.

Attorney Zeina Wakim made the following submissions on behalf of the civil claimant Coralie:

1. Coralie requests that Alieu Kosiah be found guilty and files civil claims (Art. 122 et seq. CPP) in connection with the facts set forth in sections 1.3.22, 1.3.23, and 1.3.24 of the indictment;
2. She requests that Alieu Kosiah be ordered to pay her the sum of CHF 8,000.

Attorney Raphaël Jakob made the following submissions on behalf of the complainant, Raoul:

1. Raoul requests that Mr. KOSIAH be convicted of the offenses described in sections 1.3.4, 1.3.5, 1.3.6, and 1.3.7.
2. He requests that Mr. KOSIAH be ordered to pay him CHF 8,000 as compensation for emotional distress.
3. He reserves his specific claims regarding the expenses incurred as a result of his participation in the proceedings, which will be submitted before the conclusion of the hearings.

Attorney Hikmat Maleh made the following submissions on behalf of the plaintiff, Jérôme:

1. Jérôme requests that Alieu Kosiah be found guilty on counts 1.3.19 and 1.3.20 of the indictment.
2. He requests that Alieu Kosiah be ordered to pay him compensation for emotional distress

in the amount of CHF 8,000.

Finally, Attorney Dimitri Gianoli argued on behalf of the defendant Alieu Kosiah and made the following submissions:

1. Acquit Alieu KOSIAH of all charges and, consequently, exempt him from any penalty (sic);
2. Order the Swiss Confederation to pay Alieu KOSIAH the following compensation:
   a. compensation for expenses incurred in the reasonable exercise of his rights of defense, to be determined on the basis of the fee statement to follow;
   b. CHF 500,000 as compensation for economic damages suffered due to mandatory participation in the criminal proceedings;
   c. CHF 856,000 as compensation for non-economic damages suffered as a result of a particularly serious infringement of personal rights;
3. Dismiss the civil claims of the plaintiffs;
4. With costs and expenses to follow.

The Office of the Attorney General and the counsel for the plaintiffs filed their replies. Attorney Dimitri Gianoli, for his part, declined to file a rejoinder.

A.39 The defendant was given the opportunity to speak one last time. Alieu Ko-siah exercised this right.

A.40 At the conclusion of the proceedings, the Court retired to deliberate in camera. It rendered its judgment in open court on June 18, 2021. On that occasion, it orally announced the judgment and briefly explained its reasoning. The operative part of the judgment was delivered to the parties the same day, and the Court ordered that the defendant remain in custody to ensure the enforcement of the sentence.

A.41 On June 25, 2021, the defense announced an appeal against this judgment (40.940.001).

B. Personal Background of the Def

B.1 Alieu Kosiah, of Mandingo ethnicity, was born and spent his childhood in Nimba County, Liberia. He grew up between Sagleipie, where his father lived, and Ganta, where his mother resided (13-01-0008, 0010). He arrived in Switzerland as an asylum seeker in January 1999 from Conakry, Guinea, after fleeing Liberia following the election of Charles Taylor as the country's president (13-01-0008; 40.731-003; 10-01-0007). Upon his arrival in Switzerland, Alieu Kosiah filed an asylum application, which was rejected (13-01-0007; 40.731.004; 10-01-0007). The removal order could not be enforced because the individual could not be located at the time (10-01-0007). Alieu Kosiah was married to a Swiss national from October 2004 to September 2012 (10-01-0007). This enabled him to obtain a permanent residence permit in Switzerland (13-01-0007 et seq.). Alieu Kosiah has an adult son in Switzerland, H., whom he brought

over through family reunification and who lives in the

U., as well as a cousin named I.. The rest of his family lives in Liberia or elsewhere abroad (13-01-0008; 40.731.002, 007). Since his arrival in Switzerland in 1998, Alieu Kosiah has stated that he has traveled to Liberia three times, in 2006, 2010, and 2012 (13-01-0007; 40.731.006).

B.2 Regarding his education and professional background in Liberia, Alieu Kosiah stated that he attended high school (13-01-0009; 40.731.003). He interrupted his studies when the war began on December 24, 1989. He then enlisted in the army in January 1990, lying about his age because he was not yet 18 (13-01-0009). He underwent military training near Monrovia for several months (13-01-0009; 40.731.003). The defendant stated that he was subsequently sent to the front lines in Grand Bassa, then returned to Monrovia. When the war reached that city, he left for Tubmanburg, later traveling to Sierra Leone, where he remained for one to two years. Alieu Kosiah stated that he returned to Liberia in 1992 or 1993 and fought in the war as a member of the ULIMO (United Liberation Movement of Liberia for Democracy) faction until 1995. He then joined the civilian police as deputy director of the CID (Crime Investigation Division) (13-01-0009 et seq.).

B.3 Regarding his professional career in Switzerland, Alieu Kosiah stated that he performed odd jobs until 2004. From that year onward, he worked for a tank inspection company until 2011. After his divorce in 2012, the defendant received unemployment insurance benefits and subsequently received social assistance benefits until his arrest in November 2014 (40.731.008). During the trial, he stated that he had no savings at the time of his arrest and that he owed approximately CHF 10,000 in back taxes. At the correctional facility where he is being held, the defendant works and earns between CHF 3 and CHF 5 per hour for his work. He has savings of approximately CHF 800 in a prison account (40.731.009).

B.4 Alieu Kosiah's Swiss criminal record does not list any convictions (40.231.1.002). A Liberian criminal record could not be obtained.

B.5 Alieu Kosiah was arrested on November 10, 2014. He was held in pretrial detention until April 8, 2019, at which time he was placed in detention for security reasons. His detention has been regularly extended to the present day. According to the November 9, 2020, conduct report from Prison V., which covers the past two years, Alieu Kosiah has demonstrated very good behavior, despite his long period of detention. He maintains contact with other inmates and acts as a mediator for them. He also serves as an intermediary between prison staff and inmates. He supports new arrivals, answers their questions, and provides assistance when needed. The defendant has always been courteous to prison staff and supports them to the best of his ability. There have never been

any negative incidents involving him. Alieu Kosiah has also consistently carried out the tasks assigned to him by the facility to the full satisfaction of the staff (40.231.7.144 s.).

C. A Brief History of Liberia's First Civil War: General

Overview

C.1 The first civil war in Liberia began in late 1989, against a backdrop of severe instability stemming from the authoritarian and repressive policies of the government of Samuel Doe, who had been in power since the early 1980s (10-01-0247). The war is generally considered to have begun on December 24, 1989, when about 100 insurgents—members of the National Patriotic Front of Liberia (NPFL)— under the command of Charles Taylor, a former member of Samuel Doe's regime, crossed into Liberian territory from Côte d'Ivoire and seized the Butuo border post in Nimba County. The NPFL consisted mainly of Gio and Mano ethnic group insurgents who had fled Doe's rule in Liberia in 1984 and 1985. These fighters had received 18 months of military training in Libya and could count on logistical support from Burkina Faso and arms supplies from Côte d'Ivoire (10-01-0249, 0253). The NPFL incursion marked the beginning of a period of clashes between the NPFL and the Armed Forces of Liberia (AFL). The AFL consists primarily of soldiers of Krahn ethnicity, who are hostile to the NPFL. They landed in Nimba County to repel the NPFL and specifically targeted the Gio and Mano populations, whom they suspected of supporting the insurgents. The NPFL, for their part, specifically targeted the Krahn and Mandingo, whom they considered government sympathizers. They were composed of two distinct forces, one under the command of Charles Taylor and the other under Prince Johnson. Following the clashes in Nimba County, fighting between the NPFL and the AFL spread toward the Liberian coast and Monrovia. By mid-1990, the NPFL controlled more than 80 percent of Liberian territory. The arrival of the NPFL in Liberia prompted a response from countries in the region, which, within the framework of the Economic Community of West African States (ECOWAS), established an intervention force: the ECOWAS Monitoring Group (ECOMOG). This force was dominated by Nigeria, which provided the vast majority of the troops. The remaining troops came from Ghana, Guinea, Sierra Leone, and The Gambia. ECOMOG landed in Monrovia on August 24, 1990, and succeeded in halting the NPFL's advance, driving them far from the city (10-01-0249, 0253, 0254).

C.2 Samuel Doe's regime came to an end with his assassination on September 9, 1990, by insurgents from the Independent National Patriotic Front of Liberia (IN-PFL), a splinter group that had broken away from the NPFL in late July 1990 under the leadership of Prince Johnson (10-01-0249).

C.3 On November 28, 1990, the warring parties signed a ceasefire agreement in Bamako, which provided for the establishment of an interim government headed by Amos Sawyer (10-01-0249).

C.4 In early 1991, a movement was formed in Conakry, Guinea, composed primarily of Mandingo refugees, whose goal was to return to Liberia to fight the NPFL. This movement was called the Movement for the Redemption of Muslims (MRM) and was led by Alhaji G. V. Kromah. In May 1991, it merged with another movement composed of former Krahn ethnic soldiers from the AFL who had deployed to Sierra Leone to counter Charles Taylor. This was the Liberian United Defense Force (LDUF). The merged group took the name United Liberation Movement of Liberia for Democracy (ULIMO). Alhaji G. V. Kromah served as the group's spokesperson and then became its leader in June 1992, after orchestrating the assassination of Albert Karpeh, who had been the head of the LUDF and ULIMO's operational commander until his death (10-01-0250, 0256). Formed within the Liberian diasporas in Sierra Leone and Guinea, ULIMO can count on the support of these two countries, particularly for their supply of weapons (10-01-0253). ULIMO consists of two battalions: the Mandingos are concentrated in the battalion named Zebra, commanded by J. (alias J.a.), and the Krahns make up the Alligator battalion, commanded by K. (alias K.a.) (10-01-0258).

C.5 ULIMO entered Liberia as early as September 1991, with the support of ECOMOG. Beginning in February 1992, fierce fighting broke out between the NPFL and ULIMO. ULIMO seized a large part of western Liberia, along the border with Sierra Leone. They captured the town of Tubmanburg, the capital of Bomi County, on August 24, 1992, and established their headquarters there (10-01-0250, 0256). ULIMO then reached the Po River Bridge, about twenty kilometers west of Monrovia. By the end of August 1992, ULIMO had seized a large portion of the territory previously conquered by the NPFL, including all of Grand Cape Mount and Bomi counties, as well as a large portion of Lofa County (10-01-0250).

C.6 In October 1992, threatened by ULIMO's advance into Liberian territory, the NPFL launched Operation "Octopus," aimed at dislodging ECOMOG from Monrovia and seizing the capital. However, ECOMOG, with the support of the AFL and ULIMO, repelled Charles Taylor's troops (10-01-0250).

C.7 During the first half of 1993, ULIMO completed its conquest of western Liberia, particularly Lofa County (10-01-0250).

C.8 On July 25, 1993, the three main parties to the conflict—namely, the NPFL, ULIMO, and the ECOMOG-backed interim government—signed the Cotonou Agreements, which provided for a ceasefire, the establishment of new transitional authorities, and disarmament and demobilization. The implementation

implementation of this peace process, however, failed after only a few months, due in particular to the emergence of new armed groups that did not consider themselves bound by the Cotonou Accords (10-01-0250 ff.).

C.9 In October 1993, the Liberian Peace Council (LPC) emerged, composed primarily of Krahn ethnic group members who were former AFL soldiers. This group focused its fight against the NPFL in southeastern Liberia. For his part, Charles Taylor organized the formation of a new faction, the Lofa Defense Force (LDF), led by François Massaquoi and intended to fight against ULIMO in Lofa County (10-01-0251, 0254, 15-02-0309).

C.10 In March 1994, following the Cotonou Agreements and due to disagreements over the election of ULIMO representatives to the transitional governing body, the ULIMO faction split into two: a Mandingo branch (ULIMO-K) under the leadership of Alhaji V. G. Kromah and a Krahn branch (ULIMO-J) led by Roosevelt Johnson (10-01-0251, 0253, 0257).

C.11 Before the split, the ULIMO faction numbered up to 6,000 men. Afterward, ULIMO-K had approximately 4,000 fighters and ULIMO-J had 3,000 (10-01-0254).

C.12 At the time of the split, ULIMO-J seized the headquarters in Tubmanburg, forcing ULIMO-K to relocate its headquarters to Voinjama, the capital of Lofa County located in the far north of Liberia, near the border with Guinea (10-01-0257).

C.13 On August 19, 1995, the Abuja Agreement was signed, which provided, among other things, for a ceasefire, the establishment of a new transitional government, and elections to be held within one year. In December 1995, ULIMO-J violated the ceasefire by attacking ECOMOG positions in Tubmanburg. On April 6, 1995, the situation escalated again with a failed attempt by the NPFL and ULIMO-K to arrest ULIMO-J leader Roosevelt Johnson. The clashes pitted all the Krahn factions (ULIMO-J, AFL, LPC) against the NPFL and ULIMO-K within Monrovia (10-01-0251).

C.14 In August 1996, the factions signed the Abuja II Agreement, which reestablished a ceasefire, mandated the disarmament of troops, and called for elections on May 30, 1997—which were ultimately postponed to July 19, 1997. Charles Taylor was then elected president with 75 percent of the vote, thus becoming head of state and bringing an end to seven years of civil war (10-01-0251).

ULIMO's Conquest of Territories

C.15 Year 1992

In August 1992, ULIMO captured Po River. This marked the beginning of the conflict between ULIMO and the NPFL (15-02-0398, 18-03-0083).

On September 25, 1992, Liberian newspapers reported that ULIMO had captured Bong Mines (40.555.067 ff.).

On October 15, 1992, the NPFL attempted to capture Monrovia during an operation called "Octopus." This attempt failed, largely due to ULIMO, which came to the aid of the forces defending Monrovia (10-01-0250).

On December 28, 1992, the town of Kakata, located near the town of Todee, was captured for the first time by ULIMO (15-02-0414).

C.16 Year 1993

On January 11, 1993, the Liberian press reported that the town of Zorzor was under siege by ULIMO (15-02-0447).

On January 22, 1993, the press reported that the ULIMO faction's Zebra Battalion was in the town of Klay. The area between Klay and Bomi was already under ULIMO control in September 1992 (15-02-0434).

On January 26, 1993, the press reported for the first time that ULIMO had recaptured Kakata and taken Todee (15-02-0422).

On February 9, 1993, ULIMO forces attacked Voinjama following the fall of Zorzor (15-02-0455).

On February 17, 1993, the press reported that ULIMO had taken Todee Barracks (15-02-0477).

On March 8, 1993, the press reported that ULIMO had captured the town of Voinjama, the capital of Lofa (15-02-0461).

On May 10, 1993, newspapers reported fighting between ULIMO and the NPFL in the Foya area (15-02-0469).

On July 2, 1993, the press reported that the town of Foya had fallen into ULIMO hands (15-02-0300).

On December 14, 1993, the LDF captured the town of Zorzor, which had been in ULIMO hands (15-02-0342).

C.17 Year 1994

On March 7, 1994, a clash took place between the leaders of the Mandingos and the Krahns, marking the definitive split of ULIMO into two groups (15-02-0514 to 0525).

On May 27, 1994, ULIMO-K lost control of Bomi to ULIMO-J, and its leadership moved its headquarters to Voinjama (15-02-0544, 0546).

The Court finds as a matter of law:

1. Jurisdiction

1.1 Jurisdiction of the Swiss " "

1.1.1 Until December 31, 2010, violations of humanitarian law were punishable under Articles 108 and 109 of the Swiss Military Criminal Code (aCPM) and fell under military jurisdiction. On January[1], 2011, a legislative amendment incorporated the offenses of genocide, crimes against humanity (Title 12bis), and war crimes (Title 12ter), as well as provisions common to these three offenses (Message Regarding the Amendment of Federal Laws for the Implementation of the Rome Statute of the International Criminal Court of April 23, 2008 [hereinafter: Message Regarding the Implementation of the Rome Statute], FF 2008 3461). On that occasion, Art. *264m* of the Swiss Criminal Code (CP), whose marginal heading is "Acts Committed Abroad," entered into force. This provision states that any person who commits abroad any of the acts referred to in Titles 12bisand 12teror in Art. *264k* is punishable if that person is present in Switzerland and is not extradited or surrendered to an international criminal court whose jurisdiction is recognized by Switzerland (para. 1). Pursuant to paragraph 2, where the perpetrator is not a Swiss national and the act committed abroad was not directed against a Swiss national, the authorities may suspend or discontinue criminal prosecution—subject to the preservation of evidence—in the following cases: a foreign authority or an international criminal court whose jurisdiction is recognized by Switzerland is prosecuting the offense and the perpetrator is extradited or surrendered to that court (subpar. a); the perpetrator is no longer in Switzerland and is unlikely to return (subpar. b). Art. 7, paras. 4 and 5 of the Swiss Criminal Code (CP) apply, unless the acquittal, remission of the sentence, or statute of limitations on the sentence abroad was intended to unduly shield the perpetrator from any punishment (para. 3).

Article 7(4) of the Swiss Criminal Code (CP) provides that, subject to a serious violation of the fundamental principles of constitutional law and the European Convention on Human Rights (ECHR), the offender may no longer be prosecuted in Switzerland for the same act if he or she has been acquitted abroad by a final judgment (subpar. a) or if the offender has served the sentence imposed on him or her abroad, or if the sentence has been remitted or

has become time-barred (subpar. b). Article 7, paragraph 5, of the Swiss Criminal Code adds that if, as a result of this act, the offender was convicted abroad and has

served only part of the sentence imposed on him, the judge shall credit that portion toward the sentence to be imposed. The judge shall decide whether the measure ordered and partially executed abroad is to be continued or credited toward the sentence imposed in Switzerland.

Art. *264m* of the Swiss Criminal Code (CP) is a *lex specialis* in relation to Art. 7 of the Swiss Criminal Code (Federal Criminal Court decision BB.2011.140 of July 25, 2012, para. 2.3).

1.1.2 The principle of non-retroactivity of criminal law established by Art. 2, para. 1, of the Swiss Criminal Code does not apply to procedural rules, in particular to provisions governing jurisdiction (ATF 117 IV 369, para. 4d). The retroactive application of a procedural rule is not permitted when the rule in question concerns the very territorial application of the Swiss Criminal Code—that is, when it defines the scope of Switzerland's *ius puniendi* (ATF 117 IV 369, para. 4e; HIKMAT MALEH, Commen-taire romand du CP II [hereinafter: CR-CP II], 2017, no. 51 *ad* Art. *264m* CP). Art. 2, para. 1, CP thus applies in cases where the scope of application of criminal law is extended. In other words, provisions such as Art. *264m* of the Swiss Criminal Code that extend the application of the Swiss Criminal Code to conduct committed abroad—which was previously not punishable in Switzerland—may be applied only to crimes committed after their entry into force, which in this case was January 1er January 2011. By contrast, rules modifying functional jurisdiction are immediately applicable, unless a transitional provision provides otherwise (BERNARD BERTOSSA, The Fight Against Impunity in Swiss Law: Universal Jurisdiction and International Crimes, 2e ed., No. 5, p. 3). In this case, Switzerland's jurisdiction to try the facts of the present proceedings cannot therefore be based on Art. *264m of* the Swiss Criminal Code.

1.1.3 However, it follows from the Swiss Military Criminal Code (Art. 9 and 108–114 MCC) that war crimes have been punishable in Switzerland since 1968, regardless of where they were committed or the nationality of the perpetrator or victim. However, as of June1, 2004, Art. 9(1)(bis)of the Military Penal Code required the existence of a "close connection" between the foreign perpetrator and Switzerland. This requirement was abolished effective January1, 2011.

1.1.4 In the present case, Alieu Kosiah, a Liberian national, is charged with war crimes committed during the First Liberian Civil War, between 1993 and 1996. In accordance with Article 9 of the aCPM as it stood at the time of the alleged offenses, Switzerland has jurisdiction to try the war crimes attributed to Alieu Kosiah. The requirement of a "close connection" does not apply, as the crimes in question were committed well before 2004.

1.1.5 In light of the foregoing, Switzerland has jurisdiction to hear this case.

1.2 Jurisdiction of the Civil Court ( )

1.2.1 Pursuant to Art. 3(1) of the Military Criminal Code (MCP), foreign civilians or military personnel are subject to military criminal law if they are guilty of treason by violating secrets pertaining to national defense (Art. 86), sabotage (Art. *86a*), undermining the country's defensive capabilities (Art. 94–96), disclosure of military secrets (Art. 106), or disobedience of measures taken by military or civilian authorities to prepare for or carry out the mobilization of the armed forces or to safeguard military secrecy (Art. 107) (Section 7); foreign civilians or military personnel, for acts specified in Articles 115 through 179 that they commit as employees or agents of the armed forces or the military administration in the context of collaboration with the troops (section 8); foreign civilians or military personnel who commit abroad, against a Swiss military member, any of the acts referred to in Chapters 6 (Articles 108 and 109) and 6bis(Articles 110 through 114) of Part 2 or in Article *114a* (Section 9).

1.2.2 It follows *a contrario* from the aforementioned provisions, as well as from Articles 3 and 6 of the Swiss Criminal Code (CP) *in conjunction with* Articles 264 through *264i* of the CP, that in peacetime—that is, when Switzerland is not a party to an armed conflict— civil courts have jurisdiction to adjudicate acts committed by Swiss and foreign civilians, as well as by foreign military personnel, when the victim is not a Swiss military personnel (TORNIKE KESHELAVA/BRUNO ZEHNDER, Basler Kommentar StGB II [hereinafter: BSK-StGB II], 3^{e}ed., 2013, no. 45 et seq. *ad* Art. *264b–264j of* the Swiss Criminal Code).

1.2.3 In the present case, the defendant is a Liberian national, and the victims of the acts with which he is charged are Liberian civilians. The acts with which he is charged were allegedly committed during the First Liberian Civil War, which, from Switzerland's perspective, occurred during peacetime.

1.2.4 It follows that jurisdiction to hear this case lies with the civil courts.

1.3 Jurisdiction of the Court for -Criminal Matters

1.3.1 Pursuant to Art. 23(1)(g) of the Swiss Criminal Procedure Code (CPP), offenses under Titles 12bisand 12terand Art. *264k* of the Swiss Criminal Code (CP) fall under federal jurisdiction.

1.3.2 Article 35(1) of the Act on the Organization of Criminal Authorities of March 18, 2010 (RS 173.71; LOAP) provides that criminal courts shall rule in the first instance on criminal cases falling under federal jurisdiction, unless the Office of the Attorney General of Switzerland has delegated the adjudication of such cases to the cantonal authorities.

1.3.3 This Court therefore has jurisdiction to hear the present case.

2. Preliminary Questions and Incidental Questions

2.1 Preliminary Questions

2.1.1 Pursuant to Art. 339 of the Code of Criminal Procedure, the parties may, at the outset of the proceedings, raise preliminary questions concerning, in particular, the validity of the indictment, the conditions for initiating criminal proceedings, impediments to proceeding, the case file and the evidence gathered, the public nature of the proceedings, and the division of the proceedings into two parts (para. 2, subpars. a through f).

2.1.2 In this case, Attorneys Alain Werner, Raphaël Jakob, and Dimitri Gianoli raised preliminary issues at the opening of the trial. These are addressed below in the order in which they were argued.

2.1.3 Preliminary question raised by Attorney Alain Werner

Suspension of the proceedings

Attorney Alain Werner requested the postponement of the trial proceedings scheduled to begin on December 3, 2020 (first part of the trial), on the grounds that the conditions for dividing the trial proceedings within the meaning of Art. 342 of the Swiss Criminal Procedure Code (CPP) were not met. Such a division would also violate the principle of public trial proceedings.

On its own initiative or at the request of the defendant or the public prosecutor, the court may divide the proceedings into two parts and decide that, in the first part, it will address only the issues of the facts and guilt, and, in the second part, only the consequences of a conviction or an acquittal (Art. 342, para. 1, subpar. a); that in the first part, it will address only the question of the facts, and in the second part, only the question of guilt and the consequences of a conviction or an acquittal (subparagraph b).

Pursuant to Art. 340(1)(a) of the Criminal Procedure Code (CPP), one of the effects of the preliminary issues having been addressed is that the proceedings must be brought to a conclusion without unnecessary interruption.

The parties have the right to be present during the presentation of evidence by the public prosecutor and the courts and to question the witnesses (Art. 147(1) *ab initio* of the Criminal Procedure Code).

According to Article 69(1) of the Swiss Criminal Procedure Code (CPP), proceedings before the trial court and the appellate court […] are public, with the exception of deliberations. The principle of public access represents both a fundamental right of the parties and a right of the general public, particularly journalists. Publicity for the general public is sometimes achieved through court reporting (ATF 122 V 47, consid. 2c).

Pursuant to Art. 5(1) of the Swiss Criminal Procedure Code (CPP), criminal authorities shall initiate criminal proceedings without delay and bring them to a

conclusion without undue delay.

In this case, due to the public health situation caused by COVID-19, the Court decided that the proceedings would take place in two stages, with the first part devoted to preliminary issues and the examination of the defendant, and the second to hearing the other participants in the proceedings and the closing arguments. This does not constitute a division of proceedings within the meaning of Art. 342 of the Code of Criminal Procedure. Indeed, a division of proceedings implies the rendering of a judgment for each part of the proceedings, which is not the case here. This is a matter pertaining to the organization of the proceedings.

With regard to the alleged violation of the principle that proceedings should not be subject to unnecessary interruptions, the Court notes that an interruption justified by the need to protect the health of the participants in the proceedings is not unnecessary and is, in fact, essential to avoid exposing them to significant health risks. These proceedings involved the travel of numerous individuals from Liberia to Switzerland. However, at the time of the decision to hold the hearings in two stages, the risks associated with COVID-19 were much greater in Switzerland than in Liberia (at least according to international statistics, the only basis on which the Court could rely at that time). By summoning the participants in the proceedings residing in Liberia for hearings in December 2020, the Court would have exposed them to health risks; consequently, it chose to postpone their travel to a later date, which turned out to be February 2021.

The principle of expeditious proceedings justified beginning the hearings with the preliminary issues and the questioning of the defendant in the absence of the complainants, as the defendant had been in pretrial detention for six years at that point. Proceeding in two stages offered the advantage that the duration of the second part of the hearings would be shorter, facilitating their organization, which was already greatly complicated by COVID-19.

As for the adversarial nature of the proceedings, it should be noted that this was ensured. The plaintiffs did, in fact, have the option—if they truly wished—to attend the first part of the proceedings at their own expense. The Court merely refused to cover the costs associated with their travel to Switzerland, as their presence was not advisable from a public health perspective. Furthermore, the complainants' attorneys attended the first part of the proceedings. In addition, Alieu Kosiah was heard again for a full day following the complainants' testimony (with the exception of Coralie, who, for organizational reasons, had to be heard one day later). On that day, the plaintiffs were able to ask the defendant all the questions they deemed relevant. The parties were also given the opportunity to cross-examine Alieu Kosiah once more, in a supplementary manner, before the conclusion of the evidentiary phase. Finally, the Court agreed to record the questioning of Alieu Kosiah, which took place in December 2020, on audio and video, so that the plaintiffs could review it with their attorney if they so desired. The Court, however, imposed certain conditions on the review of the

video recordings to several conditions, pursuant to Art. 102(2) of the Code of Criminal Procedure (see *supra*, consid. A.34).

Finally, regarding the issue of the public nature of the proceedings—more specifically from the perspective of the plaintiffs—it should be noted once again that the plaintiffs had the opportunity to attend the first part of the proceedings. Since the Court did not consider their presence necessary—or even desirable, given the public health situation—it merely declined to cover the costs associated with their travel and stay in Switzerland, without, however, preventing them from coming to Switzerland if they so desired. With regard to the principle of public access for the general public, this was restricted for the first part of the proceedings by a partial closure to the public due to the health situation (see Federal Council Ordinance on Measures to Combat the COVID-19 Epidemic in Special Circumstances, as in effect on December 3, 2020, RS 818.101.26). Journalists, however, were able to attend the proceedings, thereby ensuring the principle of public access to proceedings.

In light of the foregoing, the motion to adjourn the proceedings filed by Attorney Alain Werner was denied.

2.1.4 Preliminary questions raised by Attorney Raphaël Jakob

2.1.4.1 Application of Art. *264a* of the Swiss Criminal Code (crimes against humanity) to the charges set forth in the indictment

Attorney Raphaël Jakob requested the application of Art. *264a* of the Swiss Criminal Code (Criminal Code) concerning crimes against humanity to the charges against Alieu Kosiah set forth in the indictment.

Article 9 of the Swiss Criminal Procedure Code (CPP) enshrines the principle of specific charges. According to this provision, an offense may only be the subject of a judgment if the public prosecutor has filed an indictment with the competent court against a specific individual based on precisely described facts. Indeed, the defendant must know exactly what facts are alleged against him and the penalties and measures to which he is subject, so that he may explain himself and effectively prepare his defense (ATF 143 IV 63, para. 2.2; 141 IV 132, para. 3.4.1). The principle of specific charges also derives from Art. 29, para. 2, of the Federal Constitution (right to be heard), Art. 32, para. 2, of the Federal Constitution (the right to be informed, as soon as possible and in detail, of the charges against one), and Article 6(3)(a) and (b) of the ECHR (the right to be informed of the nature and cause of the charge).

Articles 324 et seq. of the Swiss Criminal Procedure Code (CPP) govern the filing of charges, in particular the specific content of the indictment. According to Art. 325 of the Swiss Criminal Procedure Code (CPP), the indictment must specify, in particular, the acts alleged against the defendant, the place, date, and time of their commission, as well as their consequences and the perpetrator's modus operandi (subparagraph f); the offenses committed and the

applicable legal provisions in the opinion of the public prosecutor’s office (subparagraph g). In other words, the indictment must contain the facts which, in the opinion of the public prosecutor’s office, correspond to all the constituent elements of

the offense with which the defendant is charged (ATF 143 IV 63, para. 2.2; Federal Supreme Court decision 6B_665/2017 of January 10, 2018, para. 1.1). This serves, on the one hand, to define the scope of the criminal court's jurisdiction and, on the other hand, to inform the defense so that it may effectively participate in the proceedings (ATF 140 IV 188, para. 1.3). Any imprecisions regarding the place or date are irrelevant, insofar as the defendant cannot have any doubt as to the conduct of which he or she is accused (Federal Supreme Court decisions 6B_696/2019 of September 24, 2019, para. 1.2.1; 6B_275/2016 of December 9, 2016, para. 2.1).

The court is bound by the facts described in the indictment (principle of the immutability of the indictment), but it may depart from the legal assessment made by the public prosecutor (Art. 350(1) CPP), provided that it informs the parties present and invites them to comment (Art. 344 CPP). This latter provision applies only if the change in legal classification does not warrant a change in the description of the facts set forth in the indictment (Federal Supreme Court Decision 6B_702/2013 of November 26, 2013, para. 1.1).

The crime against humanity is defined as "a widespread or systematic attack directed against the civilian population" (see Art. *264a*(1) of the Swiss Criminal Code). A widespread *or* systematic attack directed against the civilian population is characterized either by its scale (a large number of victims) or by its degree of organization, although the two often coincide (Message on the Implementation of the Rome Statute, FF 2008 3516 ff. and the references cited). Two recurring themes emerge from international criminal case law: on the one hand, the general nature of the attack (which is interpreted quantitatively) presupposes the massive scale of the attacks and the large number of victims, thereby excluding a priori any isolated act; on the other hand, the systematic nature (which is interpreted qualitatively) implies a minimum level of planning, thereby excluding any fortuitous act. According to the International Criminal Court (hereinafter: ICC), the adjective "widespread" means that the attack was carried out on a large scale and resulted in a certain number of victims, while the adjective "systematic" denotes the organized nature of the acts of violence and the improbability that they were fortuitous (SÉVANE GARIBIAN, CR-CP II, No. 12 *regarding* Art. *264a* of the Swiss Criminal Code and the case law cited). A widespread attack must form part of an organization's policy; that is, it must have been carefully organized according to a consistent pattern. It must also be carried out as part of a coordinated policy utilizing public or private resources. This policy may be implemented by groups of individuals governing a given territory or by any organization capable of conducting a widespread or systematic attack against the civilian population. An attack must therefore be planned, directed, or organized—and not consist of spontaneous or isolated acts of violence—to meet this criterion (ICC, Katanga Case, Judgment of September 30, 2008, para. 396, and the case law cited therein). To be punishable, it is sufficient that the perpetrator of an act within the meaning of Art. *264a*(1) of the Swiss Criminal Code (CP) has caused a single

victim, provided that

the act forms part of a widespread or systematic attack directed against the civilian population. The criterion of organization or a large number of victims characterizes the general context and not the individual case. From a subjective standpoint, the perpetrator must have acted with knowledge of the attack. This does not mean that he must have been aware of all the details of the attack, but only that he must have been aware of committing his crime within the general context of an attack directed against the civilian population. The circumstances in which the act was committed may be sufficient to establish this fact (Message on the Implementation of the Rome Statute, FF 2008 3516 ff. and the references cited). Among these circumstances are the perpetrator's position in the military hierarchy, the fact that he played a significant role in the criminal campaign as a whole, his presence at the crime scenes, his references to his group's superiority over the enemy, the general historical and political context in which the acts were committed, the scale and gravity of the acts committed, or the nature of the crimes committed (ICC, Katanga Case, Judgment of September 30, 2008, para. 402; ICTY, Blaškić Case, Judgment of March 3, 2000, para. 258 et seq.).

In the present case, the indictment of March 22, 2019, charges Alieu Kosiah solely with war crimes for the acts alleged against him. It contains no description of a systematic or widespread attack that was allegedly launched against the civilian population during the first civil war in Liberia and that would allow the facts to be viewed also from the perspective of a crime against humanity. It does state that, according to the Truth and Reconciliation Commission in Liberia (hereinafter: TRC), "civilians were deliberately and systematically targeted throughout the conflict" (p. 4) and that the conflict caused tens of thousands of casualties, many of whom were civilians (p. 2). However, these are very general assertions which, on their own, do not suffice to establish the existence of a systematic or widespread attack against the civilian population—a requirement for establishing crimes against humanity. In particular, the indictment lacks the facts necessary to establish the existence of such an attack. Thus, the indictment does not specify whether it was the armed group to which the defendant belonged that caused the deaths of tens of thousands of victims. Nor does it quantify the number of victims; the phrase "tens of thousands of victims, many of whom were civilians" is far too vague to allow for a conclusion regarding the widespread nature of any attack against the civilian population. Nor does it describe the organized, planned, or directed nature of a possible attack against civilians by the armed group to which Alieu Kosiah belonged, nor does it describe the pursuit of a concerted policy by the armed group using public or private resources. Yet these are necessary elements for establishing a systematic attack. As for the acts specifically attributed to Alieu Kosiah, the indictment at no point asserts that they form part of a systematic or widespread attack against the civilian population. Nor does it mention that the defendant was aware

of such an attack or that he was aware that he was committing crimes that would form part of said attack. The circumstances in which the acts were committed do not support the conclusion that he was aware of committing the alleged crimes as part of a systematic or widespread attack against the civilian population. On the contrary, a reading of the indictment suggests rather that these were crimes committed in a random and haphazard manner, based on momentary whims or needs, or to assert his power and intimidate the population in the area where Alieu Kosiah was located.

In light of the foregoing, the Court finds that the indictment of March 22, 2019, does not contain the factual elements necessary to assess the acts committed by Alieu Kosiah as constituting a crime against humanity within the meaning of Art. *264a* of the Swiss Criminal Code. Since the Court is bound by the facts as presented to it by the Office of the Attorney General, the preliminary question raised by Attorney Raphaël Jakob was dismissed.

2.1.4.2 Dismissal of the indictment (Art. 333 of the Swiss Criminal Procedure Code)

Following the rejection of the preliminary question regarding whether the charges against Alieu Kosiah should also be classified under Art. *264a* of the Swiss Criminal Code, Attorney Raphaël Jakob requested that the indictment be returned to the Office of the Attorney General so that the latter could supplement the statement of facts, enabling the Court to rule on the application of Art. *264a of the Swiss* Criminal Code.

Under certain conditions, Articles 329 and 333 of the Criminal Procedure Code (CPP) provide for an exception to the adversarial principle (see *supra*, consid. 2.1.4.1) by allowing the court hearing the case to give the public prosecutor's office the opportunity to amend or supplement the indictment. Article 329(1) of the Criminal Procedure Code thus provides that the presiding judge shall examine whether the indictment and the case file have been properly prepared (subparagraph (a)), whether the conditions for initiating criminal proceedings have been met (subparagraph (b)), and whether there are any impediments to proceeding (subparagraph (c)). If it becomes apparent during this review or later in the proceedings that a judgment on the merits cannot yet be rendered, the court shall stay the proceedings; if necessary, it shall return the indictment to the public prosecutor's office so that it may supplement or correct it (Art. 329(2) CPP). That said, this provision does not establish any right on the part of the public prosecutor's office to have the indictment returned to it. Art. 329 of the Code of Criminal Procedure is intended to prevent a clearly insufficient indictment from leading to unnecessary proceedings, but it is not intended to give the public prosecutor's office the discretion to amend its indictment simply because it believes, upon further reflection, that could have been different (Federal Supreme Court Decision 6B_177/2019 of March 18, 2019, para. 3.2).

Furthermore, pursuant to Art. 333(1) of the Criminal Procedure Code (CPP), the court grants the Public Prosecutor's Office the opportunity to amend the

indictment when it considers that the facts set forth in the indictment could constitute the elements of another offense, but that the indictment does not meet the legal requirements.

Article 333(1) of the Code of Criminal Procedure (CCP) addresses situations in which an indictment sets forth a set of facts that relates to only a single offense, omitting elements that would allow for the possibility that the same set of facts constitutes another offense (JEREMY STEPHENSON/ROBERTO ZALUNARDO-WALSER, Basler Kommentar zum StPO [hereinafter: BSK-StPO],2nded., 2014, n. 6 *on* Art. 333 CPP). This provision does not require the court to give the public prosecutor the opportunity to amend or expand the indictment (Federal Supreme Court decision 6B_177/2019 of March 18, 2019, para. 3.3). If the public prosecutor fails from the outset, in the indictment, to set forth all the factual elements that would, if applicable, support a finding of a criminal offense, the court is under no obligation to give the prosecution the opportunity to amend or expand the charges (Federal Supreme Court decision 6B_963/2015 of May 19, 2016, para. 1.5). Furthermore, the court may only grant the public prosecutor the option to amend the indictment. It cannot compel the prosecutor to do so (LAURENT MOREIL-LON/AUDE PAREIN-REYMOND, Petit Commentaire du CPP, No. 3 *on* Art. 333 CPP).

In this case, the indictment of March 22, 2019, as submitted to the Court, satisfactorily describes the elements constituting the war crime. When the Court analyzed the indictment in light of the requirements of Art. 329(1)(a) CPP, it found that it was in a position to rule on any potential war crimes and that there was therefore no justification for referring the indictment back to the Office of the Attorney General for supplementation or correction within the meaning of Art. 329(2) CPP. The issue of the dual classification of the charges against Alieu Kosiah was raised on numerous occasions during the preliminary investigation. From the outset of the proceedings, the Office of the Attorney General has consistently refused to prosecute Alieu Kosiah for crimes against humanity on the basis of the principle of non-retroactivity enshrined in Article 2(1) of the Swiss Criminal Code (CP), arguing that Article *264a* of the Swiss Criminal Code (CP), which entered into force on January1, 2011, cannot be applied retroactively pursuant to Art. 101(3) of the Swiss Criminal Code. The OAG's decision to refuse to expand the investigation to include the classification of crimes against humanity was the subject of an appeal to the Complaints Chamber of the Federal Criminal Court, which was declared inadmissible (decisions BB.2016.376/377/378/379-384 of February 2, 2018). Even at the time the notice of impending closure was served, Attorney Raphaël Jakob requested that the OAG draft its indictment in such a way that the Court could, if necessary, apply the classification of crimes against humanity (15-02-0970 et seq.). Thus, the MPC deliberately decided to submit to the Court an indictment that addresses only the offense of war crimes. During the proceedings, the Court asked the MPC whether it wished to amend the indictment so that the Court could examine the issue of classification as a crime against humanity, and the MPC replied in the negative. The Court cannot compel the OCP to amend its indictment; requiring the OCP to amend the indictment would effectively reverse the roles and allow the Court to influence the content of the

indictment, which would be impermissible. The Court further notes that such a referral

would not have involved merely “cosmetic changes” to the indictment, but would likely have required the OCP to present additional evidence. The defendant was in fact never specifically questioned regarding certain factual elements that might fall under the classification of crimes against humanity, nor regarding his intent with respect to those facts. The same applies to the other participants in the proceedings, as the investigation was always conducted from the perspective of war crimes rather than crimes against humanity. The question would likely have arisen as to whether it was necessary to hear an expert on the issue of a possible widespread or systematic attack against the civilian population carried out by the armed group to which the defendant belonged—namely, the ULIMO (United Liberation Movement of Liberia for Democracy)—during the first civil war.

In light of the foregoing, the preliminary question raised by Counsel Raphaël Jakob has been dismissed, and the Court will assess the facts before it solely from the perspective of war crimes.

2.1.4.3 Application of Art. *264b* et seq. of the Swiss Penal Code

Attorney Raphaël Jakob also raised a preliminary question seeking the application of Art. *264b* et seq. of the Swiss Criminal Code (new provisions on war crimes introduced on January 1January 2011) be applied in place of Articles 108 and 109a of the former Military Penal Code (provisions criminalizing war crimes in force at the time the acts were committed), pursuant to Article 101(3) of the Swiss Criminal Code.

According to Article 2(1) of the Swiss Criminal Code, criminal law applies only to acts committed after its entry into force (principle of non-retroactivity of criminal law). However, in accordance with the *lex mitior* rule enshrined in Art. 2, para. 2 of the Swiss Criminal Code (CP), the new law applies to crimes and misdemeanors committed before the date of its entry into force if the perpetrator is not brought to trial until after that date and if the new law is more favorable to the perpetrator than the law in force at the time of the offense. It follows that, in principle, the law in force at the time the act was committed applies, unless the new law is more favorable to the offender. The *lex mitior* rule constitutes an exception to the principle of non-retroactivity. It is justified by the fact that, due to a change in legal doctrine, the conduct in question is no longer—or is less—punishable under criminal law (ATF 134 IV 82, para. 6.1). The determination of the more favorable law is made through a concrete comparison of the defendant’s situation, depending on whether the defendant is being judged under the old or the new law. In principle, the legal elements of the offense in question must be examined first. When the conduct is punishable under both the old and the new law, a comprehensive comparison of the penalties incurred must be made. The proportion of the maximum penalty plays a decisive role (ATF 135 IV 113, para. 2.2). The old and new laws cannot be combined. Thus, based on a single set of facts, one cannot apply the old law to determine which offense was committed and the new law to decide whether and how the

perpetrator should be punished.

If both laws lead to the same result, the older law applies (Federal Supreme Court decision 6B_442/2012 of March 11, 2013, para. 3.1). Only rules of substantive law are subject to the *lex mitior*; procedural rules, on the other hand, are governed by the *tempus regis actum* principle, which renders them applicable as soon as they enter into force (ATF 117 IV 369, para. 4d).

In the present case, the preliminary question raised by Counsel Jakob concerns whether to apply the legal provisions governing war crimes that were in force at the time the offenses were committed (Art. 108 and 109a of the former Military Penal Code) or the new legal provisions, which entered into force on January 1er January 2011 (Art. *264b* et seq. of the Swiss Criminal Code). This is, in fact, a question concerning the application of the *lex mitior* principle, which cannot be addressed at the preliminary ruling stage but must be considered after the presentation of evidence, during the examination of the merits of the case.

The preliminary issue was therefore dismissed at this stage, as the question raised must be addressed in conjunction with the merits of the case.

2.1.4.4 Application of Art. *264k of the* Swiss Criminal Code

Finally, Attorney Raphaël Jakob requested the application of Art. *264k* of the Swiss Criminal Code (liability of a superior) to certain acts by Alieu Kosiah described in the indictment.

Pursuant to Article *264k*(1) of the Swiss Penal Code, a superior who is aware that a subordinate is committing or is about to commit one of the acts referred to in Titles 12bis (genocide and crimes against humanity) and 12ter (war crimes) of the Penal Code and who fails to take appropriate measures to prevent it is liable to the same penalty as the perpetrator. If the superior acts negligently, he or she is punishable by imprisonment for up to three years or a fine. A superior who is aware that a subordinate has committed one of the acts referred to in Titles 12bis and 12ter and who fails to take appropriate measures to ensure the punishment of the perpetrator of that act shall be punished by imprisonment for a term not exceeding three years or a fine (para. 2). This provision entered into force on January1, 2011.

The preliminary question raised by Attorney Raphaël Jakob has two parts: on the one hand, whether Alieu Kosiah should be charged with new offenses in addition to those set forth in the indictment—namely, omissions—and, on the other hand, to determine, if applicable, which law applies to such passive conduct. With regard to the first issue, Attorney Raphaël Jakob did not specify which acts described in the indictment could be considered under Art. *264k* of the Swiss Criminal Code.

The Court informed the parties that it reserved the right, pursuant to Art. 344 of the Code of Criminal Procedure (see *supra*, para. 2.1.4.1), to assess the passive conduct of Alieu Kosiah described in the indictment regarding the ill-treatment inflicted by soldiers on civilians during forced transports from the perspective of

possible omissions. With regard to the second question—namely, the law applicable to these offenses—this will be determined when the Court rules on the merits of the case, and the parties may address this issue during the final arguments.

It follows from the foregoing that the Court will partially address the third and final preliminary question raised by Counsel Raphaël Jakob.

2.1.5 Preliminary Questions Raised by Attorney Dimitri Gianoli

2.1.5.1 Eligibility of Civitas Maxima's Attorneys to Represent the Plaintiffs in the Proceedings

Attorney Dimitri Gianoli has requested the "recusal" of Attorney Alain Werner and his associate, Attorney Romain Wavre, in these proceedings for violation of Art. 12 of the Federal Act of June 23, 2000, on the Free Movement of Attorneys (Attorneys Act, LLCA; RS 935.61).

Pursuant to Art. 127(4) of the Swiss Criminal Procedure Code (CPP), the parties may choose as legal counsel any trustworthy person who has legal capacity and is of good repute; the provisions of the Lawyers Act remain reserved.

According to Article 12 of the LLCA, attorneys are subject, in particular, to the following professional rules: they shall practice their profession with care and diligence (subparagraph a); they shall carry out their professional activities independently, in their own name, and under their own responsibility (subparagraph b); and they shall avoid any conflict between the interests of their client and those of persons with whom they have professional or private relationships (subparagraph c). Art. 12, subsections (b) and (c) of the LLCA set forth the rule of substantive independence, according to which a lawyer must ensure, in every case entrusted to him or her, that he or she practices independently, in particular by avoiding any conflict of interest (ATF 138 II 440, consid. 3).

Pursuant to Art. 8(1) of the LLCA, to be registered in the registry, a lawyer must meet the following personal requirements: have full legal capacity (sublet. a); not have been convicted of a criminal offense incompatible with the practice of law, unless such conviction no longer appears on the private criminal record extract (sublet. b); not be subject to a declaration of insolvency (letter c); be able to practice independently; and may only be employed by persons who are themselves registered in a cantonal registry (letter d). A lawyer employed by a recognized public-benefit organization may apply for registration provided that he or she meets the conditions set forth in paragraph 1, subsections (a) through (c), and limits his or her legal practice to cases strictly related to the organization's stated purpose (paragraph 2).

The law does not define the concept of a recognized public-benefit organization, and the committee's deliberations did not address this issue in depth (PHILIPPE

MEIER/CHRISTIAN REISER, Commentaire romand de la LLCA [hereinafter: CR-LLCA], no. 68 *ad* art. 8 LLCA). The term “public-benefit organization” refers to legal entities that

pursue public service or purely public benefit objectives. It is clear from parliamentary proceedings that the concept of an organization recognized as serving the public interest must be interpreted as set forth in Art. 56(g) of the Federal Income Tax Act (LIFD) and Art. 23(1)(f) of the Federal Property Tax Act (LHID). The concept adopted is therefore relatively narrow. Economic objectives are generally not recognized as being in the public interest (PHILIPPE MEIER/CHRISTIAN REISER, CR-LLCA, No. 69 *on* Art. 8 LLCA; FRANÇOIS BOHNET/VINCENT MARTENET,
Law of the Legal Profession, 2009, No. 1346). According to case law relating to these provisions, a legal entity pursues purely public-benefit purposes when it provides services selflessly, in the public interest, for the benefit of a group of recipients that is, in principle, unlimited. It pursues public service objectives if it performs tasks closely related to government functions (ATF 127 II 113, para. 6b). The pursuit of public benefit purposes within the meaning of Art. 56(g) of the Federal Income Tax Act (LIFD) requires the fulfillment of two specific conditions: the performance of an activity in the public interest for an open group of beneficiaries and the absence of financial gain (Federal Supreme Court decision 2C_484/2015 of December 10, 2015, para. 5.3). The case law that formerly recognized the independence of a lawyer working for a labor union is no longer applicable, since a labor union is a nonprofit organization but not an organization recognized as serving the public interest (ATF 130 II 87, para. 5.1.1). Nor does a lawyer working for an association that defends tenants' interests (ATF 130 II 87, para. 5.1.1) or for a group active in the field of social insurance (ATF 132 V 200, paras. 5.2.3 and 5.2.4) meet the criterion of public benefit. It is not necessary for the organization to have been officially recognized, as evidenced by a certificate; it is sufficient that it be generally regarded as serving the public interest. The fact that the attorney is not required to comply with the "institutional" independence required for registration in the registry does not exempt him or her from complying with general professional rules, particularly those relating to independence in the actual performance of the mandate (Art. 12(b) and (c) LLCA) (PHILIPPE MEIER/CHRISTIAN REISER, CR-LLCA, No. 68 *on* Art. 8 LLCA).

Art. 62(1) of the Criminal Procedure Code (CPP) provides that the presiding judge shall order the measures necessary to ensure the proper conduct and legality of the proceedings. In Decision 1B_226/2016 of September 15, 2016, the Federal Supreme Court noted that the authority presiding over the proceedings must rule ex officio and at any time on a professional representative's eligibility to appear. Indeed, a prohibition on practicing in a specific case—which is distinct from a temporary or permanent suspension—does not, in principle, fall under disciplinary law, but rather under the oversight of a lawyer's right to practice. Article 62 of the Criminal Procedure Code (CPP) thus provides that the presiding judge shall order the measures necessary for the proper conduct and legality of the proceedings. However, the question of whether a lawyer must relinquish his or her mandate pursuant to, in particular,

the LLCA, pertains precisely to the legality of the proceedings and their proper conduct (consideration 2).

In the present case, the Court finds that, in light of the aforementioned case law, it has jurisdiction to rule on the eligibility of Attorneys Alain Werner and Romain Wavre to represent the plaintiffs in these proceedings.

Attorney Alain Werner, assisted by his associate, Attorney Romain Wavre, was appointed as pro bono legal counsel for the plaintiffs Paul, Louis Z., Antoine W., and Georges (15-01-0008 et seq., 0017 et seq., 0020 et seq., 0301 et seq.). Attorneys Alain Werner and Romain Wavre are employees of the Civitas Maxima association. According to the Commercial Register of the Canton of Geneva, this association, founded in 2012, pursues the following objectives: “legal assistance and representation for victims of international crimes with a view to preserving evidence and ultimately securing the prosecution of those suspected of committing such crimes, either before the International Criminal Court or before another national or international criminal prosecution authority; to compile a legal and factual dossier for each victim represented and to preserve these dossiers until they are transmitted to a national or international prosecuting authority; to work toward raising awareness, both in Switzerland and internationally, of the urgent need for international criminal justice to be fair, effective, and impartial, and not motivated by political or other interests.” It follows that the Civitas Maxima association pursues an idealistic public-benefit purpose (the defense of victims of international crimes and raising awareness of the need for an adequate international criminal justice system), in the public interest, on behalf of an open group of individuals (any person who claims to be a victim of an international crime), on a non-profit basis. Indeed, nothing in the record suggests that Civitas Maxima pursues a for-profit or partisan purpose, a claim which the defense does not, moreover, contend. Civitas Maxima must therefore be considered a public-benefit organization within the meaning of Art. 8, para. 2, of the LLCA. By representing the interests of individuals who have accused Alieu Kosiah of war crimes committed during the First Liberian Civil War, it is clear that Attorney Alain Werner and his associate, Attorney Romain Wavre, limit their activities to cases that strictly concern the objectives pursued by Civitas Maxima. Furthermore, it is undisputed that both attorneys meet the conditions set forth in subparagraphs (a) through (c) of Article 8(1) of the LLCA. Attorney Alain Werner, as well as his associate, Attorney Romain Wavre, thus meet the requirements for registration in the bar registry. Moreover, during the proceedings, Attorney Alain Werner submitted the decision of the Geneva Bar Association, dated October 19, 2013, which approved his registration in the register of attorneys pursuant to Article 8(2) of the LLCA (40.721.003 et seq.). It follows that the mere fact that Attorney Alain Werner and his associate, Attorney Romain Wavre, are both employees of the Civitas Maxima association and representatives of alleged victims in the present proceedings is in no way contrary to the law.

It remains to be determined whether a violation of Article 12(b) and (c) of the LLCA can be attributed to the two attorneys. With regard to the criterion of independence, aside from the fact that they are both employees of the Civitas

Maxima association—which is permitted by

the law, the defense does not cite any specific grounds for concluding that there is a lack of independence in the present proceedings. Regarding a potential conflict of interest, it should be noted once again that the mandates handled by Attorney Alain Werner and his associate, Attorney Romain Wavre, are consistent with the purposes of the association for which they work, as their clients' interests are in no way at odds with those purposes. A potential conflict of interest could therefore arise only from conditions imposed by Civitas Maxima on the attorneys that would be such as to prevent them from fulfilling their mandates. However, no such conditions have been demonstrated, nor are they apparent.

In light of the foregoing, the Court finds that the activities carried out in the context of these proceedings by Attorney Alain Werner and his associate, Attorney Romain Wavre, satisfy the requirements of the LLCA. The first preliminary question raised by the defense was therefore dismissed.

2.1.5.2 Admissibility of the Evidence in the Record

Attorney Dimitri Gianoli requested, as a second preliminary motion, that all testimony and evidence collected on behalf of Civitas Maxima through its sister organization RRR, based in Monrovia, Liberia, be excluded from the record, due to the latter's relationship of dependence and subordination to the former.

Article 139(1) of the Code of Criminal Procedure states that criminal justice authorities shall employ all lawful means of evidence which, according to the current state of scientific knowledge and experience, are suitable for establishing the truth. Coercive measures, the use of force, threats, promises, deception, and any means likely to impair intellectual faculties or free will are prohibited in the taking of evidence (Art. 140(1) of the Criminal Procedure Code). These methods are prohibited even if the person concerned has consented to their use (para. 2). Evidence obtained in violation of Art. 140 is inadmissible under any circumstances (Art. 141, para. 1, *ab initio,* CPP). Evidence that has been obtained unlawfully or in violation of rules of validity by criminal justice authorities is inadmissible, unless its admission is indispensable for the investigation of serious offenses (para. 2).

Private individuals, including the parties and other participants in the proceedings, may seek out and produce evidence in the context of criminal proceedings. The CPP contains no provision governing the treatment of evidence obtained unlawfully by a private individual. Case law has filled this gap by holding that evidence obtained unlawfully by a private individual is admissible only to the extent that its admission is indispensable to the investigation of a serious offense, that a balancing of interests justifies its admission, and that it could have been obtained lawfully by criminal authorities (see ATF 147

IV 16, 147; IV 9, 146; IV 226 and 143; IV 387). According to some authors, this case law cannot be applied to evidence obtained through force or threats (see, in particular, NIKLAUS SCHMID/DANIEL JOSITSCH, Schweizerische Strafprozessordnung: Praxiskommentar,3rded., 2018, no. 3 *on* Art. 141 CPP). Others argue in favor of absolute inadmissibility whenever evidence has been obtained in violation of Art. 140 of the Swiss Criminal Procedure Code (YVAN JEANNERET/ANDRÉ KUHN, Précis de procédure pénale, 2nd[e]ed., 2018, No. 9011 and the references cited in footnote 35).

In the present case, the defense requests that "all testimony and evidence collected on behalf of Civitas Maxima through its sister organization RRR" be excluded from the record, without, however, specifying exactly which pieces of the case file are at issue. The wording of this motion fails to satisfy the parties' obligation to present clear arguments in the context of preliminary questions so that the court may rule on them. In this instance, the Court does not see which "testimonies and evidence collected" by RRR and Civitas Maxima that would be affected by the defense's motion. That said, in any event, the preliminary question—to the extent it is admissible—is without merit. Indeed, there is nothing in the record to suggest that evidence was obtained or collected unlawfully in the proceedings by the criminal prosecution authorities or by private individuals. In reality, it appears that, in its arguments, the defense is challenging the substantive validity of certain pieces of evidence rather than their formal validity—that is, their content and probative value. However, only the formal validity of a piece of evidence may be challenged at the stage of preliminary questions, as the assessment of evidence occurs during the examination of the merits of the case.

The preliminary question raised by Attorney Dimitri Gianoli was therefore dismissed as inadmissible.

2.1.5.3 Identification of witnesses Victor X. and Didier X. by the plaintiffs Louis Z. and Antoine W.

Attorney Dimitri Gianoli requested that "the identification of witnesses Victor X. and Didier X." by the plaintiffs Louis Z. and Antoine W., conducted at the Court's request, be excluded from the record on the grounds that it was carried out in violation of the rights of the defense.

According to Art. 107(1) of the Swiss Criminal Procedure Code (CPP), a party has the right to be heard; in this capacity, it may, in particular, participate in procedural acts (letter b). The parties have the right to be present during the taking of evidence by the public prosecutor and the courts and to ask questions of the witnesses (Art. 147(1) *ab initio* of the Code of Criminal Procedure).

In the present case, the Court sent a letter to Attorney Alain Werner on March 4, 2020 (Ref. No. 40.400.132), in which it requested that he

to kindly show two photographs to his clients, Louis Z. and Antoine W., and to inform him whether they recognized the individuals depicted and, if so, who they were. The two photographs in question were those of Victor X. and Didier X., two witnesses whose testimony had been requested by the defense and regarding whom the Court had doubts as to whether they were in fact connected to the present proceedings. In a letter dated March 27, 2020, Counsel Alain Werner replied to the Court that the two individuals had been identified by Louis Z. and Antoine W. as residents of Pasolahun, specifying that they were not the victims mentioned during their respective hearings (40.551.435). The Court's letter to Attorney Alain Werner dated March 4, 2020, was in no way intended to establish that the individuals named Victor X. and Didier X. in the indictment had in fact been killed by the defendant, as the Office of the Attorney General (MPC) contends, and that it was therefore not possible to summon them. The purpose of the identification was solely to ensure that the summonses were sent to the individuals involved in the proceedings and not to people with the same names, whom it was necessary to avoid bringing to Switzerland from Liberia due to a mistake. It was thus an identification carried out solely for the purpose of organizing the proceedings so that they could proceed as smoothly as possible. Indeed, given the unique nature of the case and the exceptional organizational measures it entailed, the Court had a duty to ensure, to the extent possible, that the individuals it brought from Liberia to Switzerland did indeed have a connection—however tenuous—to the facts of the present proceedings. Furthermore, the Court was unable to draw any conclusions from the response received from the two complainants, Louis Z. and Antoine W., regarding the existence of the two alleged victims named in the indictment and the events they were said to have experienced. The subpoenas for the two witnesses requested by the defense were thus upheld despite the lingering doubt, and the defense was asked to conduct further verification to prevent the Court from incurring unnecessary efforts and expenses. The plaintiffs were then questioned during the proceedings regarding the two photographs that their counsel had shown them, and the defense was able to ask them all the questions it deemed appropriate on this matter, such that the parties' rights were fully respected.

In light of the foregoing, the preliminary question raised by Attorney Dimitri Gianoli was dismissed.

2.1.5.4 Admissibility of the document submitted by Maître Dimitri Gianoli

During the preliminary questions phase, Attorney Dimitri Gianoli wished to file a brief identifying, from the defense's perspective, all the contradictions in the statements made by the witness Benoît during the preliminary investigation.

Pursuant to Art. 66 of the Code of Criminal Procedure, proceedings before criminal authorities are oral, unless this Code provides for a written form.

In this case, the brief that the defense wished to enter into the record did not constitute pleadings filed in support of a preliminary issue that had been raised and argued. Rather, it was a written advance argument on the merits, and more specifically on the assessment of certain evidence in the record. Since criminal proceedings are oral, the Court refused to admit Maître Dimitri Gianoli's document into the record. He was invited to file it at a later date, in support of his argument on the merits if he so wished, provided that all the elements contained in his document were also argued orally in order to respect the other parties' right to be heard.

The defense's brief was therefore refused for inclusion in the record at the stage of preliminary questions.

2.2 , incidental issues

Pursuant to Art. 339(4) of the Code of Criminal Procedure (CCP), if the parties raise incidental issues during the trial, the court treats them as preliminary issues.

In this case, the Office of the Attorney General, represented by Attorneys Alain Werner, Raphaël Jakob, Zeina Wakim, and Dimitri Gianoli, raised incidental issues during the trial.

2.2.1 Incidental Issues Raised by Attorney Alain Werner

2.2.1.1 Request for an exemption from appearing for the complainant Georges on February 19 and 20, 2021

In a letter dated January 22, 2021, Attorney Alain Werner requested an exemption from appearing for his client, Georges, on February 19 and 20, 2021, due to an academic course he was taking "online" (40.551.586 s.).

Pursuant to Art. 338(1) of the Swiss Criminal Procedure Code (CPP), at the request of the complainant, the presiding judge may exempt him from appearing in person when his presence is not necessary.

Since Georges's hearing was scheduled for February 17, 2021, and the days of February 19 and 20, 2021, were to be devoted to hearing complainants who had not alleged facts overlapping with those alleged by the defendant, the Court granted the request of Counsel Alain Werner, subject to a possible delay in the schedule—which cannot be entirely ruled out at the time the second part of the proceedings begins.

2.2.1.2 Motion requesting that the plaintiffs be allowed to ask the defendant questions before being heard by the Court

In a letter dated January 22, 2021, Attorney Alain Werner requested that the plaintiffs be heard after having been able to ask the defendant their questions (40,551,586 s.).

Pursuant to Art. 107(1)(b) of the Criminal Procedure Code (CPP), a party has the right to be heard and may, in particular, participate in procedural acts. Article 147 of the CPP elaborates on this provision by stipulating that the parties have the right to be present during the taking of evidence by the public prosecutor's office and the courts and to ask questions of the witnesses (para. 1, *ab initio*).

In this case, the Court heard Alieu Kosiah during the first part of the trial in December 2020. Since the plaintiffs were not present at that hearing, their attorneys requested that they be allowed to reserve their questions for the defendant until the second part of the trial; the Court granted this request.

The Code of Criminal Procedure does not prescribe the order in which the parties should be heard during the trial. In this case, the attorneys for the plaintiffs had the opportunity to question Alieu Kosiah during the first part of the trial but chose not to exercise that right. The defendant was extensively questioned during the pretrial investigation, and four additional days were devoted to his hearing before the Court, amounting to a total of nearly 800 pages of transcripts. The plaintiffs are aware of the defendant's position regarding the charges against him in the indictment, as they have access to all the transcripts prepared during the preliminary investigation as well as the transcript prepared by the Court during his hearing. They were also able to review the questioning of Alieu Kosiah with their respective attorneys. They are thus able to form an informed opinion regarding the defendant's statements. Finally, an additional day of testimony by Alieu Kosiah is scheduled following their questioning so that they may ask him any further questions they may have. Under these circumstances, it must be concluded that the adversarial nature of the proceedings has been respected.

Counsel Alain Werner's motion was therefore denied.

2.2.1.3 Request for Corrections to the Transcript of Alieu Kosiah's Hearing on December 3, 2020

In a letter dated January 27, 2021, Counsel Alain Werner submitted to the Court a list of corrections and additional translations to the transcript of Alieu Kosiah's interrogation (40.551.597 et seq.).

Pursuant to Art. 78(1) of the Code of Criminal Procedure, the statements of the parties, witnesses, persons called to provide information, and experts shall be recorded in the minutes during the hearing. If, during the proceedings, a hearing is recorded using technical means, the court may waive the requirement to read the minutes to the person being heard or to provide them with a copy for review and signature. The recordings must be included in the case file (para. 5^{bis}).

The presiding judge and the court reporter shall correct obvious errors; they shall inform the parties thereof (Art. 79, para. 1 CPP). The presiding judge

shall rule on requests to correct the minutes (para. 2). Corrections concern errors in the identification of persons, amounts, or currencies; spelling or syntax errors; or errors resulting from computer input errors (GIORGIO BOMIO/DAVID BOUVERAT, Commentaire romand du CPP [hereinafter: CR-CPP], 2nd[e]ed., 2019, no. 1 *ad* art. 79 CPP).

In the present case, Attorney Alain Werner's motion concerns both corrections of transcription errors and additions to the translation. The Court agrees to correct typographical errors and obvious mistakes. However, it rejects the requests seeking improvements or additions to the translation. The translation remains, in fact, the responsibility of the translator. While this translation is not intended to be exhaustive, it conveys the essence of the witness's statements in summary form. The Court cannot, therefore, revisit the work performed in this instance, which was carried out in a fully satisfactory manner by the interpreter. If necessary, the parties should have intervened immediately to request additional information so that the translator himself could decide on their requests.

It follows from the foregoing that the Court accepts the corrections of manifest errors but rejects the requests seeking additional information or improvements to the translation in the transcript of Alieu Kosiah's interrogation on December 3, 2020.

2.2.2 Incidental Issues Raised by Attorney Raphaël Jakob

2.2.2.1 Motion requesting that the plaintiffs be allowed to ask the defendant questions before being heard by the Court

In a letter dated January 26, 2021, Counsel Raphaël Jakob requested that the complainants be allowed to ask the defendant questions before being heard by the Court (40.555.061 s.).

This motion was denied by the Court. See paragraph 2.2.1.2 above for the reasoning.

2.2.2.2 Request that the video recordings of Alieu Kosiah's hearing before the Court during the first part of the trial be entered into the record

In a letter dated January 26, 2021, Counsel Raphaël Jakob requested that the video recordings of the Court's hearing of Alieu Kosiah during the first part of the trial be entered into the record (40,555,061 s.).

If, during the trial, a hearing is recorded using technical means, the court may waive the requirement to read the transcript to the person being heard or to provide it to them for review and have them sign it. The recordings must be entered into the case file (Art. 78, para. 5$^{(bis)\ of}$the Criminal Procedure Code).

Art. 102(1) of the Criminal Procedure Code (CPP) provides that the presiding judge shall rule on access to case files. The presiding judge shall take the necessary measures to prevent abuse and delays and to protect legitimate interests in maintaining confidentiality (Art. 102(1) CPP). Case files are inspected at the headquarters of the relevant criminal authority or, through mutual legal assistance, at the headquarters of another criminal authority. As a general rule, they are provided to other authorities as well as to the parties' legal counsel (para. 2). Pursuant to this provision, the presiding judge may prohibit the defense counsel from removing a document or making a photocopy of it. The legitimate protective purpose of this measure does not constitute a disproportionate infringement of the right to inspect the case file (Federal Supreme Court decision 1B_439/2012 of November 2, 2012, para. 2.3).

In the present case, the video recordings of Alieu Kosiah's hearing will be included in the case file. That said, the Court sees a significant interest in ensuring that these recordings be viewed only at the Federal Criminal Court's headquarters in order to safeguard the defendant's security, which could be compromised once he is released. Indeed, given the seriousness of the charges against him, the risk of retaliation cannot be ruled out. The Court therefore wishes to prevent images of Alieu Kosiah from being disclosed to the general public, which could allow anyone to recognize him.

It has therefore imposed the restrictions set forth in paragraph A.34 on access to the video recordings of the defendant's hearing.

2.2.2.3 Motions Regarding the Release of Transcripts

In a letter dated January 26, 2021, Attorney Raphaël Jakob requested that the Court provide him with the transcripts of the hearings conducted during the second part of the trial before the closing arguments began. He also requested that the Court provide the parties with the transcript of the proceedings pertaining to the first part of the trial, and in particular the preliminary questions raised (40.555.061 s.).

If, during the proceedings, a hearing is recorded using technical means, the court may waive the requirement to read the transcript to the person being heard or to provide it to them for review and have them sign it. The recordings

must be

included in the record (Art. 78, para. 5$^{(bis)\ of}$the Swiss Criminal Procedure Code). This provision gives concrete expression to the principle of procedural economy by reducing the duration of proceedings, particularly in large-scale trials and when statements must be translated into the language of the proceedings before being recorded in the minutes. Recording by technical means does not alter the fact that the testimony must be entered into the minutes immediately following the hearing pursuant to Art. 78, para. 1, CPP. In practice, especially during complex proceedings, courts very frequently opt for recording and forgo reading the minutes aloud. In any case, the minutes are drawn up and signed by the presiding judge and the court clerk. The minutes may be provided to the entitled parties even after the conclusion of the proceedings, but in any case before the written judgment is served (GIORGIO BOMIO/DAVID BOUVERAT, CR-CPP, No. 6a *regarding* Art. 78 CPP).

It is the consistent practice of the Criminal Chamber of the Federal Criminal Court to record the proceedings and to provide the transcripts to the parties at the conclusion of the proceedings, once they have been finalized. In this case, given the length of the transcripts of the hearings, the Court is unable to finalize them and provide them to the parties before the start of closing arguments. The parties will therefore receive them after the conclusion of the proceedings. As for the transcript of the proceedings, it will be provided to the parties in a single batch, once it has been completed, along with the transcripts of the hearings.

Counsel Raphaël Jakob's motions are therefore denied.

2.2.3 Interlocutory motions raised by Counsel Zeina Wakim

2.2.3.1 Motion requesting that the plaintiffs be allowed to ask the defendant questions before being heard by the Court

In a letter dated January 26, 2021, Counsel Zeina Wakim joined the motion filed by Counsel Alain Werner and Raphaël Jakob seeking to allow the plaintiffs to ask the defendant questions before being heard by the Court (40.552.033 s.).

This motion was denied by the Court. See paragraph 2.2.1.2 above for the reasoning.

2.2.3.2 Request for Amendments to the Transcript of Alieu Kosiah's Hearing on December 3, 2021

In a letter dated January 28, 2021, Counsel Zeina Wakim requested three additions to the transcript of Alieu Kosiah's hearing on December 3, 2021 (40,552,036 s.).

With regard to the legal arguments, please refer to paragraph 2.2.1.3 above.

In addition, Attorney Zeina Wakim requests two additions or corrections to the translation, as well as the inclusion of an order issued by the presiding judge instructing the

journalists not to disclose Coralie's name when the facts related to the rape she reported (count 1.3.23 of the indictment) were discussed. With regard to the additions or corrections to the translation, these are rejected; reference may be made in this regard to what has already been set forth in paragraph 2.2.1.3. As for the addition of the order issued to the journalists, the Court agrees to include it in the minutes of the defendant's hearing, provided that said order was already included in the minutes of the proceedings.

Counsel Zeina Wakim's motion is thus partially granted.

2.2.4 Incidental Issues Raised by Attorney Dimitri Gianoli

2.2.4.1 Motion to amend the minutes of the hearings of Rémy and Coralie by the Public Prosecutor's Office

In a letter dated February 8, 2021, Attorney Dimitri Gianoli requested that the Public Prosecutor's Office (MPC) amend the translations of the hearing transcripts for the witness Rémy (formerly a complainant) and the complainant Coralie (40.521.378 et seq.; 40.521.384 et seq.).

With regard to the legal arguments, reference is made to paragraph 2.2.1.3 above.

In this case, the transcripts for which the defense requests corrections were prepared by the MPC and not by the Court. The Court does not intend to make corrections to transcripts that it did not prepare. Furthermore, and in any event, the requested corrections pertain to translation issues. It was incumbent upon the defense to raise objections during the hearing before the MPC, in the presence of the interpreter, if it intended to challenge the interpreter's translation, rather than four years later, before the Court.

Counsel Dimitri Gianoli's motion is therefore denied.

2.2.4.2 Request that Alieu Kosiah be allowed to speak during the trial proceedings to make amendments to the transcript of his hearing that took place during the first part of the trial in 2020

In a letter dated February 8, 2021, Attorney Dimitri Gianoli requested that his client be allowed to appear in person at the trial hearing to make amendments to the transcript of his hearing held during the first part of the trial (40.521.368 et seq.).

With regard to the legal arguments, reference is made to paragraph 2.2.1.3 above.

For the sake of economy and efficiency (saving time by avoiding unnecessary translations), it is the responsibility of the defense counsel to request amendments to the transcript of the defendant's hearing, provided that only corrections of obvious errors are permitted.

Counsel Dimitri Gianoli's motion is therefore denied.

2.2.5 Incidental Motion Raised by the Office of the Public Prosecutor

Following the hearings of Paul and Raoul, the MPC requested permission to amend the indictment of March 22, 2019, in two respects:

- amendment of the date of the offense referred to in section 1.3.2, to the effect that it was committed between February and April 1993 (and not March 1993);
- the addition, in section 1.3.6 of the indictment, of a reference to Pierre, alias Pégase, as the possible perpetrator of the stabbing with which the defendant is charged, resulting in the reclassification, in the alternative, of the defendant's form of participation as joint perpetration or complicity.

For legal discussions regarding the accusatory principle (Art. 9 CPP) and the possibilities for amending the indictment (Art. 333 CPP), see paragraphs 2.1.4.1 and 2.1.4.2 above.

If no new facts or offenses other than those set forth in the indictment are alleged, Art. 333 of the Code of Criminal Procedure does not apply. This is particularly the case for amendments that relate solely to temporal elements or quantities. Simple temporal or quantitative amendments must therefore be corrected without the application of Art. 333 CPP, as if they were clerical errors (Federal Criminal Court decision SK.2010.33 of May 5, 2011, in: JdT 2013 IV 279, para. 1.4.3; PIERRE-HENRI WINZAP, CR-CPP, No. 6a *regarding* Art. 333 CPP). The Federal Supreme Court has, moreover, held that an incorrect designation of the location of an offense—which no one disputes—constitutes a minor inaccuracy, or even a clerical error, that does not qualify as an addition or amendment within the meaning of Art. 333 CPP. Since the judges of the first and second instances could have made this correction on their own initiative and since it does not impede the defendant's defense—as the defendant was able to address this point during the proceedings and prepare his defense accordingly— the principle of specific charges is upheld, and the indictment may be amended (Federal Supreme Court decision 6B_760/2013 of November 13, 2013, para. 1.3).

Art. 333(1) of the Criminal Procedure Code does not cover situations in which a person other than the defendant may have committed the acts described in the indictment (Federal Supreme Court decision 6B_688/2017 of February[1,] 2018, para. 2.5).

In this case, the MPC first requests an extension of the period during which the offense referred to in section 1.3.2 of the indictment was committed. This amendment does not constitute a departure from the adversarial principle. Indeed, this amendment does not introduce any uncertainty or ambiguity regarding the event in question, that is, regarding the charge against the defendant. The Court therefore grants this first request. As for the second

second request, which seeks to add the name of Pierre, alias Pégase, as a possible perpetrator of the stabbing initially charged against the defendant, it amounts to adding another possible perpetrator to the offense referred to in section 1.3.6 of the indictment. However, this is not possible under the terms of the aforementioned case law. Furthermore, even if Pierre, alias Pégase, is likely to be tried in France, it is not impossible that France might delegate jurisdiction. Moreover, it cannot be ruled out that such an amendment to the indictment would require further investigation or that it would justify a request to postpone the trial. The Court therefore rejects this second request for amendment. It reserves the right, however, to examine the defendant's conduct in light of the various forms of criminal conduct—namely, commission (including as an indirect perpetrator), coercion, instigation, and complicity—pursuant to Art. 344 of the Code of Criminal Procedure (see *supra*, para. 2.1.4.1). This is a matter of legal classification and does not require an amendment to the indictment with respect to the facts.

The OAG's motion is therefore partially granted.

3. s of evidence

Under Art. 107(1)(e) of the Swiss Criminal Procedure Code (CPP), a party has the right to be heard and may, in particular, submit proposals regarding the means of proof.

The right to be heard, as guaranteed by Art. 29(2) of the Constitution, includes, in particular, the right of the party to the proceedings to have relevant and validly offered evidence admitted, to participate in the taking of essential evidence, and to comment on its outcome when such comments are likely to influence the decision to be rendered (ATF 133 I 270, para. 3.1). The right to be heard does not prevent the judge from terminating the investigation when the evidence presented has enabled the judge to form a conviction and when, by proceeding in a non-arbitrary manner to an advance assessment of the evidence still being presented—which implies examining *a priori* the usefulness of a piece of evidence (Federal Supreme Court decision 6B_676/2015 of April 24, 2017, para. 2.7)—the judge is certain that such evidence could not lead him to change his opinion. A refusal to hear evidence thus violates the parties' right to be heard only if the judge's preliminary assessment of the relevance of the offered evidence is tainted by arbitrariness (ATF 144 II 427, para. 3.1.3).

Pursuant to Art. 139(2) of the Criminal Procedure Code (CPP), there is no need to take evidence regarding facts that are irrelevant, well-known, already known to the criminal justice authority, or already sufficiently proven. This provision codifies, for criminal proceedings, the rule of case law derived from Art. 29(2) of the Constitution regarding the preliminary assessment of evidence (Federal Supreme Court decision 6B_1237/2019 of July 3, 2020, para. 2.1).

It further follows from Art. 331(2) of the Criminal Procedure Code (CPP) that a party submitting a request for evidence to the court must provide a justification

for it.

In this case, the Office of the Attorney General (MPC), represented by Attorneys Alain Werner, Raphaël Jakob, and Dimitri Gianoli, submitted requests for evidence during the proceedings (or during their adjournment), which the Court had already ruled on prior to or during the proceedings, with the reasoning recorded in the relevant court transcript.

4. Applicable e Law

Until December 31, 2010, violations of humanitarian law were punishable solely under Articles 108 and 109 of the Swiss Military Penal Code (aCPM). On January[1], 2011, a legislative amendment was enacted, introducing Titles 12[bis](genocide and crimes against humanity) and 12[ter](war crimes) into the Swiss Criminal Code.

4.1 Previous law

4.1.1 Article 108(1) of the former Swiss Military Penal Code (aCPM), as in effect at the time of the alleged offenses (i.e., between 1993 and 1996), provides that the provisions of Chapter 6 apply in cases of declared wars and other armed conflicts between two or more States; violations of neutrality, as well as the use of force to repel such violations, are treated as equivalent to such conflicts. The violation of international agreements is also punishable if the agreements provide for a broader scope of application (para. 2).

4.1.2 Pursuant to Art. 109(1) of the Military Penal Code (aCPM), as in effect at the time of the alleged offenses, anyone who contravenes the provisions of international conventions on the conduct of war and the protection of persons and property, or who violates other recognized laws or customs of war, shall be punished by imprisonment, unless more severe provisions apply. In serious cases, the penalty shall be imprisonment with hard labor. The offense shall be punished by disciplinary measures if it is of minor severity (para. 2). Pursuant to Art. 28, para. 1 of the aCPM, as in effect at the time of the alleged acts, imprisonment is the most severe of the custodial sentences. The term of imprisonment shall be at least one year and no more than twenty years. Where the law expressly provides for it, imprisonment is for life. Under Art. 29(1) of the former Military Criminal Code (aCPM) in force at the time of the alleged acts, the term of imprisonment is at least three days and, unless the law expressly provides otherwise, no more than three years.

4.1.3 Article 109(1) of the former Military Penal Code (aCPM) contains a general provision referring to international humanitarian law (Message on the Implementation of the Rome Statute, FF 2008 3527), and in particular to Article 3 common to the Geneva Conventions of August 12, 1949 (hereinafter: GC). According to this provision, in the event of an armed conflict not of an international character arising within the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply the following

provisions: (1) persons not directly participating in hostilities, including members of the armed forces who have laid down

their arms and persons who have been rendered incapable of combat by illness, injury, detention, or any other cause, shall, in all circumstances, be treated humanely, without any adverse distinction based on race, color, religion or belief, sex, birth or wealth, or any other similar criterion. To this end, the following acts are and shall remain prohibited at all times and in all places with respect to the persons mentioned above: attacks on life and physical integrity, including murder in all its forms, mutilation, cruel treatment, torture, and cruel, inhuman, or degrading punishment (subparagraph a); the taking of hostages (subparagraph b); attacks on the dignity of persons, including humiliating and degrading treatment (subparagraph c); convictions and executions carried out without a prior judgment rendered by a duly constituted court, accompanied by the judicial guarantees recognized as indispensable by civilized peoples (subparagraph d); Section 2: the wounded and the sick shall be collected and cared for.

4.1.4 Additional Protocol II to the Geneva Conventions of August 12, 1949 (hereinafter: AP II) expands upon and supplements Article 3 common to the Geneva Conventions. Its Article 4 states that all persons who are not directly participating or who are no longer participating in hostilities, whether or not they are deprived of their liberty, are entitled to respect for their person, their honor, their convictions, and their religious practices. They shall be treated humanely in all circumstances, without any adverse distinction. It is prohibited to order that there be no survivors (para. 1). Paragraph 2 states that, without prejudice to the general nature of the preceding provisions, the following acts are and remain prohibited at all times and in all places with respect to the persons referred to in paragraph 1: attacks on the life, health, and physical or mental well-being of persons, in particular murder, as well as cruel treatment such as torture, mutilation, or any other form of corporal punishment (subparagraph a); collective punishment (subparagraph b); hostage-taking (subparagraph c); acts of terrorism (subparagraph d); attacks on human dignity, including humiliating and degrading treatment, rape, forced prostitution, and any indecent assault (subparagraph e); slavery and the slave trade in all their forms (subparagraph f); looting (subparagraph g); and the threat to commit the aforementioned acts (subparagraph h). Pursuant to paragraph 3(c), children under the age of fifteen shall not be recruited into armed forces or groups, nor shall they be permitted to take part in hostilities.

4.2 New Article

4.2.1 Pursuant to Art. *264c*, para. 1, of the Swiss Criminal Code (CP), which entered into force on January 1, January 2011, anyone who, in the context of an international armed conflict, commits a serious violation of the Geneva Conventions of August 12, 1949—namely, one of the following acts directed against persons or property protected by one of these conventions—shall be punished by a custodial sentence of at least five years: murder (subparagraph

a); taking of hostages (subparagraph b); inflicting severe suffering or

serious harm to a person's physical integrity or physical or mental health, in particular through torture, inhuman treatment, or biological experiments (subparagraph c); destruction or appropriation of property not justified by military necessity or carried out on a large scale (subparagraph d); compelling a person to serve in the armed forces of an enemy power (subparagraph e); the unlawful deportation, transfer, or detention of persons (subparagraph f); denial of a fair and impartial trial prior to the imposition or execution of a severe penalty (subparagraph g). Acts referred to in paragraph 1 that are committed in the context of a non-international armed conflict are considered serious violations of international humanitarian law if they are directed against a person or property protected by that law (paragraph 2). If the act is particularly serious—in particular, if it affects a large number of people or if the perpetrator acts with cruelty—the court may impose a sentence of life imprisonment (para. 3). In less serious cases falling under para. 1, subsections (c) through (g), the court may impose a sentence of imprisonment of at least one year (para. 4).

4.2.2 Pursuant to Art. *264e*, para. 1, subpar. b of the Swiss Criminal Code (CP), anyone who, in the context of an armed conflict, rapes a woman protected by international humanitarian law, detains her after she has been impregnated against her will with the intent to alter the ethnic composition of a population, forces a person protected by international humanitarian law to undergo a sexual act of comparable severity, forces her into prostitution, or forcibly sterilizes her.

4.2.3 Article *264f*(1) of the Swiss Criminal Code (CP) further provides that anyone who conscripts or recruits children under the age of fifteen into the armed forces or armed groups, or causes them to participate in an armed conflict, shall be punished by a custodial sentence of at least three years.

4.2.4 Pursuant to Article *264g*(1)(c) of the Swiss Criminal Code, anyone who, in the context of an armed conflict, as a method of warfare, engages in looting, unlawfully appropriates property in any other manner, unnecessarily destroys or confiscates property belonging to the enemy, deprives civilians of property essential to their survival, or prevents the delivery of relief supplies.

4.2.5 Article *264b* specifies that Articles *264d* through *264j* apply in the context of an international armed conflict, including during an occupation, and, unless the nature of the offense precludes it, in the context of a non-international armed conflict.

4.3 Law Applicable to th e Case at Hand

4.3.1 With regard to developments related to the principle of *lex mitior*, see paragraph 2.1.4.3 above.

4.3.2 Unlike Articles 108 and 109a of the Military Criminal Code (aCPM), the new provisions of the Swiss Criminal Code (Articles *264c*, *264e*(1)(b), *264f*(1), and *264g*(1)(c) of the Swiss Criminal Code) establish minimum custodial sentences of three and five years, respectively. Furthermore, Art. *264c of* the Swiss Criminal Code (CP) provides, in paragraph 3, for the possibility of imposing a life sentence in serious cases, whereas Art. 109a of the former Military Penal Code (aCPM) provides for imprisonment for a term of up to 20 years. It must therefore be noted that, from the perspective of sentencing, the old law appears more favorable to the defendant than the new law.

4.3.3 This raises the question of whether there could be situations in which a particular act would be punishable under the old law but not under the new law—the only scenario in which the new law would be more favorable to the defendant under the principle of *lex mitior*. However, this scenario can be ruled out. Indeed, in order not to restrict the scope of application of the Geneva Conventions and their Protocols, the Swiss Penal Code (CP) provides, in Article *264j*, that anyone who, in the context of an armed conflict, violates—in a manner not punishable under Articles *264c* through *264i*— a norm of international humanitarian law, the violation of which is punishable under customary international law or an international convention recognized as binding by Switzerland, shall be punished by imprisonment for up to three years or a fine. It follows from this latter provision that, by definition, there can never be a case in which an act would be punishable under Articles 108 and 109 of the former Military Penal Code (which refer to the Geneva Conventions and Protocol II) but not under the current Swiss Criminal Code. That said, if Article *264j* of the Swiss Criminal Code were to apply, it could, hypothetically, be more favorable to the defendant than Articles 108 and 109 of the former Military Criminal Code, insofar as it provides for a maximum sentence.

4.3.4 In this case, the acts alleged against the defendant in the indictment of March 22, 2019, may all be covered by Articles *264c*, *264e*, *264f,* or *264g* of the Swiss Criminal Code. These provisions have the same scope of application as the equivalent rules contained in Article 3 (common to the General Provisions) and Article 4 of Part II of the Penal Code (see the Message on the Implementation of the Rome Statute, which states that “Swiss laws must faithfully and without restriction reflect the international law in force […] and must be based on the content and wording of the most restrictive norms” [FF 2008 3480 ff.]). Thus, although the conduct attributed to Alieu Kosiah is punishable under both the old and the new law, the old law appears more favorable to the defendant, insofar as, unlike the new provisions that entered into force on January 1er January 2011, the old law does not impose a minimum custodial sentence, nor does it allow for the imposition of a life sentence. Since the new law thus appears more severe than the old one in terms of penalties, the conditions for applying *the lex mitior* do not appear to be met; consequently, the conduct attributed to Alieu Kosiah must be assessed in light of Articles 108 and 109 of the aCPM.

4.4 Scope of Application of Articles 108 and 109 , aCPM

Since Articles 108 and 109 of the aCPM refer to Article 3, which is common to the CG, and to Article 4 of PA II, it is necessary to examine the applicability of these international agreements to the case at hand.

4.4.1 Spatial and Temporal Scope of Application

Pursuant to Article 1 common to the Geneva Conventions, the High Contracting Parties undertake to respect and ensure respect for the Conventions in all circumstances.

In the present case, the four Geneva Conventions of August 12, 1949, were ratified by Switzerland and Liberia. They entered into force for Switzerland on October 21, 1951, and for Liberia on September 29, 1954.

Pursuant to Article 1(1) of Additional Protocol II, the Protocol applies to armed conflicts not covered by Additional Protocol I (international armed conflicts) that take place on the territory of a High Contracting Party (…).

In this case, both Switzerland and Liberia have ratified Additional Protocol II, which entered into force for Switzerland on August 17, 1982, and for Liberia on December 30, 1988.

Since the acts with which the defendant is charged took place between 1993 and 1996, Article 3 common to the Geneva Conventions and Article 4 of Additional Protocol II are indeed applicable ratione loci and temporis to the present proceedings.

4.4.2 Material Scope of Application

Article 3, common to the General Provisions, covers armed conflicts “that are not of an international character,” as opposed to Article 2, which covers clashes between States. An international armed conflict occurs when one or more States use armed force against another State (International Committee of the Red Cross [hereinafter: ICRC], “How Is the Term ‘Armed Conflict’ Defined in International Humanitarian Law?”, Position Paper, 2008, p. 3). Armed conflicts that are not international in nature are those in which at least one of the parties involved is non-governmental. Depending on the circumstances, hostilities take place either between one or more armed groups and state forces, or solely between armed groups (ICTY, Tadic Case, Judgment on the Defense’s Appeal Regarding the Preliminary Objection of Lack of Jurisdiction of October 2, 1995, para. 70).

An “armed conflict” exists whenever there is the use of armed force between States or a protracted armed conflict between government authorities and organized armed groups or between such groups within a State. International law applies from the outset of such armed conflicts and extends beyond the cessation of hostilities until the general conclusion of peace; or, in the case of internal conflicts, until a peaceful settlement is reached. Until then, international

humanitarian law continues to apply throughout the territory of the

belligerent States or, in the case of internal conflicts, throughout the territory under the control of a party, whether or not actual fighting is taking place there (ICTY, Tadic Case, Judgment of May 7, 1997, para. 560; ICTY, Tadic Case, Order of October 2, 1995, on the Defense's Appeal Regarding the Preliminary Objection of Lack of Jurisdiction, para. 70; ICC, Bemba Gombo Case, Judgment of March 21, 2016, para. 128). For there to be an "armed conflict," the situation must reach a level that distinguishes it from other, less serious forms of violence to which international humanitarian law does not apply, such as internal disturbances or tensions, riots, or acts of banditry (ICRC, How Is the Term "Armed Conflict" Defined in International Humanitarian Law?, Position Paper, 2008, p. 3; ICTY, Limaj Case, Judgment of November 30, 2005, para. 84). The threshold of violence required in the case of a non-international armed conflict is higher than for an international armed conflict (Sylvain Vité, "Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Realities," International Review of the Red Cross 873/2009, p. 6). Practice, particularly that of the International Criminal Tribunal for the Former Yugoslavia (hereinafter: ICTY), shows that this threshold is met whenever the situation can be characterized as
"protracted armed violence" (ICTY, Tadic Case, Judgment on the Appeal by the regarding the preliminary objection of lack of jurisdiction, para. 70). The existence of an armed conflict must be assessed based on two fundamental criteria: the intensity of the violence and the organization of the parties to the conflict (ICTY, Tadic Case, Judgment of May 7, 1997, para. 562; ICTY, Limaj Case, Judgment of November 30, 2005, para. 84; ICTY, Boskoski Case, Judgment of July 10,
2008, para. 175).

With regard to the criterion of the intensity of the violence, the following factors are taken into account: the severity of the attacks and the frequency of armed clashes; the spread of the clashes across a given territory and over a given period; the reinforcement and mobilization of government forces; the collective nature of the struggle; the fact that the State is compelled to deploy its army (since the police forces are no longer able to handle the situation on their own), the territorial control exercised by opposition forces, the duration of the conflict, the frequency of acts of violence and military operations, the nature of the weapons used (in particular the use of heavy weapons and other military equipment, such as tanks and other heavy vehicles), the blockade or siege of cities and their intensive shelling, the extent of the destruction and the number of casualties caused by bombings or fighting (dead, wounded, displaced, etc.), the number of soldiers or units deployed, the existence of front lines between the parties and the shifting of those front lines, the closure of roads, the existence of ceasefire orders or agreements, and the extent of efforts by representatives of international organizations to secure and enforce ceasefire agreements. These are factors for assessment, which make it possible to determine whether the threshold of intensity has been reached on a case-by-

case basis, and not conditions that must be met cumulatively (ICTY, Boskoski Case, Judgment of July 10, 2008, para. 177; ICTY,

Limaj, Judgment of November 30, 2005, para. 168; ICTY, Haradinaj Case, Judgment of April 3, 2008, para. 49; see also Report of the Commission of Experts Tasked with Examining the Issue of Assistance to Victims of Internal Conflicts, International Review of the Red Cross 530/1963, p. 78 ff.).

With regard to the criterion of organization, actors engaged in armed violence must have attained a minimum level of organization. Government forces are presumed to satisfy this requirement, without the need for a case-by-case assessment (ICTY, Haradinaj Case, Judgment of April 3, 2008, para. 60). As for non-governmental armed groups, the indicative factors to be considered include, in particular, the existence of an organizational chart reflecting a chain of command, the authority to launch operations coordinating different units, the capacity to recruit and train new combatants, or the existence of internal regulations (ICTY, Boskoski Case, Judgment of July 10, 2008, paras. 199–203; ICTY, Limaj Case, Judgment of November 30, 2005, para. 168; ICTY, Haradinaj Case, Judgment of April 3, 2008, para. 49). When any one of these conditions is not met, a situation of violence may be classified only as internal disturbances or internal tensions. These last two concepts, which refer to forms of social instability, do not fall within the scope of armed conflict (Sylvain Vité, “Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Realities,” International Review of the Red Cross 873/2009, p. 7).

As for Additional Protocol II, it is an instrument that supplements and expands upon Common Article 3; it is an extension of it and is based on the same framework (ICRC, Commentary on the Additional Protocols of June 8, 1977, to the Geneva Conventions of August 12, 1949, 1986, No. 4437). The threshold for the application of Protocol II is determined by the criteria set forth in its Article 1. According to Article 1er paragraph 1 of Additional Protocol II, which expands upon and supplements Article 3 common to the Geneva Conventions without altering its current conditions of application, Additional Protocol II applies to all armed conflicts that are not covered by Article 1 of the Additional Protocol to the Geneva Conventions of August 2, 1949, relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place on the territory of a High Contracting Party between its armed forces and dissident forces or organized armed groups that, under the leadership of a responsible command, exercise such control over a part of its territory as to enable them to conduct sustained and concerted military operations. Pursuant to paragraph 2, Protocol II does not apply to situations of internal tensions or internal disturbances, such as riots, isolated and sporadic acts of violence, and other similar acts, which are not considered armed conflicts.

Protocol II therefore applies to non-international armed conflicts. The definition in Protocol II is narrower than that in Article 3 common to the Geneva Conventions in two respects. First, it introduces the condition of control over territory, specifying that non-governmental parties must exercise control that “enables them

enable them to conduct sustained and concerted military operations." Second, the application of Protocol II is expressly limited to armed conflicts between state armed forces and dissident armed forces or other organized armed groups. Unlike Common Article 3, Protocol II does not apply to armed conflicts involving only non-state armed groups. As with Common Article 3, there can be no non-international armed conflict within the meaning of Protocol II unless the situation reaches a certain level of violence that distinguishes it from cases of internal tensions or domestic disturbances. The scope of application of this instrument is, however, more limited than that of Common Article 3 of the Geneva Conventions. It requires that non-governmental forces attain a particularly high level of organization, since they must be placed "under the direction of a responsible command" and exercise territorial control that enables them "to conduct sustained and concerted military operations."

While Article 3 common to the GCs also presupposes that armed groups demonstrate a certain degree of organization, it does not, however, require that these groups be capable of controlling a portion of the territory. It may therefore happen in practice that a conflict falls within the scope of Article 3 common to the GCs but does not meet the conditions set forth by PA II. Conversely, all armed conflicts covered by Protocol II are also covered by Article 3 common to the GCs (Sylvain Vité, "Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Realities," International Review of the Red Cross 873/2009, p. 9). The degree of territorial control required may, in particular, be subject to differing interpretations depending on the circumstances. If a broad interpretation is adopted, the concept of a non-international armed conflict within the meaning of Protocol II is similar to that of Article 3 common to the Geneva Conventions. In this case, even temporary and geographically limited control would suffice. Conversely, if Article 1(1) of Protocol II, the situations covered by the latter are limited to cases where the non-governmental party exercises control similar to that of a State and where the nature of the hostilities is similar to that of an international armed conflict (Sylvain Vité, "Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Realities," International Review of the Red Cross 873/2009, p. 9 and references cited). The ICRC, for its part, appears to adopt an intermediate position on this point, acknowledging that territorial control may sometimes be "relative in nature, for example when urban centers remain in government hands while rural areas are beyond their authority." It considers, however, that the very nature of the obligations set forth in Protocol II presupposes "a certain stability in the control of a portion, however modest, of the territory" (ICRC, Commentary on the Additional Protocols of June 8, 1977, to the Geneva Conventions of August 12, 1949, 1986, nos. 66–118).

In the present case, the acts alleged against Alieu Kosiah took place in the context of the first civil war that occurred in Liberia between 1989 and 1996.

With regard to the non-international nature of the conflict, this was a war that remained within Liberia's borders, which initially consisted of a confrontation between the government army (AFL) and the dissident NPFL group, and eventually came to involve other armed groups in the country, including the ULIMO faction (for further details, see *supra*, para. C). The non-international nature of the conflict is not disputed by the parties.

Nor is the armed nature of the conflict disputed. In this regard, the following points may be noted.

With regard to the criterion of the intensity of the violence, the war lasted from December 1989 through August 1996—a period of seven years. There were numerous clashes, particularly around Monrovia (10-01-0249 ff.) and in Lofa County (10-01-0260 ff.). The various forces involved clashed and successively controlled different parts of the country. Certain events had a particularly significant impact on the conflict, notably the assassination of President Samuel Doe in September 1990 (10-01-0249) and Operation "Octopus" (10-01-0250) carried out by the NPFL in October 1992. The various armed factions thus fought over control of different territories in Liberia. By mid-1990, the NPFL controlled 80 percent of the national territory. ECOMOG and the AFL controlled Monrovia and its surroundings for a long time (10-01-0249). ULIMO, for its part, conquered the western part of the country, particularly Lofa County (10-01-0250). The government army (AFL) was deployed as soon as the NPFL arrived on Liberian soil and became one of the main forces involved (10-01-0249, 0253). Beginning in August 1990, it received support from ECOMOG, an intergovernmental peacekeeping force established by the countries of the West African region (10-01-0249). With regard to weaponry, both ULIMO and the NPFL notably used heavy artillery after ULIMO captured Zorzor (10-01-0265). During the seven-year civil war, several ceasefire agreements were concluded, all of which were broken by the resumption of hostilities, until the final agreement—the Abuja II Agreement—was signed in August 1996, bringing an end to the first Liberian civil war (10-01-0250 et seq.). As for the number of casualties, there are no official figures on this matter. All sources, however, mention several hundred thousand casualties (10-01-0331, 0319 ff.). In addition to causing a large number of casualties, the first civil war in Liberia was also marked by widespread looting and destruction of cities, villages, and infrastructure by the various warring factions. For example, the NPFL destroyed most of the homes in the town of Voinjama in early 1993, and ULIMO was accused of destroying villages in Lofa as well as traditional shrines and generators or power plants (10-01-0265, 0269, 0282). Many civilians were also forced to flee the combat zones. According to the TRC, more than 160,000 civilians fled Liberia for Guinea and Côte d'Ivoire between January and May 1990 (14-01-0089). In its December 16, 1992, edition, the Monrovia Daily News reported that more than 700,000 people had fled

Liberia since the start of the war and 750,000 people displaced within the country (10-01-0348 et seq.). In December 1993, Agence France-Presse reported more than 200,000 displaced persons, while other sources reported approximately 250,000 refugees (10-01-0317, 0319).

Regarding the criterion of organization, it should be noted that ULIMO, of which the defendant was a member, also had a command structure. Alhaji Kromah served as the faction's spokesperson, while Albert Karpeh headed the operational command. Following the assassination of Albert Karpeh in June 1992, Alhaji Kromah became the undisputed leader of ULIMO. He established ULIMO's headquarters in Tubmanburg, the capital of Bomi County (10-01-0256). When ULIMO split in March 1994, the ULIMO-K and ULIMO-J groups each had their own leader: Alhaji Kromah for the former and Roosevelt Johnson for the latter (10-01-0256 ff.). Although the chain of command fluctuated during the seven years of ULIMO's civil war and fighters assigned themselves military ranks, the fact remains that ULIMO—and later ULIMO-K and ULIMO-J—were organized according to a military structure and shared common interests and objectives, which enabled them to take control of numerous territories, particularly those in Lofa County. Thus, ULIMO was able to carry out organized operations that led to the conquest of that county (10-01-0260 et seq.). In terms of troop strength, ULIMO had 6,000 men before its split; ULIMO-K subsequently had 4,000, and ULIMO-J had 3,000 (10-01-0253 ff.). ULIMO recruited new members from the civilian population, including children (10-01-0279 et seq.). With regard to weapons, they were able to obtain supplies from Sierra Leone and Guinea (10-01-0253). The soldiers also underwent training in Sierra Leone (10-01-0256).

It follows from the foregoing that an armed conflict did indeed take place during Liberia's first civil war, given both the intensity of the violence that occurred and the organization of the factions, in particular the ULIMO group, of which the defendant was a member.

Since the existence of a non-international armed conflict must be recognized, Article 3 common to the GCs and Article 4 of Protocol II apply substantively to the acts alleged against Alieu Kosiah in the indictment of March 22, 2019, provided that these acts actually took place within the context of said conflict, which will be examined on a case-by-case basis.

4.4.3 Personal Scope of Application

Persons who do not take a direct part in hostilities are protected by Article 3 common to the GCs, including armed members who have laid down their arms and persons who have been rendered incapable of combat by illness, injury, detention, or any other cause (para. 1).

Article 4 of Protocol II protects all persons who are not directly participating or are no longer participating in hostilities, whether or not they are deprived of their liberty (para. 1), as well as children (para. 3).

Furthermore, killing a combatant who is neither captured nor out of action, or a civilian directly participating in hostilities, is in principle lawful under international humanitarian law and is therefore not subject to criminal prosecution (ICTY, Stanišić and Zupljanin Case, Judgment of March 27, 2013, para. 42; ICC, Bemba Gombo Case, Judgment of October 19, 2016, paras. 92–94).

In this case, the acts alleged against Alieu Kosiah in the indictment were committed either against civilians who were not participating in hostilities, against captured soldiers, or against a child; consequently, Article 3 common to the Geneva Conventions and Article 4 of Protocol II apply, rationae personae, to the alleged victims of the crimes in question.

4.4.4 Conclusion

Article 3 common to the GC and Article 4 of Protocol II apply to the acts alleged against Alieu Kosiah in the indictment of March 22, 2019.

5. Statute of Limitations

Pursuant to Article 56bisof the Military Criminal Code (aCPM) as in effect at the time of the alleged offenses, war crimes were not subject to a statute of limitations. The current Article 59(1)(c) of the Military Criminal Code (CPM) also provides that this category of crimes is not subject to a statute of limitations.

It must therefore be concluded that the criminal action in this case is not barred by the statute of limitations for any of the crimes charged against the defendant.

6. Issues Regarding the so-called " " Testimony for the Prosecution

During the trial, the defense raised a number of general arguments concerning all the plaintiffs and all the so-called prosecution witnesses. The issues thus raised are addressed in this chapter, as they pertain to several of the charges against the defendant that will be examined below.

6.1 Quality of the work carried out by the organizations Civitas Maxima and RRR.

6.1.1 Throughout the proceedings, Alieu Kosiah has sought to demonstrate that the initiation of a criminal investigation against him was the result of a campaign of harassment against him by Benoît in his capacity as director of the RRR, by Attorney Alain Werner as director of the organization Civitas Maxima, by the plaintiffs and their counsel, as well as by the so-called prosecution witnesses. His position has consistently been to deny the charges against him, portraying himself as the victim of a widespread conspiracy. According to him, it was because he resides in Switzerland that Attorney Alain Werner and Benoît

allegedly investigated him. Furthermore, the plaintiffs

have not approached them on their own initiative to report him, since they were allegedly recruited deliberately for the purpose of building a case against him—which would be proof of the existence of a conspiracy.

6.1.2 Attorneys Alain Werner and Benoît are both directors of organizations involved in the fight against impunity for international crimes. One of their key tasks is to investigate, within their means, crimes that may have been committed in various regions of the world affected by war and where such crimes remain entirely unpunished due to the inability—or lack of will—of the country concerned to prosecute them. This is clearly stated in the bylaws of such organizations. Attorneys Alain Werner and Benoît thus compile case files that enable them to subsequently file criminal complaints or charges with authorities that may have jurisdiction, particularly under the principle of universal jurisdiction. It is well known that victims face significant difficulties in reporting crimes under international law. There are several reasons for this, notably the fear of reprisals from the perpetrators or their relatives, or even from the state in which the victims of international crimes live. Consequently, victims often do not report the violence they have suffered on their own initiative. Investigators frequently must seek them out and locate them so that they can then assert their rights in court.

6.1.3 In this case, it was explained on several occasions during the proceedings that the RRR organization sent its members to cafes or *hatay shops* (public establishments) in Liberia to gather testimonies about crimes committed during the war and their perpetrators. Several plaintiffs in the proceedings stated that they had been approached in this manner. Given the specific nature of crimes of an international character and the difficulty of prosecuting them, this method of operation does not appear to be open to criticism; on the contrary, it is useful in this case for shedding light on events that occurred in Liberia during the civil war. Furthermore, while it appears to be established—based on the email correspondence between Attorney Alain Werner and Benoît (see 15-01-0273 et seq.)—that the former instructed the latter to investigate the defendant, the Court does not see what argument the defense intends to derive from this finding. Indeed, given that Alieu Kosiah had been involved in Liberia's first civil war with the ULIMO faction and that he was residing in Switzerland, Attorney Alain Werner likely saw an opportunity to assert the rights of some of the victims in Swiss proceedings, provided that the defendant's concrete involvement in war crimes could be established. Based on this conviction, Attorney Alain Werner and the other attorneys for the plaintiffs filed criminal complaints on behalf of their respective clients. Since this course of action is beyond reproach, the defendant cannot therefore draw any argument from the circumstances under which the RRR's investigations against him were conducted, nor even from the manner in which the plaintiffs were

approached. Approaching people in hatay shops is in no way reprehensible or open to criticism. Moreover, the defendant provides no concrete reason to believe otherwise.

6.1.4 The defense also challenges the reliability of the testimonies gathered by the RRR, particularly due to the methods allegedly used during the interviews, which, according to the defense, are largely unknown to it. It also pointed out a number of alleged contradictions in the organization's director's account of these events.

Benoît, director of the RRR, was questioned at length during the preliminary investigation, in his capacity as a witness, regarding the work carried out by this organization. In particular, he provided a detailed explanation of how the RRR went about collecting the testimonies. That said, the work carried out prior to the filing of the criminal complaints is not decisive in assessing the credibility of the complainants. Admittedly, it is essential that the complainants not have been influenced in their complaints by any third party. In this case, no evidence in the record supports the conclusion that such influence existed. While the defendant accuses Benoît of being biased or prejudiced, he provides no concrete reason to support this claim. Furthermore, the complainants were questioned twice during the proceedings, and the Court was able to assess the facts they alleged in light of the explanations they provided on those occasions. Under these circumstances, there is no need to conduct an in-depth examination of Benoît's statements, since it is not his credibility that must be assessed to determine the facts of the case, but rather that of the complainants and the witnesses who accused the defendant.

6.1.5 In conclusion, the defense cannot derive any decisive argument from the manner in which Alieu Kosiah's activities were uncovered by RRR investigators, nor from the work undertaken by the RRR to gather the various accounts that led to the filing of criminal complaints, it being understood that these accounts remain subject to the court's free evaluation of the evidence.

6.2 al Criminal Complaints

6.2.1 The defense also raised the issue of the complainants' credibility due to contradictions it identified between the content of their respective criminal complaints and their subsequent statements to the Office of the Attorney General. According to the defendant, these are further indications of the conspiracy of which he claims to be a victim. However, the defendant has consistently remained vague regarding the identities of the various perpetrators of this conspiracy, as well as their goals and methods.

6.2.2 A criminal complaint is an act by which a person brings to the attention of the competent authority the commission of a crime (whether or not the person may have been harmed by it) and which triggers the initiation of a

criminal investigation (see Art. 301 of the Code of Criminal Procedure). While a criminal complaint may be taken into consideration when assessing the facts described and the credibility of its author, it must, in all cases, be confirmed (or refuted) by hearing the author's testimony regarding the allegations made therein.

6.2.3 In this case, the circumstances under which the complainants recounted the facts underlying their criminal complaints mean that the probative value of those complaints must be qualified. Indeed, it appears from the case file that the said complaints were not necessarily read back to the complainants, nor even translated. Added to this are the communication difficulties experienced by their counsel, given that they speak Liberian English, which does indeed differ in some respects from International English. Furthermore, the attorneys appear to have had only a limited amount of time to consult with their clients before drafting their criminal complaints. Given these circumstances, the complaints in question cannot be considered particularly precise or accurate and are likely to contain errors, inaccuracies, and approximations. What the Court did, however, consider decisive was the consistency of their statements made before the MPC and during the proceedings. The plaintiffs were also able to speak at length about the acts they allege the defendant committed. The Court further had the opportunity to assess the credibility of their respective accounts by comparing them with the contradictions that existed between their criminal complaints and the statements they made during the preliminary investigation. Thus, it was above all the consistency in the complainants' statements, the explanations they were able to provide regarding the existing contradictions, and the corroboration of their testimony by other participants in the proceedings that were decisive in this case for assessing the truth of the facts described in the indictment. These factors proved all the more important given that the evidence in the case file relies primarily, if not exclusively, on witness testimony. These factors will be examined in depth as part of the analysis of each of the offenses with which Alieu Kosiah is charged.

The defense's aforementioned argument is therefore not decisive.

6.3 Contradictions in the Accounts of the Complainants and the So-Called Prosecution Witnesses

6.3.1 Throughout the proceedings, including during the trial, the defendant has primarily based his defense on all the contradictions he believes he has detected in the accounts of the complainants and the so-called prosecution witnesses, arguing that these constitute proof that the latter are lying and have conspired against him. The Court will address only those contradictions that it deems relevant to examine in the context of its analysis of the charges against the defendant. At this stage, it is already appropriate to set forth a few principles that have guided the court

in its assessment of the statements made by the plaintiffs and the so-called prosecution witnesses.

6.3.2 The presumption of innocence, guaranteed by Art. 10 of the Code of Criminal Procedure, Art. 32(1) of the Constitution, Art. 14(2) of the Second UN Covenant, and Art. 6(2) of the ECHR, as well as its corollary, the principle *of "in dubio pro reo*," pertain to both the burden of proof and the evaluation of evidence in the broadest sense. As a rule governing the burden of proof, it requires, at the trial stage, that the burden of proof rest with the prosecution and that any doubt be resolved in favor of the defendant. As a rule governing the evaluation of evidence, the presumption of innocence means that the judge must not declare himself convinced of the existence of a fact adverse to the defendant if, from an objective standpoint, there are doubts as to the existence of that fact. It matters little if only abstract and theoretical doubts remain, as these are always possible; absolute certainty cannot be required. The doubts must be serious and insurmountable—that is, doubts that are inevitable given the objective circumstances (Federal Supreme Court decision 6B_1274/2020 of July 2, 2021, para. 1.1).

6.3.3 With regard to the assessment of the facts, even if the existence of contradictions or errors in the statements of the complainants and so-called prosecution witnesses may raise questions about their credibility, it is important to take into account that they experienced bloody and traumatic events. Indeed, when such events are described in their accounts, certain contradictions and inaccuracies are to be expected (Judgment of the Military Court of Cassation, Vol. 12 [1997–2005], No. 21, para. 6b).

6.3.4 Furthermore, it should be noted that, in light of scientific knowledge, traumatic events are processed differently from everyday events. On the one hand, memory distortions and memory loss may occur, particularly as a result of attempts at repression. On the other hand, for some victims, a great many details of the traumatic experience remain etched in their memory. The abundance of details, particularly regarding secondary aspects, is in fact a common characteristic of memories that must be taken into account when analyzing statements. The court must therefore take this knowledge and this theoretical context into account when evaluating the statements of the parties to the proceedings (ATF 147 IV 409, para. 5.4.2 and the references cited).

6.3.5 Furthermore, general credibility as a lasting personal characteristic of an individual is of little significance. The credibility of specific statements is far more important for the search for the truth (ATF 147 IV 409, para. 5.4.3).

6.3.6 It is therefore in light of the aforementioned principles that the Court will assess the testimony of the plaintiffs and witnesses, as well as any contradictions, to the extent that they are relevant to the facts of the case.

In any event, it cannot be automatically inferred from these contradictions that they lack all credibility, as the defense contends.

6.4 Identification of the accused,

6.4.1 The defense has also advanced a conspiracy theory based on the fact that certain plaintiffs and so-called prosecution witnesses were unable to identify the defendant in the photo lineups presented to them by the Office of the Attorney General during the preliminary investigation. In this case, this issue is all the more decisive given that the defendant denies having committed the acts with which he is charged, asserting that he was not at the scene when they took place.

6.4.2 While it is true that, in most criminal proceedings, the credibility of a complainant or witness depends largely on their ability to identify the alleged perpetrator of the crime, the situation is different in this case, given the specific circumstances of the matter at hand. Indeed, the alleged events date back to the years 1993 through 1995, and the hearings of the complainants and the so-called prosecution witnesses took place between 2015 and 2017—more than 20 years later. The passage of time already partly explains the difficulty in identifying the defendant. Furthermore, one must also consider the nature of the alleged acts, namely war crimes committed in a climate of terror. Most of the plaintiffs and witnesses saw Alieu Kosiah only a few times during the war, and often only briefly. Several of them spontaneously stated that they had sought to avoid contact with the defendant out of fear of him (see, in particular, 40.755.018). In this regard, the defense's argument cannot be accepted when it compares the identification made with ease by the defendant's former bodyguards and by former ULIMO soldiers heard during the proceedings with the much more uncertain identification provided by the complainants and the so-called prosecution witnesses. The former, in fact, were in daily contact with the defendant for months, whereas the majority of the latter met him only once, twice, or three times. No meaningful comparison can therefore be made between these two categories of individuals, and regardless of what the defendant may say, the inability of certain plaintiffs or certain so-called prosecution witnesses to identify the defendant without any hesitation does not imply that their statements are not credible. Furthermore, the issue of the quality of the photographs—particularly regarding their colors—was raised by some participants in the proceedings. However, since many of them described Alieu Kosiah by mentioning his very dark skin color, if the colors in the photograph were not true to life, it would have been more difficult for these complainants and witnesses to easily recognize the defendant in the photo lineups presented to them during the preliminary investigation, especially since the photographs were old and not very clear.

6.4.3 Finally, it should be noted that the difficulty the plaintiffs had in identifying Alieu Kosiah demonstrates that they were not prepared to recognize the defendant

and that their accusations therefore do not, in fact, stem from a conspiracy. Indeed, it would have been easy for their counsel to show them the photo lineups (which were included in the case file) in advance of their respective interviews by the police or the Office of the Public Prosecutor so that they would be able to identify Alieu Kosiah.

6.4.4 In light of the foregoing, the fact that certain parties to the proceedings did not recognize Alieu Kosiah in the photographs presented to them cannot, in and of itself, constitute sufficient grounds to call into question, in general, the credibility of their statements.

6.5 Lack of Testimony to Support Criminal Allegations

6.5.1 The defense expressed surprise at the small number of witnesses the plaintiffs called to corroborate the facts they alleged.

6.5.2 It is true that the case file contains few testimonies that lend credence to the claims made by the complainants. That said, this small number must be viewed in the context of the case. Indeed, these proceedings concern war crimes committed in Liberia—a country that, to date, has not yet chosen to have its criminal authorities investigate the atrocities committed during the war. All of the complainants who testified emphasized the courage they had to muster to come to Switzerland on two separate occasions to file their complaints. Some even kept their trip to Switzerland a secret from their families to avoid causing them concern. They also expressed some fear of returning to their country after testifying against the defendant. It is therefore easy to understand the difficulty they may have encountered in finding people willing to travel to Switzerland to testify, most likely at the risk of their lives. One complainant also stated that he had asked third parties to come and testify and that they had refused due to their fears of testifying (40.757.017, 025). To reiterate, most Liberians are trying to put this part of their history far behind them and avoid reliving traumatic events.

6.5.3 Added to this is the reluctance expressed by some plaintiffs during the proceedings to discuss the case taking place in Switzerland with certain Liberian nationals, as they are unaware of the latter’s affiliations and intentions. Finally, these are events that occurred more than 20 years ago.

6.5.4 Consequently, the small number of witnesses does not support the conclusion that the plaintiffs are lying about the facts they allege against the defendant.

6.6 Ethnic Background of the Defendant

6.6.1 During its closing argument, the defense attempted to demonstrate the persecution suffered by members of the Mandingo ethnic group prior to the war. This persecution is also said to be the reason behind the criminal complaints filed against the defendant.

6.6.2 The Court does not know whether there may have been discrimination against people of Mandingo ethnicity in Liberia before the war. However, it notes that the issue is not relevant to the adjudication of the facts in the present case. Indeed, Alieu Kosiah is not accused of having taken part in the first civil war as a member of the ULIMO faction—composed primarily of Mandingos—but of having violated the laws of war during that conflict; in other words, of having, during the hostilities, violated the laws of war by attacking persons protected by international humanitarian law (children, civilians, and soldiers who had laid down their arms). Such conduct cannot be attributed to his membership in a group—ULIMO—composed mainly of Mandingos, nor can it be explained by the defense of their interests. Consequently, since they are irrelevant, the reasons why the war broke out, as well as those why the defendant decided to join ULIMO, need not be examined in this judgment.

6.6.3 As for the theory that Alieu Kosiah was the victim of a conspiracy due to his ethnicity, it must be noted that this theory is fanciful and is not supported by any evidence in the record. In particular, it has not been made plausible in any way that the plaintiffs and the so-called prosecution witnesses could have harbored animosity toward people of Mandingo ethnicity. As for the argument that the Mandingos were victims, during and after the war, of jealousy aroused by their successes—particularly in business—this has not been corroborated either by the evidence in the case file or by the individuals who testified during the proceedings.

6.6.4 In conclusion, the defense's argument regarding the injustices suffered by the Mandingo ethnic group can be set aside in assessing the reality of a possible conspiracy.

6.7 Motives of the plaintiffs for reporting the defendant,

6.7.1 Finally, it should be noted that the defendant accused the plaintiffs, throughout the proceedings, of reporting him in order to obtain money or asylum in Switzerland.

6.7.2 The Court notes that none of the complainants filed an asylum application while they were in Switzerland. The same applies to the so-called prosecution witnesses. They all returned to Liberia, as had been agreed

with the Office of the Attorney General of Switzerland (MPC) during the preliminary investigation and with the Court during the trial. The only participant to have filed an asylum application in Switzerland was Olivier, the former child soldier who had been part of the defendant's personal security detail, who is not a complainant.

6.7.3 With regard to the financial claims of the plaintiffs, the Court notes that the amounts sought by their attorneys were entirely reasonable. Furthermore, it should be emphasized that the amounts awarded for non-pecuniary damages (see *below*, para. 10) will in any case be very difficult to recover, as the defendant has no assets and the Act on Assistance to Victims of Crime of March 23, 2007 (LAVI; RS 312.5)—which might otherwise have allowed the complainants to receive compensation—is inapplicable, since the offenses were not committed in Switzerland and the complainants were not domiciled there at the time the offenses were committed (see Art. 3 and 17 LAVI). The only participants who made exorbitant financial demands for their travel to Switzerland are Victor X., Didier X., and Robert—that is, three individuals who were called by the defense to testify.

6.7.4 In conclusion, the defense's argument is unfounded.

7. Charges against Alieu , and Kosiah

7.1 Recruitment and use of a child as a soldier

7.1.1 Charge

Pursuant to paragraph 1.3.1 of the indictment, Alieu Kosiah is charged with having, in the context of the internal armed conflict that took place in Liberia from 1989 to 1996 and in his capacity as a member of the ULIMO armed faction, recruited the child Olivier (born on […]) and authorized him to take part in hostilities in the Lofa region from January 1993 to […], the date of Olivier's fifteenth birthday.

7.1.2 Evidence

During the preliminary investigation

7.1.2.1 When questioned as a witness by the MPC, Olivier stated that the ULIMO group had arrived in the town of Todee during the rainy season of 1992 (12-16-0010). The NPFL had retreated, and Olivier was among the civilians captured by the ULIMO group's Zebra Battalion (12-16-0014 s.). That is how he joined ULIMO, when he must have been twelve years old (12-16-0015). It was at that time that he met Alieu Kosiah, who was one of the ULIMO commanders who had entered Todi (or Todee). The defendant then took him on as a child soldier (12-16-0010). According to Olivier, while the ULIMO intended to kill the group of captured civilians, the defendant prevented their execution (12-16-0015, 0021).

He stated that he voluntarily joined the

ULIMO because of the benefits it offered, namely not having to watch his sister being raped before his eyes, not having to watch his brother being killed, and not having to carry heavy loads. It was also safer for his own life to be able to carry a weapon. Furthermore, he wanted to be able to defend his country. There was indeed a great deal of destruction in the country caused by the NPFL. The goal was to overthrow Charles Taylor and put an end to the NPFL's actions, which were destroying much of the country, raping people, and killing them (12-16-0016). Olivier became a *"small soldier"* under Alieu Kosiah (12-16-0010). The latter was his personal commander, and Olivier was assigned directly to him. No matter which front line Alieu Kosiah went to, Olivier accompanied him (12-16-0021). Olivier was not assigned to Alieu Kosiah against his will. He decided to serve under him five to six months after being recruited (12-16-0021). According to him, Alieu Kosiah was someone who loved children very much and took good care of them (12-16-0022). For Olivier, Alieu Kosiah looked after him like a father (12-16-0022). He stated that, when he met him, the defendant did
"good things in his presence" (12-16-0017). After being recruited, Oli-
vier had to undergo about three months of training, during which he was taught how to handle weapons, how to take cover, and how to hide. During this training, he was taught the "SOP" principles—namely, the behaviors to avoid as well as those that soldiers must adopt. These principles had to be followed, or else punishment would follow. Alieu Kosiah did not serve as Olivier's trainer. Upon completing his training, Olivier received his first weapon, an AK-47. He subsequently received other weapons (12-16-0019 et seq.).

7.1.2.2 Regarding his role alongside the defendant, Olivier stated that he served as his *bodyguard*. Anyone who wanted to meet Alieu Kosiah had to go through him. For example, when they went to the front lines, Olivier always went ahead of Alieu Kosiah to make sure it was safe to proceed. He always inspected the area before Alieu Kosiah went there. He also tasted the food before Alieu Kosiah ate it. His job—for which he received no pay—was thus to ensure that Alieu Kosiah remained safe (12-16-0022 s.). When Olivier stood at the entrance to a room where the defendant was present, he carried a weapon, specifically an AK-47 (12-16-0023). The witness also stated that Alieu Kosiah would sometimes order him to go to the front lines to fight. He then corrected himself, stating that he did not go there at Alieu Kosiah's request, but rather to fight for the organization. It was reportedly the organization that asked him to go and fight (12-16-0024). Olivier stated that he fought alongside Alieu Kosiah in Tenebu, John's Town, and Bokassa Junction (12-16-0054). When he went to the front lines with Alieu Kosiah, the latter gave him instructions (12-16-0054). The defendant is the person who most often took him to the front lines (12-16-0041).

7.1.2.3 Regarding the places Olivier went with the defendant, he stated that he followed the defendant to Monrovia as well as on all his other trips (12-16-0010). When Olivier left Todi with ULIMO, they went to the town of Tubmanburg, in Bomi County, where ULIMO's headquarters were located. Olivier stayed there for between five and six months before going to Lofa County. He places this period at the beginning of 1993. He stated that by the time they arrived in Lofa County, the towns in that county had already been taken by ULIMO (12-16-0010). From there, he traveled to Zorzor, Voinjama, Kolahun, Foya, Niandehun, Vahun, Salayae in Upper Lofa County, and finally to Kanglu's Town. After Kanglu's Town, they returned to Voinjama, where the ULIMO group's headquarters was located, then to Zorzor, and finally to Foya. Olivier finally returned to Monrovia with the ULIMO group in 1996, when the war ended. He spent the entire year of 1996 in Monrovia with Alieu Kosiah. It was at that time that Alieu Kosiah was reportedly appointed director of the CID (12-16-0011).

7.1.2.4 Regarding Alieu Kosiah's role within the ULIMO group, Olivier stated that he was part of *the staff*, specifically among the *"big* men" and "bosses" (12-16-0011). He also clarified that Alieu Kosiah never held a key position within the ULIMO organization prior to 1996, when he became CID director (12-16-0021). In Todi, he was *a frontline commander*; all the soldiers reported to him, and he reported directly to J.A., who was *the battalion commander* (12-16-0016, 0021). Olivier explained that the role of *the frontline commander* consisted, in particular, of assigning tasks to the soldiers during combat on the front lines. The *frontline commander* had to tell the soldiers what they should and should not do. He was responsible for everything that happened on the front lines. He not only gave orders but also fought himself. (12-16-0024).

7.1.2.5 Olivier stated that he was wounded twice during the war. He was wounded for the first time in 1993 when he was shot behind his left shoulder in Lofa County, at Bokassa Junction, between Zorzor and Bong County. Alieu Kosiah was wounded on the same occasion and in the same place as him. The bullet was fired by the NPFL. Alieu Kosiah took Olivier to the hospital in Voin-jama, where he remained for nine months. Alieu Kosiah was treated at the same hospital as Olivier (12-16-0011 s.). The second incident occurred three or four months after Olivier returned to the front lines following his release from the hospital. He was in a pickup truck when the vehicle exploded. Olivier sustained injuries to both hands and his buttocks. Alieu Kosiah was in a vehicle traveling behind them at the time, which was not hit. Olivier was sent to the hospital in Voinjama, then to Nzérékoré, Guinea. He remained in the hospital throughout 1995 (12-16-0012).

7.1.2.6 When questioned about the charges against him, Alieu Kosiah stated that ULIMO had taken Olivier prisoner at the start of the war—toward the end of 1993—while they were bypassing the river to reach the Todi military training camp near Kakata (13-01-0059, 0073, 0204). Alieu Kosiah was in charge of the capture of the Todi camp at that time (13-01-0199). When the ULIMO soldiers left Bomi to take the Todi camp, they had to cross a river, and it was after crossing it that they captured Olivier, alias Centaure. It happened on the riverbank. There was no town nearby (13-01-0198). The ULIMO soldiers suspected Olivier of being an NPFL child soldier (13-01-0059). According to Alieu Kosiah, Olivier was about fifteen years old at the time (13-01-0059). He later stated that the boy was only thirteen or fourteen years old (13-01-0198). Alieu Kosiah indicated that there was no reason to kill him, so he took him along to accompany him to Lofa (13-01-0059).

7.1.2.7 Regarding the route taken with Olivier, Alieu Kosiah provided several explanations that do not all match, making it difficult to establish the exact route based on his statements.

In essence, he first stated that he had taken Olivier after his capture to bring him to Lofa and that Olivier had followed him for almost the entire duration of his stay in that county (13-01-0059).

He then stated that he had gone to Monrovia with Olivier after the latter's capture near Todi. He reportedly remained with Alieu Kosiah until the first time the latter left for Lofa, in mid-June 1994. At that time, Zorzor and Voin-jama had just been captured by ULIMO (13-01-0073).

Alieu Kosiah also stated that after Olivier was captured, the group traveled to a town located on the main road to Todi. There, the group reportedly dispersed. The group's commander, M., then reportedly headed toward the main road between Kakata and Monrovia accompanied by Olivier. Alieu Kosiah, for his part, went to the Todi camp to pick him up. He remained there for one to two months. According to him, he was not with Olivier at that time (January 13, 1999). Following an incident that led to the arrest and imprisonment of M., the commander of the town of Todi, Alieu Kosiah was called upon to replace him (13-01-0199, 0200). That is where he saw Olivier again. He stated that he spent at least six months in the town of Todi Junction with Olivier. Alieu Kosiah places this period in 1993 (13-01-0200). Afterward, Alieu Kosiah reportedly traveled with Olivier to Lofa. They first went to Tubmanburg, then to Voinjama, when the town was already under ULIMO control (13-01-0202). When he left Todi, he went with Olivier to Tubmanburg, then to Voinjama. Olivier then reportedly left for Lofa with Officer Sextant to capture the town of Foya. Alieu Kosiah, for his part, traveled back and forth between Voinjama and Foya. Eventually, Olivier rejoined the defendant in Voinjama. Toward the end of the war, Alieu Kosiah sent Olivier to his parents' home in Lola, Guinea. Olivier reportedly stayed there for about six months, then rejoined Alieu

Kosiah in Lofa, either in Voinjama or Foya. When the defendant left for Zorzor as *battalion commander*, Olivier reportedly did not follow him. He saw him again when he went to Monrovia after his assignment in Zorzor (January 13, 2003).

The defendant further explained that after Todi was captured, the ULIMO commander, Mr. M., reportedly went with Olivier to a village called "Number 7" on the main road leading from Monrovia to Kakata. Three months later,
M. was imprisoned, and Alieu Kosiah then took his place. It was at that time that he met Olivier for the second time. They reportedly then traveled together to Monrovia, and Alieu Kosiah dropped him off at one of his aunts' homes before leaving for Bomi Hill. Since Olivier did not like staying at the defendant's aunt's house, the defendant took him with him to Bomi Hill. There, Olivier was free to do as he pleased. Sometimes he would leave for two or three weeks and then return (13-01-0233).

7.1.2.8 Regarding Olivier's injuries, Alieu Kosiah reported that Olivier had been shot in the neck during the attack on Gbarnga. Alieu Kosiah was reportedly angry that Olivier had gone to the front lines without telling him. On the day he was wounded, he took him to his mother's home in Guinea, where he reportedly stayed for nine months (13-01-0059). Once he had recovered, he sent the young man to his parents' home in Lola, Guinea, so that he could continue his education (13-01-0202, 0234).

7.1.2.9 Regarding Olivier's role, Alieu Kosiah admitted that he was one of his *"boys"* or his *"small soldier"* (13-01-0203, 0158). Everyone considered him to be his bodyguard (13-01-0203). Olivier was one of his five "guys" (13-01-0059). Alieu Kosiah acknowledged that he had given Olivier a weapon—an AK-47—which was his personal weapon and which Olivier was supposed to carry (13-01-0204, 0158). Olivier reportedly never used his weapon in combat. Alieu Kosiah stated that he entrusted Olivier with carrying his weapon during marches and that he would later take it back from him. The defendant also indicated that the two times Olivier went to the front lines, it was without his knowledge. According to Alieu Kosiah, Olivier likely fought in Foya when the town was captured, but as far as he recalls, Olivier would have gone there with Sextant (13-01-0204). Alieu Kosiah maintained that he never asked Olivier to kill anyone and never saw a ULIMO commander order a *"small soldier"* to kill anyone. According to the defendant, the *"small soldiers"* carried their commander's weapon or were sent to buy cigarettes (13-01-0158). Alieu Kosiah said he constantly tried to prevent Olivier from going to the front lines, but Olivier would hide and go there anyway. Alieu Kosiah stated that he did everything he could to protect him. To him, Olivier was like a brother or a son (13-01-0233 s.). His relationship with Olivier was personal and not
"through the ULIMO hierarchy." Their relationship was reportedly based on love. They were trying to survive the war together. When Olivier went to the front lines, it was on his own initiative, but never under orders from the defendant (13-01-0245 s.). When confronted with Olivier's statements suggesting that he

acted as a bodyguard for Alieu Kosiah, the latter maintained that the claim

that he was watching over him while he slept was “a bit of an exaggeration.” Olivier “could do whatever he wanted. He could even go to the front lines. He could even go there without telling [him]” (13-01-0263).

7.1.2.10 Alieu Kosiah further denied having recruited Olivier. As he understood it, recruiting someone meant going to get them and bringing them to the training camp (13-01-0233). He had never seen ULIMO soldiers recruit *“small soldiers”* and stated that he did not know how *“small soldiers”* other than Olivier had joined the group. He had never heard that young people had been forced to join the ULIMO faction. According to him, some joined the group of their own accord in order to survive and to have something to eat. Alieu Kosiah estimated the number of *“small* soldiers” he saw in Voinjama among the ULIMO to be about five. He also stated that he did not know what motivated ULIMO to take young people into their group (13-01-0158). Alieu Kosiah has no idea when or where Olivier might have undergone training. According to Alieu Kosiah, many people claim to have undergone training when in fact they had not. In general, ULIMO soldiers did not undergo training. It was, in fact, impossible to do so in three months, given the unstable situation caused by the war. Sometimes, soldiers underwent a week of training just to learn how to handle a weapon (13-01-0233).

During the proceedings

7.1.2.11 During the proceedings, Olivier, questioned as a witness, stated that he had joined ULIMO in 1992, when he was twelve or thirteen years old (40.761.007, 011). He joined them in Todi (or Todee), and Alieu Kosiah and Olivier left for Tubmanburg, then to Lofa, and then to Bong County. They then returned to Tubmanburg and finally to Monrovia when Alieu Kosiah was appointed director of the CID in 1996 (40.761.007, 008). He stated that he had been in Lofa in 1993 and had stayed there with Alieu Kosiah for half the time. From Tubmanburg, they traveled to Voinjama. Sometimes they went to Kolahun, Foya, or Massabolahun (40.761.015). Later, Alieu Kosiah left for Tubmanburg when the split occurred in 1994, leaving Olivier in Lofa. Olivier was in Voinjama at the time (40.761.015).

7.1.2.12 Olivier stated that at the time of his capture, he was surrounded by armed NPFL men and that Alieu Kosiah saved his life by preventing him from being killed (40.761.011). The witness stated that he was captured by ULIMO (40.761.012). He then decided to join ULIMO immediately because of the mistreatment he suffered at the hands of the NPFL. He said he was not forced to join them but took up arms voluntarily. He confirmed that he joined ULIMO because he saw his father killed by the NPFL and his mother die during the war. At the time, the only way to ensure one’s safety was to carry a weapon. That is why he joined ULIMO (40.761.012). He clarified that at the time, no one

could complain about being forced to enlist (40.761.012 s.). He also stated that when a commander wanted to assign a *"small soldier"* to him, the soldier had to obey. He confirmed that he underwent military training in Klay (40.761.013). The main topics covered were the handling of weapons, camouflage to avoid being killed by the enemy, and "SOP" principles (40.761.014). Alieu Kosiah did not participate in this training, but he knew that Olivier was taking part (40.761.014). The witness stated that he received an AK-47 from ULIMO upon completion of the training (40.761.017). Alieu Kosiah taught him how to use a weapon for self-defense. Once his training was complete, Olivier's first commander was reportedly M. (40.761.014). He stated that he was initially taken in by Alieu Kosiah, then placed under the command of M., and finally returned to follow Alieu Kosiah (40.761.014). He indicated that he was with the defendant from 1992 to 1998, that is, until the defendant left Liberia (40.761.015). The witness also clarified that he had indeed received a weapon from ULIMO, and not from Alieu Kosiah (40.761.016).

7.1.2.13 Regarding his role with Alieu Kosiah, Olivier confirmed before the Court that he had been his primary *bodyguard* and had been assigned to him. He was required to follow him everywhere (40.761.015, 016). He confirmed that he would go ahead of the defendant on the front lines to ensure it was safe to advance and that he would inspect the area before Alieu Kosiah went there (40.761.016). He also confirmed that his role was to ensure the defendant's safety and that he would sometimes stand outside with an AK-47 while Alieu Kosiah was inside (40.761.016). He also confirmed that he would taste the food or drink before giving it to the defendant when "he was unsure," that is, in case of a risk of poisoning (40.761.016). According to him, it is accurate to say that he took certain risks on Alieu Kosiah's behalf (40.761.016). Alieu Kosiah took him to the front lines many times. It was Olivier's duty to follow him. On both occasions when he was wounded, the defendant was present (40.761.017). The witness was generally with the defendant, but he would sometimes be away for up to a month (40.761.018).

7.1.2.14 Olivier stated that he was wounded for the first time in late 1993, in Lofa, at Bokassa Junction, when they were ambushed by the LDF (40.761.023 and 024). This injury forced him to seek medical treatment in Guinea. A bullet was lodged in his neck (40.761.024). He returned to the front lines in 1994, before the ULIMO split, after eight to nine months of convalescence (40.761.024). His second injury was also sustained in Lofa, near the border between Lofa and Bong County, following a mine explosion. Olivier places this incident in early 1995 (40.761.024).

7.1.2.15 When questioned during the proceedings, Alieu Kosiah stated that he met Olivier for the first time in Todi, after crossing the river, in February or March 1993. The ULIMO soldiers and Alieu Kosiah captured Olivier because they suspected him of being *an* NPFL *"small soldier"* (40.731.036). The defendant estimated his age at the time to be

thirteen years old (40.731.037). Alieu Kosiah took him from Todi to Klay, and then they left for Lofa. It was Olivier who allegedly chose to follow him. The defendant denied having recruited him. According to him, recruiting someone means forcing them to join the group (40.731.037). He argued that a child under the age of fifteen was capable of choosing to join an army and had sufficient autonomy to make that choice (40.731.037 and 038). The defendant also stated that he was not present when Olivier decided to join the ULIMO (40.731.038). He was reportedly Olivier's commander when they traveled to Lofa (40.731.039). The defendant also denied having used Olivier as a child soldier. He did, however, admit that Olivier was "his guy" (40.731.040). Olivier was considered his bodyguard from the time they traveled to Lofa until he was wounded (40.731.040). Alieu Kosiah stated that they would go to the front lines together and that the rest of the time, they would relax (40.731.040). He asserted that he had never sent the witness to the front lines and that, if the witness went there, it was of his own volition. He recalled going there with him on one occasion between Zorzor and the bridge (40.731.042), but did not recall giving him orders at the front lines (40.731.042). He further disputed Olivier's statements, according to which the latter would go ahead of him to the front line to ensure it was not too dangerous, would inspect the area before his commander arrived, would ensure his safety, would stand in front of the room where he, Alieu Kosiah was, armed with an AK-47, and that he tasted the food before Alieu Kosiah ate it (40.731.040 and 041). The defendant did, however, admit that he may have given an AK-47 to Olivier (40.731.041).

7.1.2.16 Alieu Kosiah denied being present when Olivier was wounded at Bokassa Junction (40.731.042). He did, however, admit to being present when Olivier was wounded a second time, on the main road leading from Lofa County to Bong County (40.731.042). Following this injury, he reportedly sent Olivier to his parents' home in Guinea, where he remained until the end of the war (40.731.043).

7.1.2.17 To the defendant's knowledge, Olivier did not receive any military training; at the very least, he would not have provided him with any (40.731.039). Regarding the route taken, Alieu Kosiah stated that Olivier was with him when he traveled to Lofa for the first time. When he was wounded, he sent Olivier to Guinea to stay with his parents so that he could attend school. Olivier remained there until the end of the war. Aside from Lofa and Guinea, Alieu Kosiah does not recall making any other trips with Olivier (40.731.039).

7.1.3 Law and Assessment of Evidence

7.1.3.1 Pursuant to Article 4(3)(c) of Protocol II, children shall receive the care and assistance they need; in particular, children under the age of fifteen shall not be recruited into armed forces or groups, nor permitted to take part in hostilities.

7.1.3.2 Children are particularly vulnerable. They require preferential treatment compared to the rest of the civilian population; this is why they are afforded specific legal protection (ICRC, Commentary on the Additional Protocols of June 8, 1977, to the Geneva Conventions of August 12, 1949, 1986, No. 4544). The legislature intentionally did not provide a precise definition of the term "child." The point at which a human being ceases to be a child and becomes an adult is not universally defined in the same way. Depending on the culture, it can vary between the ages of approximately fifteen and eighteen. With regard to the recruitment and use of children in the military, the Protocol has set the minimum age at fifteen (ICRC, Commentary on the Additional Protocols of June 8, 1977, to the Geneva Conventions of August 12, 1949, 1986, No. 4549). The prohibition on using children in military operations is a fundamental safeguard for their protection. This practice is, unfortunately, common, and children are often willing to follow adults without fully understanding the consequences of their actions. Thus, the principle of non-recruitment also includes a prohibition on accepting voluntary enlistment (ICRC, Commentary on the Additional Protocols of June 8, 1977, to the Geneva Conventions of August 12, 1949, 1986, No. 4556). Not only may a child not be recruited or enlist, but he or she also shall not be "permitted to take part in hostilities." Voluntary enlistment and forced enlistment thus represent two variants of the offense of recruitment set forth in the Second Additional Protocol, the latter being an aggravated form of the offense (Special Court for Sierra Leone [hereinafter: SCSL], Fofana Case, Judgment of August 2, 2007, paras. 191 et seq.; SCSL, Taylor Case, Judgment of May 18, 2012, para. 442).

7.1.3.3 The prohibition on the recruitment and use of child soldiers aims to protect the physical and psychological integrity of children from the risks of armed conflict, to protect everyone from acts committed by child soldiers in armed conflicts, and, like all offenses relating to war crimes, to preserve peace (ICRC, Commentary on the Additional Protocols of June 8, 1977, to the Geneva Conventions of August 12, 1949, 1986, No. 3183; TOR-NIKE KESHELAVA/BRUNO ZEHNDER, BSK-StGB II, No. 2 *on* Art. *264f* of the Swiss Penal Code; ROMAN D. GRAF/ANTOINE KABORÉ, CR-CP II, No. 3 *on* Art. *264f* of the Swiss Criminal Code, and the references cited). The protection of children from the risks of armed conflict is intended not only to shield them from violence and injuries sustained in combat, but also from potential trauma, particularly that associated with separation from family, disruption of schooling, or exposure to an atmosphere of violence and fear (ICC, Lubanga Case, Judgment of March 14, 2012, paras. 605 and 619; ELISABETH SCHAUER/THOMAS ELBERT, The Psychological Impact of Child Soldiering, p. 7 ff., in: ERIN MARTZ (ed.), Trauma Rehabilitation After War and Conflict, 2010).

7.1.3.4 The recruitment, enlistment, and use of children under the age of fifteen constitute three distinct criminal acts (ICC, Katanga Case, Judgment

of March 7, 2014, para. 1041; ICC, Lubanga Case, Judgment of March 14, 2012, paras. 609 and 620). Each of these acts, taken alone, constitutes the offense (ICC, Lubanga Case, Judgment of March 14, 2012, para. 609; SPSC, Brima Case, Judgment of June 20, 2007, para. 733; SPSC, Fofana Case, Appeal Judgment of May 28, 2008, para. 139). Although theoretically distinct, conscription and enlistment are generally referred to as "recruitment" and may be considered together insofar as they occur whenever a child is incorporated into an armed group or armed force in the context of an armed conflict, whether voluntarily or not (ROMAN D. GRAF/ANTOINE KA-BORÉ, CR-CP II, No. 4 *regarding* Art. *264f* of the Penal Code; ICC, Lubanga Case, Judgment of March 14, 2012, para. 618). The decisive criterion distinguishing the two forms of recruitment is consent, respectively coercion (ROMAN D. GRAF/ANTOINE KABORÉ, CR-CP II, No. 5*, re* Art. *264f* CP). Conscription is a form of forced recruitment, whereas enlistment is voluntary (ROMAN D. GRAF/ANTOINE KABORÉ, CR-CP II, No. 5, regarding Art. *264f* of the Swiss Criminal Code; ICC, Lubanga Case, Judgment of March 14, 2012, para. 607). When the armed group is not a conventional military organization, enlistment does not necessarily consist of a formal act. Enlistment must be understood in a broad sense, including any conduct by which a child is accepted as a member of an armed group (SCTL, Fofana Case, Judgment of May 28, 2008, para. 144; SCTL, Taylor Case, Judgment of May 18, 2012, para. 442). The offense of recruitment is thus committed as soon as a child under the age of fifteen is incorporated into an armed force or group or joins its ranks, whether by force or not (ICC, Lubanga Case, Judgment of March 14, 2012, para. 61).

7.1.3.5 The distinction between conscription and enlistment, which is clear in theory, presents practical difficulties, particularly because children under the age of fifteen do not appear capable of giving informed consent. Psychologist Elisabeth Schauer, who testified as a witness before the International Criminal Court in the Lubanga case, explained that, from a psychological perspective, because children have a limited understanding of the consequences of their choices, they are not capable of giving "informed" consent when they join an armed group; they neither control nor fully comprehend the structures and forces with which they are dealing; they have insufficient knowledge and understanding of the medium- and long-term consequences of their actions. In this particular context, children are not capable of determining their best interests (ICC, Lubanga Case, Judgment of March 14, 2012, para. 610; ELISABETH SCHAUER/THOMAS ELBERT, "The Psychological Impact of Child Soldiering," p. 7 ff., in: ERIN MARTZ (ed.), *Trauma Rehabilitation After War and Conflict*, 2010). As a result, girls and boys under the age of fifteen are often unable to give valid and informed consent when they enlist in an armed force or group (ICC, Lubanga Case, Judgment of March 14, 2012, para. 613). The manner in which the child was recruited and whether the child was recruited under duress or on a

"voluntary" basis are circumstances that may, however, be taken into consideration at the sentencing stage or when determining reparations. The child's consent to recruitment does not, however, constitute an exculpatory defense (ICC, Lubanga Case, Judgment of March 14, 2012, para. 617; SCTL, Brima Case, Judgment of June 20, 2007, para. 735; SCTL, Fofana Case, Judgment of May 28, 2008, para. 140; SCTL, Sesay Case, Judgment of March 2, 2009,
para. 187 and note 349).

7.1.3.6 The use of a child soldier is, like recruitment, an independent offense that can be committed even in the absence of recruitment. Thus, a child may be considered to have been "used" without proof of his or her prior "recruitment" or "enlistment" into the armed force or group in question (ICC, Lubanga Case, Judgment of March 14, 2012, para. 619 et seq.). The prohibition on the use of child soldiers also aims to protect children from the risks associated with armed conflict. Protocol II states that children under the age of fifteen are not permitted to "take part in hostilities." This is a broad formulation that lends itself to an expansive interpretation (ICC, Lubanga Case, Judgment of March 14, 2012, para. 627 and note 1801). This provision was drafted with the aim of allowing for a broad interpretation of "taking part in hostilities," as acts such as gathering intelligence, transmitting orders, transporting ammunition and supplies, and acts of sabotage are also covered by this concept (ICRC, Commentary on the Additional Protocols of June 8, 1977, to the Geneva Conventions of August 12, 1949, 1986, No. 4557). Article 8 of the Rome Statute, for its part, refers to the act of "actively involving" children under the age of fifteen in hostilities. The ICC has held that the conduct covered by the term "active participation in hostilities" should be interpreted broadly. The concept of active participation within the meaning of Article 8 of the Rome Statute thus overlaps with that contained in Article 4 PA II, the fundamental criterion being that the child must, at the very least, constitute a potential target during hostilities. It is thus crucial to determine whether the support the child provides to combatants exposes him or her to real danger, thereby making him or her a potential target (ICC, Lubanga Case, Judgment of March 14, 2012, para. 628; ICC, Katanga Case, Judgment of March 7, 2014, para. 1045; see also SCSL, Brima Case, Judgment of June 20, 2007, para. 736 et seq.; SPSL, Taylor Case, Judgment of May 18, 2012, para. 444). In this regard, the ICC has held that the use of children in support roles on the front lines, particularly as porters, falls within the concept of activities related to hostilities. Furthermore, guarding military objectives or serving as a bodyguard or member of an escort also constitute activities of this nature, particularly when they have a direct impact on the level of logistical resources or on the organization of operations that the other party to the conflict must carry out to attack military objectives (ICC, Katanga Case, Judgment of March 7, 2014, para. 1045). The ICC further cites as examples of activities related to hostilities reconnaissance, espionage, sabotage,

the use of children as decoys, messengers, or human shields, or their use at military checkpoints, carrying loads for combatants, and finding and/or acquiring food or equipment for them. By contrast, delivering food to an air base or employing domestic staff in officers' quarters does not constitute active participation in hostilities (ICC, Lubanga Case, Judgment of March 14, 2012, paras. 621–626; ICC, Katanga Case, Judgment of March 7, 2014, paras. 1043 and 1045). The SCSL takes an even broader view of participation in hostilities, considering that any logistical support to the armed forces constitutes such participation. Thus, supplying ammunition for combat, finding or procuring ammunition or equipment, engaging in deception, delivering messages, building roads or access routes, managing *checkpoints*, or acting as human shields are all examples of active participation (SCSL, Brima Case, Judgment of June 20, 2007, para. 737; SCSL, Taylor Case, Judgment of May 18, 2012, para. 444). On this basis, and in the context of the armed conflict in Sierra Leone, the SCSL thus held that crimes committed against civilians (SCSL, Sesay Case, Judgment of March 2, 2009, para. 1724), the protection of military objectives (ibid., para. 1725), espionage (ibid., para. 1729), and serving as bodyguards for commanders (which makes children potential targets because a commander himself represents a target; ibid., para. 1731) are activities that fall within the concept of active participation in hostilities. By contrast, the use of children for domestic work (ibid., para. 1730) and missions to supply soldiers with food (ibid., para. 1743) do not constitute activities related to hostilities.

7.1.3.7 In the present case, with regard to recruitment, it is established that Alieu Kosiah was present at the time of Olivier's capture, as the statements of both participants are consistent on this point. It is also established that Olivier was under fifteen years of age at the time of his arrest by ULIMO. Indeed, according to the statements of the defendant and the witness, their encounter took place between late 1992 and March 1993. Born on […], Olivier was twelve years old at the time. Furthermore, the fact that Olivier voluntarily sought to join the ULIMO armed faction to escape the abuse of the NPFL rebels does not exonerate the defendant, as recruitment is prohibited whether it involves forcing a child to join the ranks of an army or accepting that the child joins a military entity of his own accord. At most, this circumstance could be taken into consideration when determining the sentence to be imposed on Alieu Kosiah.

7.1.3.8 The Court notes, however, that the indictment of March 22, 2019, does not describe how Alieu Kosiah was allegedly involved in Olivier's recruitment. It is not sufficient, in fact, that the defendant was present at the time of the child's capture to conclude that he participated in his recruitment, especially since it appears that he was not the highest-ranking commander at the time of said capture. That position was held by M., who is said to have attained the rank

Major General (see 12-29-0023). The statements made by the defendant and Olivier before the Court did not clarify the question of the defendant's involvement in the child's recruitment. Even if recruitment does not constitute a formal act, in order to attribute this action to Alieu Kosiah, it would still be necessary to establish that he played a decisive role. However, the Court was not convinced that Alieu Kosiah actually took part in Olivier's recruitment, as his mere presence at the scene was not sufficient in this regard. It should also be noted that Olivier was not immediately assigned to the defendant after joining the ULIMO faction, which might otherwise have served as evidence of Alieu Kosiah's involvement in the recruitment. In fact, Olivier first underwent military training, then served under Mr. M., before finally joining the defendant. The defendant is therefore acquitted of the charge of recruiting a child soldier.

7.1.3.9 The charge of using Olivier as a child soldier, however, can be upheld. The witness's statements regarding the role he played alongside the defendant remained consistent throughout the proceedings. He thus confirmed before the Court the statements he had made to the Office of the Public Prosecutor, namely that he had served as the defendant's bodyguard. He would thus go ahead of the defendant to the front lines to ensure it was not too dangerous, inspect the area before his commander arrived, stand guard with an AK-47 outside the room where Alieu Kosiah was staying, and taste the food before Kosiah ate it. His role consisted, in particular, of ensuring that the defendant was, as far as possible, safe. He also stated that the defendant had taken him to the front lines on several occasions and had given him instructions while they were there. The witness further explained that he had been wounded twice in the presence of Alieu Kosiah. The defendant, for his part, was more reserved regarding the role Olivier played at his side. He did, however, acknowledge that Olivier was one of his *"boys"* or his *"small soldier"* and that he was "considered" his bodyguard. He also acknowledged having gone to the front lines with Olivier on at least one occasion. He further admitted that it was possible he had given Olivier an AK-47. He did, however, dispute the details provided by the witness regarding his role as a bodyguard, though he implicitly admitted that the child kept watch over him while he slept. Alieu Kosiah further admitted to having been present on at least one occasion when the child was wounded. The Court finds that Olivier's statements regarding the role he played under the defendant's command—which were partially confirmed by the defendant—are credible. The fact that Alieu Kosiah used him as a bodyguard, provided him with a weapon, and took him to the front lines are all factors that exposed Olivier to real and concrete danger and made him a prime target. This danger materialized on two occasions, as the child was seriously injured.

7.1.3.10 Subjectively speaking, Alieu Kosiah acted intentionally. He knew that Olivier was only twelve or thirteen years old at the time.

Furthermore, the alleged acts took place during Liberia's first civil war, a fact of which Alieu Kosiah was aware.

The offense of using a child soldier has therefore been committed.

7.1.3.11 The period during which the offense took place has yet to be determined. In this regard, the statements made by the individuals involved regarding the route they traveled together have not always been consistent and are not compatible with one another. The indictment identifies the relevant period as June or July 1993 through […] 1995, the date of Olivier's fifteenth birthday. In determining June or July 1993 as *the starting point*, the Office of the Public Prosecutor relied on Olivier's statements, according to which he was assigned to the defendant five to six months after his recruitment.

The Court notes that Olivier's capture occurred when the ULIMO arrived in Todee. Liberian newspapers dated the capture of Todee to January 1993 (see *supra*, consid. C. 16). Olivier, for his part, placed his encounter with the ULIMO in 1992, during the rainy season. The defendant, for his part, initially stated that Todee was captured at the end of 1993, before telling the Court that it was in February or March 1993. Since Olivier's account is consistent with the information reported by Liberian newspapers, the Court finds that he was arrested by ULIMO in December 1992 or January 1993. As for the precise time when Olivier was assigned to the defendant, it is difficult to determine, as a certain amount of time elapsed between his recruitment and his assignment to Alieu Kosiah. That said, the Court is bound by the facts set forth in the indictment, which identifies the period of June or July 1993 as the starting point of the offense. This is, moreover, the version most favorable to the defendant. The Court will therefore consider the period between June and July 1993 and […] 1995 as the period during which the offense of using a child soldier was committed.

7.1.3.12 In conclusion, Alieu Kosiah is acquitted of the offense of recruiting a child soldier and is found guilty of using a child soldier during the aforementioned period (Art. 109, para. 1, and Art. 108, para. 2, aCPM, *in conjunction with* Art. 4, para. 3, let. c, PA II).

7.1.4 Error Regarding Unlawfulness

7.1.4.1 During closing arguments, the defense argued that the defendant, at the time of the events, was unaware that the use of a child soldier constituted a criminal offense.

7.1.4.2 Pursuant to Art. 17 of the aCPM, the judge may, at his or her discretion, mitigate the sentence (Art. 47) for a person who committed a felony or misdemeanor while having sufficient grounds to believe he or she was acting

lawfully. The judge may also exempt the defendant from any punishment.

7.1.4.3 The recruitment and use of child soldiers are offenses established under customary international law. It is also recognized under customary law that the victims must be under the age of fifteen at the time of the offense. International custom does not depend on the specific practice of each State. For this reason, a State's practice that creates an appearance of lawfulness cannot serve as a defense in cases of violations of rules of international law (SCTL, Brima Case, Judgment of June 20, 2007, para. 731 et seq.).

7.1.4.4 In this case, even if, as the defendant suggested, children under the age of fifteen were sometimes recruited into the military in Liberia, this practice cannot call into question customary international law. Moreover, during his numerous hearings, Alieu Kosiah never claimed that he was unaware, at the time of the events, that the use of a child soldier constituted a criminal offense. On the contrary, he must have known this, since he stated that he had received military training in the regular army. And even if he had not received training on this subject—since the use of a child soldier constituted, at the time of the events, an offense recognized under customary international law—Alieu Kosiah failed to convince the Court that he was unaware of the wrongfulness of his conduct.

7.1.4.5 In light of the foregoing, the defense of mistake as to illegality must be rejected.

7.2 Ordering the murder of seven civilians in Zorzor

7.2.1 Count

Pursuant to Count 1.3.2 of the indictment, Alieu Kosiah is charged with having, in the context of the internal armed conflict that took place in Liberia from 1989 to 1996 and in his capacity as a member of the ULIMO armed faction, ordered the killings of seven civilians in Zorzor, including N., in March 1993.

7.2.2 Evidence

During the preliminary investigation

7.2.2.1 According to Paul's criminal complaint dated July 3, 2014, he was in the town of Zorzor in Lofa County in 1994 when the ULIMO faction, under the command of Alieu Kosiah, invaded the town. Paul spent three months in Zorzor while the town was under the control of Alieu Kosiah's forces. After the capture of Zorzor, seven civilians, including Paul's brother, were executed on the orders of Alieu Kosiah and another ULIMO commander. The complainant saw and heard Alieu Kosiah give the orders to kill these seven people (05-01-0012).

7.2.2.2 During his interrogation by the MPC, Paul stated that he had a very clear picture of the defendant in his mind. During the revolution, Alieu Kosiah was thin and

tall, with *big eyes*. His skin was darker than Paul's (12-28-0018). When Paul saw him, Alieu Kosiah was wearing military clothing—a military jacket and pants—and boots. He was not wearing a cap or sunglasses. He was also not carrying a weapon. The people around him, however, were armed (12-28-0019). On the first photo spread presented to him, which included a photograph of the defendant from the war, Paul recognized Alieu Kosiah. On the second sheet, which contained a more recent photograph of the defendant, it seemed to him that he saw him in two places; one of the two people identified was indeed Alieu Kosiah. When the latter entered the hearing room, the complainant confirmed that he recognized him and was overcome with emotion (12-28-0020).

At first, Paul stated that he had filed a complaint against Alieu Kosiah after seeing a photograph of him in a newspaper at the time of his arrest (12.28-006). When questioned by the Public Prosecutor's Office about the chronology of these two events, he retracted his statement, acknowledging that he had likely been mistaken due to stress and that he might have filed the complaint before seeing Kosiah's photo in a newspaper (12-28-0011, 0012).

7.2.2.3 Regarding the alleged events, Paul stated that when Zorzor was taken by the ULIMO, everyone had been forced to gather at the town's gas station (12-28-0018). Alieu Kosiah, who was standing in the center of the gathering, pointed to seven civilians—among whom was N., Paul's brother—and ordered their execution (12-28-0020, 0021). The seven civilians were first beaten with rifle butts until they were unconscious. They were then struck on the head with a sledgehammer. They had no chance of escaping because some soldiers were holding them down. Alieu Kosiah accused them of being NPFL rebels. They denied it, but Alieu Kosiah insisted that they were rebels and ordered his *men* to kill them (12-28-0021). To give the order to execute them, Alieu Kosiah reportedly said, "Kill these people, because they are NPFL fighters" (12-28-0022). Paul stated that he heard Alieu Kosiah give that order. According to the complainant, Alieu Kosiah was the leader of the group, as everyone called him "Chief Kosiah." However, he does not know if there was anyone higher in rank than him (12-28-0023). Paul stated that he heard the names of two other soldiers during the murder: Patrick and Bertrand, both of whom were Alieu Kosiah's bodyguards (12-28-0023, 0018). Following the execution, Alieu Kosiah and the ULIMO soldiers jumped up and down with their arms in the air and fired shots in celebration. They were jubilant, jumping, and shouting. Regarding the bodies, Paul stated that when he returned to the scene, the bodies were no longer there; he could not say what had become of them (12-28-0022). Regarding the presence of an "other commander" mentioned in Paul's criminal complaint, Paul stated that this was Pascal. He stated, however, that Pascal was not at the gas station and that there may have been a misunderstanding when he recounted his story in preparation for filing the criminal complaint (12-28-0025).

7.2.2.4 When questioned about these facts, Alieu Kosiah disputed them, asserting that he had arrived in Lofa after the capture of Foya, which took place six months after that of Zorzor. According to him, he therefore could not have been in Zorzor at the time the town was captured by ULIMO. Furthermore, he stated that he had never met Paul prior to these proceedings (13-01-0637). Regarding the capture of Zorzor, the defendant stated that it was Pascal who captured the town in late 1993 or early 1994. After the capture, Vincent was sent to Zorzor as *the* Lofa area commander. He then left to take the town of Voinjama. Two or three months later, he traveled to Monrovia, where Alieu Kosiah was staying, and asked Kosiah to accompany him to Lofa. The defendant thus reportedly traveled to Lofa between June and July 1994 (13-01-0022 s., 0117). Alieu Kosiah also stated later that he had arrived in Voinjama in early 1994 with Vincent (13-01-0103). He further claimed to have accompanied Vincent when the latter traveled to Lofa, initially stating that this was before the ULIMO split, and then asserting that it was after the split (13-01-0033, 0365). During his first interview with the MPC, Alieu Kosiah stated that he had spent the entire duration of the war—that is, until 1994—in the Grand Cape Mount region or the Lofa region (13-01-0010).

7.2.2.5 During his interview with the MPC, Olivier stated that he had traveled to Lofa with Alieu Kosiah between late 1992 and early 1993. They reportedly went first to Zorzor, then to Voinjama, then to Kolahun, and finally to Foya (12.16-0011, 0027).

7.2.2.6 Witness O., *a* former *deputy chief of staff* of ULIMO, who was questioned via a letter rogatory from the United States, stated that the first commander of Lofa County was Pascal (referred to as “Pascal” in the transcript). Subsequently, Vincent was reportedly sent to Lofa (18-03-01-173). Vincent reportedly arrived in Lofa before Voinjama had been captured by ULIMO. When he arrived in Lofa, he first went to Zorzor, where he replaced Pascal, and then, from there, to Voinjama to capture the town (18-03-01-0120, 0345). The witness also stated that Alieu Kosiah did not go to Lofa while Pascal was in command. The defendant was in Bomi at that time. However, when Vincent went to Lofa—specifically to Zorzor—Alieu Kosiah reportedly left Bomi to also go to Lofa (18-03-01-0333). O. further stated during his testimony that Bertrand was a *battlefront commander* in Zorzor (18-03-01-0202).

During the proceedings

7.2.2.7 Before the Court, Paul confirmed his testimony. He stated that his brother was among the seven civilians killed and that he did not know who the other six victims were. He also stated that he could not date the event, but that it occurred while it was raining heavily (40.757.013). According to him, the soldiers ordered the civilians—including Paul—to gather around the

gas station. Among the soldiers present were Bertrand, Patrick, P., and Q. (40.757.014). Alieu Kosiah was also present. He was the *boss*. He was the one directing the gathering because he gave orders, and his orders were carried out. He, for his part, received orders from no one (40.757.014). Paul stated that he saw and heard Alieu Kosiah give the order in English to his *men* to execute seven civilians whom he had identified because he suspected them of being NPFL soldiers (40.757.014, 015). He reportedly uttered the following words: "They are rebels. Execute them. Kill them" (40.757.016). The distance between the complainant and Alieu Kosiah at that time was approximately six meters (40.757.015). Alieu Kosiah did not specify how the civilians were to be executed. The soldiers "smashed their heads" with hammers (40.757.016). Bertrand, Patrick, P., and Q. participated in the execution (40.757.016). Paul stated that he personally witnessed these executions (40.757.016). The soldiers then ordered the civilians who had witnessed the scene to return home, and the bodies were left on the road (40.757.016). Paul confirmed that Pascal was not present during this incident (40.757.015). When asked about her relationship with her brother N., the plaintiff stated that she was living with him at the time he was killed. He was the eldest brother in the family (40.757.016). Paul's father had invested money in his eldest son's education so that he could attend school. Following his death, the siblings had no one left to care for them (40.757.017).

7.2.2.8 Following an untimely outburst by the defendant during Paul's hearing—in which the defendant loudly expressed his anger—the complainant no longer wished to remain in his seat at the center of the courtroom, facing the Court, but instead moved to stand next to his attorney. He stated that he had been afraid because Alieu Kosiah had expressed his anger in court by shouting in the same manner as he did when giving orders during the war (40.757.038).

7.2.2.9 When questioned by the Court, Alieu Kosiah continued to deny the allegation against him. He stated that he was not in Zorzor when the town was captured. It was only in 1995, after the capture of Gbarnga, that he was allegedly assigned to that region, whereas the town of Zorzor had been taken by ULIMO in January 1993. In March 1993, the defendant was reportedly in Todi (or Todee) and never traveled to Zorzor. He confirmed that in 1993, a soldier named Patrick was a member of ULIMO. According to him, however, he did not know him (40.731.044). As for Bertrand, he was one of the highest-ranking officers in the Foya region. The defendant stated that he had met him once or twice during the war (40.731.045). Alieu Kosiah further stated that Vincent had taken him to Lofa in May 1994 (40.731.062).

7.2.2.10 During his testimony before the Court as a witness called to provide information, Pierre stated that Alieu Kosiah had arrived in Zorzor with Vincent after the town was captured. They then reportedly traveled together to Voinjama and then to Foya to capture those two towns (40.771.014, 016).

Physical Evidence

7.2.2.11 According to the Liberian press, the town of Zorzor was captured by ULIMO in February 1993 (10-01-0266). On March 8, 1993, Pascal announced at a press conference in Monrovia that over the weekend of March 6–7, Voin-jama had been recaptured from the NPFL (10-01-0266, 0321).

7.2.3 Law and Assessment of Evidence

7.2.3.1 Pursuant to Art. 3(1)(1)(a) of the General Provisions, attacks on life and physical integrity—including murder in all its forms, mutilation, cruel treatment, torture, and cruel punishment—are and remain prohibited at all times and in all places with respect to persons who are not directly participating in hostilities.

Pursuant to Article 4, paragraph 2, subparagraph a of Protocol II, the following acts are and remain prohibited at all times and in all places with respect to persons who are not directly participating or are no longer participating in hostilities, whether or not they are deprived of their liberty: attacks on their life, health, and physical or mental well-being, in particular murder, as well as cruel treatment such as torture, mutilation, or any form of corporal punishment.

7.2.3.2 To determine whether the crime of murder has been committed, it must be proven that an individual, through an act or omission, caused the death of one or more persons who were out of combat—whether civilians or members of medical or religious personnel not actively participating in hostilities. The death must result from the accused's conduct, such that a causal link is established between the conduct and the result (ICC, Katanga Case, Judgment of March 7, 2014, para. 767), with the intent to kill or the awareness that death would occur in the normal course of events (ICC, Katanga Case, Judgment of September 30, 2008, para. 423). Furthermore, there must be a causal link between the perpetrator's action and the victim's death (ICC, Bemba Gombo Case, Judgment of June 15, 2008, para. 132). The prosecution must establish a causal link between the murder and the victim's death (ICC, Bemba Gombo Case, Judgment of June 15, 2008, para. 132). It is not necessary to locate and/or identify the body; the prosecution must nevertheless indicate, to the extent possible and among other elements, the location where the murder is alleged to have been committed, its approximate date, the means by which it was committed (with sufficient precision), the circumstances surrounding the murder, and the link between the perpetrator and the crime (ICC, Bemba Gombo Case, Judgment of June 15, 2008, para. 133).

7.2.3.3 Civilians may be defined as persons who are not members of the armed forces, whether state or non-state (ICC, Katanga Case, Judgment of March 7, 2014, para. 784 et seq.).

7.2.3.4 Pursuant to Art. 18(1)(a) of the Swiss Military Criminal Code (aCPM), if the execution of an order constitutes a punishable act, the commander or superior who issued the order is punishable as the perpetrator of the offense.

The objective elements of Article 18(a) of the Military Penal Code are as follows: a commander or superior must (1) issue to a subordinate or a person of lower rank
(2) a service order (3) whose execution constitutes an offense (4) and which thereby causes the subordinate or person under his command to decide to act with the intent to commit the offense (5) (STEFAN FLACHSMANN/PATRICK FLURI/BERNHARD ISENRING/STEFAN WEHRENBERG, Tables of Military Criminal Law,[2nd]ed., 2010, p. 63).

The subjective elements that must be satisfied to apply Art. 18 aCPM are: the perpetrator must know that he is giving his subordinate or a person of lower rank an order to commit a specific offense and that he is prompting a decision to act (1); the perpetrator must be aware of the objective and subjective elements of the offense that he or she is causing the subordinate or person of lower rank to commit (2); the perpetrator must intend for the subordinate or the person of lower rank to carry out the requested offense with all its characteristics (3) (STEFAN FLACHSMANN/PATRICK FLURI/BERNHARD ISENRING/STEFAN WEHRENBERG, *op. cit.*, p. 63).

The person who gives the order is punishable as an indirect perpetrator of the offense. He is thus punished as if he had committed the ordered acts himself. He is punishable even when the direct perpetrator escapes punishment (STEFAN FLACHSMANN/PATRICK FLURI/BERNHARD ISENRING/STEFAN WEHRENBERG, *op. cit.*, p. 63, note 8).

If the person carrying out the order goes beyond what was ordered, the person who gave the order is not liable for the commission of that additional act. If the order is not fully carried out, the person who gave the order is punishable as an attempted offender (KURT HAURI, Militärstrafgesetz: Kommentar, 1983, No. 12 *on* Art. 18 CPM). Giving an order to a subordinate or inferior who has already decided to commit the offense (*omnimodo facturus*) must be considered an attempt (STEFAN FLACHSMANN/PATRICK FLURI/BERNHARD ISENRING/STEFAN WEHRENBERG, *op. cit.*, p. 63, note 6).

7.2.3.5 In the present case, Paul provided descriptive details of Alieu Kosiah that frequently emerged during the proceedings to characterize the defendant during the war: thin (by which he presumably meant slender), very dark-skinned, and with large eyes. Furthermore, the complainant correctly identified the defendant in the two photo lineups presented to him (though he hesitated between two images in the second lineup). He was also overcome with strong emotion when he was confronted with Alieu Kosiah for the first time, as well as during the trial, when Alieu Kosiah shouted angrily during

his testimony, which frightened the complainant. These elements have already convinced the Court that the complainant had been in the defendant's company during the war.

7.2.3.6 Furthermore, Paul's statements regarding the alleged acts have been consistent throughout the proceedings. He stated unequivocally, both before the Public Prosecutor's Office and before the Court, that he saw and heard Alieu Kosiah order the soldiers to execute the seven civilians, including his brother. The complainant was also consistent regarding the manner in which the civilians were executed, namely that Alieu Kosiah did not issue any specific orders in this regard and that they were beaten with rifle butts and clubs, which caused their deaths. Paul further consistently stated that Alieu Kosiah was the leader (the soldiers called him "Chief Kosiah") and that his orders were carried out.

7.2.3.7 For his part, Alieu Kosiah has consistently denied the charges against him, arguing that he arrived in Lofa after the town of Foya had already been captured by ULIMO. However, since the capture of Foya occurred nearly six months after that of Zorzor, he could not have been in Zorzor at the time of that town's capture. That said, Pierre, a former ULIMO soldier stationed in Lofa, contradicted the defendant's account before the court. He stated that Alieu Kosiah had traveled with Vincent to Zorzor after the town's capture and that they had then gone together to Voinjama, and then to Foya, to capture those towns. O., ULIMO's *deputy chief of staff*, also made statements to that effect, asserting that by the time Vincent arrived in Zorzor, Alieu Kosiah had already left for Lofa. The defendant himself confirmed that he had gone to Lofa with Vincent. Regarding the date on which Alieu Kosiah went to Zorzor, it is established that the town was captured in January 1993 and that Vincent then left to take the town of Voinjama, which fell on March 6 or 7, 1993. Alieu Kosiah's statements, in which he claimed to have been in Todee during the conquest of Lofa, are not credible. Indeed, these statements first of all contradict those he made at the beginning of the proceedings, when he was not yet aware of the charges against him. At that time, he had in fact admitted to having spent the war years—that is, until 1994—between Grand Cape Mount and the Lofa region. Furthermore, his presence in Todee would have served no military purpose, given that the war was raging in Lofa, and there is no reason to believe that Vincent would have come to fetch him to join the campaign in Lofa after all the towns had already been captured. On the contrary, it must rather be concluded that Vincent took him along as reinforcements to travel to Lofa and to conquer Voin-jama, then Foya. With regard to the statements of Alieu Kosiah's two bodyguards, namely Olivier and Bernard, according to which the defendant arrived in Lofa only after all the towns in the county had been captured (see 12-16-0010, 0011; 12-19-0015, 0018, 0031, 0045, 0058), the Court notes that they
are not credible. Indeed, the Court is convinced that the two witnesses, out of

loyalty to Alieu Kosiah, had agreed to give this response during their respective interrogations, thereby enabling the defendant to lend credence to his alibi for the vast majority of the charges against him. This conviction stemmed in particular from the fact that both witnesses each deemed it necessary to spontaneously mention this detail to the Public Prosecutor's Office on several occasions, even though the question did not pertain to this subject (see 12-16-0010; 0011; 12-19-0015, 0031, 0045, 0058). For Bernard, this assertion bordered on obsession. In Olivier's case, the attempt to mislead the criminal authorities was blatant because he provided dates and an itinerary that were inconsistent with the version he was supposed to support—namely, that Alieu Kosiah had arrived in Lofa after the capture of Foya. In reality, the route the witness claims to have taken in Lofa and the dates he provided coincide precisely with the various other testimonies and the physical evidence in the case file, which rendered the witness's attempt to support the defense's version ineffective. In light of the foregoing, the Court finds it established that the defendant was indeed in Zorzor at the time of the murder of the seven people, which occurred between February and March 1993.

7.2.3.8 Objectively, in light of Paul's consistent statements, it must be concluded that Alieu Kosiah ordered the ULIMO soldiers present in Zorzor to execute the seven people, including the complainant's brother, and that they carried out this order by killing them with rifle butts and clubs. As for the civilian status of the persons killed, this must be upheld. Indeed, nothing in Paul's account suggests that they were soldiers. They were chosen at random, with the deliberate intent of spreading terror and enabling ULIMO to assert its authority in the village it had just conquered. The victims' alleged membership in the NPFL was merely a pretext for executing them. This pretext for committing the murders was, moreover, recounted on several occasions during the proceedings (see, in particular, *infra,* para. 7.4). As for Alieu Kosiah's status as a superior, there is no need to establish specifically what the defendant's position in the chain of command was at the time of the events. Such an exercise would, in any case, be impossible, given that it is clear from the preliminary proceedings and the trial that, since ULIMO was a rebel and non-state faction, ranks were not clearly defined and military personnel assumed unofficial ranks and positions. To hold the defendant liable, it is sufficient to establish that he held a higher rank than the soldiers to whom he gave the order to kill. In this case, Paul clearly stated that the soldiers called the defendant "Chief Kosiah" and that the orders he gave were carried out. Objectively, these elements are sufficient to hold Alieu Kosiah liable under Article 18 of the aCPM.

7.2.3.9 Subjectively, Alieu Kosiah acted intentionally. He knew that by ordering the soldiers to execute the seven civilians, they would carry out his order. Furthermore, the defendant could not have been unaware that the victims were civilians, and it was clear to him that the order he gave took place in the context of the armed conflict that constituted Liberia's first civil war.

7.2.3.10 Alieu Kosiah must therefore be found guilty of ordering the killing of seven civilians under Art. 109(1) and Art. 108(2) of the Military Criminal Code (aCPM), in conjunction with Art. 18 of the aCPM, *together* with Art. 3(1)(1)(a) common to the General Provisions and Art. 4(2)(a) of Part II of the Military Criminal Code (PA II).

7.3 Murder of civilian B. in Babahun

7.3.1 Charge

Pursuant to section 1.3.3 of the indictment, Alieu Kosiah is charged with having, in the context of the internal armed conflict that took place in Liberia from 1989 to 1995 and in his capacity as a member of the ULIMO armed faction, killed civilian B. in Babahun between March and May 1993.

7.3.2 Evidence

During the Preliminary Investigation

7.3.2.1 According to Rémy's criminal complaint dated July 3, 2014, when ULIMO forces were in the vicinity of Kolahun, in Lofa District, Rémy was with his uncle in a village located in the forest, about an hour and a half from Kolahun. Rémy saw ULIMO fighters arrive with their commander, whom they all called "Alieu Kosiah." Alieu Kosiah ordered Rémy's uncle to show him where the steel mill was located—30 minutes from the village—because they wanted to dismantle it and take it to Kolahun. On the way, Alieu Kosiah ordered his men to tie up Rémy's uncle, and they took him aside. Rémy then heard two gunshots and saw Alieu Kosiah return with a pistol in his hand and put it back in its holster. Alieu Kosiah told Rémy to leave, and Rémy never saw his uncle again (05-01-0013 s.).

7.3.2.2 During his interview with the MPC, Rémy described Alieu Kosiah as he remembered him from the war—as being relatively tall, black (that is, with dark skin), and with bulging eyes (*pop eyes*) (12-22-0006). On the first set of photographs presented to him (which included a wartime photograph of the defendant), Rémy identified a photograph other than that of Alieu Kosiah. However, he did recognize the defendant in the second set of photographs (which included a more recent photograph of the defendant) (12-22-0007). When Alieu Kosiah entered the courtroom, Rémy confirmed that this was indeed the person he had identified (12-22-0008).

7.3.2.3 When asked about the events he had reported, Rémy stated that his story dated back to 1992 or 1993, during the dry season, in Lofa, when the ULIMO attacked his village of Babahun Town, near Kotohun (phon.), in the Kolahun district (12-22-0008, 0010). One day, as he was returning to the village between 11:00 a.m. and noon, Rémy heard Alieu Kosiah arrive in the village and demand money from the various plantations (sugarcane, cocoa, etc.). The soldiers, numbering approximately ten, were coming from the direction of Foya in a Toyota Land Cruiser pickup truck (12-22-0010, 0011, 0012). Rémy stated that he clearly heard the name "Chief Kosiah" because everyone was repeating it (12-22-0008, 0013). It was Alieu Kosiah who was leading the group (12-22-0012). The soldiers told everyone to get out, on Alieu Kosiah's orders (12-22-0011, 0012). Alieu Kosiah stated that the man who owned the sugarcane plantations—that is, B., Rémy's uncle—had to come (12-22-0013, 0014). Alieu Kosiah then asked B. for money; B. did indeed own coffee, cocoa, and sugarcane plantations and was also able to distill alcohol. B. replied that he had no money (12-22-0009, 0011, 0013, 0014). Alieu Kosiah and his men then told him to go to the back of the village. When the soldiers took his uncle away on Alieu Kosiah's orders, Rémy was at home and was able to witness the scene from the back door. From there, he could hear Alieu Kosiah and his soldiers asking B. questions. When they took him away, he followed them from a distance because he knew some shortcuts (12-22-0009, 0011, 0014, 0015, 0016). His uncle was not tied up when he was taken away (12-22-0016). The soldiers left behind the village, on a road leading to Foya. Alieu Kosiah and his soldiers went with B. behind a straw fence, surrounded by *the bush*. Rémy, for his part, was on the other side and was looking through the *bush* (12-22-0016). During his hearing, Rémy initially stated that he had heard a gunshot and seen Alieu Kosiah holster his pistol (12-22-0016). Later, he claimed to have witnessed the execution (12-22-0014, 0016). He stated that Alieu Kosiah had shot his uncle in the chest while standing directly in front of him, at a distance of approximately three meters (12-22-0016 s.). Following his uncle's execution, Rémy went into the *bush* to join his aunt in Kolahun (12-22-0014).

7.3.2.4 When questioned about the charges against him, Alieu Kosiah denied them, stating that this was the first time he had heard the name Babahun. It was also the first time he had seen the complainant, Rémy. The defendant further stated that Rémy's account of the trips he made during the war was not credible. Indeed, Rémy had indicated that he was in Kolahun and had gone on vacation to Babahun. He claimed to have seen ULIMO troops arriving from the road to Foya. However, according to him, Babahun is located between Foya and Kolahun, so if the ULIMO soldiers were coming from Foya, that would mean Foya had already been captured. But that would be inaccurate, since Foya was captured later. Similarly, Alieu Kosiah maintains that there is an inconsistency in Rémy's statement that he

left Kolahun to go to Monrovia and encountered NPFL forces in Voinjama and Zorzor along the way, which would not be possible given the report prepared by the PJF, which states that Zorzor and Voinjama were taken before Kolahun (13-01-0638, 12-22-0099 et seq.).

7.3.2.5 Bernard, Alieu Kosiah's former bodyguard, testified before the MPC that the defendant was carrying a pistol on his right side while they were in Lofa (12-19-0069). Olivier also stated that Alieu Kosiah had a pistol (12-16-0018).

During the trial

7.3.2.6 During his hearing before the Court, Rémy confirmed his criminal complaint against Alieu Kosiah for the murder of his uncle B. According to his account, his uncle was a farmer; he owned a sugarcane press and grew cocoa and coffee (40.762.006). The witness was unable to specify the exact date of his uncle's death but stated that he had been killed on the day of the ULIMO attack on Babahun in 1993 (40.762.004, 006). The murder reportedly took place in the afternoon (40.762.007). Alieu Kosiah reportedly asked who owned the sugarcane press, the coffee, and the cocoa. B. was standing in front of his house at the time. Rémy stated that he, for his part, was hiding in the bush behind the house. From there, he could hear everything that was happening (40.762.007). B. replied to Alieu Kosiah that he had no money. Alieu Kosiah then said, "Let's go," and they set off toward the edge of the village. They reportedly tied up B. and took him away because they had not gotten what they wanted. They walked for about three or four minutes. Rémy followed them through the bush, keeping to one side. When they arrived at the crime scene, Alieu Kosiah shot B. with the pistol he was carrying at his side (40.762.007, 010). The witness, who was hiding behind a tree at the time, stated that he saw the defendant shoot his uncle (40.762.007 s.). He heard a gunshot. Alieu Kosiah shot B. "in the side of the chest." According to Rémy, no one else but him witnessed this killing (40.762.008). After seeing his uncle killed, Rémy took a bush path toward Kolahun to join his aunt, unbeknownst to the defendant, who did not notice his presence (40.762.008 s.). He does not know what became of the deceased's body (40.762.010).

7.3.2.7 Alieu Kosiah, for his part, continued to deny the charges against him. He stated that he had only learned of the existence of the village of Babahun after being arrested in connection with these proceedings (40.731.045 s.). Between March and May 1993, he said he was in Todee (40,731,046). According to him, Rémy's account does not correspond to reality, as the ULIMO did not come from Guinea to attack. They could not have come from Foya to attack the village of Babahun, because that would have meant the ULIMO were already in control of Foya, which was not the case (40.731.046).

7.3.3 Law and Assessment of the Evidence

7.3.3.1 With regard to the legal arguments, reference is made to paragraphs 7.2.3.1 through
7.2.3.3 above.

7.3.3.2 In this case, Rémy's description of Alieu Kosiah during the war is consistent with numerous other statements made during the proceedings: the defendant was fairly tall, had very dark skin, and had *"pop eyes*," or bulging eyes. Rémy also identified Alieu Kosiah in one of the two photo lineups presented to him. Admittedly, he mistakenly identified the defendant on the first lineup presented to him. That said, as noted in paragraph 6.4 above, at the time these photographs were shown to him, Rémy had not seen the defendant for nearly 20 years. Furthermore, he had seen the defendant only once during the war. He therefore cannot be expected to have a very precise memory of Alieu Kosiah's face. When confronted with him, Rémy confirmed without the slightest hesitation that he was the person who murdered his uncle. The description he provided, the partial identification from a photograph, and the confirmation of the *in-person* identification are sufficient to make it highly credible that Rémy was indeed confronted with Alieu Kosiah during the war.

7.3.3.3 Regarding the charges, Rémy's statements to the Office of the Public Prosecutor and to the Court have been consistent on numerous points: he affirmed that it was the defendant who killed his uncle by shooting him in the chest with a pistol on the day Babahun was captured, in a remote area at the back of the village. Admittedly, as the defense pointed out, there are certain discrepancies in Rémy's testimony regarding the motives for the murder, whether B. was tied up before being taken away, and the number of shots fired by the defendant to kill him. In this regard, the Court finds that these are discrepancies concerning details that are not sufficient to call into question the credibility of the witness's testimony. As for the motives for the murder, they are not mentioned in the initial complaint but are not contradicted by it either. That said, as we have seen (see *supra*, para. 6.2), the content of the criminal complaints filed in the context of these proceedings must be viewed with caution. Furthermore, the question of whether or not the victim was tied up before being killed is clearly separate from the question of whether the victim was in fact killed. As for whether the perpetrator used one or two bullets to kill the victim, this is a matter concerning one of the circumstances of the crime, the memory of which may very well have become distorted over the years. Finally, the fact that the alleged perpetrator is said to have fired two shots rather than one does not allow the Court to assume that the person who reported the crime attempted to mislead the court regarding the reality of the reported crime. Ultimately, the Court finds that the consistency of Rémy's account regarding the essential details of his uncle's murder renders his testimony entirely credible.

7.3.3.4 The defense disputes the charges against him, stating that between March and May 1993—the period specified by the Public Prosecutor's Office in its indictment—Alieu Kosiah was in Todee. In its closing argument, the MPC justified the timeframe specified in the indictment—namely, between March and May 1993—by noting that the dry season in Liberia lasts until February and is followed by a transitional period extending through May, with May generally marking the start of the rainy season. Furthermore, the MPC justified this timeframe by referring to ULIMO's advance into Lofa. Voinjama was captured by ULIMO forces in early March 1993, and Foya—which is located slightly further along the main road from Voinjama—was taken in late June or early July 1993 (see *supra*, para. C.16). The capture of Kolahun, a town near Babahun, is not mentioned in the newspapers. That said, since it lies between Voinjama and Foya, it must have been captured by ULIMO between March and June or July 1993. The reasoning put forward by the MPC, which is based, on the one hand, on Rémy's statements and, on the other hand, on media sources, is entirely sound. The Court therefore adopts this reasoning and places the events alleged by Rémy between March and July 1993.

It remains to be determined whether the defendant could have been in the vicinity of Babahun during that period. As already noted, the defendant's alibi—that he was in Todee during the period when ULIMO was conquering Lofa—is not credible; the Court therefore finds that Alieu Kosiah accompanied Vincent to Lofa in March 1993 and that he participated, alongside him, in the capture of the county's towns (with the exception of Zorzor, which had already been taken by Pascal upon their arrival) (see *supra*, para. 7.2.3.7 for further details). Given the defendant's role as a "floating officer" while he was in Lofa, his presence in Babahun between March and June or July 1993 is entirely credible and may be accepted.

7.3.3.5 As for the defense's argument seeking to cast doubt on Rémy's credibility on the grounds that the geographical references he provided during his hearings do not correspond to the history of the war, this argument is irrelevant. Indeed, there is no basis for concluding that it is impossible for the ULIMO to have reached Babahun via the road from Foya simply because the town had not yet been captured. Nor is it impossible that the witness was mistaken on this point, which is irrelevant to the assessment of the charges against Alieu Kosiah. Regarding the list of NPFL *checkpoints* provided by Rémy to describe his journey from Kolahun to Monrovia—which, according to the defendant, does not correspond to reality—the Court struggles to understand what the defense could infer from this, as this detail is irrelevant to the facts of the case.

7.3.3.6 In light of the foregoing, it is found that, objectively, Alieu Kosiah shot civilian B. with a pistol, on at least one occasion, in the torso, which caused his death.

7.3.3.7 Subjectively, Alieu Kosiah acted intentionally. He was aware and intended that by shooting B. with a firearm in the torso at close range, he would cause his death. Furthermore, there is no doubt that Alieu Kosiah knew the victim was a civilian, since he was addressing a farmer.

Finally, the murder committed by the defendant took place in the context of the armed conflict of Liberia's First Civil War, a fact of which Alieu Kosiah was aware.

7.3.3.8 Alieu Kosiah shall therefore be found guilty of the murder of the civilian B. pursuant to Art. 109(1) and Art. 108(2)(a) of the Swiss Military Criminal Code (aCPM), *in conjunction with* Art. 3(1)(1)(a) common to the General Provisions (CG) and Art. 4(2)(a) of Part II of the Penal Code (PA II).

7.4 Ordering the cruel treatment of seven civilians in Foya, the murder of six of them, and stabbing the civilian Raoul

7.4.1 Charge

According to section 1.3.4 of the indictment, Alieu Kosiah is charged with having, in the context of the aforementioned internal armed conflict, as a member of the ULIMO armed faction, ordered the cruel treatment of seven civilians, including Raoul, in Foya in July 1993. He is also charged with subsequently ordering the murder of six of the seven civilians, including R. and S. (count 1.3.5 of the indictment), and with stabbing the civilian Raoul, thereby attempting to kill him (count 1.3.6 of the indictment).

7.4.2 Evidence

During the preliminary investigation

7.4.2.1 Raoul's criminal complaint dated July 30, 2014, recounts the following facts: in 1994, during the rainy season, the ULIMO group launched an attack on Foya, where the complainant was living. Out of fear, Raoul took refuge with other people in the forest surrounding Foya. ULIMO members who were searching the area captured them and divided them into three groups: women, the elderly, and men. The ULIMO members, led by Alieu Kosiah, singled out Raoul and six other captured men and accused them of belonging to the NPFL. They tied their arms behind their backs so that their elbows touched. Raoul protested on behalf of the entire group, explaining that he had nothing to do with the NPFL and that they were all students. The ULIMO members grabbed Raoul by the feet, dragged him on his back to the Foya market, and then took him back into the forest toward the group of detainees, causing him great suffering and injuries all over his body. One of the ULIMO members present, who was under Alieu Kosiah's command, then interceded on his behalf. This man was named Cassiopée, who knew Raoul's cousin. An altercation ensued between Cassiopée and Alieu Kosiah, during which the latter allegedly pulled out a knife and stabbed Raoul in the back, uttering the following words:

"Once we've killed the six men, I'll take care of this one." Alieu Kosiah then gave the order to kill the other six people and throw their bodies into a well, which was carried out in front of Raoul by a dozen men. Following the altercation between Alieu Kosiah and Cassiopée, Raoul's life was spared. However, he was subsequently forcibly recruited into the ULIMO ranks for several months and was stationed in Foya (05-02-002 et seq.).

7.4.2.2 During his interrogation by the MPC, Raoul described Alieu Kosiah at the time of the events as being younger than himself. He had *"pop eyes*," or large eyes, "like someone who is angry with you." He was thin, with no body fat. He was about the same height as him. He did not wear glasses. He had a round face and no beard. The complainant could not recall what his hair looked like, because Alieu Kosiah was wearing a military cap. His skin was dark. He was wearing a glove on his right hand. Someone had told Raoul that Alieu Kosiah had been wounded on the front lines. Raoul could not describe the glove or its color. However, he said it was not a fingered glove; only the palm of the hand was covered. On the occasions when the complainant saw Alieu Kosiah, he was wearing a military winter jacket—like a long coat—and military-style pants. He sometimes wore camouflage pants, in two or three colors (brown-black camouflage), or "fiti" pants, which were solid green. He sometimes wore military boots, and sometimes *"brown clamers*," a type of brown boot the same height as military boots (calf-high). Raoul could not say whether Alieu Kosiah had a tattoo or a scar. He sometimes carried two grenades on his jacket and a weapon—a .45 pistol—on the side of his right leg (12-08-0010). On the first photo lineup presented to him (which included a relatively recent photograph of Alieu Kosiah), Raoul indicated that it was unclear to him and pointed to the defendant, saying that this person reminded him of someone. On the second photo lineup (which included a photograph of Alieu Kosiah from the time of the war), however, Raoul identified someone other than Alieu Kosiah, stating that he could not place that face in context (12-08-0011). When confronted with the defendant, Raoul stated that he recognized him (12-08-0011).

7.4.2.3 In connection with his testimony, Raoul reported the following facts: while he was with other civilians at a farm looking for food, ULIMO forces entered Foya (12-08-0015). Raoul dated this event to 1993, during the rainy season, around the month of May (12-08-0017). He remained with the other civilians on the farm for two weeks, afraid to go into the town of Foya because of the gunfire echoing there (12-08-0015, 0017). However, ULIMO forces entered the farm through the bush and took the civilians who were there back to Foya. The civilians were organized into three groups: women, children, and men (12-08-0015). There were seven men,

including Raoul and his two cousins, R. and S., who were traveling together. Raoul first heard the name “CO Kosiah” when the soldiers brought the civilians back from the bush and separated them into three groups (12-08-0018). The soldiers were then singing a Mandingo song titled “Kele Kele.” According to the prosecution, when civilians heard this song, it meant that the soldiers had come to kill. The song mentioned the names of Alieu Kosiah, Vincent, and other high-ranking commanders (12-08-0018). The ULIMO soldiers, including one named Pégase and Alieu Kosiah, considered the seven men brought back to Foya to be rebels. The soldiers tied the seven civilians’ arms very tightly behind their backs using the “tabé” method (12-08-0015, 0026), which involved tying the person with a rope, with both arms behind their back, above the elbows so that they touched each other (12-08-0020, 0021). Only the six men and Raoul were tied up using the “tabé” method; the others were older men (12-08-0026). Alieu Kosiah then gave the order to force them to the ground (12-08-0015) and drag them along the ground (12-08-0021). The seven men walked to the market, and once there, Pégase dragged Raoul by the legs across the ground to the market square, then dragged him back (12-08-0015, 0021). Raoul was bleeding from his legs and had blood on his hands (12-08-0015). Raoul estimated the distance he was dragged to be about 60 meters each way (12-08-0021). His skin had been rubbed raw by the ground, and his arms were still tied behind his back. He was sitting on his buttocks when he was dragged. The flesh on his buttocks was raw (12-08-0026). The other soldiers were present and watching the scene (12-08-0021). Raoul was the only civilian to be dragged because he had dared to speak out. The other civilians said nothing because they were afraid (12-08-0021). When Raoul was dragged toward the well at the market square, Alieu Kosiah was standing a little way back on the road (12-08-0021). Kosiah then gave the order to kill the seven civilians and throw them into the well, which was located just before the market (12-08-0015). It was as he was being dragged from the well toward Alieu Kosiah, on the road to the market, that Raoul heard Kosiah give the order to kill them. Raoul was lying on the ground, and Alieu Kosiah was standing behind him (12-08-0021). The civilians were bound with ropes tied very tightly. One of the soldiers then picked up a large rock and smashed it over the head of one of the seven civilians (12-08-0015, 0021). At that moment, Raoul thought they were all dead, because no one was moving on the ground. Shocked, the complainant then closed his eyes. He could no longer see anything but could hear people screaming and crying, as well as gunshots ringing out (12-08-0015, 0021). When he opened his eyes, he no longer saw the six civilians who had been with him (12-08-0015). Pégase then came toward him from the well and lifted him up. At that moment, Raoul heard an S2 soldier—that is, a soldier responsible for liaising between civilians and soldiers—named Cassiopée tell the other soldiers that they had no right to kill civilians, even if they were rebels (12-08-0015, 0021). Pégase and Alieu Kosiah then argued over Raoul’s death. They were both pulling him, each from one side. Both wanted to kill him. Cassiopée then tried to come to his aid (12-08-0022, 0026). CO (*commanding officer*)

Sextant, *the ground commander* of Foya—that is, the person in charge of the soldiers stationed in Foya—was also present. After being released by Pégase, who cut the rope holding him, Raoul was stabbed in the back (12-08-0015, 0022). He specifically stated that "before feeling the pain in [his] back, [he] saw a knife in Alieu Kosiah's hand. Pégase also had a knife in his hand at that moment" (12-08-0022). It was the first time he had seen Alieu Kosiah with a knife. It was a bayonet-style knife (*benknife*) that can be attached to an AK rifle. After being stabbed, Raoul heard CO Sextant and Cassiopée object to the killing of civilians like Raoul, even if they were rebels (12-08-0022). The complainant stated that he did not know, at the time, whether it was Alieu Kosiah or Pégase who had stabbed him (12-08-0016). He was then taken by Cassiopée to his office. He was bleeding profusely. He required two months of medical care, which was provided by his cousin, a nurse, at home (12-08-0015, 0022). A few days after this incident, Raoul noticed that the well had been sealed off by the civilians living in the vicinity. According to him, the well had been sealed because the soldiers had dumped the bodies of the six civilians who had been killed there (12-08-0023). A few weeks later, Raoul learned from Cassiopée—who turned out to be his cousin's boyfriend and was visiting her at the time—that he had been very lucky because the other six civilians had been killed. At that time, Raoul did not know who had stabbed him in the back. It could have been Alieu Kosiah or Pégase. During a conversation with Cassiopée and his cousin, Raoul heard Cassiopée say that it was Alieu Kosiah who had stabbed him (12-08-0016). Cassiopée believed it was Alieu Kosiah because the latter had told her, during a discussion at headquarters, that he wanted Raoul dead (12-08-0028). Following this incident, on Cassiopée's advice and to protect himself, Raoul joined the ULIMO as a soldier, because "he had no other option" (12-08-0016, 0028). Raoul stated that he still has scars on the inside of his left forearm from the "tabé" treatment that was inflicted on him (12-08-0026). Regarding the stab wound he sustained, he indicated that he still sometimes feels pain in his back, as well as in his right arm, when he performs physical labor (12-08-0022).

7.4.2.4 As for Alieu Kosiah's rank at the time of the events, Raoul stated that he did not know it. He had heard that Kosiah was "H&H," meaning *"headquarters and headquarters* commander" (12-08-0022). That said, he did not hear anyone giving orders to the defendant (12-08-0023). Raoul also stated that the defendant was the highest-ranking officer and that he did not need to go through CO Sextant to give an order to a soldier (12-08-0025).

7.4.2.5 Photographs of the complainant's left forearm and the scar on his back are included in the MPC's file (12-08-0052 et seq.). The MPC also contacted the Institute of Forensic Medicine at the University of Bern to

obtain technical information regarding Raoul's scar. The MPC wanted to know whether a medical examination of a scar could provide conclusions regarding the scar's age (11-01-0001 et seq.). Dr. T. answered this question as follows: "A dermal scar is the result of the healing of a skin wound. Once the dermal tissue defect has been consolidated by collagen fibers that replace the original tissue, it is referred to as a scar. Initially, this connective tissue still contains capillaries, giving it a pink appearance that fades after a few months. Beyond this phase, it is no longer possible to estimate the age of a scar" (11-01-0005).

7.4.2.6 When questioned on several occasions during the preliminary investigation regarding the allegations made by Raoul, Alieu Kosiah consistently denied them. He stated that he did not know Raoul and had not been in Foya in May 1993 when the town was captured (13-01-0639, 0182). He also denied having ordered his soldiers to kill prisoners in Foya and throw them into a well. He further stated that he had never witnessed a scene in which a soldier smashed a prisoner's head with a rock, nor had he heard that the bodies of certain civilians had been thrown into a well by combatants (13-01-0183). He also denied carrying a knife and asserted that he had never seen a soldier with a knife (13-01-0262). The defendant stated that he had never stabbed anyone in his entire life. Since he had firearms at his disposal, he did not see why he would have used a knife (13-01-0183). Alieu Kosiah also denied having been "H&H." He claimed he could not have been a "General" in Foya and then *a battalion commander* with the rank of colonel in Zorzor, because, technically, that would have made no sense, in his view (13-01-0187). Regarding Pégase, Alieu Kosiah stated that he knew him very well. He was reportedly a mid-level officer within ULIMO, ranking below the rank of major. Alieu Kosiah reportedly spent time with him in the towns of Voinjama and Foya. The defendant believes that Pégase was mainly in Foya during the war, but he does not know exactly what he did there (13-01-0182). Regarding Cas-siopée, Alieu Kosiah stated that he had probably heard of him, but that he had not been in contact with this person within the ULIMO groups he was associated with (13-01-0179).

7.4.2.7 During his interrogation by the MPC, Olivier stated that Alieu Kosiah was carrying a knife. The knife was in a sheath attached to his belt (12-16-0023).

French proceedings against Pierre for war crimes and/or crimes against humanity

7.4.2.8 During his interrogation by French authorities, Raoul made the following statements: Pégase tied his hands on the orders of Alieu Kosiah. All the men they had brought in from the bush were tied up (D555/3). The other soldiers told Pégase, referring to Raoul: "We have to tie him up because he's strong; he might escape" (D555/3). When Raoul was dragged by his legs across the floor, he was near the S2's office (D555/3). After

killing the six other civilians, Pégase said that Raoul also had to be killed, because he could testify about what had happened (D555/4). Cassiopée, who was the lover of the complainant's cousin, later told the complainant that it was thanks to him that he had not been killed (D555/4). It was Pégase who cut the rope binding Raoul's hands with a knife. Pégase then left because he was upset. After the rope was cut, Raoul was stabbed. He stated that at the time, he did not feel any pain; it developed gradually. It was when fluid began to ooze from his wound that he realized he was injured. When he was stabbed, Raoul did not know who had stabbed him. Later, when he went to Bomi to join the ranks of ULIMO, Cassiopée explained to him that Pégase had stabbed him. When the French investigating judge pointed out to Raoul that he had consistently maintained up to that point that Cassiopée had told him it was Alieu Kosiah who had stabbed him, Raoul replied that he did indeed believe it was Alieu Kosiah who had stabbed him. However, when he arrived in Bomi—that is, in Tubmanburg—Cassiopée reportedly told him that Pégase was responsible, not Alieu Kosiah. While Raoul was still tied up, Alieu Kosiah and Pégase were arguing behind him. The complainant thought that Alieu Kosiah had stabbed him because he was angry, whereas Pégase was calmer (D555/4). A girl in Foya named AA. also reportedly told him, "You thought it was Kosiah who stabbed you, but it was Pégase" (D555/5).

7.4.2.9 When questioned by French authorities as a witness, AA. stated that one day in Foya, after the town had been taken by the ULIMO, Alieu Kosiah and Pégase went out into the surrounding area and brought back many men. Eight people gathered behind the market in Foya. They were tied up and then dragged to the ground (D556/2). Pégase gave the order to kill them (D556/2 and 3). AA. heard "the bodyguards" say that it was Chief Pierre who had given the order to kill (D556/3). She stated that she saw Pégase kill these men, who were then thrown into a well located nearby (D556/2 and 3). The eighth person was large and burly. He begged not to be killed. They then asked him, "You're asking us not to kill you—do you think you can join our ranks?" The man replied that he did. That is how he joined the ranks of ULIMO (D556/2). Later, AA. stated that she was not present when the young man agreed to join the ULIMO forces. One day, when he arrived in the neighborhood carrying a weapon, he explained that he was one of the eight people but that he was in good physical condition, which was why he had been spared and had rejoined ULIMO (D556/3). AA. also stated that at the time of the massacre, she was in her home, which was located about ten meters from the scene, at the end of the Foya market (D556/2). Regarding how the victims were tied up, AA. explained that they had used the
"tabé," tying their arms "behind their backs" with ropes or strings that
cut into the skin. After learning that these men had been killed, she

went to look at the well and saw the bodies piled on top of one another (D556/3). When asked if she had witnessed the executions, she replied: “I saw them where those people were killed near the well. That’s how they said they were killing people, but that God was with the eighth man because he was spared” (sic) (D556/4). AA. then stated that she had seen the seven people who were killed and described how they were killed—by being shot very close to the well. She also said she saw the eighth man being released (D556/4). Alieu Kosiah and Pierre did not kill anyone, but they gave the order to kill and demanded that the man who had been spared be taken away (D556/4).
AA. stated that Pierre did not drag one of the men to the ground. He was not doing anything. He was only giving orders (D556/5). Regarding the person who stabbed Raoul, AA. denied having told Raoul that Pierre was the one who did it (D556/5).

7.4.2.10 During a confrontation hearing between Raoul and AA., the latter stated that she recognized Raoul as the person who had been saved (D570/2). She added that she had seen him subjected to the “tabé” method and dragged by a rope (D570/2). Raoul confirmed that AA. had told him that Pégase was the one who had stabbed him. She reportedly told him that while he thought it was Alieu Kosiah who had stabbed him, it was in fact Pégase (D570/2). AA. confirmed these statements (D570/3). She noted that the soldiers were all masked and wore wigs on their heads, which Raoul in turn confirmed (D570/3). From her house, which was a short distance away, she could clearly see the scene (D570/3). The French investigating judge then noted that AA. had stated during her initial interrogation that Pierre was merely giving orders. She replied that everything that happened originated with Pierre. He gave the orders, and the others carried them out (D570/3).

7.4.2.11 When questioned about these facts by the French authorities, Pierre denied them, declaring that he was innocent. He stated that Alieu Kosiah was his superior, but that he was not under his command. They did not have the same instructions; they did not do “the same things” (D471/10). Pierre stated that he was facing the same political charges as Alieu Kosiah (D471/10).

During the trial

7.4.2.12 Before the Court, Raoul confirmed his criminal complaint against Alieu Kosiah for ordering the “tabé” treatment of seven civilians, including himself, and for ordering the killing of six civilians (40.755.010, 015). Regarding the stab wound, however, he stated that he did not know who had inflicted it on him (40.555.016). Raoul stated that the events took place in 1993, though he was unable to provide a more precise timeframe (40.755.010 s.). When fighting broke out in Foya between the NPFL and ULIMO, civilians fled into the bush. After successfully taking control of Foya, ULIMO sent patrols to the outskirts of the town to bring the civilians back so they

work for them. Raoul was captured in this context while he was at his aunt's farm near Foya (40.755.011). He was taken, along with many other civilians, to Foya. Upon arriving in front of the S2 office, Raoul and six other civilians were then taken to the market square, and it was at that moment that they were subjected to the "tabé" treatment. Their hands were tied behind their backs with ropes, and their elbows were also tied behind them, causing their chests to protrude. The complainant stated that this treatment was inflicted on him by CO (*commanding officer*) Kosiah and other men, including CO Pégase (i.e., Pierre), because he was suspected, along with six other civilians, of being a rebel (755.011, 012, 014, 015). Among the other civilians who were tied up, the complainant knew two of them—R. and S., his cousins (40.755.014). Soldier Cassiopée was in the S2 office and was writing down the names of the civilians who were brought back from the bush (40.755.012). It was CO Kosiah who gave the order to "beat" them, and it was the soldiers who tied them up. As far as Raoul was concerned, CO Kosiah was the most important figure because he had his men with him, and when he gave orders, they carried them out. After being tied up, Raoul was dragged across the floor by his feet by a soldier because he kept repeating that he was not a rebel (40.755.013, 014). The order to drag him was given by CO Kosiah. Raoul was still tied up when he was dragged. He ended up covered in blood (40.755.015). As for the six other civilians, Alieu Kosiah gave the order to kill them because he suspected them of being rebels. Raoul then saw a soldier "crush" the head of one of them with a large rock. He then closed his eyes and heard gunshots. He thought he would be next (40,755,015 s.). When the gunshots rang out, Cassiopée and Sextant arrived. Pegase and Alieu Kosiah then asked why they should spare Raoul when they had already killed the other six. At that moment, the complainant was stabbed but did not see who had stabbed him (40,755,016). When he opened his eyes, he saw the pools of blood left behind by the execution of the six civilians. Their bodies had been thrown into the well in the market square through a maintenance hatch. Raoul did not see the bodies when they were thrown into the well, but he knew they were there because the next day and in the days that followed, swarms of flies circled around due to the decomposition of the bodies, and the well had to be closed (40.755.016). Regarding the stab wound he sustained, the complainant said he later learned who had inflicted it. One day, while he was cleaning the S2's office—a task he was required to perform because he was suspected of being a rebel—Cassiopée, the S2, explained to him that it was Alieu Kosiah who had stabbed him. When asked if there had been any other witnesses to the stabbing, Raoul replied that a woman named AA. had witnessed it and that she had given a statement to the RRR. He added that he did not know what she had told the RRR or the French authorities (40.755.017). When confronted with the fact that he had told the French authorities that Pégase had stabbed him, the complainant replied that at the time he was working as a night security guard and had been questioned that morning by the French authorities while he was still half-asleep. Communication was very poor,

and he claimed he had not understood anything that was said to him due to translation issues. He said he was shocked by the statements attributed to him, as transcribed in the French proceedings. He asserted that he had not been able to review the statements that were recorded in the minutes and that the correct version of events was the one he had reported to the Swiss authorities (40.755.017). Raoul stated that he did not know whether what Cassiopée had told him was the truth or not. Regarding the weapon used, he indicated that it was a bayonet (40.755.017). The wound required nearly ten stitches (40.755.018). Alieu Kosiah, Pégase, and the other soldiers left him there as he was bleeding to death. The complainant's cousin treated him. The complainant stated that he has suffered lasting effects from the stab wound, as he has been unable to perform physical labor since then. Furthermore, due to the "tabé" treatment, he has difficulty using his left arm and right leg. The complainant stated that he does not have the money to receive proper medical treatment (40.755.013, 018).

7.4.2.13 When questioned by the Court about these facts, Alieu Kosiah once again denied them, asserting that they were fabricated by Raoul (40.731.0047, 0049). He stated that he was likely between Todee and Bomi in July 1993. According to him, ULIMO had taken Todee in January or February 1993 and had remained there for at least four to five months. He then reportedly went to Bomi and stayed there until the end of 1993 or the beginning of 1994 (40.731.0047). As for Pierre, alias Pégase, he was reportedly a soldier based in Foya who was his subordinate (40.731.048). Alieu Kosiah confirmed that a soldier named Cassiopée was indeed a member of ULIMO but stated that he did not know him. He had heard that Cassiopée was an S2. Cassiopée must have been his subordinate in the chain of command; otherwise, he would have known him better. Alieu Kosiah also confirmed that he was familiar with the song "Kele Kele," which was sung when the soldiers went to the front lines. Regarding the stabbing of which he is accused, the defendant stated that the Court had evidence—as demonstrated by the inclusion of documents from the French proceedings in the case file—that this was a conspiracy (40.73.0049).

7.4.2.14 Testifying before the Court as a witness, Jean, alias Cassiopée, confirmed that he had been appointed S2 in Foya in 1993, within the ULIMO faction (40.769.004). At the time of his appointment, he stated that there was a good atmosphere between the ULIMO soldiers and the civilians, and that everything was under control (40.769.004). Foya was captured in 1993. When the ULIMO forces entered the town under Sextant's command, there was no fighting (40.769.004 s.). In his capacity as S2, he received complaints from civilians and reported them to the regional commander, who took action (40.769.005). Jean stated that he was aware of the practice
"tabé," which consisted of tying a person up, but stated that he had never seen anyone subjected to this treatment. He also indicated that he had known Alieu Kosiah during the civil war. He saw him in Foya after the town was captured, in

1994 or 1995. According to him, the defendant would go to Foya from time to time, but he was not stationed there (40.769.006). He was part of the Voinjama command staff under

Vincent. During the war, he was reportedly stationed only in Voinjama and Zorzor. Jean also stated that he knew Pierre, alias Pégase, who was *a battle front commander* in Foya and held a rank lower than that of Alieu Kosiah (40.769.007). When confronted with Raoul, Jean stated that he did not know him. He also stated that he did not know Raoul's cousin, whom Raoul claimed was named BB. According to him, his two girlfriends during the war were named CC. and DD. The witness stated that he had never witnessed any violence inflicted on civilians by Alieu Kosiah or ordered by him. Nor had he heard anything about such incidents (40.769.008). He confirmed that he was in Foya in 1993 but had never heard of the mistreatment of seven civilians, including Raoul, whom he does not know. Nor was he aware of the murder of some of them. He did, however, state that many cases had come through his office and that he did not know all the people on whose behalf he had intervened. Jean also denied having been aware that Raoul had been stabbed. He claimed not to remember telling Raoul who had stabbed him (40.769.010). While some soldiers may indeed have engaged in reprehensible behavior that required his intervention, to the best of his knowledge, Alieu Kosiah was not one of them (40.769.009). The witness repeated several times that it could not have been Alieu Kosiah (40.769.010). He stated that he was certain Alieu Kosiah was not there in 1993, at the time when civilians were allegedly subjected to mistreatment by certain soldiers (40.769.010).

7.4.2.15 When a photograph of Jean's redacted ID card was shown to Raoul during the trial, he immediately identified it correctly (40.755.055). Furthermore, when he was confronted with the witness, he confirmed that he recognized him (40.769.008).

7.4.2.16 Alfred, alias Perseus, a former ULIMO soldier stationed in Foya during the war, was also heard during the proceedings. He stated that, until the disarmament, everything had gone smoothly in Foya, which was a commercial town (40.767.005 s.). He himself participated in the capture of Foya, under the command of Maurice, alias Sextant (40.767.006 s.). The soldiers reportedly treated the civilians well at that time (40,767,007). Alfred stated that he captured Zorzor, Voinjama, Kolahun, and then Foya in 1993. At that time, Alieu Kosiah was reportedly in Bomi. He reportedly joined them in 1994 as a rank-and-file officer, serving as *a "floating officer*." He was not part of the unit that went to capture Lofa. He remained as military commander in Bomi, a town he had captured. When he arrived in Foya, Alieu Kosiah was not *the Headquarters & Headquarters Commander* (H&H) (40.767.009). He was under the command of Maurice, alias Sextant (40.767.010). When asked about the events described by Raoul, the witness stated that he had no knowledge of them and repeated that Alieu Kosiah was not in Foya in 1993 (40.767.011). As for Pégase, he remembers him as being very young during the war, like a child soldier (40.767.011).

7.4.3 Law and Assessment of Evidence

Order to Inflict Ill-Treatment

7.4.3.1 Pursuant to Art. 3 common to the General Provisions, para. 1, item 1, subitem a, attacks on life and physical integrity—including murder in all its forms, mutilation, cruel treatment, torture, and cruel, inhuman, or degrading punishment—are and remain prohibited at all times and in all places with respect to persons who do not directly participate in hostilities.

Pursuant to Article 4, paragraph 2, subparagraph a of Protocol II, the following acts are and remain prohibited at all times and in all places with respect to persons who are not directly participating or are no longer participating in hostilities, whether or not they are deprived of their liberty: attacks on their life, health, and physical or mental well-being, in particular murder, as well as cruel treatment such as torture, mutilation, or any form of corporal punishment.

7.4.3.2 The Geneva Conventions contain no definition or explanation of the offenses of torture and cruel treatment. The ICTY defines the latter as an intentional act or omission—that is, an act that, objectively speaking, is deliberate and not accidental—which causes severe physical or mental suffering or pain or constitutes a serious violation of human dignity (ICTY, Delalic et al. Case, Judgment of November 16, 1998, para. 552).

7.4.3.3 With regard to torture, the ICTY has noted that international law, both conventional and customary, prohibits torture in times of peace as well as during armed conflict. This offense is characterized by the following elements: 1) it consists of inflicting, by an act or omission, severe pain or suffering, whether physical or mental; 2) the act or omission is deliberate; 3) the act must serve another purpose, that is, the pain must be inflicted in order to achieve a specific objective. According to the ICTY, the following purposes are part of customary international law: to obtain information or a confession; to punish, intimidate, or coerce the victim or a third party; or to discriminate against the victim or a third party, regardless of the motive. It is sufficient that the stated purpose was one of the motives for the act, but it is not necessary that it was the sole or primary purpose. Finally, the ICTY holds that, under international humanitarian law, the presence of a State agent or any other person vested with authority is not required for an act to constitute torture under international humanitarian law. The defining characteristics of the crime of torture are, in fact, to be found in the nature of the act committed, and not in the status of its perpetrator (ICTY, Kunarac Case, Judgment of February 22, 2011, para. 465 et seq.).

The ICC, for its part, defines the crime of torture as a crime against humanity or a war crime committed by an act or omission; regardless of the category into which it is classified, the crime of torture is always characterized by the fact that "the perpetrator inflicts severe pain or suffering, whether physical or mental,

to one or more persons." The severity implies a significant degree of pain and suffering and may result from a single act or from a series of acts considered as a whole. It is not necessary to prove that the pain or suffering is linked to a physical injury, damage to a bodily organ, or death. The consequences of torture need not be visible, and the injury need not be permanent. With regard to torture as a war crime, detention—or the element of control—is not required. The war crime may thus also be committed against persons who are not actively participating in hostilities, including members of armed forces who have laid down their arms and have been rendered incapable of combat. From a subjective perspective, a crime against humanity also requires that the perpetrator have inflicted pain or suffering for a specific purpose, such as to obtain information or a confession, to punish, intimidate, or coerce the victim, or for any other reason based on discrimination of any kind. This specific purpose must be at least partly behind the perpetrator's conduct, but it need not be the primary or sole purpose. The perpetrator must also be aware of the factual circumstances establishing the victim's status (ICC, Ongwen Case, Judgment of February 4, 2021, para. 2700 et seq.).

In connection with the introduction of Art. *264a*(1)(f) and Art. *264c*(1)(c) of the Swiss Criminal Code (SCC), which criminalize torture as a crime against humanity and a war crime, respectively, the Federal Council, drawing on the ICC's position, defined torture as "the intentional infliction of severe physical or mental pain or suffering on a person in one's custody or under one's control." According to this definition, torture need not necessarily have been committed for a specific purpose; what matters is not the objective but the intensity of the pain or suffering caused (Message on the Implementation of the Rome Statute, FF 2008 3521).

7.4.3.4 With regard to the legal developments related to Art. 18 aCPM concerning an order given by a superior, these are addressed in para. 7.2.3.4 above.

7.4.3.5 In this case, during his interview with the Office of the Attorney General, Raoul provided descriptive details of the defendant that were frequently cited by other participants in the proceedings, namely his *bulging eyes*, his stocky build without excess fat, his dark skin, the fact that he wore a cap, and the glove he wore on one hand. He identified the photograph of Alieu Kosiah on one of the photo lineups presented to him, stating that the face reminded him of someone. When confronted with the defendant, he further confirmed that the defendant was the perpetrator of the acts he had reported. These elements are already sufficient to consider credible the fact that the complainant came into contact with the defendant during the war.

7.4.3.6 Regarding the mistreatment she and six other civilians endured, the complainant has been consistent in her accounts before the Office of the Prosecutor and the Court on numerous points: the location where she was when she was arrested, the circumstances

in which he was apprehended (soldiers went to retrieve the civilians who were hiding in the bush and brought them back to town), the mistreatment he suffered, namely the “tabé” treatment; the reason why the seven civilians were subjected to the “tabé” treatment—namely, that they were suspected of being rebels; the fact that he was the only one dragged along the ground because he had tried to defend himself by saying he was not a rebel; and the names of some of the soldiers present. During the proceedings and in response to a question from the Court, Raoul clarified that it was Alieu Kosiah who had ordered that the civilians be tied up and that he himself be dragged along the ground. His transcript of the hearing during the preliminary investigation merely implied that Alieu Kosiah had given the order. The Court considers Raoul’s account to be credible. Indeed, in his explanations, he clearly distinguishes between what he saw and heard and what he did not see or what was reported to him (particularly regarding the execution of the civilians and the stab wound he sustained). In this case, the prosecution stated unequivocally that it was Alieu Kosiah who gave the order to tie him up and drag him along the ground. The defendant received orders from no one, and his own orders were carried out. Furthermore, the motive behind the brutal treatment of the seven civilians echoes other events described in the proceedings (see *supra*, para. 7.2: the practice of singling out civilians during the capture of a town to mistreat or execute them by accusing them of belonging to the NPFL rebel faction, the real aim being to instill terror in order to establish ULIMO’s authority). Although he was unable to be more specific, the year 1993 that Raoul indicated is entirely plausible in light of his account, as Foya was captured in June or July of that year. It should also be noted that these statements are corroborated by photographs in the case file showing his left forearm, which attest to the injuries he sustained. Finally, the fact that Raoul immediately recognized Jean from the redacted copy of Jean’s identification document (which had never before been submitted to any party to the proceedings) further lends credence to his account. Based on the foregoing, Raoul’s explanations convinced the Court of their credibility.

7.4.3.7 The few contradictions that were noted in Raoul’s statements are not sufficient to call this conviction into question. Admittedly, the complainant stated in the French proceedings that it was Pierre, alias Pégase, who had tied him up, whereas according to his statements in Switzerland, it was the soldiers who tied him up and Pierre, alias Pégase, who dragged him along the ground. These discrepancies can easily be explained by the passage of time and are irrelevant to determining the reality of this mistreatment.

7.4.3.8 As for the witness AA., who was interviewed by the French authorities, her account must be evaluated with great caution. Indeed, she does not seem to distinguish between what she saw and what she was told. She also recanted her version of events during the confrontation with Raoul. The Court therefore considers that her statements to the French authorities

are not sufficiently reliable to be taken into account for the purpose of establishing the facts.

7.4.3.9 In his statement, the defendant denies having been in Foya at the time the town was taken by ULIMO, claiming that he was between Todee and Bomi at the time. The Court does not accept this argument, as already noted in paragraphs 7.2.3.7 and 7.3.3.5 above. The Court finds that Alieu Kosiah accompanied Vincent to Lofa in March 1993 to support him in capturing the towns in the county (with the exception of Zorzor, which had been captured before their arrival). The testimony of witnesses Jean and Alfred is not sufficient to call this finding into question. Indeed, the former was vague in his answers and repeatedly asked the presiding judge to repeat the questions—some of which were extremely simple—that were put to him. In contrast, when it came to questions concerning Alieu Kosiah, his involvement in wartime atrocities, and his presence in Lofa, Jean answered very quickly and without the slightest hesitation. He also placed Alieu Kosiah at the time of the capture of Foya in 1993 between Zorzor and Voinjama, whereas the defendant insisted that he had been between Bomi and Todee during that period. The defendant and the witness therefore do not agree in their accounts. Alfred's testimony was no more convincing, as he, too, seemed to have memorized his lines to recite them before the Court. In both cases, the Court noted that the two witnesses, although they knew Alieu Kosiah only vaguely, were able to assert, without a shadow of a doubt, that the defendant could not have been in Foya at the time the town was captured or shortly thereafter. As for their position regarding the events alleged by Raoul, it is also not credible: they stated that Foya was peaceful during the war, whereas it is established that the town was the scene of countless violations of the laws of war against civilians (see 14-01-0187). The Court therefore rejects the defense's alibi and finds that Alieu Kosiah was indeed in Foya in July 1993, a fact corroborated not only by the statements of Pierre, alias Pégase, but also by the testimony of another complainant in the proceedings, namely Georges (see *infra*, para. 7.7).

7.4.3.10 As for the defendant's status as a superior who issued the order, this can be inferred from the circumstances: the fact that Alieu Kosiah gave an order and that it was carried out demonstrates his hierarchical superiority. The question of what rank Alieu Kosiah actually held is irrelevant for the application of Art. 18 aCPM, especially since the ULIMO's military hierarchy remained rather loose.

7.4.3.11 It is therefore deemed established that Alieu Kosiah ordered his soldiers to tie up seven people and to drag one of them—Raoul—along the ground for a distance of several dozen meters, and that it was this order that prompted the soldiers to act. The civilian status of these individuals is also established,

since there is no evidence in the record to suggest that these individuals could have been armed.

With regard to the legal characterization of the treatment inflicted on Raoul and the six other civilians, one might ask whether it falls within the definition of torture adopted by the ICTY and the ICC, namely the deliberate infliction, by act or omission, of severe physical or mental pain or suffering for the purpose of intimidation. However, since the indictment did not describe the specific motive the perpetrator must have had in committing the crime of torture, this question may remain open. In any case, the act of tying a human being in the "tabé" position—that is, binding their elbows behind their back and their hands in front (for an illustration of this treatment, see the video included in exhibits 40.551.428 through 430) and dragging them along the ground, are acts that are likely to cause severe physical pain and therefore constitute cruel treatment.

Subjectively, Alieu Kosiah acted intentionally. He knew that the order given—which consisted of committing a crime, namely cruel treatment—would be carried out by the soldiers. He was also aware that the mistreated individuals were civilians; the accusation that they belonged to an enemy faction was merely a pretext for instilling terror and asserting his authority.

The events took place within the context of the internal armed conflict that occurred in Liberia during the first civil war, a fact of which the defendant was aware.

7.4.3.12 In conclusion, Alieu Kosiah must be convicted of ordering the cruel treatment of seven civilians within the meaning of Art. 109(1) and Art. 108(2) of the former Swiss Military Criminal Code (aCPM) in conjunction with Art. 18 of the former aCPM, *together* with Art. 3(1)(1)(a) common to the General Provisions and Art. 4(2)(a) of Part II of the Swiss Criminal Code (PA II).

Order to Kill the Six Civilians

7.4.3.13 For the legal considerations regarding murder (Art. 3(1)(1)(a), common to the General Provisions, and Art. 4(2)(a) of PA II) and the superior's order (Art. 18 of the former Swiss Military Penal Code), reference is made to paragraphs 7.2.3.1 through 7.2.3.4 above.

7.4.3.14 Regarding the order to kill the six civilians, Raoul was once again consistent in his explanations on numerous points. He stated, both before the Office of the Attorney General and before the Court, that he had heard the defendant give the order to kill the seven civilians. He described the scene in the same detail during his hearings, particularly regarding how the first civilian was executed, as well as the fact that he then closed his eyes and heard gunshots. Raoul distinguished between what he saw and what he did not see. Thus, he reiterated before the Court that he had not been able to observe the murder of the six other civilians, but had only heard gunshots. He also admitted that he had not seen the bodies, but had only noticed bloodstains on the ground that

bore witness to the murders that had been committed. He further acknowledged that he had not seen the bodies

in the well. This distinction made by the prosecution between what he perceived visually and what he heard or inferred, as well as the consistency of his statements over time, lends credibility to his account, which the Court considers highly reliable.

7.4.3.15 With regard to the statements of AA., reference is made to paragraph 7.4.3.8 above. The Court cannot rely on her statements to establish the facts, even though it may be acknowledged that she was at least aware of the events reported by Raoul.

7.4.3.16 With regard to the statements of witnesses Jean and Alfred concerning the alleged facts, reference is made to paragraph 7.4.3.9 above.

7.4.3.17 The defense considers it illogical that the six civilians were killed while the complainant was spared, given that he was the only one to protest the mistreatment inflicted. In this case, the Court has found that the acts committed by the armed factions against civilians defied all logic and were, on the contrary, entirely arbitrary and haphazard; thus, the argument raised is not sufficient to shake the Court's conviction.

7.4.3.18 That being said, the Court finds it established that Alieu Kosiah ordered the soldiers to kill the six civilians and that it was because of this order that they carried it out. Admittedly, Raoul was an eyewitness to only one execution. That said, the scene he described leaves no room for doubt as to the occurrence of the murders. Indeed, when he reopened his eyes—after having closed them in the face of the horror—he saw the pools of blood that attested to the killing of the six civilians.

7.4.3.19 Regarding Alieu Kosiah's status as a superior, reference is made to recital 7.4.3.10 above.

7.4.3.20 Subjectively, Alieu Kosiah acted intentionally. He knew that by ordering the soldiers to kill the six civilians, that order would be carried out. It may also be held that he knew the victims were civilians, since no factual circumstances supported the claim that they were part of the NPFL faction—or any other faction—an argument that had been used as a pretext to justify these unprovoked executions.

Finally, these events took place within the context of the armed conflict that occurred in Liberia during the first civil war, a fact of which Alieu Kosiah was aware.

7.4.3.21 In conclusion, Alieu Kosiah will be found guilty of ordering the murder of six civilians under Art. 109(1) and Art. 108(2) of the former Swiss Military Criminal Code (aCPM), in conjunction with Art. 18 of the aCPM, *together* with Art. 3(1)(1)(a) common to the General Provisions and Art. 4(2)(a) of Part II of the Penal Code (PA II).

Stabbing

7.4.3.22 Pursuant to Article 3, common paragraph 1, item 1, subparagraph a, attacks on life and physical integrity—including murder in all its forms, mutilation, cruel treatment, torture, and cruel, inhuman, or degrading punishment—are and remain prohibited at all times and in all places against persons not directly participating in hostilities.

Pursuant to Article 4, paragraph 2, subparagraph (a) of Protocol II, the following acts are and remain prohibited at all times and in all places with respect to persons who are not directly participating or are no longer participating in hostilities, whether or not they are deprived of their liberty: attacks on their life, health, and physical or mental well-being, in particular murder, as well as cruel treatment such as torture, mutilation, or any form of corporal punishment.

7.4.3.23 The sentence may be mitigated (Art. 46 aCPM) for a person who has carried out their criminal activity to the end but without achieving the result necessary for the crime or offense to be completed (Art. *19a,* para. 1 aCPM).

7.4.3.24 Pursuant to Art. 23 aCPM, the sentence may be reduced (Art. 46 aCPM) for a person who intentionally assisted in the commission of a felony or misdemeanor.

According to case law, an accomplice is a secondary participant who assists in the commission of a felony or misdemeanor (Art. 25 of the Swiss Penal Code). Complicity presupposes that the participant makes a causal contribution to the principal offender's commission of the offense, such that the events would not have unfolded in the same manner without this assistance. It is not necessary for this contribution to be an *indispensable* condition for the commission of the offense. It is sufficient that it increases the chances of success of the principal act (ATF 132 IV 49, para. 1.1). The accomplice's contribution may take the form of material assistance and support (physical complicity) (ATF 121 IV 109, para. 3). Complicity may also be psychological in nature, in the form of intellectual or moral support (MARC FORSTER, Basler Kommentar StGB I [hereinafter: BSK-StGB I], 4e ed., 2018, no. 23 et seq. *on* Art. 25 of the Swiss Criminal Code and the references cited). Merely approving the act committed by a third party, however, does not constitute psychological complicity (ATF 113 IV 84, para. 4). A person who merely is present at the scene of the planned offense, thereby signaling approval to the other participants and reinforcing their resolve to commit the act, must be classified as an accomplice (Federal Supreme Court decision 6P.40/2005 of September1, 2005, para. 2.2).

7.4.3.25 In contrast to an accomplice, who intentionally assists the perpetrator in committing a felony or misdemeanor through incidental participation, a co-perpetrator is someone who collaborates, intentionally and in a decisive manner,

with other persons in the decision to commit an offense, its organization, or its execution, to the extent that they appear to be one of the principal participants. It must be the case that, based on the circumstances of the specific case, the co-perpetrator's contribution appears essential to the commission of the offense. Mere intent regarding the act is not sufficient; however, it is not necessary for the co-perpetrator to have actually participated in the commission of the act or to have been able to influence it. Co-perpetration presupposes a joint decision, which need not necessarily be express but may also result from conclusive acts, with eventual intent regarding the result being sufficient. It is not necessary for the co-perpetrator to participate in the planning of the scheme; they may join it at a later stage. Nor is it necessary for the act to be premeditated; the co-perpetrator may join in while it is being carried out. What is decisive is that the co-perpetrator has participated in the decision leading to the offense or in the commission of the offense itself, under conditions or to an extent that make him appear not as a secondary but as a principal participant (ATF 135 IV 152, para. 2.3.1; 130 IV 58, para. 9.2.1; 125 IV 134, para. 3a).

7.4.3.26 In this case, given the contradictory statements made by Raoul to the Swiss and French authorities regarding the identity of the person who stabbed him, a reasonable doubt remains, and this doubt must be resolved in favor of the defendant.

7.4.3.27 During the proceedings, the Court reserved the right, pursuant to Art. 344 of the Code of Criminal Procedure, to assess the charges against the defendant also from the perspective of joint criminal conduct, complicity, or conduct by omission.

Regarding joint commission, the indictment does not describe how Alieu Kosiah allegedly played a decisive role in the commission of the offense or participated in the decision to commit it, nor does it specify with which other perpetrator the offense was allegedly committed. Alieu Kosiah's presence at the scene and his expression of satisfaction would not be sufficient to establish joint commission.

Nor do the facts described in the indictment support a finding of Alieu Kosiah's complicity. On the one hand, there is no mention that Pierre, alias Pégase, was the principal perpetrator of the offense, not to mention that there is doubt as to who actually carried out the stabbing. Furthermore, it is not stated how, in this particular case, the defendant provided assistance or material support for the commission of the offense.

Finally, with regard to the charge of omission, it should first be noted that the aCPM, in the version in force at the time of the alleged acts, did not expressly criminalize this form of offense. It would therefore be necessary to determine whether the offense by omission could be established based on the case law in force at the time of the events. This question, however, may remain open in this case. Indeed, the commission of an offense by omission presupposes a position of responsibility. Yet, the indictment in no way accuses the defendant of failing

to

preventing the commission of the offense, nor does it specify what he should have done or under what duty to act.

7.4.3.28 In conclusion, Alieu Kosiah is acquitted of the attempted murder of a civilian, and, in the alternative, of causing bodily harm, or harm to health and physical well-being, pursuant to Art. 109(1) and Art. 108(2)(a) of the Military Penal Code (aCPM) *in conjunction with* Art. 3(1)(1)(a) common to the General Provisions and Art. 4, item 2, subitem a of PA II.

7.5 Ordering and directing a forced transport of coffee, cocoa, and palm oil by civilians from Foya to Solomba, and from there to the Guinean border

7.5.1 Charge

Pursuant to section 1.3.7 of the indictment, Alieu Kosiah is charged with having ordered and directed a forced transport of coffee, cocoa, and palm oil by civilians from Foya to Solomba between July and August 1993.

7.5.2 Evidence

During the preliminary investigation

7.5.2.1 During his interrogation by the MPC, Raoul stated that, two weeks after the incident that resulted in the deaths of six civilians and his back injury (see *supra*, para. 7.4), he was asked to transport coffee, cocoa, and palm oil along with other civilians. Since there were no more cars in Foya, S2 Cassiopée—who was responsible for liaising between the civilians and the soldiers—went from house to house looking for civilians who could carry the goods (12-08-0015, 0027). Raoul was at his cousin's house when Cassiopée came to pick him up. Cassiopée reportedly told him that he had received an order from "Headquarter Headquarter"—that is, from Alieu Kosiah—to carry out a transport mission with civilians to Solomba, on the border with Guinea (12-08-0027, 0011). Raoul then went with Cassiopée to ULIMO headquarters, where the goods to be transported—which had been taken from civilians' homes—were located (12-08-0027). The transport was allegedly organized by Alieu Kosiah, Cassiopée, and Sextant. Orders were given by Cassiopée, the S2. Raoul was forced to carry a sack of coffee on his head. To lift it and place it on his head, the complainant stated that he had to use both hands (12-08-0027). The group of about fifty civilians, consisting of men and young boys around fifteen years old, had to march in single file, with soldiers flanking them on either side (12-08-0015, 0027). There were fewer soldiers accompanying them than there were civilians (12-08-0028). They had to walk from Foya to the border with Guinea, at Solomba, near the Makona River (12-08-0015). They left in the morning and arrived at the border the same day, around 4:00 p.m. Raoul estimated the walk took between eight and nine hours. The soldiers behaved "cruelly" when the civilians did not walk fast enough. They whipped them with rattan, a flexible stick. For his part, Raoul, who was still injured in the back (see *supra*, para.

7.4*)*,

tried to walk quickly to avoid being struck. Alieu Ko-siah, Sextant, and Cassiopée walked behind the civilians with their *bodyguards*. Raoul stated that the trio did not strike any civilians. However, from the rear of the column, they could see soldiers beating the civilians to make them move faster, and they refrained from intervening to stop them. Upon reaching the border, the civilians waited under the watch of a few soldiers while Alieu Kosiah, Sextant, Cassiopée, and their *bodyguards* crossed the river by ferry to Guinea to sell the goods they were transporting (12-08-0015, 0028). They then left their weapons with the Guinean soldiers after noting down their serial numbers so they could retrieve them upon their return. Sextant, Cassiopée, and their *bodyguards* returned from Guinea one to two hours later with ammunition, which the civilians were to carry to Foya (12-08-0015, 0028). Raoul stated that he did not see Alieu Kosiah return (12-08-0015). Cassiopée reportedly told him that Alieu Kosiah had headed toward Voinjama. The civilians then set off again for Foya with the ammunition brought back from Guinea and arrived late at night (12-08-0028).

7.5.2.2 When questioned several times about the allegations made by Raoul, Alieu Kosiah denied them. He stated that he did not know Raoul, whom he claimed to have seen for the first time during the proceedings (13-01-0641). In response to Raoul's statement that, while he himself was a soldier, he had once seen Alieu Kosiah cross the border with his "sidegun" strapped to his leg (12-08-0028), the defendant argued that soldiers were not allowed to cross the border with their weapons (13-01-0432). Indeed, if that had been the case, they would have been arrested by Guinean soldiers, since they were on Guinean territory (13-01-0102). The defendant believes that Raoul is trying to take revenge "against anyone" because he was captured as an NPFL soldier by the ULIMO (13-01-0105).

7.5.2.3 When asked about the forced transport of goods by civilians during the war, Olivier admitted that all factions, including ULIMO, had resorted to this practice. Since there were no vehicles, soldiers forced civilians to carry their weapons and ammunition all the way to the front lines. Civilians were also required to carry food or other goods (rice, oil, plantains, salt, etc.). There were also small generators. Civilians were forced to make these trips because the soldiers were armed. The trips lasted between three and six hours, according to the witness. ULIMO soldiers used whatever civilians they found on the spot when they needed to make a transport (12-16-0032). The goods were transported, in particular, to the border with Guinea (at Guéckédou, Macenta, and Nzérékoré) to be sold and to buy food (12-16-0032 et seq.). The civilians would stop at the border, and the soldiers would carry the goods across to the other side. The civilians thus transported the goods to the banks of the Makona River in Solomba, and from there, the goods were loaded onto a kind of canoe to reach the opposite bank. According to Olivier's statements, the need to rely on civilians

to carry out the transports stemmed from the fact that, due to the war, there were no cars in certain areas. Furthermore, a car made noise and could therefore be spotted by the enemy. There were also places that were inaccessible by road. For trips to Solomba, ULIMO used civilians because they did not always have cars available. Olivier stated that he remembered making a transport from the Foya district to Solomba. The trip took about two hours. The civilians were carrying oil and bags of coffee or cocoa. According to the witness, when a civilian grew tired, he would set down his load to rest, and the group would wait for him. The convoy was not organized. Some walked on the left side of the road, others on the right, and still others in the middle of the roadway (12-16-0033). Olivier maintained that Alieu Kosiah had never participated in the transport of goods by civilians (12-16-0035).

7.5.2.4 Bernard, the defendant's former bodyguard, also acknowledged that goods and ammunition were transported during the first civil war in Liberia. He stated, however, that he was not aware of Alieu Kosiah having participated in convoys in which civilians were forced to carry loads (12-19-0072).

During the trial

7.5.2.5 When questioned by the Court, Raoul confirmed his testimony against Alieu Kosiah. He stated that the transport took place one morning in 1993, though he could not specify the exact date (40.755.018 s.). According to his account, he was summoned by the S2 while he was in the S2's office cleaning. The S2 reportedly told him that he had to transport the cargo to Solomba. The cargo was already on site, in the S2's office, and the convoy departed from there for Solomba. The complainant stated that the transport had been arranged by S2 and H&H (i.e., Alieu Kosiah), but that the order to carry out the transport had been issued by S2. However, since Alieu Kosiah was one of *the "big men"* of the Strike Force (a ULIMO battalion), once he was on site, he was clearly the commander giving orders. Raoul stated that he did not see Alieu Kosiah give the order for the transport (40.755.019). Kosiah was, however, present during the journey to Solomba and did not return with the group of civilians to Foya (40.755.019 s.). There was no one of higher rank than him during the transport. Raoul stated that he had no choice but to participate in this transport because if he had refused,
"he would have lost his life" (40.755.020). The civilians were forced to carry cocoa,
coffee, and oil. These goods, which belonged to them, were taken from them to be sold in Guinea. Cassiopée, the S2, was in charge of finding civilians when the soldiers needed labor. In this instance, he was the one who organized the transport and accompanied the civilians (40.755.020 s.). He also gathered the soldiers to supervise the civilians during the transport. During the transport, the civilians had to carry their loads and walk quickly; otherwise,

"they would be putting themselves in danger" (40.755.021). The soldiers received orders from the S2. For his part, Raoul stated that he had to carry coffee on his head. He estimated its weight at 25 kilograms (40.755.021). According to the complainant, the round trip took approximately seven hours of walking. The road was passable but had been overgrown with brush. Civilians were allowed to take breaks during the journey whenever the soldiers stopped to rest. When they passed near a river, they could drink a little water, but then they had to keep moving. Soldiers were stationed at the front, middle, and rear of the convoy to protect the civilians and the goods. The convoy moved in single file. Raoul noted that some soldiers behaved very arrogantly toward the civilians. Some beat or whipped civilians who wanted to stop, while others were more understanding and let them drink (40.755.022, 024). When asked about Alieu Kosiah's behavior, Raoul stated that he treated civilians badly (40.755.022). When asked whether he beat civilians, the complainant's answer was unclear: he seemed to say yes (using the singular, i.e., "he"), but then used the plural when referring to the soldiers. (40.755.022 s.). The soldiers were armed with RPGs (rocket-propelled grenades), AK-47s, and heavy machine guns. Raoul claimed that he was threatened during the transport by ULIMO soldiers. In particular, he was warned, even before departure, that if he asked to stop or if he lingered, he would be beaten. The complainant does not recall anyone being killed during the transport. According to him, Alieu Kosiah did not intervene during the transport to prevent civilians from being mistreated or beaten by soldiers (40.755.023). Once the civilians had unloaded the goods in Solomba, they immediately returned to Foya, arriving around 10 or 11 p.m. (40.755.022). The complainant added that he was not paid for this transport, since it constituted "forced labor" (40.755.024).

7.5.2.6 When questioned by the Court about these facts, Alieu Kosiah disputed them, stating that if he had carried out this transport, he would have done so by car. He indicated that he did not recall whether he had traveled to Foya between July and August 1993. If he did go there during that period, it was to relax when he was not on the front lines, since, according to him, there was no fighting. However, he claimed he was never stationed there. He went there only occasionally, for a day or two. Alieu Kosiah stated that he was stationed in Voinjama. When asked about the distance between Foya and Solomba, the defendant estimated it to be 18 to 20 kilometers. He was unable to say how long it would take to walk from Foya to Solomba since, if he had made that trip, it would have been by car or motorcycle. Regarding the condition of the road, the defendant stated that it was narrow and that there were many ditches to cross. For example, it was impassable for a truck during the rainy season (40.731.050). With a four-wheel-drive vehicle, however, he believed it might be possible. In Liberia, during the rainy season—especially from June through August—the roads are extremely difficult to navigate due to heavy rainfall. More specifically

Regarding the charges against him, Alieu Kosiah stated that he had never heard of this shipment because, in his opinion, it never existed. Speaking more generally about the transport of goods between Foya and Solomba, the defendant stated that there was “regular civilian activity involving trips back and forth to the border” (40.731.051). However, he had never seen civilians forced to participate in such shipments (40.731.051 s.). He did not deny that it was possible that soldiers had forced civilians to transport goods, but he asserted that he, for his part, had never seen this happen and had never participated in it. He claimed never to have heard that, under ULIMO control, civilians had been beaten for transporting goods. In his view, while ULIMO certainly did not wage a “clean” war, the root of the problem was that they were of Mandingo ethnicity (40.731.053).

7.5.2.7 When questioned by the Court about the issue of civilians transporting goods, Olivier confirmed that it was “obvious” that ULIMO soldiers resorted to this practice because they lacked vehicles. Civilians were forced to participate in such transports because the soldiers were armed (40.761.009). Sometimes, civilians received rice as compensation for the transport, but they never received any money (40.761.010). The witness stated that he had never seen Alieu Kosiah participate in or order the transport of goods with civilians (40.761.009 s.). According to him, Kosiah was a commander who showed empathy toward people (40.761.009).

7.5.2.8 When questioned by the Court, Jean, alias Cassiopée, a former ULIMO soldier responsible for liaising between soldiers and civilians in Foya, stated that during the war, some civilians had come to him to complain that they had been forced to carry loads from Foya to the Guinean border. According to him, these transports took place shortly after the capture of Foya but quickly ceased. Subsequently, if a soldier wanted a civilian to carry something, he had to speak with the civilian and agree on a price and the terms of transport (40.769.005). Regarding more specifically the allegations made by Raoul, Jean stated that civilian transport of goods to Guinea had indeed taken place from Foya (40.769.011). The goods, which had been purchased in Kolahun in particular, were brought there to be sold (40.769.011 s.). These shipments were reportedly based on an agreement between the *commissioner* and the civilians, and the latter were paid for their participation. The witness stated that he did not know whether the civilians had been mistreated during the shipments (40.769.011). When asked how ULIMO acquired the goods they resold in Guinea, Jean stated that, as far as he was concerned, it was his wife who ran the business and earned the money. Regarding the other soldiers, he indicated that he could not answer (40.769.012).

7.5.2.9 When questioned in turn by the Court about the transport of goods by civilians during the first civil war in Liberia, Alfred, a former ULIMO soldier

ULIMO soldier based in Foya, stated that civilian transport of goods had indeed taken place, but that civilians were not forced to participate. These transports reportedly resulted from arrangements between soldiers and civilians, with the former paying the latter for their services. The civilians were also reportedly given food and drink during the trips (40.767.007). Regarding Alieu Kosiah, the witness stated that he was “kind” to civilians and that he would, for example, give them money and food (40.767.010). He also stated that he did not recall Alieu Kosiah or any other soldier mistreating civilians (40.767.011).

7.5.2.10 Finally, Pierre, alias Pégase, a former ULIMO soldier also stationed in Foya, stated that he had never heard of civilians transporting goods during the war (40.771.007). As for Alieu Kosiah, he stated that he did not know whether Kosiah had participated in such transports or had ordered them (40.771.009).

7.5.3 Law and Evaluation of Evidence

7.5.3.1 Pursuant to Article 3 common to the Geneva Conventions, attacks on life and physical integrity—including murder in all its forms, mutilation, cruel treatment, torture, and cruel, inhuman, or degrading punishment—are and remain prohibited at all times and in all places with respect to persons not directly participating in hostilities (subparagraph (a)), as well as attacks on the dignity of persons, including humiliating and degrading treatment (subparagraph (c)).

7.5.3.2 Pursuant to Art. 4(2) of Additional Protocol II, attacks on the life, health, and physical or mental well-being of persons—in particular murder—as well as cruel treatment such as torture, mutilation, or any form of corporal punishment (subparagraph (a)), attacks on human dignity, including humiliating and degrading treatment, rape, forced prostitution, and any indecent assault (subparagraph (e)), slavery and the slave trade in all their forms (subparagraph f), and the threat to commit the aforementioned acts (subparagraph h).

For legal discussions regarding cruel treatment, see paragraph 7.4.3.2 above.

7.5.3.3 Article 3, common to the Statutes, prohibits inhuman treatment in general (ICTY, Aleksovski Case, Judgment of June 25, 1999, para. 51). Among all forms of inhuman treatment, violations of human dignity constitute a category of particularly abhorrent acts that cause more severe suffering than most of the acts prohibited in this context. It is indisputable

that the prohibition of acts constituting an affront to human dignity contributes to the respect for an important value. Indeed, respect for the human person is one of the most important values. The entire framework of international human rights law and the evolution of international humanitarian law are based on this fundamental principle. The protection of the individual against inhuman treatment is undoubtedly one of the essential principles enumerated in Article 5 of the 1948 Universal Declaration of Human Rights, a principle also enshrined in the prohibitions set forth in regional and international human rights instruments, which led to the adoption by consensus of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment by the United Nations General Assembly on December 10, 1984. Furthermore, the constitutions and laws of most countries contain provisions designed to protect individuals against torture and other cruel or inhuman treatment (ICTY, Aleksovski Case, Judgment of June 25, 1999, paras. 51 and 54). According to the commentaries on the four Geneva Conventions, violations of a person's dignity refer to acts which, without directly infringing upon the physical and mental integrity and well-being of individuals, are intended to humiliate and ridicule them (ICRC, Commentary on the Additional Protocols of June 8, 1977, to the Geneva Conventions of August 12, 1949, 1986, No. 3074). An act that violates a person's dignity is one motivated by contempt for another person's dignity. Such an act must be seriously humiliating or degrading to the victim. It is sufficient that the act in question inflict upon the victim real and lasting suffering resulting from humiliation or ridicule. The degree of suffering a victim may endure naturally depends on his or her temperament. Sensitive individuals are more likely to regard the treatment inflicted upon them as humiliating and, consequently, to feel its effects more acutely. Conversely, it is more difficult for the person inflicting such treatment to cause real suffering to individuals with a certain strength of character—those who are not as concerned about how others treat them and who, even if they feel they are being subjected to humiliating treatment, are generally better able to cope with it through indifference. The same act is therefore likely to cause terrible suffering to sensitive individuals and, conversely, only negligible discomfort to those who are more impervious. This difference in outcome stems from subjective factors. In the context of criminal proceedings, the subjective element must be tempered by objective factors; otherwise, it would result in an injustice to the accused: his guilt would then depend not on the gravity of the act committed but solely on the victim's sensitivity. Thus, the humiliation of the victim must be sufficiently intense that any reasonable person would feel outraged (ICTY, Aleksovski Case, Judgment of June 25, 1999, para. 56). With regard to the subjective element, according to the Commentary on the Geneva Conventions, the accused must have committed the alleged act with the intent to humiliate or ridicule the victim. The perpetrator must thus have acted intentionally. Criminal negligence is not sufficient; the perpetrator must have acted deliberately or have deliberately failed to act.

It is not necessary for the perpetrator to have had the express intent to humiliate the victim or to subject them to degrading treatment; it is sufficient that the perpetrator was aware of the foreseeable and logical consequences of his or her actions (ICRC, Commentary on the Additional Protocols of June 8, 1977, to the Geneva Conventions of August 12, 1949, 1986, No. 3074; ICTY, Aleksovski Case, Judgment of June 25, 1999, para.
56). The degree of gravity of an act and its consequences may stem either from the nature of the act itself or from the repetition of an act or a series of acts that, individually, would not constitute a crime. The nature of the violence inflicted, as well as its duration and degree of severity, or the intensity and duration of the physical or mental suffering, will serve as criteria for assessing whether the acts committed can be characterized as an affront to a person's dignity (ICTY, Aleksovski Case, Judgment of June 25, 1999, para. 57).

7.5.3.4 Slavery consists of the exercise of powers of ownership over a person. Indicators of slavery include: elements of control and ownership; a restriction or control over an individual's autonomy, freedom of choice, or freedom of movement; gain for the perpetrator; the fact that the victim's consent or free will is rendered impossible by the threat of force or other means of coercion; an abuse of power; the victim's vulnerable situation; their detention or captivity; their psychological oppression; or their socioeconomic status. Other indicators include exploitation, forced or compulsory labor—often without pay and generally involving physically demanding work (ICTY, Kunarac Case, Judgment of February 22, 2001, para. 539 et seq.; SCSL, Sesay Case, Judgment of March 2, 2009, para. 197). Not all work performed by civilians during an armed conflict is necessarily prohibited; the prohibition applies only to forced or involuntary labor. It must therefore be established that the person did not have the opportunity to decide whether or not to work (SSPT, Sesay Case, Judgment of March 2, 2009, para. 202). The mere fact that the person felt compelled is insufficient; concrete evidence of coercion is required (SCT, Taylor Case, Judgment of May 18, 2012, para. 448). Slavery can exist even in the absence of mistreatment, and involuntary servitude—even when accompanied by decent treatment—remains slavery (TSSL, Sesay Case, Judgment of March 2, 2009, para. 203). In the Brima and Sesay cases, the SCSL addressed the issue of civilians forced to carry loads for the armed forces under duress, with those who refused to participate being beaten or killed (SCSL, Brima Case, Judgment of June 20, 2007, para. 1369 et seq.; SLC, Sesay Case, Judgment of March 2, 2009, para. 1215 et seq.). It has previously been held that the use of civilians for forced labor may meet the criteria for slavery (SLC, Brima Case, Judgment of June 20, 2007, para. 1374; SCT, Sesay Case, Judgment of March 2, 2009, para. 1323). The SCT has, however, held that forcing civilians, on a single occasion, to dig a trench to block another armed faction constitutes a short-term incident of forced labor that does not involve the exercise of powers related to ownership rights over the victims

and therefore does not constitute slavery (TSSL, Brima Case, Judgment of June 20, 2007, para. 1392).

7.5.3.5 With regard to the legal developments related to Art. 18 aCPM concerning orders given by a superior, reference is made to paragraph 7.2.3.4 above.

7.5.3.6 In the present case, Raoul's statements, both before the Office of the Attorney General and before the Court, were consistent on numerous points. He explained that he had been conscripted by Cassiopée, the S2 of Foya, to transport cocoa, coffee, and oil from Foya to Solomba, on the Guinean border, and that he, for his part, had carried a load of coffee on his head. According to his account, the convoy moved in single file, with soldiers surrounding the civilians, and those who did not move fast enough were whipped by the soldiers. The complainant, striving to walk as quickly as possible, was able to avoid being struck. Raoul estimated the duration of the journey to be between seven and nine hours. Once they arrived at the border, near the Makona River, the civilians set down their loads and set off back for Foya. Some of the soldiers crossed the river by ferry to go to Guinea to sell the goods they had transported. The civilians, meanwhile, returned to Foya, where they arrived late at night. Regarding the role played by the defendant, Raoul stated during his two interrogations that the defendant had participated in the transport, that he was at the rear of the convoy, and that while he did not personally strike the civilians, his position allowed him to see soldiers beating them. However, he reportedly did not intervene to stop the violence. As for the order to carry out the transport, Raoul admitted that he did not hear Alieu Kosiah give such an order. Before the Public Prosecutor's Office, he stated that Cassiopée had received the order to carry out the transport from Alieu Kosiah and that he had been tasked with relaying it to the civilians. Before the Court, Raoul stated that the transport had been organized by Alieu Kosiah and Cassiopée, but that the order had been issued by the latter. In any case, since the defendant was a *"big man"* in the Strike Force, once he was on the scene, he was the one giving the orders. The consistency of Raoul's statements, as well as his reluctance to incriminate the defendant at all costs—taking care to distinguish between what he saw or heard and what was reported to him—led the Court to view his testimony as highly credible. The Court further noted that the distance between Foya and Solomba is some 20 kilometers, so that the walking time estimated by the complainant—between seven and nine hours—seems entirely plausible and lends further credibility to his account.

7.5.3.7 In addition, Raoul's statements are corroborated by other complainants in the proceedings who reported the same type of transports, organized under the same conditions, and during which the defendant played the same role each time: he gave the order for the transport and, in most cases, supervised it (see, in particular, *infra,* para. 7.7). Furthermore, the explanations provided by Olivier

regarding the transport of goods carried out by civilians during the first civil war have largely confirmed Raoul's statements. The former child soldier admitted that all factions, during the war, had resorted to such methods to transport weapons, ammunition, and goods for sale. He specified that civilians were forced to take part because the soldiers were armed and that the goods were sometimes transported as far as the Makona River in Solomba, on the border with Guinea, to be sold there. He explained that ULIMO was forced to rely on civilians to carry out the transports for several reasons: there were not enough cars everywhere during the war; a car could make noise and be spotted by the enemy; and there were not enough passable roads everywhere. The witness stated that he remembered taking part in a transport of oil, bags of coffee, and cocoa from the Foya district to Solomba. These statements thus further corroborate Raoul's testimony.

7.5.3.8 It should be added that, in the Court's view, the statements of the former ULIMO soldiers heard during the proceedings—all of whom stated that they had never seen or heard that Alieu Kosiah had participated in or ordered the transport of goods by civilians—cannot be relied upon. Indeed, the Court did not consider Jean and Alfred to be credible witnesses, particularly because they denied throughout their respective interrogations having witnessed mistreatment of civilians by soldiers in Foya during the war, even though it has been established that Foya was the scene of countless crimes committed against civilians (see 14-01-0187). Their status as former soldiers undoubtedly helps explain their denials. In particular, their statements—according to which the soldiers made arrangements with civilians for transportation and paid them for their work—lack any plausibility. Indeed, these statements seem implausible given the context of civil war in which these transports took place. As for Pierre, given that he is the subject of criminal proceedings in France for acts similar to those alleged against Alieu Kosiah in the present case, his denials regarding the mistreatment of civilians in Foya lack any credibility, as he is clearly seeking to avoid incriminating himself. Finally, Olivier and Bernard, former members of the defendant's personal security detail, maintained the same account of events throughout their hearings—namely, that Alieu Kosiah had done nothing and was never present when crimes were committed—systematically seeking to exonerate their former leader.

It should be noted from the outset that it will become clear on several occasions from Olivier's statements that he is clearly attempting to protect his former commander, Alieu Kosiah, by refusing to admit that the latter committed any offenses. However, given his personal military experience within the ULIMO, his evident perceptiveness, and his desire to make a good impression before the Court in order to

apply for asylum, Olivier provided a great deal of information that appears accurate and reliable, particularly regarding the forced transports carried out by the various factions.

7.5.3.9 As for the defendant's statements, they must also be dismissed. Indeed, regarding the issue of armed ULIMO soldiers crossing the Guinean border, Raoul provided a convincing explanation. The soldiers did not travel into Guinea with their weapons; rather, they crossed a few meters into Guinean territory before being able to hand them over to Guinean customs officials (see 40.755.032), so this is not the scenario described by the defendant, in which Liberian combatants allegedly entered Guinea while armed. As for Alieu Kosiah's argument that, had he carried out such a transport, he would have used a car, it is unfounded in light of the relevant explanations provided by Olivier regarding the reasons why civilians were requisitioned instead of vehicles. Moreover, in his descriptions of the condition of the road connecting Foya to Solomba during the rainy season, the defendant provided the Court with further justification for relying on civilians for transportation rather than vehicles. Finally, regarding the defendant's alibi, which he has repeatedly asserted throughout the proceedings—namely, that he was not based in Foya when the town was captured—the Court notes that it was by no means necessary for Alieu Kosiah to be based in that town to commit the offense with which he is charged in this case. Furthermore, reference is made to paragraph 7.4.3.9 above regarding Alieu Kosiah's presence in Foya in July 1993.

7.5.3.10 The Court further notes that the role attributed to the defendant during the transport described by Raoul, as well as during the other transports with which he is charged (see, in particular, paragraph 7.7 *below*), can be linked to the position of H&H (*Headquarters Commander*) attributed to him by several participants in the proceedings (Raoul: 12-08-0012; Antoine W.: 12-07-0009; André: 12-18-0006; confirmed by Olivier: 12-16-0042; 40.761.019). Indeed, Olivier defined the H&H as the person responsible for military supplies, ammunition, and food (12-16-0042). Although it cannot be considered established, based on the record, that Alieu Kosiah officially held the position of H&H, the fact remains that the role described as his during civilian transport operations closely resembles that of an H&H; he did, in fact, organize the transport of goods, accompany the shipments to ensure that everything proceeded as he expected, and remain on site once the destination was reached to sell the goods and, where appropriate, purchase ammunition with the proceeds from the sale (see *supra*, para. 7.5.2.1). This convergence between the function attributed to him and the role he actually played during the transports further lends credence to the charge brought against him in the indictment.

7.5.3.11 In light of all the foregoing considerations, the Court finds that the complainant's statements are far more credible than the defendant's denials; accordingly, it finds it established that the defendant participated in the transport of goods from Foya to Solomba as alleged by Raoul. These acts may be characterized both as an assault on physical and mental integrity, constituting cruel treatment, and as an affront to human dignity, in the form of humiliating and degrading treatment.

Forcing civilians to walk for hours carrying a heavy load, without giving them food or water and threatening them with death or beating them if they do not keep up with the imposed pace, is likely to cause great suffering. This suffering is primarily physical, due to the length of the march the civilians were forced to undertake while carrying a heavy load and the beatings they endured if they did not walk fast enough. The suffering is also psychological, given the terror that gripped the civilians throughout the journey, as they were accompanied by armed soldiers threatening them with death. It should be noted in this regard that, even though the defendant did not personally inflict blows or utter death threats, these acts may still be attributed to him. Indeed, to be the perpetrator of the offense, it is not necessary for him to have personally committed all the acts constituting said offense. In this case, it involved a joint plan carried out by various participants, who thus acted as co-perpetrators of the offense (on the concept of joint commission: see *supra*, para. 7.4.3.25).

The acts alleged against the defendant must also be classified as humiliating and degrading treatment. Forcing a person to carry a load under extremely difficult conditions, by threatening them with death or beating them if they do not keep up with the imposed pace, amounts to a violation of their dignity as a human being and constitutes a very serious form of humiliation. Any person of average sensitivity would indeed feel deeply humiliated and ridiculed by such treatment.

Furthermore, since beatings inflicted on civilians and death threats are considered components of the offenses of cruel, humiliating, and degrading treatment, they do not constitute separate offenses that would need to be charged in addition.

Finally, it is noted that, despite the seriousness of the facts, the offense of slavery has not been committed, insofar as the transport lasted only a few hours and that this period of time is not sufficient to establish the exercise of powers arising from property rights over the civilians involved.

7.5.3.12 Regarding the order to transport the victims, Raoul stated that he did not personally hear the defendant give it. That said, he also stated that whenever Alieu Kosiah was present, it was Kosiah who gave the orders, in his capacity as *"big man*." He also indicated to the Office of the Attorney General that Cassiopée had told him the order

came from the defendant. However, in cases involving international criminal law, indirect testimony from individuals to whom the defendant's statements were relayed cannot be dismissed as a matter of principle. Such testimony may indeed attest to the reality of orders or exhortations issued publicly with the intent that they be disseminated and carried out (Judgment of the Military Court of Cassation, Vol. 12 [1997–2005], No. 21, para. 6c). Since Raoul consistently distinguished, during his hearings, between what he saw and what he heard, the Court finds it credible that he may have heard from Cassiopée that an order had been given by Alieu Kosiah. Furthermore, in light of the other shipments of goods alleged by the complainants in the proceedings, it is reasonable to conclude that Alieu Kosiah not only participated in the shipment but also ordered it. His position in the convoy—at the rear—further constitutes clear evidence of his role as a leader supervising the group's progress. It thus appears entirely plausible that Alieu Kosiah gave the order for the transport to Cassiopée and the soldiers, who were responsible for carrying it out. This order involved the commission of offenses—namely, the infliction of cruel, humiliating, and degrading treatment against civilians—as it led Cassiopée and the soldiers to commit said offenses. The Court therefore also finds that, objectively, the offense committed by order of a superior officer, pursuant to Article 18 of the Military Penal Code (aCPM), has been committed.

7.5.3.13 With regard to the subjective element, Alieu Kosiah acted intentionally, both in his participation in the transport and in the order he gave to carry it out. He knew that by instructing Cassiopée and the soldiers to organize the transport, they would carry it out. The defendant was also aware that the persons forced to undertake the transport were civilians.

Finally, these acts took place within the context of the armed conflict that occurred in Liberia during the First Civil War, a fact of which Alieu Kosiah was aware.

7.5.3.14 In conclusion, Alieu Kosiah must therefore be convicted of inflicting cruel, humiliating, and degrading treatment on civilians (Art. 109(1) and 108(2)(a) MCP in conjunction with Art. 18 MCP*, together* with Art. 3(1)(1)(a) and (c) common to the General Provisions and Art. 4, subparagraph 2, letters a and e of PA II).

7.6 Participation in the murder of the civilian Joseph in Foya and desecration of his corpse

7.6.1 Charge

According to section 1.3.8 of the indictment, Alieu Kosiah is charged with having participated as an accomplice in the murder of the civilian Joseph in Foya between July and October 4, 1993. He is also charged with desecrating his corpse by eating his heart (section 1.3.9 of the indictment).

7.6.2 Evidence

During the preliminary investigation

7.6.2.1 During his interrogation by the Office of the Public Prosecutor, Georges described Alieu Kosiah at the time of the events as having dark skin, not very heavy, and of average height. He had *"bulb eyes*," meaning eyes that protrude. He was dressed in a military uniform or in jeans and a T-shirt. He did not have a consistent style of dress; he sometimes wore his jeans with a military shirt. Georges was unable to say whether Alieu Kosiah had a tattoo, as he had not seen all parts of his body. He saw him carrying a pistol, an AK, and a knife on his belt. Georges did not recall seeing a scar on Alieu Kosiah's body (12-20-0021 s.). On the first set of photographs presented to him, the complainant was unable to identify Alieu Kosiah "with 100 percent certainty." He therefore did not point to any photograph. On the second set of photographs, the complainant maintained that he was not 100 percent certain (12-20-0022). When the defendant entered the room, Georges identified him as Alieu Kosiah. He stated: "From his eyes, it's very clear" (12-20-0023).

7.6.2.2 Regarding the facts of the case, Georges stated that he had witnessed the murder of Joseph, a teacher from L. The complainant explained that Joseph was on the main road in Foya when he was asked to get into a vehicle by humanitarian workers (presumably from Doctors Without Borders or the Red Cross), who took him to a hill at the "L.a. Mission" in L., which had been looted and damaged. This mission had a school and a hospital. The humanitarian workers asked Joseph who was responsible for the looting of the mission. He reportedly replied that it was ULIMO. The humanitarian workers then returned to Foya with Joseph, whom they dropped off in the city center (12-20-0028). Georges explained that, when he got out of the vehicle, Joseph was intercepted by ULIMO commanders who were in downtown Foya, near the former police station (12-20-0029). They then took him to an office to interrogate him (12-20-0066). Joseph told them that the aid workers had asked him who had looted the mission and that he had replied that it was ULIMO (12-20-0029). As soon as he said this, the ULIMO commanders reportedly grabbed him, tied his wrists, and pulled his elbows back with great force (12-20-0029). According to what Georges heard, the ULIMO soldiers claimed that Joseph had been a spy and called him a traitor (12-20-0066). Joseph was then reportedly taken to the airstrip by Céphée, Sextant, CO Kosiah, CO Pegasus, Bertrand, and other commanders, amid the shouts of people chanting, "tabé, tabé." Cepheus led the way (12-20-0029, 0066). According to Georges, the soldiers were like rampaging warriors. They reportedly tied Joseph's wrists together in front and

pulled his elbows back, tying them until they touched, which put pressure on his rib cage, bringing it close
"exploding" (12-20-0066, 0068). The soldiers threw Joseph to the ground and stepped on him (12-20-0066). Alieu Kosiah was present along with the other commanders, other soldiers, and *bodyguards* during this incident. According to Georges, as *the leader*, if Alieu Kosiah had not agreed with what was happening, "he would have had every means to stop it" (12-20-0068). However, the defendant, on the contrary, appeared proud of what was happening and showed no remorse or regret (12-20-0068). The complainant stated that this was the first time he had witnessed such a brutal scene (12-20-0066). In full view of CO Kosiah, Sextant, Pégase, and Bertrand, and in the midst of all the soldiers, Céphée allegedly held up Joseph's body, cut open his chest with an axe, and ripped out his heart, which he placed on a metal plate (12-20-0067, 0069). According to Georges, the scene was
"horrifying to witness" (12-20-0067). Once again, Alieu Kosiah reportedly did nothing "to stop this slaughter" (12-20-0069). The only thing he is said to have done was raise his arms in the air in a gesture of jubilation (12-20-0069). Then, the ULIMO members reportedly left Joseph's body at the scene and headed toward Céphée's house, which was near the airstrip, taking Joseph's heart with them (12-20-0029, 0067, 0069). According to Georges, they openly declared that they were going to eat his heart and cut it into pieces (12-20-0069); CO Kosiah was among those who ate Joseph's heart; they did so openly, in full view of everyone (12-20-0067). They ate the heart raw. Georges stated that he saw Alieu Kosiah eat part of Joseph's heart (12-20-0070). The commanders gloated over having killed a man and eaten his flesh (12-20-0029). According to the complainant, the purpose of this incident was to send a message that anyone who rose up against the ULIMO would suffer the same fate (12-20-0067). Georges stated that this was the first time he had ever seen a human being rip out another person's heart, and he described the act as "incredibly cruel." It was also the first time he had ever seen a human being being eaten (12-20-0029).

Regarding his perception of the scene, Georges indicated that when Joseph left Foya with the humanitarian group, he himself was not at the scene but on the other side of *the airstrip*. What happened at that moment was therefore reported to him. However, he stated that when Joseph was dropped off in the center of Foya, he was able to see everything that was happening there (12-20-0066, 0069). Georges witnessed the scene along with other civilians (12-20-0066). The complainant estimated the number of civilians present to be between 50 and 60. As for the soldiers and *bodyguards,* there were between 30 and 50 of them (12-20-0069).

When asked about Alieu Kosiah's position in the chain of command, Georges stated that he had never been familiar with the structure of the ULIMO group. He never knew where each person stood within the hierarchy. Alieu Kosiah was known as "CO" (for commander). The complainant indicated that sometimes

Sextant seemed to be giving

orders to Alieu Kosiah, but that “it wasn’t very clear depending on the circumstances” (12-20-0029).

7.6.2.3 Alieu Kosiah denied the allegations against him. He stated that he had never met anyone named Joseph, nor the complainant who had accused him. In his view, it is possible that Joseph was killed by a ULIMO member, but he has no knowledge of this. Alieu Kosiah noted that one should be wary of what the newspapers report. Indeed, according to him, the newspapers reported that Joseph’s death occurred because he was a Christian. However, Georges, for his part, offered a different explanation for the motive behind the murder. The defendant added that he was a traditional Muslim who does not eat pork, so it would be inconceivable for him to eat human flesh (13-01-0642 et seq., 0184) and that he had never heard of acts of cannibalism within ULIMO (13-01-0184).

French proceedings against Pierre

7.6.2.4 During his interrogation by French authorities as part of the criminal proceedings against Pierre, alias Pégase, Georges confirmed the statements he had made to the MPC in Switzerland. He specified that it was the ULIMO command that had captured Joseph—that is, “a certain Mr. Sextant,” “EE,” “CO Pégase,” “Céphée,” and “a certain Bertrand.” Georges reiterated that Joseph had been killed and that his heart had been removed and placed on a plate. Céphée then reportedly uttered the following words: “If anyone tries ULIMO, we’ll eat your heart.” The murder took place outdoors, at the airstrip. They then allegedly took Joseph’s heart to Cepheus’s house to eat it. Georges stated that he had personally “witnessed” the scene. He had never seen anything like it before. It was “too horrible.” Georges clarified that all the leaders were present on the airstrip. He saw Pierre, among other commanders, kicking, punching, and stomping on Joseph several times. Joseph was tied to the ground at the time, completely vulnerable. He was on his side, sometimes on his back. Georges stated that he himself was standing at the side of the runway, not far from Cepheus’s house, while the scene was unfolding on the runway. Many civilians were present there. The complainant estimated the distance between the scene and his location to be between 100 and 250 feet, though he could not be more precise (D245/3). Georges stated that he saw Pierre holding a piece of a heart. He also confirmed that he heard Pierre say, “If anyone tries ULIMO, we will eat your heart.” Regarding the time of Joseph’s arrest, Georges stated that he was in a store owned by a Lebanese man at that moment. A humanitarian organization reportedly visited Foya that day. Georges clarified, however, that he was not present when the organization arrived and took Joseph away. He did, however, hear that the humanitarian group had asked Joseph to take them to the L.a. mission, where there was a hospital, a school,

and a church. According to the story Georges heard, a member of the humanitarian organization asked Joseph how the mission had been looted. Joseph reportedly replied that ULIMO was responsible for the looting. Georges explained that when the vehicle returned to Foya, he saw Joseph being dropped off (D245/4). As Joseph got out of the vehicle, ULIMO commanders rushed toward him to question him. Joseph reportedly confessed to having revealed that ULIMO was responsible for the looting of the mission. It was for this reason that he was allegedly taken to the airstrip, where he was mistreated and killed (D245/5).

7.6.2.5 When questioned by the Liberian National Police at the request of the French authorities, FF., Joseph's widow, stated that before his death, her husband had been working for the religious organization L.b. At the time, they were living in New Foya. One day,

"some white people" came to Foya to try to determine which rebel faction had destroyed the hospital in L.a. and the church. When the "white people" arrived, the "ULIMO commander" sent a message to all residents, ordering them to gather at the police station because the "white people" wanted to speak with them. Joseph served as an interpreter for the Kissi-English languages during this gathering. One "white man" asked who had destroyed the hospital in L.a. and the church. Joseph then replied that it was the ULIMO rebel faction. After the gathering and the "whites'" departure, ULIMO fighters reportedly arrested Joseph and took him to the police station. Joseph is said to have remained in detention there for two days. On the third day, he was taken out of his cell (D428/3). Joseph's hands were tied behind his back with cable and he was taken to the former airfield, where Commander Pierre was located (D428/7). According to FF., Commander Pierre then allegedly ordered his men to kill "that dog" (D428/3). The soldiers cut into his flesh with axes, knives, frying pans, etc.; his body, including his testicles, was cut into pieces (D428/3 and 7). FF. stated that she then fled "from the scene" (D428/7). She clarified that she did not see Commander Pierre attack her husband (D428/7). A few days later, FF.'s brother, GG., brought some clothes and placed them on Joseph's remains before burying the body in the center of Foya. FF. stated that she left Liberia after this incident to seek refuge in Guinea (D428/4). When asked about Joseph's clothing at the time of the murder, FF. stated that he was wearing shorts and a tank top (D428/8).

7.6.2.6 During her interrogation by French authorities, FF. essentially confirmed the statements she had made to the Liberian National Police (D557/3 and 4). She stated that she "thought" her husband had been detained for two days (D557/3). She explained that Joseph was on his way to pick up his mother, who was blind, when he was arrested. He was with her at the time of his arrest. FF. was told that her husband had been arrested for revealing that ULIMO was responsible for the "raiding" of the hospital and the church. FF. stated

that while she was hiding in the bush, she saw her husband being taken to the police station at Airfield (D557/4). She stated that she heard, from her hiding place, that CO Pégase had given the order to kill Joseph. She described Joseph's body after his death as follows: both his forearms and both legs were lacerated; "the flesh was fresh," and his chest was open. She stated that "there was nothing in his chest" (D557/4). He was bound with cables (D557/5).
FF. stated that she saw the soldiers take her husband's heart, put it in a bag, and leave. However, she did not see them eat the heart (D557/4). FF. disputed the French translation of her interview by the Liberian National Police regarding the claim that her husband's genitals had been cut off. She stated that the soldiers had not touched them. They had lacerated both his forearms and both his legs at the calves, and his chest was
"empty" (D557/5).

FF. stated that she fled to Guinea with her children on the day of her husband's death. Her brother, GG., stayed behind to bury Joseph's body (D557/5). FF. indicated that she did not have a death certificate for her husband, as such a document does not exist in Liberia (D557/6).

7.6.2.7 During the confrontation hearing before French authorities between Georges and FF., the former stated that he had not seen FF. on the day of Joseph's murder. Georges stated that when NGOs arrived, the villagers were curious to know who was there because the NGOs helped them. Georges therefore left his home and heard that Joseph had been taken to the "Broma Mission" hospital. Shortly afterward, he saw the car that had taken Joseph return. Joseph got out of the car in front of JJ's shop. He was arrested and taken to the police station. All the ULIMO commanders—Pégase, Kosiah, Céphée, and others—were nearby. Accompanied by their bodyguards, they approached Joseph and took him away. The ULIMO commanders reportedly accused Joseph of betraying their faction. The villagers later learned that Joseph had admitted to stating that the ULIMO faction was responsible for the destruction of the hospital. After spending a few minutes at the police station, the soldiers drove Joseph down to the airport, where Céphée was staying. According to Georges, they then beat Joseph and killed him. They reportedly cut open his chest to remove his heart (D560/2). The French authorities confronted Georges with FF.'s statements, according to which Joseph had been detained for two days. Georges stated that "to the best of his knowledge," Joseph had not been detained. When confronted with this assertion, FF. stated that an "old woman" had sent "someone" to speak with the ULIMO faction and convince them to release Joseph. After two days, the "old woman" reportedly made it clear to Joseph's family that he was already dead. In response, Georges countered that during the ULIMO era, it was "simply impossible" to send someone to try to negotiate a person's release. He thus implied that FF.'s explanations were not plausible. FF. then conceded that if anyone tried to negotiate with the

ULIMO faction, they would be killed. She also stated that it was possible her husband had been killed on the day of his arrest, but that in that case, she had not been informed. Georges stated that “Céphée” was the most vicious member of the group. He was the one who gave the orders, and the others carried them out. When confronted with FF.’s statements, according to which Pierre had given the order to kill Joseph, Georges stated that he had seen Céphée cut open Joseph’s chest, thereby causing his death, and that Pierre was present and had struck blows (D560/3). Also present were Sextant, Jean, and Alieu Kosiah. The latter three gloated, saying, “If anyone tries ULIMO, we’ll eat your heart” (D560/4).

7.6.2.8 When questioned by French authorities, GG., Joseph’s brother-in-law, stated that he was at home when one of Joseph’s students came to inform him that Joseph had been arrested. GG. then went to the police station and was able to exchange a few words with Joseph, who was in custody. Joseph told him that he was with some “white people,” who had taken him to the hospital and asked him who had turned him in. Joseph reportedly told him that he hadn’t said anything, but people accused him of revealing that it was the ULIMO. These people took Joseph to the power plant (LEC—Liberia Electric Corporation). GG. stated that he later heard that Joseph was indeed the person who had denounced the ULIMO. After Joseph was arrested, GG. went to see him in jail at the police station that same day. While Joseph was in custody, GG. sent him food through a “guy” who had connections with the fighters. Three days into Joseph’s detention, a girl reportedly told the person in charge of bringing the food that “they” had killed him. GG. stated that on the third day, toward evening, Joseph’s body—which was at the place where Cepheus lived—was decomposing and smelled bad. He claimed to have heard Cepheus order his bodyguards to bury Joseph’s body. GG. stated that he saw the body and recognized it. Joseph was lying down, his hands tied behind his back. The rebels asked GG. to cover the deceased’s body with dirt (D561/2). GG. specified that Joseph’s chest was cut open and that he had cuts on his legs and forearms. He also stated that he had placed clothes on his brother-in-law’s body, which he then buried. He further stated that once his sister had been informed of her husband’s death, she had left for Guinea. When asked if he knew whether the fighters had ripped out Joseph’s heart, GG. replied that he had seen the wound on the chest but did not know if they had taken his heart (D561/3).

7.6.2.9 Before French authorities, HH., a Liberian national, stated that she had witnessed Joseph’s murder and had seen him when he arrived with the Red Cross. The rebels made him get out of the car and asked him what he had told the organization’s staff. They then tied him up and took him behind the tailor’s shop “II.,” which was located near that of

JJ. Store, and then behind the office of the speaker of parliament. Joseph was then taken away, and HH. never saw him again. She stated that Joseph had been
"held" for two days. She saw his body, with his chest cut open; his heart was missing. HH. stated that a man named Céphée had an axe, without specifying whether Céphée was the perpetrator of the murder (D559/2). Subsequently,
HH. stated that she was not present when Joseph was captured. She claimed to have seen him only after he had been tied up, having heard people shout, "Joseph is tied up." She then stated that she had not said Joseph had been detained for two days, but believed he had been killed on the very day of his arrest. However, it was two days after his arrest that "someone" allegedly asked to retrieve his body. She further clarified that she had not witnessed the murder, but had only seen the dead body two days later. When asked what she knew about Commander Pierre, she stated that he was the *leader*, along with Céphée, Bertrand, and KK. (D559/3).

7.6.2.10 When questioned by French authorities about the events described by Georges, Pierre stated that he did not know Georges and knew nothing about the incident he had described. He cited "political jealousy" directed at him (D245/5). Pierre also claimed not to know who Joseph was or what had happened to him. In his view, a normal person could not commit such a murder, and he had never witnessed such a scene while he was a member of ULIMO. Pierre accused his accusers of being criminals and of making false accusations against him in order to reach Europe and remain there (D206/15). He stated that he had heard rumors of cannibalism in Liberia but did not know exactly what that meant. He denied ever having been a cannibal himself (D206/16). Regarding his role, Pierre stated that he was a commander on the front lines during the first civil war in Liberia (D245/4, D206/3).

<u>During the proceedings</u>

7.6.2.11 Before the Court, Georges confirmed his accusation against the defendant. He stated that the events took place in the second half of 1993, though he could not be more specific. According to his account, Joseph was a resident of Foya, a member of L., and a teacher. He confirmed that Joseph had gone with humanitarian workers to the "L.a. Mission" in L., which had been looted (40.751.012). He reiterated that he had not seen him get into the humanitarian workers' vehicle, but that he had seen him get out of it. When Joseph got out, the ULIMO saw him and approached him to ask what he had been doing with the humanitarian workers. Joseph reportedly then stated that he had told the workers that the ULIMO were responsible for the looting of the "L.a. Mission." The ULIMO members then reportedly seized him and took him to the office of the former police station. Considered a traitor, he was subsequently taken to the S2. Georges stated that he, along with other civilians, witnessed the entire scene from the moment the victim got out of the vehicle (40.751.012, 013). He was

in the center of Foya, in front of the JJ store. Among the high-ranking military officers present were CO Kosiah, Céphée, Pégase, CO Sextant, and CO Cassiopée. According to the complainant, the highest-ranking commander was Alieu Kosiah. They took Joseph to the airstrip, near Céphée's house (40.751.013 s.). It was Alieu Kosiah who allegedly gave the order to take Joseph away. Georges stated that he heard him give that order. Once they arrived at the airstrip, the soldiers allegedly tied the victim up in a "tabé" position—that is, in such a way that he could barely breathe (40.751.014). They then allegedly tortured him, beat him, and kicked him. According to the complainant, it was "horrific" (40.751.013, 014, 015). Xavier, alias Céphée, allegedly then split Joseph's body open with an axe. This scene reportedly took place in the presence of Alieu Kosiah. Regarding the role played by the latter, Georges stated that he had kicked the victim along with the other soldiers. According to him, the defendant participated in the murder as the highest-ranking officer on the scene. Georges believes that Alieu Kosiah ordered Céphée to kill Joseph
"since he was the one who said to grab him and take him away." He knew, in fact, that
Céphée was capable of killing people in the manner in which he did, and the complainant assumes that Alieu Kosiah could have foreseen that the victim would be executed in this way (40.751.015). The defendant, however, did not intervene to prevent it, even though he would have been the person best positioned to do so, in his capacity as *overall commander* (40.751.015, 018). The soldiers present then allegedly cut out Joseph's heart and took it near Céphée's house to eat it (40.751.015 et seq.). Georges stated that he saw Alieu Kosiah and Pierre take a piece of the heart and eat it. He was standing a few meters away from them at the time. The victim's body, stripped of its clothes, was left at the airfield, in plain view of everyone. It was subsequently covered with a little dirt by civilians (40.751.016). When confronted with statements from certain witnesses in the French proceedings, according to which Joseph had allegedly been detained for a few days before being killed, the complainant maintained his version of events, asserting that the events had taken place on the same day (40.751.017).

7.6.2.12 During the proceedings, the Court presented Georges with a redacted copy of Jean's identification document and asked him to identify the person depicted in the photograph. Georges stated that he did not know him (40.751.060).

7.6.2.13 When questioned by the Court about the charges against him, Alieu Kosiah stated that Georges was lying, as Georges had claimed that he had captured Foya when in fact he had not. The defendant asserted that he was in Bomi during the period specified in the indictment, namely between July and October 4, 1993. He claimed to have first heard about Joseph and what had happened to him at the time of his arrest (40.731.052 s.). The defendant believes that Georges denounced him because he belongs to the Mandingo ethnic group.

Furthermore, he stated that if he had been forced to eat a human heart, he would have cooked it first, but would not have eaten it raw. Alieu Kosiah also denied having any knowledge

of acts of cannibalism during the war and pointed out the inconsistency between the complainant's explanations regarding the cause of Joseph's death and those reported in the newspapers, namely that Joseph was killed because of his Christian faith and the fact that he possessed a Bible (40,731,054).

7.6.2.14 When also questioned by the Court about these events, Pierre stated that he did not know Joseph and did not know what had happened to him (40.771.010 s.).

7.6.2.15 Jean, alias Cassiopée, stated that he had never heard of Joseph's murder (40.769.012). He stated that he had heard of only one murder during the entire war, which allegedly took place in Foya in 1993 and was allegedly committed by Bertrand (40.769.013).

7.6.2.16 Many participants in the proceedings reported acts of cannibalism that allegedly occurred during the war (Paul: 40,757,007; Raoul: 40,755,007; Louis Z.: 40,754,005; Antoine W.: 40,756,007; Alfred: 40,767,007; Olivier: 40,761,011).

Physical Evidence

7.6.2.17 The TRC report indicates that cannibalism was a clearly documented offense that was reported on numerous occasions (14-01-0144). According to this source, it was a widespread practice among combatants and their leaders during the war (14-01-0141). This type of crime helped perpetuate the climate of terror imposed by the combatants (14-01-0140).

7.6.3 Law and Evaluation of Evidence

Participation in the Murder of Joseph

7.6.3.1 During the proceedings, the Court reserved the right, pursuant to Art. 344 of the Code of Criminal Procedure, to assess the charges against Alieu Kosiah in connection with the murder of Joseph not only from the perspective of complicity, but also from those of joint criminal conduct and action by omission.

7.6.3.2 With regard to the legal arguments concerning the murder, reference is made to paragraphs 7.2.3.1 through 7.2.3.3 above.

7.6.3.3 Pursuant to Art. 23 of the former Penal Code (aCPM), the sentence may be mitigated (Art. 46 of the former Penal Code) for a person who intentionally assisted in the commission of a felony or misdemeanor.

7.6.3.4 For legal considerations regarding complicity and aiding and abetting, see paragraphs 7.4.3.24 and 7.4.3.25 above.

7.6.3.5 In this case, the indictment does not specifically describe what conduct Alieu Kosiah engaged in as part of his participation in the murder. It is clear from the description of the scene that Joseph died as a result of Céphée's actions, who allegedly split open his chest with an axe and ripped out his heart. As for the defendant, it is stated that he was present, that he took pride in what was happening, that he rejoiced at having killed or at seeing a human being killed, and that he did nothing to stop the murder.

The facts as set forth in the indictment do not support a finding of complicity against Alieu Kosiah. Indeed, it is not stated in what way the defendant provided assistance or material support for the commission of the murder. With regard to mental complicity, the defendant's mere presence at the time of the murder is not sufficient to establish it. Admittedly, the indictment mentions that he rejoiced after the murder. However, it is not specified how the defendant's attitude would have encouraged Céphée to carry out the crime, an element that is nevertheless essential for establishing mental complicity. Since mere approval of the murder is not sufficient, complicity cannot be established.

With regard to active participation, the indictment also fails to describe how Alieu Kosiah allegedly contributed in a decisive manner to the commission of the murder or participated in the decision to commit it. Again, his presence at the scene and the expression of his satisfaction are not sufficient to establish active participation.

Finally, with regard to commission by omission, it must first be noted that the aCPM, in the version in force at the time of the alleged acts, did not expressly criminalize this form of offense. It would therefore be necessary to determine whether the offense by omission could be established based on the case law in force at the time of the events. However, this question may remain open in the present case. Indeed, the commission of an offense by omission presupposes a position of responsibility. However, while the indictment accuses the defendant of failing to prevent the murder, it fails to specify in what capacity he had a duty to act (for example, as a superior officer) and what he should therefore have done.

7.6.3.6 Consequently, Alieu Kosiah must be acquitted of complicity in the murder of a civilian under Art. 109(1) and Art. 108(2) of the former Military Criminal Code (aCPM), in conjunction with Art. 23 of the aCPM, *together with* Art. 3(1)(1)(a) common to the General Provisions (CG) and Art. 4(2)(a) of PA II.

Desecration of Joseph's Body

7.6.3.7 Pursuant to Article 3, common to the General Provisions, paragraph 1, item 1, subparagraph c, acts that violate the dignity of persons—in particular, humiliating and degrading treatment—are and remain prohibited at all times and in all places with respect to persons who are not directly participating in hostilities.

> In accordance with Article 4, paragraph 2, subparagraph (e) of Protocol II, acts that violate the dignity of persons—including humiliating and degrading treatment—are and remain prohibited at all times and in all places with respect to persons who are not directly participating in hostilities or who are no longer participating in hostilities (…).

7.6.3.8 For the legal concepts relating to violations of human dignity, see recitals 7.5.3.3 and 7.5.3.4 above.

7.6.3.9 The victim of the offense of violation of human dignity may be a person who has already died (see, in particular, ICC, Elements of Crimes, 2013, p. 24, note 57; International Criminal Tribunal for Rwanda [hereinafter: ICTR], Bagosora Case, Judgment of December 18, 2008, para. 2224; RTC, Bagosora Case, Appeal Judgment of December 14, 2011, para. 729).

7.6.3.10 In the present case, when describing the defendant to the Office of the Public Prosecutor, Georges mentioned several characteristics that frequently emerged during the proceedings to identify him, namely his dark complexion, medium build, his manner of dress (sometimes in military uniform, sometimes in civilian clothes), and his bulging eyes. These are indications that the complainant did in fact encounter the defendant during the war. He was certainly unable to identify him in the two photo lineups presented to him. However, this is not decisive, as explained in paragraph 6.4 above. Georges explained to the Court that he had been thrown off by the color of the photographs. Since he recognized the defendant primarily by his skin tone, he was unable to recognize him in the photographs. The complainant, however, was categorical when he was confronted *face-to-face* with the defendant, stating at that time that he recognized him by his eyes. The descriptive details provided by Georges, as well as his identification of Alieu Kosiah during their confrontation, lead the Court to conclude that it is credible that he saw the latter during the First Liberian Civil War.

7.6.3.11 Furthermore, Georges's statements—whether before the Office of the Prosecutor, before the French authorities in the proceedings against Pierre, or before the Court—have been consistent regarding the circumstances in which Joseph was killed and his body desecrated. Even when confronted with accounts that diverged somewhat from his own, he always maintained his statements with confidence. The complainant distinguished between what was reported to him and what he personally witnessed. These factors make his account highly credible. In particular, he unequivocally stated that he witnessed Joseph's murder and saw Alieu Kosiah eat part of his heart. The circumstances of Joseph's murder that he described were also largely corroborated by the testimony of witnesses in the French proceedings, particularly regarding the manner in which the victim was killed and the fact that his chest had been cut open with an axe to remove his heart. As for the contradictions that may have been identified between Georges's account and those of the witnesses in the

French proceedings, they pertain to details that are irrelevant (Joseph's detention).

Furthermore, it should be noted that neither FF., the victim's widow, nor HH., had direct knowledge of the murder but reported hearsay. As for GG., his account largely corresponds with that of Georges, particularly regarding the fact that Joseph's chest had been cut open. It is true that the witnesses in the French proceedings did not mention Alieu Kosiah in their testimony. However, it cannot be inferred from this that he was not present. Indeed, since it is possible that Alieu Kosiah was not stationed in Foya in 1993, it cannot be ruled out that the civilians did not recognize him, unlike Pierre, Céphée, and Bertrand, who were soldiers stationed in that town. Finally, regarding the fact that Georges was unable to identify Jean, alias Cassiopée, in a photograph presented to him during the proceedings, this fact is not sufficient to undermine the credibility of his statements. Indeed, nearly 28 years have passed since the events, and it is not unusual or surprising that an individual might fail to recognize someone after such a long period of time, especially since Cassiopée was not part of Georges's inner circle. In this regard, the fact that Raoul, for his part, recognized him immediately can be explained by his assignment as a ULIMO soldier in Foya; he thus inevitably came into close contact with Cassiopée on numerous occasions.

7.6.3.12 As for the statements made by Pierre and Jean, alias Cassiopée, they are completely implausible. Indeed, the former appears to be attempting to exonerate himself, given that he faces the same charges as those brought against Alieu Kosiah in this case in the French proceedings against him. As for Jean, his statements are once again devoid of any credibility, as he claims to have witnessed only a single murder of a civilian in Foya during the entire first civil war, whereas numerous sources report a veritable massacre of the civilian population in that city in 1993 (see, in particular, the TRC report, 14-01-0137).

7.6.3.13 Finally, the defendant's denials must also be dismissed. His alibi—that since he did not capture Foya, he cannot be the perpetrator of the acts with which he is charged—is unfounded. The Court considers it established that the defendant was present in Lofa as early as March 1993 (see *supra*, para. 7.2.3.7). Furthermore, Pierre stated that he captured the town of Foya alongside the defendant. It is unclear what motive the defendant would have had to lie about such a trivial matter, given the charges brought against him by the French authorities. Furthermore, the capture of Foya is not a prerequisite for the alleged acts to be attributed to the defendant. As for the defendant's argument that he is a victim because of his membership in the Mandingo ethnic group, this is also irrelevant. In this regard, reference is made to paragraph 6.6 above. Finally, the defendant disputes that acts of cannibalism were committed in Liberia during the first civil war, even though numerous participants in the proceedings (including former ULIMO soldiers)

the opposite. The TRC report is also very explicit regarding cannibalism. The defendant's defense strategy, which consists of claiming to have seen or heard nothing related to crimes committed against civilians during the first civil war, is, once again, not credible.

7.6.3.14 The Court therefore finds it established that the civilian Joseph was killed with an axe by Céphée and that his heart was removed to be eaten. It is also established that Alieu Kosiah was present during the murder and that he ate part of the victim's heart. Eating a part of a deceased person's body constitutes an act that seriously undermines human dignity and conveys humiliation. It must therefore be classified as inhuman and degrading treatment within the meaning of Article 3, common to the General Provisions, paragraph 1, section 1, subparagraph c, and Article 4, paragraph 2, subparagraph e, of Protocol II.

7.6.3.15 Subjectively, Alieu Kosiah acted intentionally. He was also aware that the victim was a civilian.

The offense took place within the context of the armed conflict that occurred in Liberia during the first civil war, a fact of which the defendant was aware.

7.6.3.16 In conclusion, Alieu Kosiah will be convicted of subjecting a deceased civilian to humiliating and degrading treatment within the meaning of Art. 109, para. 1, and Art. 108, para. 2, of the Swiss Military Penal Code (aCPM), *in conjunction with* Art. 3, para. 1, item 1, subletter c, common to the General Provisions (CG), and Art. 4, item 2, subletter e, of PA II.

7.7 Ordering and directing a forced transport, carried out by civilians, from Foya to Solomba, and from there to the Guinean border

7.7.1 Charge

Pursuant to section 1.3.10 of the indictment, Alieu Kosiah is charged with having ordered and directed the forced transport of goods (notably coffee) by civilians from Foya to Solomba during the second half of 1993 and at the end of 1993, respectively.

7.7.2 Evidence

During the preliminary investigation

7.7.2.1 According to Georges's criminal complaint dated June 23, 2016, he was forced on several occasions, along with other civilians, to carry a shipment for the ULIMO faction from Foya to the Guinean border. The journey took several hours. The cargo was very heavy and had to be carried on their heads. Georges states that he had to make at least two of these forced marches in the presence of Alieu Kosiah (05-02-0017 et seq.).

7.7.2.2 During his interview with the MPC, Georges stated that he had been forced by

Alieu Kosiah, in the second half of 1993, to transport coffee from

From Foya to the Guinean border at Solomba. He was reportedly first taken to the house of Alieu Kosiah, where many civilians were present. Georges estimated the number of civilians who participated in the transport to be between 20 and 30. There were various goods to be transported. The complainant stated that he, for his part, had to carry a very heavy load of coffee on his head (12-20-0057, 0059). During the transport, Alieu Kosiah, who was the sole commander, did not walk with the civilians. He was accompanied by his *bodyguards*—"no fewer than sixteen of them"—and remained either in front of or behind the group (12-20-0059). Georges stated that he was constantly threatened by Alieu Kosiah's soldiers, who told him that if he could not carry the load, he would be killed. During other transports, he saw people killed by other commanders for being unable to carry their load and dropping it (12-20-0057, 0059). Georges was also threatened by Alieu Kosiah during the transport. Kosiah reportedly told the civilians, while brandishing his weapon, that "everyone had to line up and that, if anything happened, [they would die]" ("if any bush shake, you die") (12-20-0060). Georges explained that, overcome by such terror, he had no choice but to find the strength to carry his load no matter what. According to him, under normal circumstances, he would never have been able to carry such a weight. When he arrived at the border, Georges was completely exhausted. His muscles and neck were very stiff. The complainant stated that he had received no food and had been forced to drink, using the palm of his hand, unclean water from the Makona River. In Solomba, Alieu Kosiah crossed the border. The civilians, meanwhile, gathered and returned to Foya, accompanied by the soldiers and *bodyguards* who had not crossed the border (12-20-0058). Georges stated that this journey had been a terrible experience for him. He said that it could have killed him and that he had been traumatized by being forced to carry heavy loads over a long distance (12-20-0032).

7.7.2.3 When questioned about the charges against him, Alieu Kosiah denied them. He stated that he had never walked from Foya to Solomba. He claimed to have traveled there by motorcycle or car, but never on foot (13-01-0643).

7.7.2.4 With regard to the statements by Olivier and Bernard concerning the transport of goods by civilians during the war, reference is made to recitals 7.5.2.3 and 7.5.2.4 above.

During the proceedings

7.7.2.5 During his testimony before the Court, Georges confirmed his accusation against Alieu Kosiah, stating that the transport had taken place in the second half of 1993 (40.751.018 s.). He explained that the defendant's soldiers had come to pick him up one morning to take him to the defendant so that he could transport a shipment of coffee to the Guinean border. He was living in Foya at the time. The complainant stated that he had seen and heard Alieu Kosiah give the order for the transport.

The goods to be transported had been looted from civilians by Alieu Kosiah (40.751.019). They included cocoa, coffee, and other valuable items that came, in particular, from a hospital or an oil mill. The destination was Solomba, as it was a commercial area in Guinea where the goods could be sold (40.751.021). Georges estimated the number of civilians who participated in the transport to be between 25 and 30. According to him, the civilians had no choice but to participate. In fact, they would have been killed on the spot if they had refused (40.751.020). He stated that he personally saw Alieu Kosiah participating in the transport. It was Alieu Kosiah who led the group. He was accompanied by his soldiers and bodyguards. According to the complainant, no military officer outranked him (40.751.021). The journey reportedly lasted about six or seven hours, according to Georges, depending on the load the civilians were carrying. The road taken was passable by vehicle. The civilians reportedly did not take any breaks, nor were they given anything to eat or drink during the transport. The complainant carried his load on his head. When it became too heavy, he would place it on his shoulders for a moment to rest his head. He stated that the load was very heavy. The soldiers accompanying the convoy were very harsh toward the civilians and would beat them or strike them with their weapons if they did not keep up with the imposed pace (40.751.022). The soldiers were armed with AKs or knives (40.751.023). They were positioned at the front, in the middle, and at the rear of the convoy (40.751.024). According to Georges, the defendant was also harsh, his sole concern being to reach the Guinean border. The complainant admitted that he did not see him strike any civilians. He stated that he felt threatened during the transport by the sound of the weapons, which was terrifying. Regarding physical violence, he stated that he had been pushed. The other civilians also felt threatened and were pushed as well (40.751.023). Georges stated that he was not sure whether Alieu Kosiah—who was sometimes at the front, sometimes on the side, and sometimes at the rear of the convoy—could see everything that was happening during the transport. He did not intervene when his soldiers threatened or struck civilians. The complainant stated that he feared for his life throughout the entire journey. Since the soldiers were armed, there was no possibility of escape. The convoy arrived at the Guinean border in the late afternoon (40.751.024). Most of the soldiers remained in Solomba with Alieu Kosiah, and the civilians were able to return freely to Foya. Georges stated that he had not been paid for this transport (40.751.024). When asked why Alieu Kosiah had not used vehicles instead of civilians to transport the goods, the complainant replied that there were no cars left available due to looting (40.751.025).

7.7.2.6 When questioned by the Court about the charges against him, the defendant continued to deny them. He stated that, to the best of his recollection, he had not traveled to Foya between July and December 1993 (40.731.054). He claimed to be the victim of a conspiracy. Georges would not know him, since he was unable to identify him in a photograph dating from 1996 (40.731.055).

7.7.2.7 Regarding the statements by former military personnel concerning the transport of goods by civilians, please refer to paragraphs 7.5.2.7 through 7.5.2.10 above.

7.7.3 Law and Assessment of Evidence

7.7.3.1 Pursuant to Article 3 common to the GC, attacks on life and physical integrity—including murder in all its forms, mutilation, cruel treatment, torture, and cruel, inhuman, or degrading punishment (subparagraph (a)), as well as attacks on the dignity of persons, including humiliating and degrading treatment (subparagraph (c)).

7.7.3.2 Pursuant to Art. 4(2) of Additional Protocol II, attacks on the life, health, and physical or mental well-being of persons who are not directly participating or are no longer participating in hostilities—whether or not they are deprived of their liberty—are and remain prohibited at all times and in all places, in particular murder, as well as cruel treatment such as torture, mutilation, or any form of corporal punishment (subparagraph (a)), attacks on human dignity, including humiliating and degrading treatment, rape, forced prostitution, and any indecent assault (subparagraph (e)), slavery and the slave trade in all their forms (subparagraph f), and the threat to commit the aforementioned acts (subparagraph h).

7.7.3.3 With regard to legal developments concerning cruel treatment, violations of human dignity, and slavery, reference is made to recitals 7.4.3.2, 7.4.3.3, 7.5.3.3, and 7.5.3.4 above.

7.7.3.4 With regard to an order given by a superior within the meaning of Art. 18 aCPM, see recital 7.2.3.4 above.

7.7.3.5 In this case, Georges' statements to the Office of the Attorney General (MPC) and before the Court have consistently been consistent regarding the circumstances under which the transport took place and the defendant's involvement. The complainant stated before the MPC and reiterated during the trial that he had heard Alieu Kosiah give the order for the transport and had seen him take part in it as the convoy leader. Given the consistency of his account, it already appears to be highly credible. Furthermore, Georges showed restraint in his statements regarding the defendant's involvement, making no attempt to incriminate him at all costs. For example, he acknowledges that he did not see Alieu Kosiah beat civilians and that the defendant may not have witnessed everything that occurred during the convoy. This caution lends further credibility to his statements.

7.7.3.6 Georges's description of the transport also largely corresponds to the one given by Raoul regarding the events described in paragraph 7.5, particularly with regard to the goods being transported, the method of transport—namely, on the head—the way the convoy was organized, the route taken, the time required to walk, the physical and psychological violence inflicted on the civilians, and the role played by the defendant. Georges's account is also corroborated by the explanations provided by Olivier regarding the transport of goods carried out by the ULIMO during the war (see *supra* para. 7.5.2.3).

7.7.3.7 The facts alleged by Georges can also be linked to the role attributed to Alieu Kosiah within H&H (see *supra*, para. 7.5.3.10).

7.7.3.8 Regarding the denials by former ULIMO soldiers and their lack of credibility, reference is made to paragraph 7.5.3.8 above.

7.7.3.9 The defendant's argument—that he was not in Foya during the second half of 1993—must be rejected, as the Court considers it established that Alieu Kosiah was in Lofa beginning in March 1993 and that he participated in the conflict (see *supra*, para. 7.2.3.7). The fact that the defendant was not based in Foya is irrelevant, as he could have traveled there to carry out the transport in question. As for the conspiracy of which he claims to be a victim, this has not been established despite the various arguments put forward by the defense in support of this claim (see *supra*, para. 6). Finally, with regard to the photographs, reference is made to paragraphs 6.5 and 7.6.3.10 above.

7.7.3.10 In light of the foregoing, the Court considers that Georges's statements are far more credible than those of the defendant and thus finds that it has been established that Alieu Kosiah ordered the transport of the goods reported by the complainant and that he participated in it. These acts may be characterized both as an infringement upon physical and mental integrity, in the form of cruel treatment, and as an infringement upon human dignity, in the form of humiliating and degrading treatment.

Forcing civilians to march for hours carrying a heavy load, without giving them food or water, and threatening them with weapons or beating them if they do not keep up with the imposed pace, is likely to cause great suffering. This suffering is primarily physical, due to the long march the civilians were forced to undertake while carrying a heavy load and the beatings they endured if they did not walk fast enough. The suffering is also psychological, given the terror that gripped the civilians throughout the journey, as they were accompanied by armed soldiers. Once again, it is clarified that even if the defendant did not personally inflict the blows or threaten the civilians with his weapon, these acts may be attributed to him. Indeed, to be considered the perpetrator of the offense, it is not necessary for him to have personally carried out all the acts constituting said offense. This was a plan to which he adhered, carried out by

various actors, who thereby acted as co-perpetrators of the offense (on the concept of co-perpetration: see *supra*, para. 7.4.3.25).

The acts alleged against the defendant must also be classified as humiliating and degrading treatment. Forcing a person to carry a load under extremely difficult conditions, while threatening them with death or beatings if they do not keep up with the imposed pace, amounts to a violation of their dignity as a human being and constitutes a very serious form of humiliation. Any reasonable person would indeed feel deeply humiliated and ridiculed by such treatment.

Furthermore, the beatings inflicted on civilians and the death threats constitute the offenses of cruel, humiliating, and degrading treatment; they do not, therefore, constitute separate offenses that would need to be charged in addition.

Finally, it is clarified that, despite the seriousness of the facts, the offense of slavery is not upheld, insofar as the transport lasted only a few hours and this period of time is not sufficient to establish the exercise of powers falling under the right of ownership over the civilians involved.

7.7.3.11 Regarding the order to carry out the transport, Alieu Kosiah's status as commander can be established, given Georges's statements to the effect that the defendant was the highest-ranking officer present during the transport. The position he occupied, at the rear of the convoy, also indicates his hierarchical superiority, as from there he could oversee the transport. Furthermore, the fact that his order was carried out also demonstrates his status as the leader of the convoy. The order given involved the commission of offenses, namely the infliction of cruel, humiliating, and degrading treatment. It was because of the order they received from Alieu Kosiah that the soldiers accompanied the civilians during the transport under the circumstances described above. The objective conditions of Article 18 of the Military Criminal Code (aCPM) are therefore met.

7.7.3.12 Subjectively, Alieu Kosiah acted intentionally. With regard to the order given, he knew that by instructing his soldiers to carry out the transport, they would carry it out. Furthermore, the defendant knew beyond any doubt that the persons involved were civilians.

Finally, these acts took place within the context of the armed conflict that occurred in Liberia during the first civil war, a fact of which Alieu Kosiah was aware.

7.7.3.13 In conclusion, Alieu Kosiah must therefore be convicted for having ordered, and for having personally inflicted, cruel, humiliating, and degrading treatment on civilians (Art. 109(1) and 108(2) of the Military Criminal Code [aCPM] in conjunction with Art. 18 of the Swiss Criminal Code (aCPM) *in conjunction with* Art. 3(1)(1)(a) and (c) common to the General Provisions and Art. 4(2)(a) and (e) of Part II of the Penal Code).

7.8 Ordering the looting of the Foya power plant

7.8.1 Charge

According to section 1.3.11 of the indictment, Alieu Kosiah is charged with having ordered the looting of the Foya power plant between July and December 1993 or between March 1994 and December 1995.

7.8.2 Evidence

During the preliminary investigation

7.8.2.1 In his criminal complaint dated June 23, 2016, Georges stated that ULIMO members had systematically looted property and other valuables and that they forced civilians to transport them to the Guinean border to sell them (05-01-0017).

7.8.2.2 During his interrogation by the Office of the Public Prosecutor (MPC), Georges stated that Alieu Kosiah, Pé-gase, Xavier (alias Céphée), Bertrand, and Sextant had looted the power plant in downtown Foya, located on Kpormbu Road. This was the sole source of electricity for a district with a population of 100,000. They looted the power plant's engine and the structure of the building itself. According to the complainant, this was not an ordinary act of looting, as the commanders themselves were involved (12-20-0031). The "Black Stone" engine was dismantled first. Georges stated that he saw Alieu Kosiah give the order to loot the power plant to his men, as well as to other individuals who had come as reinforcements from Guinea (12-20-0049). Because of this looting, Foya was still without electricity at the time Georges was interviewed by the MPC in 2016 (12-20-0031).

7.8.2.3 When he was interviewed by the MPC, Raoul reported the existence of a generator used to produce electricity in Foya that had been looted and whose parts had been transported to Solomba (for details, see *below*, para. 7.9).

7.8.2.4 When questioned about the charges against him, Alieu Kosiah denied them. He stated that nothing in the case file established that there was in fact a power plant in Foya, other than the statements of two complainants (13-01-0650). According to him, the witness LL. had also stated that there were private generators in Foya, but that there was no central generator to supply electricity to the town (13-01-0640).

During the proceedings

7.8.2.5 During his hearing before the Court, Georges confirmed his accusation against Alieu Kosiah (40.751.025). He was unable to date the event. He explained that the power plant was located on Bombu Road—the road

that leads to Foya Tengia, and that it was the only source of electricity for the Foya district, providing lighting in particular. According to the complainant, those present during the looting included Alieu Kosiah, who was the most senior figure; Sex-tant, the *ground commander* of Foya; Pégase, Céphée, Bertrand, Cassiopée; and other rebels. The looting was reportedly not the act of a single individual, but of the entire ULIMO *leadership* that was present. According to Georges, Alieu Kosiah was the highest-ranking officer among all these soldiers. When asked whether it was the defendant who gave the orders, he replied, "Yes, he was there." Georges acknowledged that he did not see and/or hear Alieu Kosiah give the order to loot; that said, since he was the highest-ranking commander in the Foya area, witnessed the looting, and participated in it, "he was fully aware of it." The complainant explained that there was a Black Stone generator that was set in concrete and therefore could not be taken away. However, right next to it was a backup generator. It was this one that was reportedly taken away, along with certain parts of the main generator that could be detached (40.751.026). Georges clarified that it was not the civilians who dismantled the two machines. It was the soldiers who took charge of this and brought in people from Guinea to help them. The civilians, however, were subsequently conscripted to transport the parts from the two generators. The complainant stated that he did not witness the dismantling of the generators but was involved only in removing the parts for transport. When asked whether Alieu Kosiah was present during the dismantling, Georges stated that he could not answer that question since he was not there, but that the defendant was present when the parts had to be loaded onto the truck. He further indicated that Foya had been completely without electricity since that looting (40.751.027).

7.8.2.6 When questioned by the Court about this looting, Raoul confirmed that before the war, Foya had a power plant, which was located just before the entrance to the town coming from Foya Tengia and which supplied electricity to the entire Foya district. He also confirmed that this power plant had been looted by ULIMO during the war, while he was a soldier. The looting was allegedly ordered by the Strike Force command, specifically Alieu Kosiah and Sextant. This was the Strike Force's general staff. He stated, however, that he did not know whether the order came from them or whether they themselves had carried out an order. In any case, according to Raoul, ULIMO is responsible for this looting. (40.755.024). According to him, a certain Commander MM. is said to have come up with the idea for this looting. The looting was then carried out by the ULIMO chain of command, namely CO Kosiah, CO Vincent, and CO Sextant. The complainant specified that when the ULIMO arrived in Foya, there was already no electricity, but the generator was still there. He also stated that when the generator was running, it supplied electricity to the entire Foya district (40.755.025).

7.8.2.7 When questioned about these facts, Alieu Kosiah denied having given the order for this looting. He did, however, acknowledge that during the period covered by the indictment—namely, between July and December 1993 or between March 1994 and December 1995—he was in Lofa, in the vicinity of Foya. He stated that he had traveled to Foya during that period to relax after returning from the front lines. He indicated that he did not know whether there was a power plant in Foya during the war (40.731.055).

7.8.2.8 Regarding the looting, Olivier stated that the ULIMO were supported "only by themselves" and, in particular, received no international support. Thus, when they arrived somewhere, if they saw anything of value, they took it so they could later buy ammunition or equipment (40.761.009).

7.8.2.9 Jean, also known as Cassiopée, confirmed that there was indeed a power plant in Foya, but stated that he was not aware that it had been looted, while adding that he did not know whether the NPFL or ULIMO was responsible. When asked whether he therefore admitted that the power plant had been looted, he replied, somewhat vaguely, that he had seen the power plant but that it was not operating when he was in Foya (40.769.012). Alfred and Pierre, for their part, stated that they had no knowledge of looting during the war (40.767.007; 40.771.006).

Physical Evidence

7.8.2.10 Attorney Alain Werner submitted photographs to the court showing a base from which a machine appears to have been removed, as well as the remains of another machine (40.751.068).

7.8.3 Law and Assessment of Evidence

7.8.3.1 Pursuant to Art. 4, para. 2, subpar. g of Additional Protocol II, looting is and remains prohibited at all times and in all places with respect to persons who are not directly participating or are no longer participating in hostilities, whether or not they are deprived of their liberty.

7.8.3.2 The prohibition on looting applies equally to organized looting and to looting resulting from individual acts of indiscipline. It is prohibited to order or authorize looting. The prohibition is general in scope and applies to all categories of property, whether private or state-owned (ICRC, Commentary on the Additional Protocols of June 8, 1977, to the Geneva Conventions of August 12, 1949, 1986, No. 4541).

The offense of looting consists of the deliberate and unlawful appropriation of property (ICTY, Naletili Case, Judgment of March 31, 2003, para. 612). The prohibition against looting is considered an integral part of customary international law (ICC, Bemba Gombo Case, Judgment of March 21, 2016, para. 114). Under international law, it is not necessary for the appropriation to

occur on a large

scale, nor does it need to be of great economic value. Spoliation, a common means for individual soldiers to acquire loot, is considered one of the most traditional war crimes. Individual cases of theft of personal property were classified as war crimes in a number of trials held before French military courts and other jurisdictions following World War II, even though in each of these cases the value of the stolen property was modest (ICTY, Naletili Case, Judgment of March 31, 2003, para. 612 et seq.). For looting to constitute a war crime, it requires the appropriation of certain property by a person. The act of "appropriating" property implies that "the property (…)" has come under the control of the perpetrator of the crime (ICC, Bemba Gombo Case, Judgment of March 21, 2016, para. 114).

7.8.3.3 With regard to the discussion concerning Article 18 of the former Military Criminal Code (aCPM) relating to orders given by a superior, reference is made to paragraph 7.2.3.4 above.

7.8.3.4 In the present case, the statements of Georges and Raoul are consistent regarding the existence of a power plant in Foya during the war. Both complainants located the power plant in the same place, namely on the road leading to Foya Tengia. Both also stated that the power plant had been looted by ULIMO during the first civil war. The existence of this power plant, as well as the fact that some of its components were taken away, is also corroborated by the photographs provided by Attorney Alain Werner. Indeed, these clearly show a location where a machine must have once stood, as well as certain parts that apparently could not be removed. Olivier, for his part, confirmed that looting took place during the war by ULIMO, motivated by a desire to obtain money, since the faction received no material support from neighboring countries. Once again, the denials by Alfred and Pierre are not considered credible, as they dispute any offenses committed by the ULIMO armed faction during the war. As for Jean, his statements—to the extent that they are comprehensible—show that he avoided answering the question regarding the looting. As for the defendant, although he contested the existence of a power plant in Foya during the preliminary investigation, he did not revisit this argument during the trial; his defense counsel even expressly admitted that its existence was not in dispute (40.720.053). In light of these facts, the Court finds it established that there was a power plant in Foya before the war and that it was looted by the ULIMO faction.

7.8.3.5 Regarding the order to carry out the looting, Georges testified before the Office of the Prosecutor in 2016 that he had seen Alieu Kosiah give it. That said, during the trial, the complainant retracted his statement, indicating that he had neither seen nor heard the defendant give the order to loot, which was not the act of a single man but of the entire ULIMO *leadership*. According to him, Alieu Kosiah was the highest-ranking commander

the Foya area, and since he witnessed and participated in the looting, “he was fully aware of it.” Raoul, for his part, stated that the order had been issued by the Strike Force’s general staff, of which Alieu Kosiah was a member, while clarifying that he did not know whether the order came from that general staff or whether the latter was carrying out an order received from elsewhere. The fact that the defendant was present during the looting does not necessarily mean that he himself gave the order. While it is established, based on the statements of Georges and Raoul, that the defendant was involved in this looting, the Court has not reached the conclusion that Alieu Kosiah was in fact the one who gave the order to loot the power plant.

7.8.3.6 Under these circumstances, Alieu Kosiah must be acquitted of the offense of ordering the looting of the Foya power plant within the meaning of Art. 109(1) and Art. 108(2) of the Military Criminal Code (aCPM) in conjunction with Art. 18 *of* the aCPM*,* Art. 3 common to the General Provisions (CG), and Art. 4(2)(g) of PA II.

7.9 Ordering and directing the forced transport of the engine from the Foya power plant, by civilians, from Foya to Solomba, and from there to the border with Guinea

7.9.1 Charge

Pursuant to section 1.3.12 of the indictment, Alieu Kosiah is charged with having ordered and directed the forced transport of the generator from the Foya power plant to Solomba by civilians between July and December 1993 or between March 1994 and December 1995.

7.9.2 Evidence

During the Preliminary Investigation

7.9.2.1 During his interrogation, Georges stated that once the power plant’s engine had been dismantled (see *supra*, para. 7.8), a large number of civilians had to be employed to carry it and load it onto a truck, given its weight. Tree trunks had been cut and then placed under the machine to roll it to *the truck*. These logs were then used to lift the machine and load it onto the vehicle (12-20-0049). It was a *minisize truck*, open-bed like a Toyota, with two front wheels and four rear wheels (12-20-0053). The *truck* could not move on its own, so civilians had to push it (12-20-0049). Georges explained that the civilians had to push it from Kpormbu Road—which is located at the exit from Foya, almost on Tengia Road—all the way to the Solomba border. The complainant maintained that he was among the civilians forced to lift the engine to place it on the vehicle and to push the vehicle. The complainant estimated the number of civilians conscripted to be between 50 and 100 (12-20-0050). He stated that, during the journey, ULIMO commanders, including Alieu Kosiah, walked alongside the civilians.

As for the distance traveled, Georges estimated it to be between 16 and 18 miles (between 25 and 28 kilometers), requiring about six hours of walking at a normal pace. The civilians thus spent almost the entire day pushing the *truck*. Some were also carrying other loads, such as spare parts, scrap metal, or aluminum sheets. Even the galvanized metal from the roof covering the power plant had been torn off. Others carried coffee, cocoa, and all kinds of equipment. These goods were placed on the civilians' heads (12-20-0054). According to the complainant, during the transport, civilians who did not want to push the *truck* were whipped, and if any of them did not push hard enough, they were beaten by the soldiers. The commanders, including Alieu Kosiah, were either at the front or the rear of the group, as they did not remain in the same position throughout the entire transport (12-20-0053). Alieu Kosiah's soldiers—his *bodyguards*—were positioned along the convoy and beat "those who did not participate." Their command was "till go," meaning "keep going" (12-20-0054). To terrorize the civilians and force them to move forward, the soldiers also fired shots into the air (12-20-0054). The complainant does not recall the exact time the convoy arrived in Solomba, only that it was nearly evening ("it was almost approaching the evening" (12-20-0050). He explained that once they arrived in Solomba, the civilians had to get off the vehicle on the main road, after which the crossing of the Makona River at the border was organized by a businessman named OO. (or OO.a.) (12-20-0051), a Guinean who organized the sale of goods (12-20-0061). He was often with Alieu Kosiah, Sextant, and the other commanders, and acted as their intermediary by traveling back and forth between Guinea and Liberia (12-20-0047). The river crossing was made using two very large canoes connected by planks. After the engine was transported to the other side of the river, most of the commanders, including Alieu Kosiah, also crossed. The civilians, meanwhile, remained on the bank on the Liberian side. Some of them entered Solomba, intending to continue on to Foya the next day (12-20-0051).

7.9.2.2 Before the MPC, Raoul also briefly mentioned this transport, which he said took place at the end of 1993 (12-08-0030). By then, he had become a ULIMO soldier and had received an order from a commander named MM. to escort civilians who were to transport goods from Foya to Solomba. According to Raoul, the organization of the soldiers for the transport had been planned by the *headquarters commander*, Alieu Kosiah (12-08-0030 s., 0011). Other soldiers were with him when he received this order. There were many of them because they were transporting the generator from Foya. There were two vehicles to push, one of which had no engine (12-08-0030 s.). Raoul had received instructions from MM. that if any civilians were tired, they should be given water. In fact, some of them were living with MM., which is why he wanted them to be treated well and protected (12-08-0031). Regarding the generator

generator to be dismantled, Commander MM. reportedly told him that it had produced electricity for the town of Foya before the war. It was located on the outskirts of Foya, but not in the bush. The generator had been dismantled into several parts, which were loaded into a vehicle without an engine. The goods to be transported had been gathered at headquarters. When Raoul arrived, the civilians were already assembled. The convoy left Foya in the morning and traveled for several hours, arriving in Solomba in the afternoon. Raoul explained that, during the journey, the civilians were tired of pushing the cars (12-08-0031). They were given food; some people were indeed carrying food and preparing meals for everyone (12-08-0040). On the road from Foya to Solomba, Raoul stated that he saw Alieu Kosiah. Sextant, Cassiopée, and NN—Alieu Kosiah's *bodyguard*—were also there (12-08-0031). According to him, the escort leaders were CO Kosiah and CO Sextant (12-08-0032). The commanders were at the rear of the convoy. They were not patrolling alongside the convoy but were giving instructions (12-08-0040). During his interrogation, Raoul reported the death of a civilian, killed by
NN because he was too tired to push the vehicle. NN allegedly used an
AK to kill the civilian. He allegedly fired a shot at the victim's forehead and then left the body by the side of the road. When the civilian was killed, CO Kosiah and CO Sextant were at the rear of the escort. According to Raoul, they saw the body on the way there. The body was still lying by the roadside when they made their way back (12-08-0031 s.).

7.9.2.3 When questioned about the allegations, Alieu Kosiah denied them. He pointed out contradictions between Raoul's account and Georges's. Indeed, while the former reportedly stated that a civilian had died during transport, the latter never mentioned it (13-01-0650). Similarly, Raoul reportedly stated that there were two vehicles in the convoy, whereas Georges stated that there was only one *truck* (13-01-0424). Regarding the boat used to cross the So-lomba River, Alieu Kosiah stated that the one he had seen on his visits to Solomba was 10 to 12 meters long and no more than 1.5 to 2 meters wide at its widest point, in the middle. According to the defendant, when sitting in the boat, it was possible to hold onto the sides with one hand on each side. Alieu Kosiah therefore stated that it was impossible for a car to have been transported on this type of boat (13-01-0104). He added that he did not know OO. (or OO.a.) (13-01-0606 and 0607). Regarding NN., Alieu Kosiah stated that he knew him very well, but that he had never been his *bodyguard*. He was a simple ULIMO soldier whom he had met in Voinjama or Monrovia before going to Lofa. He stated that he had never met him during the war in the region between Foya and Guinea, but rather in Voinjama. Alieu Kosiah had never heard that NN. had killed someone with a shot to the head in the Foya region, as Raoul had claimed. The defendant said he did not know who NN.'s superior was during the war (13-01-0179).

7.9.2.4 With regard to the statements made by Olivier and Bernard concerning the transport of goods by civilians during the war, reference is made to recitals 7.5.2.3 and 7.5.2.4 above.

During the proceedings

7.9.2.5 Before the Court, Georges confirmed his accusation against Alieu Kosiah regarding this transport. He explained that the looting of the power plant had taken several days and that the parts had subsequently been transported. He had been conscripted by "the commanders" (40.751.027). He was summoned from his home that morning (40.751.028, 031). When asked what led him to say that it was Alieu Kosiah who had given the order for this transport, the complainant stated that the defendant was the highest-ranking officer and that he was present. He admitted that he had neither heard nor seen him give the order. However, he inferred from the defendant's presence—as the highest-ranking officer in the chain of command at that time—that the order had come from him. Georges confirmed the estimate he had given to the Office of the Prosecutor regarding the number of civilians who took part in the transport, namely between 50 and 100. He himself was among them (40.751.028). There were also many soldiers present because the goods being transported were "significant." The complainant stated that Alieu Kosiah was present during the transport, as was Pégase (40.751.029). He explained that the backup generator, as well as the various parts of the main generator that had been detached, were moved onto logs so they could be loaded onto the truck using metal brackets. Georges was among the civilians who had to push the truck. The soldiers also took advantage of this transport to bring other goods they had looted to the border. When asked if there were any vehicles other than a *truck*, Georges replied that he did not know what was in front of him and that, for his part, he had pushed—along with other civilians—a *truck* with a non-functioning engine all the way to Solomba (40.751.030). According to the complainant, this task was very difficult. The goods had to be transported to Solomba because that was where trade took place. The journey reportedly lasted approximately six to eight hours. Georges explained that when one group of civilians grew tired, another would take over. According to him, the civilians received neither food nor drink during the journey (40.751.031). The soldiers wanted to demonstrate their power and repeated the same phrases: "any bush shake your heart" and "till go." They were armed and fired shots, which the complainant described as "horrifying." Alieu Kosiah, for his part, had a pistol. According to Georges, this second transport was worse than the first (discussed in para. 7.7 above) in terms of threats and violence, particularly because of the gunshots fired. Since the items being transported were valuable, the soldiers made sure to hurry the journey to the destination. Georges clarified that, with regard to the threats, since more civilians were involved than during the first transport, this somewhat reduced the stress he felt. For his part, he focused on his own task, which was to keep the vehicle moving, so he was not pushed by the soldiers as other civilians may have been. When

asked whether he had seen a civilian killed during the trip, Georges replied that he had not noticed anything of the sort, but could not rule it out because the convoy was large. Regarding Alieu Kosiah, the complainant stated that he could not see everything that was happening during the journey, but that he had at least heard gunshots (40.751.032). The defendant reportedly did not intervene to prevent the soldiers from threatening or beating the civilians. Georges stated that he had feared for his life during the transport and had been unable to flee for fear of being killed. Regarding the formation of the convoy, the complainant explained that the group stretched for several dozen meters. Alieu Kosiah, along with the other officers, did not occupy fixed positions. The convoy arrived at the border late in the evening. The civilians unloaded the goods onto the riverbank and left the truck there as well. To transport the goods across the river, they used large canoes as well as barrels tied together to keep them afloat, much like a ferry. However, the civilians did not bother to transport the goods to the other side of the river (40.751.033). Once they had unloaded it on the riverbank, they were able to return to Foya, where they arrived very late (40.751.033, 034). Georges stated that he had not been paid for his participation in this transport (40.751.035).

7.9.2.6 During the proceedings, Raoul stated that the power plant parts had been transported on a vehicle without an engine—a Mercedes *truck*—which had been pushed by civilians to Solomba to be sold there. Coffee and cocoa were also loaded onto the truck. This transport was allegedly ordered by ULIMO leadership (40.755.025). Raoul claimed to have seen Alieu Kosiah participate in the operation and issue orders in his capacity as second-in-command of the Strike Force. No one outranked the defendant during the transport, as he was in control of Lofa (40.755.025 s.). Speaking about Alieu Kosiah's involvement in the transport, Raoul stated: "It was something that cost a lot of money, so obviously, he wanted to be part of it." He explained that it took a few days to gather the looted items before carrying out the transport. For his part, Raoul participated in the transport as a ULIMO soldier in order to protect the looted goods being taken to Solomba. The civilians, for their part, were reportedly conscripted by the S2, who was responsible for liaising between them and the soldiers (40.755.026). The convoy reportedly left between 7:00 a.m. and 8:00 a.m. (40.755.027, 029). Raoul was unable to estimate the number of civilians who took part in the transport but indicated that there were many of them and that they had no choice but to participate. There were also many soldiers (40.755.027). Alieu Kosiah, who participated in the entire journey of the convoy, was at the rear during the trip to supervise what was happening. He was the one leading the group, as the highest-ranking officer (40.755.027 s.). As for which parts of the power plant were transported, Raoul stated that he did not know, but that he had heard they were important components of the machine that enabled it to start up and generate electricity. These parts were loaded onto a vehicle, which was pushed

all the way to Solomba. He specified that two vehicles left Foya: a pickup truck and a *truck*. He added that there was also a *van*. For his part, he said he saw only the *truck* and the *van*. He was reportedly told there was a pickup truck, but he did not see it himself because the vehicle had already crossed the river into Guinea by the time he arrived. The *truck* had no engine, unlike the *van*. However, the van had no gas, so it also had to be pushed (40.755.028). In addition to the power plant parts, other goods produced in Lofa were transported, including oil, cocoa, and coffee. The journey reportedly took between six and seven hours. The civilians who had to push the two vehicles got a little rest on the downhill stretches but had to push again on the uphill stretches. The road was unpaved (40.755.029). The soldiers accompanying the convoy were armed. Alieu Kosiah, for his part, had a handgun holstered at his side. According to Raoul, the civilians were
"more than just threatened." Those who stopped were whipped by the soldiers. Raoul confirmed that a civilian was killed during the transport by NN, one of the defendant's *bodyguards*, because he had complained of being tired (40.755.030). Alieu Kosiah could see and hear the civilians being beaten or threatened during the transport. However, he reportedly did not intervene to stop these actions. According to Raoul, Alieu Kosiah was present when the civilian was killed and did nothing. During the transport, Alieu Kosiah was indeed positioned in the back, and the ULIMO soldiers were in the front. The convoy arrived at the Guinean border late in the evening. There, the *truck* was loaded onto a ferry. People were present at the border to retrieve the looted goods. The civilians, meanwhile, remained in So-lomba, and only a few soldiers crossed the border (40.755.031). Alieu Kosiah, for his part, crossed the border. Raoul does not know what became of the vehicles that were pushed. He stated that he returned to Foya in the middle of the night. He finally clarified that the civilians had not been paid for participating in this transport (40.755.032).

7.9.2.7 When questioned by the Court about the charges against him, Alieu Kosiah continued to deny them, stating that he had first heard about this transport when he was arrested. He admitted that he knew NN., who, to his knowledge, was a "tactical driver" for Vincent. He claimed he had never been under his command.

7.9.2.8 Regarding the statements by former military personnel concerning the transport of goods by civilians, reference is made to paragraphs 7.5.2.7 through 7.5.2.10 above.

Physical Evidence

7.9.2.9 Attorney Alain Werner submitted to the record photographic images in which makeshift boats used to cross the Makona River can be seen (40.751.069).

7.9.3 Law and Assessment of Evidence

7.9.3.1 Pursuant to Article 3 common to the GC, attacks on life and physical integrity—including murder in all its forms, mutilation, cruel treatment, torture, and cruel, inhuman, or degrading punishment (subparagraph (a)), as well as attacks on the dignity of persons, including humiliating and degrading treatment (subparagraph (c)).

7.9.3.2 Pursuant to Art. 4(2) of Additional Protocol II, attacks on the life, health, and physical or mental well-being of persons who are not directly participating or are no longer participating in hostilities—whether or not they are deprived of their liberty—are and remain prohibited at all times and in all places, in particular murder, as well as cruel treatment such as torture, mutilation, or any form of corporal punishment (subparagraph (a)), attacks on human dignity, including humiliating and degrading treatment, rape, forced prostitution, and any indecent assault (subparagraph (e)), slavery and the slave trade in all their forms (subparagraph f), and the threat to commit the aforementioned acts (subparagraph h).

7.9.3.3 With regard to legal developments concerning cruel treatment, violations of human dignity, and slavery, reference is made to recitals 7.4.2.2, 7.4.3.3, 7.5.3.3, and 7.5.3.4 above.

7.9.3.4 Regarding an order given by a superior within the meaning of Art. 18 aCPM, see recital 7.2.3.4 above.

7.9.3.5 In the present case, the accounts of Georges and Raoul corroborate each other on numerous points, namely the manner in which the transport took place, its duration, the formation of the convoy, the threats and acts of violence committed against civilians by the soldiers during the transport, the manner in which the goods were unloaded at the border, and the method used to transport them across the river—a method corroborated by photographs. The defendant's role during the transport is also described in the same way by both Georges and Raoul: Alieu Kosiah was the highest-ranking person in the convoy and was positioned at the rear of it in order to supervise it. As for the differences between their respective accounts, these can be described as minor and were convincingly explained during the proceedings. Thus, regarding the number of vehicles involved in the transport, Georges and Raoul explained that their differing observations stemmed from the fact that the convoy was large and stretched over a long distance. The length of the convoy also explains why only Raoul saw a civilian being killed. These differences are not sufficient to call into question the reality of the transport or the role played by Alieu Kosiah in it. The fact that both participants

maintained, before the Court, their versions of the facts without attempting to make them correspond in every detail, reinforces the credibility of their statements. The Court therefore considers the allegations of the two complainants to be highly credible. Finally, the fact that both distinguish between what they saw and what they inferred from it is a further indicator of their credibility.

7.9.3.6 The statements of Georges and Raoul are also corroborated by their own accounts regarding other transports, as well as by those of other complainants in the proceedings (see, in particular, *infra,* para. 7.10). In these accounts, the defendant consistently plays the same role as supervisor of the transports. He ensures that the goods reach their destination as quickly as possible and safely, and he is never the one who threatens or beats civilians during the convoy; this menial task is carried out by lower-ranking soldiers. The reality of this transport is also supported by Olivier's statements to the Office of the Attorney General and before the Court, in which he speaks of the need for ULIMO to engage in looting and the forced transport of goods to Guinea to finance their movement.

7.9.3.7 The facts alleged by Georges and Raoul can also be linked to the role of H&H attributed to Alieu Kosiah (see *supra*, para. 7.5.3.10).

7.9.3.8 As for the defendant's denials, they are not sufficient to call into question the Court's assessment. Indeed, as already noted, Georges and Raoul provided convincing explanations for the discrepancies between their respective accounts. As for the defendant's assertion that he did not know NN well, it is unfounded. Indeed, in his statement to the Office of the Attorney General, Olivier stated that NN was part of the same group of fighters as the defendant and that he served as a driver for Vincent (12-16-0042). Even if NN. was not necessarily a bodyguard for Alieu Kosiah, it seems plausible that he participated in this transport given the number of soldiers involved.

7.9.3.9 Finally, regarding the denials made by the former ULIMO soldiers heard during the proceedings and their lack of credibility, reference is made to paragraph 7.5.3.8 above.

7.9.3.10 It is therefore established that Alieu Kosiah participated in the aforementioned transport. These acts may be characterized both as an infringement upon physical and mental integrity, in the form of cruel treatment, and as an infringement upon human dignity, in the form of humiliating and degrading treatment.

Forcing civilians to walk for hours while pushing or carrying a heavy load, without providing them with food or water, and threatening them by firing shots into the air, shoving them, or whipping them if they do not keep up with the imposed pace, is likely to cause great suffering. This suffering is primarily physical, due to the long march the civilians had to endure while carrying or

pushing a heavy

load and the blows they suffered if they did not walk fast enough. The suffering is also psychological, given the terror that gripped the civilians throughout the journey, as they were accompanied by armed soldiers. Even though the defendant did not personally inflict blows or threaten civilians with his weapon, these acts may be attributed to him. Indeed, to be the perpetrator of the offense, it is not necessary for him to have personally committed all the acts constituting said offense. This was a joint plan that was carried out in various ways by different actors, who thus acted as co-perpetrators of the offense (on the concept of co-perpetration: see *supra*, para. 7.4.3.25).

The acts alleged against the defendant must also be classified as humiliating and degrading treatment. Forcing a person to carry a load under extremely difficult conditions, while threatening them with death or beatings if they do not keep up with the imposed pace, amounts to a violation of their dignity as a human being and constitutes a very serious form of humiliation. Any reasonable person would, in fact, feel deeply humiliated and mortified by such treatment.

Furthermore, since the beatings inflicted on civilians and the death threats were found to constitute elements of the offenses of cruel, humiliating, and degrading treatment, they do not constitute any other offenses that would need to be considered in addition.

Finally, it is clarified that, despite the seriousness of the facts, the offense of slavery has not been committed, insofar as the transport lasted only a few hours and this period of time is not sufficient to establish the exercise of powers falling under the right of ownership over the civilians involved.

7.9.3.11 Regarding the order to carry out the transport, both Georges and Raoul admitted that they did not see and/or hear the defendant issue it. That said, this transport can be compared to certain others also attributed to Alieu Kosiah; in each instance, the role played by the latter is the same—namely, that of supervisor of the transport. He does not threaten the civilians, nor does he beat them, but he ensures that the soldiers do so. This role can once again be viewed in the context of his duties (at least *de facto*) as H&H. It is therefore inconceivable that the defendant could have been merely a foot soldier during this transport. Furthermore, while the Court could not be convinced that the looting had in fact been ordered by the defendant—as the order may have come from a person of higher rank, given the testimony of Georges and Raoul—the situation is different regarding the transport, for which both witnesses agree that Alieu Kosiah was in charge. Consequently, it will be held that Alieu Kosiah not only participated in the transport but also gave the order to subject the civilians to cruel, humiliating, and degrading treatment.

7.9.3.12 Subjectively, Alieu Kosiah acted intentionally, both with regard to his participation in the cruel, humiliating, and degrading treatment and with regard to the order he gave to inflict such treatment. He knew, in fact, that by giving the order to compel civilians to transport goods, that order would be carried out by the soldiers, and thus necessarily constituted criminal offenses. Alieu Kosiah was also necessarily aware of the victims' status as civilians.

Finally, these acts took place within the context of the armed conflict that occurred in Liberia during the first civil war, a fact of which Alieu Kosiah was aware.

7.9.3.13 In conclusion, Alieu Kosiah must therefore be convicted for having ordered, and for having personally inflicted, cruel, humiliating, and degrading treatment on civilians (Art. 109(1) and 108(2) of the Military Criminal Code [aCPM] in conjunction with Art. 18 aCPM *in conjunction with* Art. 3(1)(1)(a) and (c) common to the General Provisions and Art. 4(2)(a) and (e) of PA II).

7.10 Ordering the looting of the Pasolahun generator, ordering the forced transport of the Pasolahun generator by civilians from Pasolahun to Kolahun, and the murder of the civilian Victor X. near the Kehair River

7.10.1 Charge

Pursuant to paragraph 1.3.13 of the indictment, Alieu Kosiah is charged with having ordered the looting of the Pasolahun generator between October and November 1993, and between March 1994 and the end of 1995, respectively. The defendant is also charged with subsequently ordering the forced transport of this generator by civilians from Pasolahun to Kolahun (section 1.3.14 of the indictment), and, during said transport, of having killed the civilian Victor X. near the Kehair River (section 1.3.15 of the indictment).

7.10.2 Evidence

During the preliminary investigation

7.10.2.1 According to Louis Z.'s criminal complaint dated July 3, 2014, during the civil war in Liberia, he was in his village of Pasolahun when ULIMO fighters came from Kolahun to dismantle a large electric generator and take it to Kolahun. Louis Z. and approximately 30 other civilians were forced to carry the various parts of the generator. At a roadblock where human skulls were impaled on sticks, they encountered a ULIMO commander named Alieu Kosiah. Louis Z. knows this was his name because the fighters mentioned it. At one point during the transport, a civilian said he was exhausted and could no longer continue carrying his load. Alieu Kosiah then took out a gun and shot him at point-blank range. He then declared that anyone who grew tired would suffer the same fate (05-01-0013).

7.10.2.2 During his interrogation by the MPC, Louis Z. stated that on the day he saw Alieu Kosiah during the war, the latter was wearing camouflage fatigues and carried a .45-caliber pistol on his side. He was thin, with very dark skin and *"big big eyes*," similar to his own (12-26-0020). Looking at the first set of photographs presented to him (which included a relatively recent photograph of the defendant), Louis Z. stated that he did not recognize any of the men shown to him and that the photos were old. On the second set of photographs (which included a photograph of the defendant dating from the war), the complainant did not identify anyone either (12-26-0022). When confronted with the defendant, Louis Z. recognized Alieu Kosiah as the perpetrator of the acts he had reported (12-26-0030). When asked why he recognized Alieu Kosiah in person but not in the photographs presented to him the previous day, the complainant stated that the photographs were too dark (12-26-0030).

7.10.2.3 Regarding the reported incidents, Louis Z. explained that ULIMO soldiers, who had come from Kolahun, had reached Pasolahun that evening. Upon their arrival, they asked to see the village chief (*town crier*) and went to his home. They then informed him that they had received orders from their commander, Alieu Ko-siah, to come and retrieve the village generator (12-26-0015). The soldiers dismantled the generator using tools they had brought with them. Louis Z. stated that the soldiers were armed and could therefore do as they pleased. Later that night, the soldiers went to see the village chief to inform him that all the men were to gather the next morning to transport the generator parts to Kolahun. So, the next day, the civilians gathered. When a part was too heavy for one person to carry, it was tied to a stick so that two people could carry it—one in front and one in back. The largest part, which was the center section of the machine, was so heavy that it took four people to carry it—one in back, one in front, and one on each side. Two poles were tied together in the shape of a cross to carry it (12-26-0017). The core of the part that generates electricity had been removed, revealing a hole through which a pole had been inserted. The part was thus suspended from this pole. Another pole had been placed across the top of the part, at right angles, and secured so that four men could carry it. The other parts were divided among the men (12-26-0017 et seq.). Some civilians were also required to carry rice, goats, sheep, chickens, and "whatever pleased the soldiers" (12-26-0040). For his part, Louis Z. took the pieces he could lift on his own and carried them on his head (12-26-0018). The convoy left Pasolahun in the morning. There were many civilians because the load was very large. The soldiers accompanying them were all armed, which deterred the civilians from fleeing. During the march, whenever a civilian did not walk fast enough, he was beaten by the soldiers, who carried sticks to

hit them (12-26-0017, 0018, 0039). On the road, before reaching Kolahun, the convoy was very spread out (12-26-0018). Louis Z. was at the rear of the convoy. At one point, he saw the body of a man, PP.Y., on the road. He had previously heard a gunshot but did not know who had fired it. When they passed the body, the soldiers told the civilians that this was the first example they were showing them and that if anyone said they were too tired and no longer wanted to carry the machine, they would be killed in the same way (12-26-0019). Louis Z. stated that he learned the body was that of PP.Y. after asking Antoine W., another civilian in the convoy, upon their arrival in Kolahun. Shortly after seeing the first body, Louis Z. heard another gunshot and then saw another body. Since he had been beaten by the soldiers to make him move faster, he had caught up with Antoine W., André, and other civilians who were at the scene when the shot was fired. Louis Z. then asked André, in the Gbandi language—so the soldiers wouldn't understand—what had happened. André replied that the situation was bad and that they shouldn't show any signs of fatigue. He also told him the identity of the second person who had died: QQ.Y. Louis
Z. asked who had fired the shot, but Antoine W. and André never gave him a name (12-26-0019). After these incidents, the convoy continued on and arrived in Kolahun in the evening. Just before Kolahun lies the village of Samalahun. Between Samalahun and Kolahun was a hill that they had to cross, from the top of which one could see the Kehair River, also known as
"Mano River." Then they had to go down the hill to cross the river before reaching a barrier (*gate)* at the entrance to the rebel-held towns. It consisted of a piece of wood that they had placed across the road (12-26-0020). At this spot, Louis Z. stated that there were skull bones attached to a long piece of wood laid across the road, intended to instill fear in civilians and remind them that ULIMO could do whatever they wanted (12-26-0032 s.). Next to the barrier was the "office" where civilians traveling alone had to declare their goods. When Louis Z. passed through this checkpoint, he saw Alieu Kosiah for the first and only time. His soldiers then greeted him by calling him "Chief Kosiah" (12-26-0020). Louis Z. heard that he was the *"big man"* for the soldiers in the Kolahun district, which meant that he was in charge of them (12-26-0038). The soldiers told the civilians that they had to wait until the last group had crossed before they could continue on toward Kolahun (12-26-0020). Louis
Z. explained that he saw a man from Pasolahun, Victor X., tell Alieu Kosiah that he was too tired to finish the journey. Alieu Kosiah then reportedly told him that if he did not carry his load to the center of Kolahun—which was not far away—he would kill him, and one of his soldiers would carry his load to the warehouse (12-26-0020 s.). Later, during his interrogation, Louis Z. stated that it was Antoine W. who had explained to him what Victor X. had said to Alieu Kosiah. He also specified that Alieu Kosiah allegedly stated that if Victor X. was too tired, he would "stay here" (meaning he would be killed) (12-26-0048). Following the exchange between Alieu Kosiah and Victor X., Louis Z. reportedly heard a gunshot (12-26-0021,

0048). He reportedly turned around and saw Victor X., who had just been shot in the upper body and was dying (12-26-0021). When the shot rang out, Louis Z. saw no soldiers near Victor X., except for Alieu Kosiah, who was holding a .45-caliber pistol in his right hand (12-26-0021, 0048). After that, the civilians were lined up to continue their journey toward the center of Kolahun. It was still a 30- to 40-minute walk to the warehouse in the "Tulila" (phon.) community, where they unloaded the goods (12-26-0021 s.). Louis Z. heard that the soldiers had gone to sell the machine in Guinea (12-26-0041). Some civilians returned to Pasolahun that same day. Louis Z., for his part, went with other civilians to his older sister's house in Kolahun to spend the night. They then left the next day for Pasolahun and, on the way, saw the bodies of the three civilians killed the previous day (12-26-0022).

Louis Z. stated that after ULIMO soldiers looted the generator in Pasolahun, there was no longer any electricity in the village. This was still the case when he was interviewed in March 2017 (12-26-0046). He clarified, however, that when the war began, the village of Pasolahun had run out of gasoline to run the generator, and the village did not have a car to go buy any (12-26-0046).

7.10.2.4 In his criminal complaint dated July 3, 2014, Antoine W. also recounted the events described above. According to his complaint, in 1994, Antoine W. was in his village, located in the forest outside Kolahun, when Alieu Kosiah sent soldiers to dismantle and remove a generator that was in the village. Antoine W. and other civilians were forced to dismantle the generator and had to transport the parts to Kolahun. ULIMO soldiers beat the civilians carrying this equipment with sticks. Antoine W.'s uncle reportedly died of exhaustion during the transport, and two of his brothers, who had attempted to escape, were reportedly shot dead by ULIMO fighters. When the civilians arrived near Kolahun, Antoine W. saw Alieu Kosiah waiting for the convoy. It was the first time he had seen him. Antoine W. then saw Alieu Kosiah shoot at point-blank range one of the civilians, who was completely exhausted and said he could no longer carry the supplies (05-01-0012 s.).

7.10.2.5 During his interrogation by the MPC, Antoine W. described Alieu Kosiah as being, at the time, thin, black, and with *bulging eyes*. According to the complainant, the defendant had darker skin than he did. He was also taller than him. He had very short hair. Antoine W. could not recall whether Alieu Kosiah had a beard, wore glasses, or any jewelry, nor whether he had a tattoo. He also could not recall whether the defendant had any distinctive physical features. The complainant stated that in Liberia, during the war, "people did not go near those people." There were many soldiers surrounding Alieu Kosiah, so it was impossible to approach him (12-07-0008). On the occasions when the complainant saw the defendant, the latter was wearing a long-sleeved camouflage military uniform and a cap, which he pulled down quite low over his eyes. Alieu

Kosiah was not carrying a weapon. It was his *"small soldier*," who was standing next to him, who was carrying one (12-07-0016). In the two photo lineups presented to him, Antoine W. was unable to identify the defendant (12-07-0008 et seq.). When Alieu Kosiah was shown to him on a screen, Antoine W. stated that he reminded him of someone and that he had seen this man before in Kolahun. However, he was unable to confirm that the person he saw on the screen was indeed the one he had identified (12-07-0009). When Alieu Kosiah entered the courtroom, Antoine W. stated: "That's him. The eyes I told you about—the *bulging eyes*."

7.10.2.6 Regarding the facts of the case, Antoine W. stated that there was a large generator in Pasolahun that provided electricity before the war. When the ULIMO learned of this generator, they sent "some people" to retrieve it. These people dismantled the machine and asked civilians to transport the parts to Kolahun. The commander of the soldiers who came to dismantle the generator was Serge. He told the civilians that Alieu Kosiah had sent him to retrieve the generator. It took a full day's walk to get from Pasolahun to Kolahun. Antoine W. had to carry a military bag on his back, the contents of which he did not know. The other civilians carried the parts on their heads (12-07-0011). According to the complainant, there were many of them involved in this transport—more than a hundred. Antoine W. explained that he had been beaten with sticks by ULIMO soldiers during the march (12-07-0023). Along the way, two civilians named QQ.Y. and PP.Y. (who are not related to Antoine W.) were tired and hungry. Antoine W. heard that Serge had warned QQ.Y. and PP.Y. that if they were tired and hungry, "they would die right there" (12-07-0012). He also heard gunshots behind him. The civilians continued on their way toward Kolahun. Before reaching Kolahun, there is a large river called the Kehair. The civilians crossed this river via a bridge, which had been destroyed during the war. Serge then told the civilians that the chief, Alieu Kosiah, was waiting for them with the spare parts. Once the convoy arrived, Serge called Alieu Kosiah to inform him that the generator had arrived (12-07-0011). Alieu Kosiah was waiting for them in uniform (12-07-0023). An-toine W.'s uncle, named Victor X., was very tired by then and did not want to go any further. Alieu Kosiah told him that if he was too tired, he would kill him and he would die right there. Since Victor X. kept saying he didn't want to keep walking, Alieu Kosiah ordered one of his *"small soldiers"* to hand him his weapon, an AK-47, with which he shot Victor X. (12-07-0011, 0023). Antoine W. explained that he saw Alieu Kosiah's face with his bulging eyes (*pop eyes*) at the moment he pointed his gun at his uncle (12-07-0023). After that, the complainant and the other civilians continued on their way to Kolahun, dropped off the generator there, and returned to Pasolahun (12-07-0011). On the way back, Antoine W. saw the bodies of QQ.Y. and PP.Y. The civilians he was with reportedly told him that it was Serge who had killed them (12-07-0023). Antoine W. also saw his uncle's corpse again, which was beginning to decompose. He explained that he had been unable to carry the

body, because if the soldiers had seen him near his uncle's body, they would have killed him too (12-07-0023).

7.10.2.7 During his hearing before the Public Prosecutor's Office as a witness, André provided a description of the defendant at the time of the events and stated that his skin was black and that he had *"pop eyes*," or bulging eyes. The witness was unable to specify Alieu Kosiah's exact skin color because he "did not look closely at these people to identify them." He also stated that the defendant was not tall—that is, he was slightly taller than himself but shorter than Federal Prosecutor Andreas Müller, who is 175 centimeters tall. As for his build, André stated that he was neither fat nor thin, and that he was "well-built." He had a pistol holstered at his side, and the people around him were carrying various types of weapons, including AKs, Uzzis, etc. On both occasions that André saw Alieu Kosiah, the latter was in military uniform—a multicolored green camouflage outfit. André stated that he did not recall any other details about the defendant, because at the time, he was in a situation where he wanted to pass by him quickly and avoid any personal interaction with him. He did not want to make eye contact with him because he was
"was afraid, and there were a lot of people around him—a lot of soldiers" (12-18-0009). When shown a lineup of photographs, André stated that, since the events had occurred a long time ago, it was difficult for him to identify the defendant. He did, however, point to the photograph of Alieu Kosiah, saying that it resembled him (12-18-0010). When the defendant entered the courtroom, André confirmed that it was indeed Alieu Kosiah (12-18-0010).

7.10.2.8 Regarding the events, André stated that one morning at 5:00 a.m., ULIMO soldiers arrived in Pasolahun, where he had been staying for a few months. The soldiers had taken "everyone" to the square and began looting (12-18-0006). There was a generator in Pasolahun at the time. André could not, however, recall whether it was an electric generator or one used to cook rice (12-18-0006 s.). The witness was unable to say whether there was electricity in Pasolahun before the war. In any case, according to him, there was none while he was in Pasolahun (12-18-0029 s.). As for whether there was street lighting, André replied that he had not seen any electric poles (12-18-0030). ULIMO soldiers reportedly ordered the young men to carry the generator from Pasolahun to Kolahun. This order was allegedly given by "H&H," that is, Alieu Kosiah. The witness explained that the journey from Pasolahun to Kolahun took more than nine hours on foot. The young men, who were numerous, carried the generator on a scaffold. André was part of the convoy as a civilian (12-18-0007). Two people—QQ.Y. and PP.Y.—complained during the journey that they were tired and hungry. Serge, one of the ULIMO soldiers, reportedly told them: "If you're tired, you'll stay here" (12-18-0007). The two civilians insisted on returning home, saying they were tired and hungry. Serge

reportedly killed them by shooting them with a pistol. The other civilians, including André, continued on their way (12-18-0007).

At the foot of a hill was a river called “Kehair,” which marked the beginning of the town of Kolahun. The town began just past a bridge. From the hill, it was possible to see Kolahun. The civilians saw, across the river, a group of soldiers heading toward the bridge. The civilians descended the hill to also reach the bridge. The soldiers accompanying the civilians stated, as another group of soldiers advanced toward them, that the H&H *boss-man*, Alieu Kosiah, was approaching the river (12-18-0007). He was wearing a military uniform, specifically camouflage fatigues (12-18-0009). Upon his arrival, the soldiers saluted him (12-18-0047). A civilian, Victor X., was at the rear of the convoy, separated from the group, and was complaining that he was tired and hungry. Soldiers were beating him and telling him to move forward. Alieu Kosiah reportedly then asked his soldiers why he was lagging behind when everyone else had already crossed the bridge (12-18-0012). The soldiers replied that it was because he was tired and hungry (12-18-0012 s.). Once Victor X. had crossed the bridge, Alieu Kosiah reportedly accused him of wasting their time (12-18-0008). He then reportedly drew his pistol and shot and killed him just as Victor X. was crossing the bridge (12-18-0008, 0013). On Alieu Kosiah’s orders, the civilians continued carrying the cargo. Then, in the center of the town of Kolahun, they set down the cargo they were carrying and headed back toward Pasolahun (12-18-0008).

7.10.2.9 When questioned as a witness by the MPC, Robert stated that he had been the *town chief* of Pasolahun during the war, from 1992 to 2002. He explained that, starting in the 1980s, Pasolahun had a diesel generator to produce electricity, which, however, had never been used until the war broke out (12-34-0013, 0017 ff., 0019). The witness stated that during the war, in either 1995 or 1996, ULIMO looted this generator. They dismantled it, had people carry certain parts on their heads, and the engine was carried on a stretcher by four people to the next village. Robert stated that he was not present when this occurred, but that he had been told that the commander who had ordered it was “Chief RR.” When the ULIMO arrived in Gondolahun, “Chief RR.” allegedly led the soldiers directly to Pasolahun to take the machine. The machine was reportedly transported to Kolahun, and from there to Guinea (12-34-0020 s.). The witness stated that he saw the ULIMO soldiers one morning around 10:00 a.m.; by then, they had already finished dismantling the machine and were beginning to transport it. They were along the road to Kolahun. Robert saw them as he was returning from the farm. The civilians were carrying heavy loads on their heads, and behind them, armed soldiers were shouting at them, “Till go, till go.” Robert explained that he then hid (12-34-0021). Regarding the claim that a man named Victor X. was killed during the transport, the witness stated that this was a lie. In fact, according to him, from the moment the ULIMO arrived in Pasolahun, no firearm was ever pointed at a civilian from the village.

No one was shot (12-34-0057). The witness further stated that he knew Victor X., an elderly man who is still in Pasolahun. He was a civilian during the war (12-34-0023) and reportedly works on a farm, but is also a carpenter and blacksmith (12-34-0039). Robert clarified that at the time the generator was transported from Pasolahun to Kolahun, there was only one Victor X. in Pasolahun, who was still alive when the witness was heard, in early January 2019 (12-34-0079 et seq.).

7.10.2.10 When asked whether there was electricity in Pasolahun before the war, witness SS. stated that there was a generator for the village, but only "for dancing or celebrating important days." It was a "Tiger" or "Honda" type generator (12-33-0028). He also stated that a man named Victor X. lived in Pasolahun in 2017 and that he was the assistant clan chief (12-33-0030, 0031). Witness TT., who testified in 2019, stated that Victor X. was the current chief of Pasolahun (12-35-0043).

7.10.2.11 When questioned about the charges against him, Alieu Kosiah denied them, asserting that at the time, there was no electricity in Pasolahun. According to him, 99 percent of Liberia was without electricity at that time. Therefore, there was no generator in Pasolahun that could have been transported by civilians. He also stated that, in the context of the proceedings, this was the first time he had heard the name of that village (13-01-0645). He stated that he was also unfamiliar with Kolahun and that the only thing he knew about it was that one must pass through that town to reach Foya or Massabo-lahun (13-01-0383). Alieu Kosiah also stated that he had never been stationed in Kolahun (13-01-0490). Furthermore, the defendant defended himself by pointing out inconsistencies between the various accounts given by the participants in the proceedings (see, in particular, 13-01-0389 et seq.).

During the trial

7.10.2.12 Before the Court, Louis Z. confirmed his accusation against Alieu Kosiah regarding the theft of the generator. He dated the incident to 1993, during the dry season. The generator was located outside the village of Pasolahun, near the soccer field (40.754.007). According to him, it was used to provide electricity for the villagers (40.754.008). Louis Z. explained that ULIMO soldiers, led by Serge, had gone to Pasolahun one day and approached the village chief, telling him that Chief Kosiah had sent them to take the machine (40.754.008 s.). Since they were armed, the village chief did not attempt to oppose the operation. The soldiers dismantled the generator with the help of their own mechanic and took all of its parts. Louis Z. stated that he did not witness the dismantling of the generator and was therefore unable to say whether the defendant was present (40.754.008). According to the complainant, since the looting, the village of Pasolahun has been without electricity (40.754.009). Louis Z. also confirmed his complaint against Alieu Kosiah for ordering civilians to transport the generator to

Kolahun. He explained that the transport took place the day after the looting and that the civilians had taken the machine to *the checkpoint*, where three human skulls were displayed. It was there that he reportedly saw Alieu Kosiah, accompanied by *bodyguards* (40.754.009). Louis Z. confirmed that he had been forced to participate in the transport and that, had he refused, he would have been killed (40.754.009 s.). Early in the morning, the day after the looting, ULIMO soldiers rounded up the village elders of Pasolahun and demanded that they find men to transport the machine; otherwise, “they would burn the area” (40.754.009). The soldiers reportedly told the village elders that they had been sent by Alieu Kosiah. Louis Z. stated that he saw Antoine W. and André during the transport; he knew them well because they were from the same village (40.754.010 s.). When asked whether Alieu Kosiah was present during the transport from Pasolahun to Kola-hun, the complainant replied that he had only seen him at *the checkpoint*. When the convoy arrived there, the soldiers saluted the defendant. That is how Louis Z. reportedly learned that he was “Chief Kosiah.” The latter was wearing a camouflage uniform. During the transport, Serge was the one giving orders. But when the convoy reached the *checkpoint*, the most important person was Alieu Kosiah because the soldiers saluted him and called him “Chief Kosiah.” Louis Z. explained that the civilians had carried the cargo on their heads and that, when they grew tired, he would place it on their shoulders. In addition to the generator parts, the civilians also carried oil and rice. For his part, the complainant carried a heavy metal part. He was unable to specify the weight of the part, citing the fact that he had not attended school (40,754,012 sec.). He explained that the journey from Pasolahun to Kolahun took a day’s walk. The road they took was unpaved. Civilians who were thirsty could ask the soldiers for permission to drink, but stopping to rest was out of the question. The civilians, however, were not given anything to eat during the journey. Regarding the composition of the convoy, Louis Z. explained that soldiers were mixed in with the civilians to prevent them from escaping (40.754.013). According to the complainant, the soldiers—most of whom were armed—behaved very cruelly toward the civilians. They mistreated them by beating them. Louis Z. stated that he personally was struck in the back with the butt of a rifle during the journey to force him to move faster. The soldiers told them that “if they didn’t walk fast enough, the flies would deliver the message to their parents,” which meant they would be killed. Louis Z. confirmed before the Court that two people had been killed during the journey, namely PP.Y. and QQ.Y. He stated that he did not see them being killed but saw their bodies on the ground. It was André who reportedly told him that they had been killed by Serge (40.754.014). Louis Z. also confirmed that Alieu Kosiah had killed the civilian Victor X. (40.754.015). He explained that, when they arrived at *the checkpoint*, the civilians had to wait for the last group to catch up with them. Victor X. was part of that group (40.754.016). He said he could no longer carry his load because he was tired (40.754.017). Alieu Kosiah then allegedly shot him. Louis Z. stated

that he saw the defendant threaten Victor X. with a pistol, telling him that if he complained, he would kill him. Afterward, Louis Z. reportedly heard a gunshot and saw the civilian lying on the ground, dying. Louis Z. estimated that he was about fifteen meters away from the scene. Alieu Kosiah and Victor X. were close to each other, about one or two meters apart (40.754.016). The civilians then continued on their way to the warehouse located in the center of Kola-hun, where they unloaded the goods. Alieu Kosiah was present during the final leg of the journey from the *checkpoint*. Once the goods had been unloaded, the civilians were able to return to Pasolahun freely. Louis Z. stated that he feared for his life throughout the entire transport and that he had not been paid for his participation (40.754.018).

7.10.2.13 When questioned in turn by the Court, Antoine W. also confirmed his accusation against Alieu Kosiah for ordering the looting of the Pasolahun generator in 1993. The generator was located near the Pasolahun soccer field and was used to provide lighting for the village (40.756.011). Antoine W. explained that as he was returning to his village from the farm, he saw ULIMO soldiers. He was told that Serge, the soldiers' commander, had informed the village chief that Alieu Kosiah was in Kolahun and that he had sent them to take the generator, giving the order that no man was to leave the village, as the generator had to be transported the following day. The generator was dismantled by men led by the ULIMO soldiers. Antoine W. stated that he did not witness the dismantling (40.756.012). According to the complainant, the looting resulted in the village of Pasolahun being deprived of electricity. Antoine W. specified that Pasolahun still had no electricity as of the date of his hearing in February 2021. Antoine W. also confirmed his complaint against Alieu Kosiah for ordering the transport of the generator from Pasolahun to Kolahun, which allegedly took place the day after the looting (40.756.012). The complainant further confirmed that he had taken part in the transport alongside numerous other civilians, whom he estimated to number more than 50 (40.756.013 s.). These civilians were forced to participate under threat of death. Antoine W. stated that he saw Louis Z. and André among the civilians during the transport (40.756.014). The soldier leading the convoy was Serge (40.756.015). Antoine W. explained that the soldiers who dismantled the generator had been unable to take apart the main component, so it had to be carried using sticks. This component was reportedly carried by a group of 30 to 40 civilians. The complainant stated that he did not recall any other goods being transported that day. For his part, he carried a military bag whose contents he did not know and which was extremely heavy. Antoine W. stated that he could not specify the weight of this bag because he was not attending school at that time. He also confirmed that Alieu Kosiah was not present during the transport and that he had only seen him at the Kehair River, near Kolahun. According to Antoine W., the convoy's destination was Kolahun, as that was where everything coming from the bush was brought before being taken to Voinjama or Foya, and then transported to Guinea (40.756.016). Regarding the duration of the transport, Antoine W. stated that the civilians had

left in the morning and that the journey had

lasted all day, well into the evening (40,756,016 s., 022). The road they took was overgrown with brush, leaving only a narrow path. The civilians therefore moved in single file, with the exception of those carrying the generator's central component. The civilians did not take any breaks during the journey. The pace imposed on them was so brisk that they practically had to run. If the soldiers saw them sitting down, they could be beaten with rifle butts or sticks. They were given neither food nor drink. Antoine
W. stated that he was kicked in the buttocks and struck with rifle butts on numerous occasions (40.756.017). He even saw a civilian fall to the ground due to the force of a blow inflicted on him (40.756.017 s.). According to the complainant, three civilians died during the transport. He explained that he saw Serge ask a *"small soldier"* for a weapon to kill PP.Y. and QQ.Y. because they were complaining of being tired and having been beaten too severely. Antoine W. stated that he heard gunshots and saw the bodies lying on the ground during the return trip (40.756.018). The civilian Victor X. was also reportedly killed at the Kehair River by Alieu Kosiah because he was tired. When asked why his criminal complaint stated that Victor X. had died of exhaustion, Antoine W. was unable to explain it, stating that what was written there was false. Victor X. was Antoine W.'s uncle and was 30 or 40 years old at the time. He lived in Bolahun and fled to Pasolahun due to the arrival of ULIMO (50.756.019). According to the complainant, Victor X. had two children, a boy and a girl (40.756.020). Regarding the circumstances of his uncle's death, Antoine W. explained that he had seen Alieu Kosiah for the first time during the transport, after crossing the Ke-hair River. The complainant was part of the first group, which had to wait for the rest of the convoy to catch up before continuing on. Victor X. was part of the last group (40.756.021). He reportedly complained of being hungry, tired, and no longer able to carry his load, which is why Alieu Kosiah allegedly killed him. Kosiah reportedly told him that if he could no longer continue, he would stay there, implying that he would die (40.756.019, 021). Antoine W., who was about ten meters from the scene, confirmed that he saw the defendant shoot his uncle, who was sitting on the ground (40.756.021). The complainant stated that it was a "terrible" situation. The body was left at the scene, and the convoy continued on to Kolahun, with Alieu Kosiah riding in the back (40.756.022 s.). The cargo was unloaded in a parking lot in downtown Kolahun, after which the civilians were able to return home (40.756.022 s.). Regarding the role played by Alieu Kosiah during this transport, Antoine W. stated that he did not know whether Serge or Alieu Kosiah was the superior in the chain of command, but that he had seen the former salute the latter with respect, as was customary when soldiers met their commander (40.756.023). Antoine W. stated that he feared for his life on numerous occasions during the transport; the soldiers had the power to decide the civilians' fate, so the civilians had no control over their own destiny. According to the complainant, it was impossible for them to escape (40,756,022). When asked whether he had been paid for carrying out this transport,

Antoine W. stated that the civilians had been treated like slaves and that slaves were not paid (40.756.024).

7.10.2.14 When questioned as a witness, André stated that in 1993, there was a machine on the outskirts of the village of Pasolahun, though it was not connected to a power source. André stated that he did not know if it was a generator and was unaware of its purpose (40.763.009). He clarified that he did not know whether it was operational before it was looted (40.763.011). This machine was taken by ULIMO soldiers—including Serge—who stated that the order to loot came from Alieu Kosiah (40.763.009 s.). The witness stated that he neither saw nor heard Alieu Kosiah give the order to loot, but that he heard the ULIMO soldiers say the order came from him. André also stated that he did not know who had dismantled the machine because he had only seen it after it had been dismantled (40.763.010). After the dismantling, the civilians were gathered to retrieve the parts of the generator and a few other items that had been looted (40.763.011, 014). André confirmed that he had participated in transporting the generator from Pasolahun to Kolahun (40.763.011). The order to carry out this transport was reportedly given in Pasolahun by a soldier named AAA (40.763.011 s.). According to the witness, the transport took place on the same day that the soldiers arrived in Pasolahun. He explained that they arrived very early in the morning, before the civilians had left for their respective farms. Regarding the civilians who took part in the transport, André stated that he remembered seeing Antoine W.'s face, though he did not know him (40.763.012). He also stated that Alieu Kosiah did not participate in the transport and that he had only seen him in Kolahun. At that time, Kosiah was wearing a military uniform. In Kolahun, Alieu Kosiah appeared, based on his demeanor, to be the highest-ranking soldier (40.763.013). He spoke in a loud, authoritative voice, according to the witness. André stated that he had to carry a metal object that he described as heavy (40.763.014). He explained that he had difficulty carrying it, but "he had to manage" (40.763.014 s.). André noted, however, that while the loads carried by the civilians were heavy, they were not so heavy as to require them to use their last ounce of strength (40.763.016). The convoy set out in the morning and continued on its way for nine hours or more, according to the witness's estimates. The road taken had been passable before the war, but due to the fighting, it had not been cleared of brush, so it had become a trail that could only be traveled on foot. The civilians did not take any breaks during the journey and were given neither food nor drink. Regarding the formation of the convoy, André explained that the soldiers moved along the convoy to ensure that no one escaped (40.763.015). The civilians carried the parts on their heads using crisscrossed wooden frames. According to the witness, the soldiers behaved arrogantly and brutally toward the civilians (40.763.016). The civilians were insulted during the transport by armed soldiers (40.763.016 s.). The witness stated that he himself had not been subjected to physical violence, but that other civilians had been slapped and kicked in the backside (40.763.016). In Kolahun, Alieu Kosiah

reportedly did not intervene to prevent the soldiers from committing these acts of violence. When asked how many civilians had been killed during transport, André initially replied four, namely “a Didier, a PP., a QQ., and a Victor.” He clarified that Didier and Victor’s last name was X and that he did not know the last names of PP or QQ (40.763.017). The witness, however, later corrected himself during his testimony, stating that Didier X had been killed during another transport (40.763.022). PP. and QQ. were allegedly killed by one of the group’s leaders—namely, BBB., AAA., or Serge—on the grounds that they were too tired. André stated that he heard gunshots but did not see who fired them, as he was at the front of the convoy. André also confirmed that Victor X. had been killed during the transport (40.763.018). When asked about the latter’s identity, the witness was unable to provide any information, other than that he was about the same age as himself. He heard his name when people were talking about his death (40.763.019). The incident occurred when the convoy arrived at the Kehair River, at Lofa Bridge. Alieu Kosiah was on the other side of the river at the time. It was the first time André had seen him. André stated that he saw the defendant shoot Victor X. with a pistol as Victor X. was approaching the end of the bridge (40.763.020). The reason for his killing was that he had complained of being tired from carrying his load and had become angry (40.763.021 s.). André estimated the distance between himself and the scene to be about ten meters (40.763.020). Following the murder of Victor X., the civilians resumed their journey toward the center of Kolahun (40.763.021). The bodies were taken to the town center, where vehicles were waiting to transport them to Guinea (40.763.024). The civilians were then able to return freely to Pasolahun (40.763.025). The witness stated that he feared for his life during the transport, as did each of the other civilians. They had no way to escape, given the risk of being killed (40.763.022).

7.10.2.15 During the proceedings, the witness Robert stated that Luc (Antoine W.’s nickname) and Louis Z. were his nephews, a claim that both of them disputed (40.764.002 s.). He claimed to have provided financial assistance to Antoine W. so that he could attend school, a claim that the latter also strongly denied (40.764.003). At the Court’s request, Robert was able to correctly name the members of each of the two complainants’ respective families (40.764.006 ff.). The only error, according to Antoine W., concerned his mother’s name, which is CCC. and not CCC.a., as Robert claimed (40.764.008). Before the Court, the witness stated that he had been the *town chief* of Pasolahun from October 2001 through 2002 (40.764.010). When confronted with the statements he had made before the MPC, in which he claimed to have been town chief since as early as 1992, Robert replied that at that time, he was part of “the chief’s group” (40.764.010 et seq.). When asked about the treatment of civilians in Pasolahun during the war, the witness stated that he had never seen a civilian mistreated by the ULIMO. As for looting, apart from “the machine,” the ULIMO had never looted the village. Robert did, however, state that civilians were required to

carry loads for the soldiers (40.764.011). They were forced to do so out of fear of being killed, since the soldiers were armed and the civilians were not paid for participating in these transports. Civilians also reportedly told him that they were not given anything to eat during these transport operations. Regarding acts of violence, Robert stated that he was unaware of any, as he himself had never carried out such transport operations (40.763.012). He also stated that he had never met Alieu Kosiah during the war (40.764.013). Regarding the specific allegations against Alieu Kosiah, the witness confirmed the existence of an electricity-generating machine that was looted by ULIMO soldiers. Victor X. reportedly told him that the person responsible for the looting was “Chief RR.” The witness stated that he encountered the convoy of civilians transporting the generator parts—accompanied by soldiers—along the way and hid himself (40.764.014 s.). Robert stated that, as the village *leader*, Victor X. had avoided being transported. When asked how many people named Victor X. he knew in Pasolahun at the time of the war, the witness replied that he knew only one (40.764.015). He clarified that the Victor X. in question was Luc’s uncle (i.e., Antoine W.), that is, his mother’s brother. Robert also stated that the Victor X. in question was “much older” than himself. The witness further asserted that no one had died during the transport of the generator because, in his view, “normally, when people leave to make a transport like that, those same people come back afterward” (40.764.016).

7.10.2.16 When questioned in turn as a witness, Victor X. identified Antoine W. as his brother, Didier X., and identified Louis Z. as a certain DDD., his nephew (40.765.002). Since Victor X. appeared to have significant vision problems, the presiding judge asked him to move closer to the two plaintiffs to identify them. Victor X. then stated that he recognized a man named EEE. as Antoine W. and that he did not know Louis Z. (40.765.003). The two plaintiffs, for their part, identified Victor X. as Richard, who later became Victor X. after the civil war (40.765.003 s.). Both stated that they did not know who DDD. or EEE. were. They also indicated that they had no family relationship with the witness Victor X. The latter is reportedly the brother of Didier X., another witness in the proceedings, and is also said to be related to Robert (40.765.004 s.). When confronted with Robert, Victor X. confirmed that he was his nephew. Robert, in turn, confirmed this (40.765.006). Antoine
W. and Louis Z. further clarified that, to the best of their knowledge, the witness Victor X. had not transported any goods during the war (40.765.005 s.). Regarding the charges against the defendant, Victor X. stated that he had been in Pasolahun during Liberia’s first civil war (40.765.009). He stated that he did not know of any other Victor X. in Pasolahun during the war. He confirmed the existence of a generator in Pasolahun that was looted during the war by ULIMO members. The looting was allegedly carried out by three men, whose leader was named QQQ. The generator was reportedly placed on a concrete slab and transported by villagers, who had been forced to take part in the convoy

(40.765.010). Victor X. stated that his brother, Didier X., had been forced to participate in the transport. He added that no one had been injured or killed during the transport of the generator (40.765.012). For his part, he had to take part, during the war, in a munitions transport from Gondolahun, from which he reportedly escaped (40.765.011).

7.10.2.17 Didier X., who was also called as a witness during the trial, stated that he was the brother of Victor X., who was also heard in these proceedings (40.766.006). Regarding the individuals present in the courtroom, he correctly identified the witness Robert (who remained in the courtroom after his testimony), specifying that he was his brother. Regarding Antoine W., he claimed that he was a man named FFF., who was allegedly his sister's son. As for Louis Z., he recognized him as his brother-in-law, since, according to him, Louis Z.'s sister was married to his brother (40.766.002). The two complainants, for their part, denied having any family ties to the witness (40.766.003 s.). Regarding the charges against the defendant, Didier X. stated that he had not witnessed any crimes committed against civilians in Pasolahun during the first civil war, particularly acts of looting (40.766.005). The witness stated that soldiers would sometimes make civilians carry loads to the next village due to the lack of a passable road (40.755.006). According to Didier X., the civilians were not paid for these trips and could refuse to participate. The civilians were neither mistreated nor beaten during the trips (40.766.007). Didier
X. stated that in 1994 he took part in a munitions transport from Gondolahun
to the Lofa River, which reportedly lasted nine hours (40.766.007 s.). This was the only ammunition transport in which he reportedly participated (40.766.008 s., 010). Regarding Alieu Kosiah, the witness stated that he had not seen him in Pasolahun during the first civil war (40.755.007). Didier X. also confirmed the existence of a generator in Pasolahun before the war, which, however, he claimed had never worked (40.766.009). He explained that one morning, two soldiers named QQQ. and SSS. had come from Kolahun to take the machine away (40.766.009 s.). The witness stated that he did not know where the generator had been taken. When asked if he had taken part in transporting it, Didier
X. answered in the affirmative. Many civilians had participated in the transport. Four villagers, including himself, had to carry a part that they lifted with a crowbar and placed on pieces of wood to make it easier to carry. Didier X. stated that no one else in the courtroom had taken part in this transport. His brother, Victor X., reportedly did not participate in the convoy either (40.766.010).

7.10.2.18 When questioned by the Court about the charges against him, Alieu Kosiah continued to deny them. He repeated that he did not know Pasolahun before his arrest, that he did not know whether there was a generator in that village in 1993, and that he had never heard of the looting of that generator (40.731.056 s.). He called the complainants Louis Z. and Antoine W. liars (40,731,056).

When

asked whether he knew a soldier by the nickname “Serge,” the defendant answered in the affirmative, specifying that this was a very important figure within ULIMO, assigned to the Voinjama region (40,731,056 s.). Alieu Kosiah stated that this individual was his superior in the chain of command. He also denied having ordered civilians to transport the generator from Pasolahun to Kolahun (40,731,057). He further stated that he did not know anyone named Victor X. and denied having killed him (40,731,057 s.). According to him, based on the statements made by certain participants in the proceedings, Victor X. would have died three times—once by asphyxiation, once killed by an AK-47, and once killed by a pistol. The defendant added that the only Victor X. from Pasolahun is still alive and that it is impossible for two Victor X.s—whose brothers were both named Didier—to have lived in the same village at the same time (40.731.059). Alieu Kosiah also expressed surprise that Antoine W. had stated before the Public Prosecutor’s Office that he knew neither Louis Z. nor André, whereas André had reportedly indicated that he knew Antoine W. but not Louis Z., and the latter had claimed to know both Antoine W. and André (40.731.059). Alieu Kosiah also referred to Robert’s statements. According to the defendant, as the village chief at the time, Robert would be in a better position than anyone else to comment on the alleged facts. However, he reportedly stated that there was only one Victor X. in Pasolahun during the war and that there was no W. family in that village (40.731.061).

7.10.3 Law and Assessment of the Evidence

Order to Loot

7.10.3.1 Pursuant to Art. 4, para. 2, subpar. g of PA II, looting is and remains prohibited at all times and in all places with respect to persons who are not directly participating or are no longer participating in hostilities, whether or not they are deprived of their liberty.

7.10.3.2 For legal considerations regarding looting, see paragraph 7.8.3.2 above.

7.10.3.3 With regard to developments related to Art. 18 aCPM, which concerns the superior’s liability for orders given, see paragraph 7.2.3.4 above.

7.10.3.4 In this case, it should first be noted that Louis Z., Antoine W., and André all provided, during their respective interrogations by the Office of the Attorney General, descriptive details of the defendant during the war that were frequently mentioned in the proceedings, namely his skin color, the shape of his eyes, his camouflage uniform, and the pistol he carried on his right hip. These details already indicate that it is likely that they did in fact encounter the defendant during the war. Regarding the fact that Louis Z. and Antoine W. did not identify the defendant in the photo lineups presented to them, reference is made to paragraph 6.4 above.

7.10.3.5 Furthermore, the existence of a generator in Pasolahun that supplied electricity before the war and its looting are established, as nearly all participants in the proceedings confirmed this, with the exception of the defendant. Regarding the circumstances of the looting, Louis Z., Antoine W., and André all provided accounts of the events that are consistent with one another. Indeed, they stated that ULIMO soldiers had gone to Pasolahun one day, claiming they had received an order from Alieu Kosiah to loot the village's generator. The dismantling was reportedly carried out by the soldiers themselves, without civilians being used for that purpose. The three witnesses did admit that they neither heard nor saw Alieu Kosiah give the order to loot, but only heard the soldiers say that the order had come from him. Nevertheless, as has already been noted, in cases involving international criminal law, indirect testimony from individuals to whom the defendant's statements were relayed cannot be dismissed as a matter of principle. Such testimony can indeed attest to the reality of orders or exhortations given publicly with the intent that they be disseminated and carried out (Judgment of the Military Court of Cassation, Vol. 12 [1997–2005], No. 21, para. 6c). In the present case, however, the consistency of the three accounts—coupled with the fact that Alieu Kosiah waited for the vehicle at its destination, namely Kolahun (see below)—makes them highly credible.

The statements by Louis Z., Antoine W., and André can furthermore be linked to those made by Olivier regarding the justification for looting during the war (see *supra*, para. 7.8.2.8), as well as to the role of H&H that the defendant de facto assumed in Lofa (see *supra*, para. 7.5.3.10, the reasoning of which may also apply here).

7.10.3.6 The defendant's denials are not sufficient to undermine the credibility of his accusers. Indeed, contrary to the defense's contention, the presentation of evidence in the proceedings did not reveal any element supporting the conclusion of any collusion between Louis Z., Antoine W., and André. The fact that the first two come from the same village and are related does not call into question the credibility of their statements. Admittedly, they did not voluntarily disclose their family ties to the Court and merely stated that they came from the same village. That said, it emerged from their respective hearings that in Pasolahun, family ties among residents are extremely common, so it seems understandable that a family connection might not carry the same weight there as it does in Switzerland, for example; this may explain why the individuals in question did not deem it necessary to mention this fact on their own initiative. Regarding the André who was heard as a witness in the proceedings, it appears that he is not the André whom Louis Z. had mentioned during his hearing with the Office of the Attorney General (40.754.030). A case of homonymy is entirely plausible, given that the proceedings revealed that in Liberia, it is common for several people to share the same first and last names (Paul: 40.757.008; Raoul: 40.755.007; Jérôme: 40.753.008; Georges: 40.751.008; Louis Z.:

40,755,005; Antoine W.: 40,756,008; André: 40,763,004). Thus, the argument raised by Alieu Kosiah—that no two people in Liberia have the same first and last names—is clearly contradicted by the explanations provided by numerous individuals. It is therefore entirely conceivable that a person living in Liberia today could have the same first and last names as another person who lived or is living in that country, without them being the same person.

7.10.3.7 As for Robert, his two hearings—first before the MPC and then before the Court—revealed that his statements regarding the charges against Alieu Kosiah and the role the witness played during the war lack credibility. In fact, in 2019, Robert claimed to have been the chief of the village of Pasolahun from 1992 to 2002, only to later assert before the Court that he had served as chief only between 2002 and 2003; the explanations he provided to resolve this contradiction are incomprehensible. Furthermore, when questioned by the Public Prosecutor's Office (MPC), Robert claimed not to know Louis Z. (12-34-0077), whereas during the trial, he correctly identified the complainant, stating that he was his nephew. Moreover, while before the MPC the witness spoke of a Z. family from Pasolahun, stating that he could provide only two or three first names of its members, he was able, before the Court, to trace the entire family tree of this—large—family without making any errors (40.764.006 et seq.). Furthermore, both before the MPC and before the Court, Robert gave categorical answers, without any nuance, regarding the number of people named Victor X. in Pasolahun during the war and regarding the fact that no one had been killed during the transport of the generator. He thus asserted that any statement contradicting his assertions must necessarily be a lie (12-34-0057, 0077). Given the very different manner in which Robert expressed himself before the MPC and before the Court on such important matters as his alleged ties to Louis Z. or members of the Z. family of Pasolahun, the Court concludes that Robert prepared the statements he was going to make during the trial and that he was guided by Alieu Kosiah's associates to provide explanations favorable to Kosiah regarding matters that are difficult to verify. Furthermore, the witness's behavior during his questioning by the MPC was surprising. Indeed, he refused to look at the defendant or to describe him when asked to do so first by the defense and then by the MPC (12.34.0087 et seq.). It should also be noted that Robert submitted a request to the Court, in an email drafted by a certain Didier X., for compensation in the amount of USD 10,000 for his trip to Switzerland. When questioned on this matter, the witness provided vague and incomprehensible answers. He thus appeared to admit to having made such a request, but without specifying an amount (40.764.020). Taken together, all these elements render Robert's statements highly implausible.

7.10.3.8 In light of the foregoing analysis, the Court considers it clearly established that Alieu Kosiah ordered the looting of the generator in Pasolahun. As for his status as a commander, this can be upheld to the extent that the order he gave was in fact carried out by the ULIMO soldiers; furthermore, his decision to wait for the convoy's arrival in Kolahun (see below) demonstrates his superior hierarchical position. The order he gave resulted in the commission of a crime, namely the looting of property that benefited (or was likely to benefit) an entire population by providing it with electricity. It is irrelevant whether this was an isolated act by the defendant or the execution of a broader looting strategy. The objective elements of the offense under Art. 4(2)(g) PA II *in conjunction with* Art. 18a CPM have been fulfilled in any case.

7.10.3.9 Subjectively, Alieu Kosiah acted intentionally. He knew that by giving the order to loot, it would be carried out by the soldiers.

Furthermore, the acts took place within the context of the internal armed conflict that occurred in Liberia during the first civil war, a fact of which the defendant was aware.

7.10.3.10 Alieu Kosiah will therefore be found guilty of giving the order to loot the Pasolahun generator, pursuant to Art. 109(1) and Art. 108(2) of the Military Criminal Code (aCPM) in conjunction with Art. 18 *of* the aCPM*,* Art. 3(1)(1) common to the General Provisions (CG), and Art. 4(2)(g) of Part II of the Penal Code (PA II).

Order to Transport

7.10.3.11 Pursuant to Article 3 common to the GC, attacks on life and physical integrity—including murder in all its forms, mutilation, cruel treatment, torture, and torment (subparagraph a), as well as attacks on the dignity of persons, including humiliating and degrading treatment (subparagraph c).

7.10.3.12 Pursuant to Art. 4(2) of Additional Protocol II, attacks on the life, health, and physical or mental well-being of persons who are not directly participating or are no longer participating in hostilities—whether or not they are deprived of their liberty—are and remain prohibited at all times and in all places, in particular murder, as well as cruel treatment such as torture, mutilation, or any form of corporal punishment (subparagraph (a)), attacks on human dignity, including humiliating and degrading treatment, rape, forced prostitution, and any indecent assault (subparagraph (e)), slavery and the slave trade in all their forms (subparagraph f), and the threat to commit the aforementioned acts (subparagraph h).

7.10.3.13 With regard to legal developments concerning cruel treatment, violations of human dignity, and slavery, reference is made to recitals 7.4.3.2, 7.4.3.3, 7.5.3.3, and 7.5.3.4 above.

7.10.3.14 Regarding an order given by a superior within the meaning of Art. 18 aCPM, see recital 7.2.3.4 above.

7.10.3.15 In this case, the statements by Louis Z., Antoine W., and André regarding the transport of the generator are consistent on many points, particularly concerning the course of said transport. All three thus stated that the transport took place without Alieu Kosiah being present, and that they had seen him only in Kolahun, near the Kehair River, where he was waiting for the convoy to arrive. They also described an identical route from Pasolahun to Kolahun, along a road that had become so overgrown with brush that it was passable only on foot. They further described the soldiers' treatment of civilians in a similar manner, noting that the civilians were beaten if they did not move fast enough; furthermore, they reportedly received no food or water during a journey that lasted many hours. The presence of the soldier Serge also emerged from all three of their accounts. The traumatic events that occurred during this transport were also recounted in a consistent manner. Thus, three civilians reportedly died during the convoy. Certain minor differences can certainly be noted between the versions they provided. For example, during his hearing before the OAG, Louis Z. gave the names PP. and QQ. as the two civilians who were allegedly executed by Serge during the transport, whereas he stated before the Court that he did not know their full identities. However, this discrepancy concerns a detail that is not relevant to assessing the credibility of the accounts of the transport and, moreover, pertains to facts that cannot be held against the defendant in the context of these proceedings. With regard to the weapon used to kill the third civilian, Victor X., reference is made to the analysis below (see *infra*, para. 7.10.3.24) concerning the murder attributed to Alieu Kosiah.

7.10.3.16 The defendant's denials can once again be dismissed for the same reasons set forth in paragraph 7.10.3.6 above. As for his presence in Kolahun, this is entirely plausible insofar as the Court has established that he arrived in Lofa in March 1993 (see para. 7.2.3.7 *above*) and that, by his own admission, he remained there until 1995 (see 13-01-0015). With regard to the credibility of Robert's statements, reference is made to paragraph 7.3.10.7 above.

7.10.3.17 The Court also did not consider the witnesses Victor X. and Didier X. to be credible. Indeed, it should first be noted that the questioning of the former was extremely laborious, as he apparently did not understand most of the questions put to him. He also identified Antoine W. as a person named EEE, which is clearly fanciful. When asked who had contacted him to come and testify, Victor X. replied that he did not know (40.765.008). Furthermore, although the Court received an email from a certain Didier X. stating that Victor X. was demanding USD 10,000 in compensation for his trip to Switzerland, Victor X. claimed to know nothing about it

and clarified that after coming to Switzerland, he thought that “people might help [him],” but that “no one made [him] any promises” (40.765.013). The witness’s overall demeanor does not allow the Court to accept his testimony as having any credibility whatsoever. As for Didier X., he stated, in response to a question, that he had come to testify because it was alleged in the proceedings that he had been killed and thrown into the Lofa River. However, this information had not been provided to the witness by the Court, which suggests that he most likely spoke with someone familiar with the facts of the case prior to his hearing (40.766.013 et seq.). When asked how he had been approached to come to Switzerland to testify, Didier X. stated that his brother had found his name online along with the information that he was to travel to Switzerland to testify (40.766.011). This explanation, however, does not in any way correspond to the circumstances under which the Court contacted the witness. Regarding the email sent to the Court in his name, Didier X. confirmed that he had made a request for approximately USD 9,000 and explained that the email had been written by his brother, GGG. (40.766-014). He denied, however, having made a request on behalf of Robert and Victor X. (40.766.012). As for Victor X., Didier X.’s brother, he stated that he did not know anyone named GGG. (40.765.008). These statements undermine the witness’s credibility, as they reveal that he was aware of the matters on which he would be questioned even before arriving in Switzerland—though to what extent is unknown to the Court—as well as a clear intention to enrich himself by coming to our country. The respective hearings of Victor X. and Didier X. also gave the impression that they had come to testify in order to demonstrate that they were the only ones with those names in Pasolahun during the war and that they are still very much alive. In light of these facts, the Court considers that the statements of Victor X. and Didier X. have no probative value.

7.10.3.18 The Court therefore finds that the consistent statements of Louis Z., Antoine W., and André are considerably more credible than those of the defendant and the witnesses proposed by the defense. It is therefore established that Louis Z., Antoine W., and André participated in transporting the generator, along with other civilians, between Pasolahun and Kolahun.

Forcing people to walk for hours carrying a heavy load, without giving them food or water, and threatening them with weapons or beating them if they do not keep up with the imposed pace, is likely to cause great suffering. This suffering is primarily physical, due to the long march the civilians were forced to undertake while carrying a heavy load and the beatings they endured if they did not walk fast enough. The suffering is also psychological, given the terror the civilians felt throughout the journey, as they were accompanied by armed soldiers.

These acts must also be classified as humiliating and degrading treatment. Forcing a person to carry a load under extremely difficult conditions, while threatening them with death or beatings if they do not keep up with the imposed pace, amounts to a violation of their humanity and constitutes a very serious form of humiliation. Any reasonable person would indeed feel deeply humiliated and mortified by such treatment.

The beatings inflicted on civilians and the death threats were considered components of the offenses of cruel, humiliating, and degrading treatment, and therefore do not constitute separate offenses that would need to be considered in addition.

Finally, it is clarified that, despite the seriousness of the facts, the offense of slavery has not been committed, insofar as the transport lasted only a few hours and this period of time is not sufficient to establish the exercise of property rights over the civilians involved.

7.10.3.19 Regarding Alieu Kosiah's role in this transport, none of the three participants in the proceedings heard or saw him give the order for said transport. His role as the convoy leader, however, can easily be inferred from his decision to wait for them in Kolahun—that is, at their destination—and from his behavior, such as shouting orders, as reported by André, for example. The fact that he was greeted with respect by Serge and the other soldiers also reinforces the conviction that the defendant was in charge of the transport. In light of the foregoing, the Court finds that Alieu Kosiah gave the order to transport the generator. This order, which was carried out, entailed the commission of offenses, namely the infliction of cruel, humiliating, and degrading treatment. The objective elements of Article 18 of the Military Criminal Code (aCPM) are therefore satisfied.

7.10.3.20 Subjectively, Alieu Kosiah acted intentionally. With regard to the order given, he knew that by instructing his soldiers to carry out the transport, they would carry it out. The defendant was also aware that the persons involved were civilians.

Finally, the alleged acts took place within the context of the armed conflict that occurred in Liberia during the first civil war, a fact of which Alieu Kosiah was aware.

7.10.3.21 In conclusion, Alieu Kosiah must therefore be convicted of ordering the infliction of cruel, humiliating, and degrading treatment on civilians (Art. 109(1) and 108(2) of the Military Criminal Code [aCPM] in conjunction with Art. 18 of the Swiss Criminal Code (aCPM) *in conjunction with* Art. 3(1)(1)(a) and (c) common to the General Provisions and Art. 4(2)(a) and (e) of Part II of the Penal Code).

Murder of the civilian Victor X.

7.10.3.22 Pursuant to Art. 3(1)(1)(a) common to the General Provisions, attacks on life and physical integrity are and remain prohibited at all times and in all places

with respect to persons not directly participating in hostilities,

including murder in all its forms, mutilation, cruel treatment, torture, and cruel, inhuman, or degrading punishment.

Pursuant to Article 4, paragraph 2, subparagraph a of Protocol II, the following are and remain prohibited at all times and in all places with respect to persons who are not directly participating or are no longer participating in hostilities, whether or not they are deprived of their liberty: attacks on their life, health, and physical or mental well-being, in particular murder, as well as cruel treatment such as torture, mutilation, or any form of corporal punishment.

7.10.3.23 For legal developments related to the offense of murder, see paragraphs 7.2.3.1 through 7.2.3.3 above.

7.10.3.24 In this case, Louis Z., Antoine W., and André all accused Alieu Ko-siah of the murder of the civilian Victor X. during the transport of the generator from Pa-solahun. All three stated that they saw the defendant fire a gun at the victim. They also provided consistent descriptions of the location where the murder took place, namely on the banks of the Kehair River in Kolahun. It does not matter exactly where the perpetrator or the victim was located, as this detail is not decisive in establishing whether the crime actually occurred. All three also gave the same, single reason for why Victor X. was killed: namely, because he was tired and could no longer carry his load. Their accounts, however, differ regarding the weapon Alieu Kosiah allegedly used to kill the civilian. While Louis Z. and André claim that he fired a pistol, Antoine W. maintains that it was an AK-47. According to the defense, this is evidence of the conspiracy of which the defendant claims to be a victim. The Court notes that if the three participants had wanted—as good conspirators would—to coordinate their respective accounts regarding the weapon used by Alieu Kosiah, they would have had ample opportunity to do so between the time they were interviewed by the Office of the Attorney General and the time they were heard by the Court. Indeed, Antoine W. could have retracted his statement and indicated that he had been mistaken. However, he did not do so. On the contrary, during the trial, he confirmed that he recalled seeing an AK-47 in the defendant's hands, while noting that he could not explain why Louis Z., for his part, spoke of a pistol. As previously noted, contradictions in accounts of events as distant and traumatic as a murder are foreseeable, if not inevitable (see *supra*, para. 6.3.3). It cannot be inferred from these discrepancies that the events described did not actually occur. On the contrary, in this case, the Court considers that the accounts of the three participants in the proceedings appear all the more credible because each maintained, before the Court, his own version of the facts, without making any attempt to align it with the statements of the others. A pistol and an AK-47 do indeed differ in shape and size. That said, it is not impossible that the AK-47 was folded up, thus giving the rifle the appearance of a handgun. In any case, the three participants in the proceedings agree that the defendant used

a firearm, and the type of weapon is not in itself a determining factor. In a situation as shocking as witnessing a murder at close range, it is not uncommon for witnesses to be unable to describe or recall the weapon used, as their attention was focused more on the victim, the victim's body, the victim's screams, and the impact of the bullet. In light of these factors, the Court finds that the statements of Louis Z., Antoine W., and André are highly credible, despite the discrepancies regarding the weapon used.

7.10.3.25 With regard to the statements of Alieu Kosiah, Robert, Victor X. and Didier X.—which state that there was only one Victor X. in Pasolahun during the war—it should first be noted that the Court did not find these three witnesses credible for the reasons set forth in paragraphs 7.10.3.7 and 7.10.3.17 above. Furthermore, numerous participants in the proceedings asserted during the hearings that it is common in Liberia for several people to share the same last name and first name (Paul: 40.757.008; Raoul: 40.755.007; Jérôme: 40,753,008; Georges: 40,751,008; Louis Z.: 40,755,005; Antoine W.: 40,756,008;
André: 40,763,004). Furthermore, several participants reported that the war had caused population displacements, casting doubt on the categorical assertion that there could have been only one Victor X. in Pasolahun during the war. Antoine W. also specifically explained that his uncle Victor X. was from Bolahun (40.756.059). In light of these facts, the Court is convinced that the Victor X. who testified during the proceedings is a namesake of Antoine W.'s uncle and has no connection to the facts of the case.

7.10.3.26 Consequently, it is held that Alieu Kosiah killed the civilian Victor X. with a firearm while transporting the generator from Pasolahun.

7.10.3.27 Subjectively, Alieu Kosiah acted intentionally. He was also aware that the victim was a civilian.

Furthermore, the events took place within the context of the internal armed conflict that occurred in Liberia during the First Civil War, a fact of which Alieu Kosiah was aware.

7.10.3.28 Alieu Kosiah will therefore be found guilty of the murder of the civilian Victor X. pursuant to Art. 109(1) and Art. 108(2)(a) of the Military Criminal Code (aCPM), *in conjunction with* Art. 3(1)(1)(a) common to the General Provisions (CG) and Art. 4(2)(a) of Part II of the Military Penal Code (PA II).

7.11 Ordering and directing the forced transport of ammunition by civilians from Gondolahun to Fassama and the murder of the civilian Didier X. near the Lofa River

7.11.1 Charge

Pursuant to section 1.3.16 of the indictment, Alieu Kosiah is charged with having ordered and directed a forced transport of ammunition from Gondolahun to Fassama by civilians between November and December 1993, and between March 1994 and the end of 1995, respectively. He is also charged with having killed, during said transport, the civilian Didier X. near the Lofa River (count 1.3.17 of the indictment).

7.11.2 Evidence

During the preliminary investigation

7.11.2.1 According to Antoine W.'s criminal complaint dated July 3, 2014, in 1995 he was forced by ULIMO members to transport ammunition from Kolahun to Fassama, in Gbarpolu County. During that trip, an uncle of Antoine W. was shot and killed by Alieu Kosiah, who fired at him at point-blank range with a weapon he had taken from one of his bodyguards (05-01-0013).

7.11.2.2 During his hearing before the MPC, Antoine W. stated that after returning to Pasolahun following the events described in paragraph 7.10 above, he heard that ULIMO forces were fighting in Fassama (July 12, 0012). ULIMO soldiers reportedly then asked civilians to carry ammunition from Gondolahun to Fassama (12-07-0012). Antoine W. estimated that he was sixteen years old at the time of the events (12-07-0024). He was reportedly forced to carry a military bag whose contents he did not know, while the other, older civilians had to carry ammunition (12-07-0012, 0024). Antoine W. stated that he carried his load as far as Sassahun (12-07-0023 et seq.). During the march, he occasionally heard the name "J.a.," whom he believed to be the commander of the unit. He also occasionally heard the name "Alieu Kosiah," as well as other names. The complainant clarified that he did not see the convoy commander with his own eyes during the march, as soldiers were surrounding him. He further explained that, during the journey, "people" were standing behind the civilians and beating them (12-07-0024). The road taken from Gondolahun to Sas-sahun was narrow; it was a sort of path through the bush, so vehicles could not travel on it. The path was unpaved, and at times they had to cut through the grass to get through (12-07-0027). Antoine W. specified that his uncle, Didier X., who was his mother's younger brother, had participated in the transport in question (12-07-0024). When the convoy reached the river, which they had to cross by canoe, Antoine W. saw that his uncle was very tired from carrying ammunition and was suffering from shoulder pain. The ULIMO soldiers then reportedly called Alieu Kosiah and told him that Didier X., who was carrying iron bars, was tired,

that his shoulder hurt, and that he no longer wanted to continue (12-07-0012, 0024). Antoine W. clarified that Alieu Kosiah had accompanied the convoy from Gondolahun but that he himself had not seen him until they reached the border because, until then, Alieu Kosiah had been surrounded by soldiers (12-07-0024). The defendant reportedly stated that if Didier X. could no longer carry the goods, he had to stay there and would die there (12-07-0012). Alieu Kosiah then killed Didier X. by shooting him (12-07-0012, 0024). Since he did not count the shots, Antoine W. was unable to indicate how many times Alieu Kosiah fired. He saw Alieu Kosiah firing an AK, a weapon he had borrowed from one of his *"small soldiers"* who was carrying it for him. Antoine
W. stated that he recognized Alieu Kosiah at the time of the incident; he indeed had the same face and the same eyes as the man who had killed his other uncle, Victor X., during the transport of the generator from Pasolahun. Furthermore, the soldiers were calling out his name. The complainant stated that he saw his uncle's body by the river (12-07-0024). Following this incident, the civilians crossed the river by canoe. For his part, Antoine W. stopped at Sassahun, then returned to Pasolahun (12-07-0012). He further stated that his uncle's body had not been buried (12-07-0024). Antoine W. finally added that on the day of this transport, he had heard that the defendant came from Nimba County, specifically from the town of Sagleipie (12-07-0012).

7.11.2.3 According to the criminal complaint filed by Louis Z. on July 3, 2014, he was forced on numerous occasions by the ULIMO faction to carry various loads and saw Alieu Kosiah on those occasions (05-01-0013).

7.11.2.4 During his interrogation by the MPC, Louis Z. also reported the transport of ammunition from Gondolahun to Fassama. He stated that five or six soldiers had arrived one evening in Pasolahun and had asked to speak with *the town chief*, whose name was HHH. (12-26-0049,0012). They explained to him that they had received ammunition in Kolahun that was to be transported to Fassama and that they needed at least thirty men from the village of Pasolahun, which was part of the Hembé clan, comprising twelve localities. The soldiers went around to the twelve villages of the clan to conscript men. The conscripted civilians, including Louis Z., then went to Gondolahun, where they were to assemble, and slept there. The next day, everyone was taken to headquarters to transport the ammunition. Since Louis Z. was unable to lift a crate of ammunition, the soldiers tied together two long weapons (each approximately 80 centimeters long), each with two magazines, and gave them to him to carry on his head (12-26-0049). There were also crates for RPGs, about 1.5 meters long, and crates measuring 60 centimeters by 60 centimeters, containing "sixties" and AKs (12-26-0089). Louis Z. explained that, during the transport, the soldiers were all armed and that the civilians therefore had no way to escape without risking being killed. When the complainant, who was at the rear of the convoy, reached the river, Antoine W., who had also been conscripted

for the transport, reportedly told him that “they” had just killed a man from Pasolahun, namely Didier X. Louis Z. then asked Antoine W. and André, another civilian present, who had killed him, but they reportedly never gave him a name. Louis Z. stated that he did not know, in fact, whether the soldiers themselves knew who had killed Didier X. Following this, the soldiers transported crates of ammunition across the river in large canoes, making four or five round trips. They transported the ammunition and the civilians in turns. After the crossing, the civilians resumed their march to Sassahun. Once there, most of them returned home that same evening. Louis Z., for his part, was given lodging, along with other civilians, by a woman, and he left the next morning (12-26-0049).

7.11.2.5 The witness André stated during his hearing before the MPC that he had also taken part in this transport. He explained that while he was in Pasolahun one morning around 5:00 a.m., a group of soldiers entered the town and ordered the young people to go to Gondolahun. André and the other civilians therefore left with the soldiers for Gondolahun (12-18-0017). The witness stated that the civilians had no choice but to follow the soldiers, as the soldiers were armed with firearms. André added that “if anyone had resisted, God only knows what would have happened to him. The soldiers might have beaten him or perhaps killed him” (12-18-0018). In Gondolahun, the witness said he saw a group of soldiers sitting on the porch of a house and one person sitting in the middle. According to the witness, this was “H&H,” or Alieu Kosiah, whom he had previously seen at the Kehair River. Kosiah allegedly ordered the soldiers to take the civilians into a room, like a cell, to make them wait until the other civilians arrived (12-18-0008, 0014, 0019). André stated that he personally heard the defendant give such an order in English (12-18-0019). The cell was a room containing beds where people were sleeping. André stated that he remained in that room for less than an hour (12-18-0018). The civilians then had to transport the ammunition to Kornehun (12-18-0008, 0019). Most of the ammunition consisted of cartridges (*gunshots*) in metal boxes (*iron boxes*) (12-18-0034). There were also military backpacks (12-18-0019). André stated that, during the transport from Gondolahun to Kornehun, it was “H&H”—that is, Alieu Kosiah—who was in command of the soldiers (12-18-0034). The journey took place along a trail through the bush; it was very long, according to the witness. Before arriving in Kornehun, a civilian, Didier X., complained that he was hungry and tired. Everyone could hear him complaining, including the soldiers escorting the civilians. At the river in Kornehun, everyone set down their loads. Didier X., for his part, dropped his on the ground, which made a noise. Alieu Kosiah then reportedly asked who had dropped their load, and the soldiers pointed to Didier X., saying, “That’s the one.” Alieu Kosiah then reportedly pulled out his pistol (*small gun*) and killed him. Everyone was shocked (12-18-0019). André stated that the sound of the gunshot and the sight of someone

dying made his heart beat faster, but he did not show it outwardly (12-18-0020). The witness added that after this incident, the soldiers ordered the civilians to return to Pasolahun (12-18-0020).

7.11.2.6 The witness Robert, who claimed to have been the *town chief* of Pasolahun during the war, from 1992 to 2002, stated that he remembered a request for labor to transport ammunition from Gondolahun to Fassama (12-34-0013, 0034). However, he was unable to specify the year and month of this transport (12-34-0086). He recalled that people had left Pasolahun to go to Gondolahun, then to Fassama, and then returned. The ULIMO commander, who was in Gondolahun, had sent two soldiers to Pasolahun to tell the *town chief* that he needed laborers (12-34-0035). Each village was required to provide them (12-34-0075). The information that the ULIMO soldiers needed labor was communicated to all twelve villages of the Hembé clan (12-34-0064). Robert stated that he then sent three people: III., JJJ., and Didier X. The latter was a civilian who worked on the farm (12-34-0037, 0064). The witness clarified that he knew only one Didier X. and that the latter was still alive when he left Liberia to testify in Switzerland in January 2019 (12-34-0037 et seq., 0080). He also explained that when the three civilians returned after transporting the ammunition, two of them—III. and Didier X.—told him that the ammunition had been “too heavy to carry” and that “the soldiers had made their lives miserable”; since the soldiers were not carrying any loads, they walked faster, and it was difficult to keep up with them. III. and Didier X. reportedly told Robert that they had cried and asked him to tell the villagers that they could not perform this kind of task again, as they were not capable of doing so (12-34-0063). The witness clarified that he was aware of only one ammunition transport (12-34-0075).

7.11.2.7 When questioned about the charges against him, Alieu Kosiah denied them (12-18-0067). In his defense, the defendant pointed out several inconsistencies in the statements of the various witnesses. He stated that this was his only means of defending himself, since, according to him, he was not present at the scene and did nothing (12-18-0066).

During the trial

7.11.2.8 When questioned during the trial, Antoine W. confirmed his accusation against Alieu Kosiah. He explained that the transport was intended to carry ammunition from Gondolahun to Fassama. He claimed that he, for his part, had stopped at Sassahun, past the Lofa River. The complainant was unable to specify the date of this transport. He stated that he was in Pasolahun when a ULIMO soldier arrived from Gondolahun to deliver a message to the *ground commander* and the S2 that men were needed to transport ammunition to Fassama. The S2 then went to see the village chief (40.756.025). The village chief relayed the information to *the young*

Boy Chief, who was responsible for finding men to carry out the transport. To do so, he used a horn to summon them. The ammunition was located in Gondolahun, and men from the Hembé clan—which comprises twelve villages—were called upon to transport it. Antoine W. explained that it was Alieu Kosiah who had given the order for this transport. In fact, before leaving, he had already received word that Alieu Kosiah was in Gondolahun with the ammunition, and when he arrived there that evening, he saw him giving orders to the soldiers. The complainant stated that he did not know whether there was anyone higher in rank than the defendant at that time, but that he had heard him giving orders to the soldiers, while he himself received none (40.756.026, 028). Antoine W. clarified that, in his opinion, he would have risked his life if he had refused to participate in this transport (40.756.027). The civilians were locked up in various houses in Gondolahun, where they spent the night, and left the next morning (40.756.027 s.). The complainant stated that he saw Alieu Kosiah give the order to lock them up. He also indicated that he had been locked up in the same room as Louis Z. (40.756.028). According to Antoine W., Alieu Kosiah was present during the transport and was the one who directed it. He was wearing a military uniform (40.756.028). The cargo to be transported consisted of ammunition for firearms. There were also military bags, the contents of which the complainant did not know. He stated that he had to carry a heavy military bag on his head. When asked why the ammunition had to be transported to Fassama, the complainant replied that he had heard that ULIMO was fighting there (40.756.029). He also explained that the convoy was moving in a column. The road was passable from Gondolahun to Kehewa, but after that, they had to take a very narrow bush trail that was impassable by car (40.756.030, 035). Soldiers were positioned at the front, middle, and rear of the convoy to ensure that no one set the ammunition down on the ground. When asked where the defendant was in the group, Antoine W. stated that, normally, the leaders were at the rear of the convoy but that he did not know if that was the case for Alieu Kosiah on this occasion. According to the complainant's recollection, the convoy arrived in Sassahun in the evening. He added that the civilians were not allowed to take a break because they were "under pressure" and were forbidden from drinking or eating (40.756.030). The soldiers struck the civilians with the butts of their rifles or cut branches from trees in the bush to beat them with, forcing them to move quickly. The soldiers were armed with AKs or G3s, and Alieu Kosiah, for his part, had a pistol holstered at his side. According to Antoine W., Alieu Kosiah "knew very well" how the soldiers treated the civilians, since it was "routine." He added that the commanders specifically ordered this mistreatment. The defendant thus reportedly did not intervene to stop them. Antoine W. confirmed that his uncle, Didier X., the brother of Victor X. (see *supra*, para. 7.10), was killed during transport by Alieu Kosiah (40.756.031, 033). The complainant explained that, to travel from Gondolahun to Sas-sahun, one had to cross the Lofa River by canoe. During the crossing, Didier X. reportedly said that he was tired, that he could no longer

to continue, and that he wanted to go home. Antoine W. stated that he witnessed the crime scene because, at that moment, he was waiting to board a canoe. He was on the same side of the river as his uncle, about ten meters away from him (40.756.033). After Didier X. complained of being tired, the defendant allegedly told him, “Get your ass up and keep moving.” When the victim repeated that he was tired, Alieu Kosiah allegedly killed him by shooting him twice in the head with an AK-47. Didier X.’s body was reportedly left at the scene. Antoine W. stated that he was very afraid during the transport and that he did not attempt to flee, for fear of being killed. The convoy arrived in Sassahun in the evening (40,756,034). The ammunition was unloaded at the “Palaver House.” The complainant stated that he subsequently hid at a woman’s house to avoid having to go all the way to Fassama, as ULIMO soldiers were looking for men to take him there. When asked whether he had been paid to carry out this transport, Antoine W. replied in the negative, adding that he had even been beaten (40.756.035).

7.11.2.9 Before the Court, Louis Z. confirmed that he had been forced to transport ammunition during a trip from Gondolahun, during which a victim named Didier X. was killed. He stated that he had been forced to participate in the transport by ULIMO soldiers. At the time, he was in Pasolahun, one of the twelve villages belonging to the Hembé clan. Soldiers then conscripted men from every village in the clan to go to Gondolahun (40.754.019). The complainant stated that he did not know who had ordered this transport and therefore did not know whether Alieu Kosiah had played a role in it (40.754.020). He stated that he had not seen him in the convoy (40.754.021, 023). Louis Z. explained that he had been unable to refuse to participate, given the risk of being killed. He confirmed that he had seen Antoine W. during the transport in question (40.754.020). The convoy was reportedly led by soldiers named Serge, KKK, and BBB (40.754.021). The civilians spent the night in Gondolahun, some locked in rooms and others sleeping outside. Louis Z. stated that he did not remember whether Antoine W. had spent the night in the same room as him. The civilians left the next morning for Sassahun (40.754.022). In addition to ammunition, they had to carry bags whose contents the complainant did not know. For his part, he said he carried two rifles tied together on his head, or on his shoulders when he was tired (40.754.021). According to what Louis Z. had heard, the cargo had to be transported because there was fighting in Fassama. Many civilians were part of the convoy. Soldiers were mixed in with them to prevent the civilians from setting down their loads and fleeing. The route taken was a paved road from Gondolahun to Gehewa, after which it became a dirt road. The civilians were not allowed to take breaks and received neither food nor drink during the journey (40.754.023, 026). According to the complainant, the soldiers behaved very cruelly toward the civilians. Most of them were armed with long rifles. The civilians were threatened with death if they attempted to escape from the convoy (40.754.023). Louis Z. stated that he, like other civilians, was beaten by soldiers during the transport with weapons or sticks,

to make him walk faster. The complainant stated that he was not present when the civilian Didier X. was killed. André, who reportedly witnessed the scene, allegedly told him that Alieu Kosiah was responsible (40.754.024). He was reportedly killed near the spot where the convoy was to cross the river, more precisely before the crossing. When asked whether Antoine W. saw Didier X. being killed, Louis Z. replied that he did not know and that he had never discussed it with him. He also stated that he did not know what weapon the defendant had used to kill Didier X. He indicated, however, that he had seen the body on the ground when he arrived at the riverbank to cross and that he was certain it was indeed Didier X. The complainant stated that he had been afraid during the transport because the civilians were “on edge”; the soldiers were telling them what to do and were keeping them under control (40.754.025). Louis Z. specified that he completed the transport in Sassahun, where the goods were unloaded in front of a “round house.” It was then past 6:00 p.m. There, another group of soldiers was looking for men to carry out another transport. Many took the opportunity to flee. Louis Z. spent the night in Sassahun and returned to Pasolahun the next morning. The complainant was unable to indicate whether the final destination was Sassahun or whether part of the convoy went further. He stated that he was not paid for participating in this transport but was forced to do so.

7.11.2.10 When questioned by the Court, the witness André confirmed that he had seen Alieu Kosiah give the order to transport ammunition, which took place in 1993, a few months after the transport of the generator from Pasolahun (40.763.002, 026). ULIMO soldiers came to Pasolahun to round up young men from the village “who were strong.” André stated that he had been conscripted early in the morning. He clarified that he had been unable to refuse to take part in the transport (40.762.027). The civilians, including André, were taken to Gondolahun to pick up ammunition before setting off toward Konehun. It was in Gondolahun that André reportedly saw the defendant give the order to transport the ammunition to Konehun. He stated that he remembered seeing Antoine W.’s face in the convoy (40.763.026). As for the defendant, he allegedly accompanied the convoy and led it (40.763.026 s.). During the journey, he would sometimes position himself at the front and sometimes at the rear of the group. He was wearing military clothing, including a military jacket. Alieu Kosiah was in command and gave orders during the trip. He said, “Take the ammunition and let’s go” (40.763.027). Regarding the cargo being transported, André stated that it consisted of metal crates containing ammunition. There were also other items, but the witness did not know what they were. He stated that he, for his part, carried a metal crate along with another civilian. The route taken could only be traveled on foot. The civilians did not take any “real” breaks during the transport and were given neither food nor drink. The civilians walked in single file because the path was narrow, and the soldiers walked on either side (40.763.028). Alieu Kosiah, for his part, was sometimes at the front and sometimes at the back of the group. Regarding the behavior of the soldiers,

who were armed, André stated that they were never

"friendly" toward the civilians. Alieu Kosiah, for his part, was armed with a pistol. The witness stated that he, like the other civilians, was threatened during the journey. The mere fact that the soldiers were carrying weapons was a threat in itself. According to André, Alieu Kosiah did not intervene to prevent the civilians from being threatened or beaten (40.763.029). The witness also confirmed that Alieu Kosiah had killed the civilian Didier X. during the transport, near the bridge on the banks of the Lofa River in Ko-nehun (40.763.030). He explained that the only thing that mattered to the ULIMO soldiers was the property they were looting and that, by comparison, the lives of civilians were of little concern to them. While the convoy was on the banks of the Lofa River, Didier X. reportedly dropped his load. This allegedly enraged the defendant, who then shot him. (40.763.022). André stated that the convoy had then reached its destination and that all the civilians had set down their loads. The witness then stated that he heard a gunshot (40.763.023). Alieu Kosiah allegedly used a pistol to kill the victim. The witness could not say which part of Didier X.'s body the defendant had shot (40.763.024).

7.11.2.11 When questioned by the Court about the charges against him, Alieu Kosiah denied them. He stated that the village of Gondodulahun—the name of which he claimed not to have known—was very far from the "center" and was located in the bush. It was therefore impossible for a soldier like him to reach it. The defendant added that he had, however, previously traveled to Fassama by car, but from Bomi—that is, in the opposite direction (40.731.059). Alieu Kosiah further explained that he had never heard that ammunition was being transported from Gondolahun to Fassama, especially since, in his view, this would not have made sense from a military standpoint. Indeed, the ULIMO soldiers had reportedly arrived in Lofa via the opposite route. When asked whether he had ever heard that a civilian named Didier X. had been killed during an ammunition transport between Gondolahun and Fassama, the defendant answered in the negative (40.731.060). He further referred to Robert's statements. According to the defendant, as the village chief at the time, Robert would be in a better position than anyone else to comment on the alleged events. However, the chief reportedly stated that there was only one Didier X. in Pasolahun during the war and that there was no W. family in that village (40.731.061).

7.11.2.12 Robert, who also testified before the Court, stated that he was aware of a shipment of ammunition from Gondolahun to Fassama. Soldiers had come to Pasolahun to recruit men to carry out the shipment. Robert stated that he recalled Didier X. having participated in the convoy and that, upon his return, Didier X. had complained that the load had been too heavy to carry and that he no longer wished to make such shipments (40.764.016). The witness clarified that he himself had not participated in the transport in question and stated that he did not know who the soldiers' commander was. When asked whether he was aware of any civilian killed during the transport, Robert replied in the

negative. He also disputed that Didier X. had been wounded during the journey, as he claimed to have seen him

return (40.764.017). Robert clarified that Didier X. was Luc's uncle (identified by the witness as Antoine W.), that is, his mother's brother. According to the witness, his date of birth must have been around 1973. The witness further stated that he knew only one Didier X. during the war (40.764.018).

7.11.2.13 When questioned in turn, Victor X. stated that he had, on one occasion, taken part in a munitions transport from Gondolahun in 1993, from which he had fled. He clarified that none of his brothers had participated in that transport (40.765.011).

7.11.2.14 The witness Didier X. stated during the proceedings that in 1994 he had taken part in a munitions transport from Gondolahun to "Sassasu" (phon.), a village located beyond the Lofa River. The journey between Gondolahun and "Sassasu" took nine hours on foot. The witness clarified that he himself had stopped at Papahun and therefore had not crossed the river. Some 200 civilians reportedly participated in this transport, which was allegedly led by a soldier named Chief LLL.

When asked whether anyone present in the courtroom had also participated in this transport, Didier X. replied in the negative (40.766.008). According to him, Alieu Kosiah did not take part in this convoy. The witness stated that no one had been injured or killed during the transport. When his attention was drawn to the fact that it had been reported that a certain Didier X. had died during the transport, the witness stated that he was the only Didier X. he knew in Pasolahun from the time of the war. According to him, there are many people named Didier, but he is the only Didier X. (40.766.009).

7.11.3 Law and Assessment of the Evidence

Transportation of Ammunition

7.11.3.1 Pursuant to Article 3 common to the Geneva Conventions, attacks on life and physical integrity—including murder in all its forms, mutilation, cruel treatment, torture, and cruel, inhuman, or degrading punishment—are and remain prohibited at all times and in all places with respect to persons not directly participating in hostilities (subparagraph (a)), as well as attacks on the dignity of persons, including humiliating and degrading treatment (subparagraph (c)).

7.11.3.2 Pursuant to Art. 4(2) of Additional Protocol II, attacks on the life, health, and physical or mental well-being of persons who are not directly participating or are no longer participating in hostilities—whether or not they are deprived of their liberty—are and remain prohibited at all times and in all places, in particular murder, as well as cruel treatment such as torture, mutilation, or any form of corporal punishment (subparagraph (a)), attacks on human dignity, including humiliating and degrading treatment, rape, forced prostitution, and any indecent assault (subparagraph (e)), slavery and the

slave trade in all their forms (subparagraph f), and the threat to commit the aforementioned acts (subparagraph h).

7.11.3.3 With regard to legal developments concerning cruel treatment, violations of human dignity, and slavery, reference is made to recitals 7.4.3.2, 7.4.3.3, 7.5.3.3, and 7.5.3.4 above.

7.11.3.4 With regard to an order given by a superior within the meaning of Art. 18 aCPM, reference is made to recital 7.2.3.4 above.

7.11.3.5 In the present case, Antoine W., Louis Z., and André all three described a munitions transport departing from Gondolahun. They provided consistent and clear accounts that corroborate one another on several points, including how civilians were conscripted from the twelve villages of the Hembé clan, the cargo being transported, the condition of the road taken, the organization of the convoy, how the civilians were treated during the journey, and the fact that a civilian was killed during the trip. As for the destination of the transport, it does not appear to have been the same for all three participants: Antoine W. and Louis Z. stopped at Sassahun—that is, after crossing the Lofa River—while André stated that the transport ended at Konehun—that is, before crossing the river. Furthermore, the first two stated that they had been conscripted at the end of the day and had to spend a night locked up in Gondolahun before the convoy's departure, whereas André was conscripted that very morning. These discrepancies, however, in no way undermine the credibility of their accounts. It is entirely possible that André was called up that very morning, while Antoine W. and Louis Z. were conscripted the day before. Furthermore, the final destination of the convoy is not decisive, insofar as the three participants provided sufficient evidence to conclude that they did in fact take part in the same ammunition transport. In this regard, it cannot be ruled out that some civilians unloaded their cargo before crossing the river at Kone-hun, while others had to continue the transport to Sassahun. The Court therefore finds that the statements of the three participants regarding the transport in question are highly credible, given their consistency and the numerous elements that corroborate one another across their respective statements.

7.11.3.6 Regarding the role played by the defendant during said transport, both Antoine W. and André stated that they saw him give the order for the transport at Gondolahun and participate in it by supervising it. Louis Z., for his part, stated that it was possible that Alieu Kosiah had participated in this convoy, but that he had not personally seen him. The Court finds that the consistent statements of Antoine W. and André are credible. The fact that Louis Z. did not see the defendant does not alter this assessment. On the contrary, it reinforces the credibility of the complainant's testimony, as he is not seeking to incriminate Alieu Kosiah at all costs, but is sticking to what he saw and/or heard.

7.11.3.7 The accounts of Antoine W., Louis Z., and André regarding the course of the transport are corroborated by the other participants who have reported such transports in these proceedings, and the same applies with regard to the defendant's involvement. In fact, the same pattern is consistently described: Alieu Kosiah gives the order for the transport and participates by supervising it, while the soldiers carry out the menial task of threatening and beating civilians who do not move fast enough. The statements of the three participants can also be linked to the statements of Olivier, who admitted to the existence of ammunition transports during the war, as well as to the *de facto* role of H&H held by the defendant (see *supra*, para. 7.5.3.10).

7.11.3.8 The defendant's argument that transporting ammunition toward Fassama would have been illogical from a military standpoint is unfounded. It should first be noted that, in a war such as the one that took place in Liberia, the enemy is likely to be found anywhere sooner or later, making it difficult to rely on a simplistic and static military model, as the defendant suggests. Furthermore, according to the prosecution, the transport allegedly took place between March 1994 and the end of 1995, that is, after the split within ULIMO. However, fighting took place in Bomi between ULIMO-J and ULIMO-K, which were vying for control of the headquarters (see 15-02.0544, 0546). It is therefore not illogical, from a military standpoint, that at some point ammunition was transported southward. The defense's argument is therefore unfounded. With regard to the statements of Robert, Victor X., and Didier X., reference is made to recitals 7.10.3.7 and 7.10.3.17 above concerning the assessment of their credibility.

7.11.3.9 In light of the foregoing, it is established that Alieu Kosiah ordered the aforementioned transport of ammunition and participated in it. These acts can be characterized both as an infringement upon physical and mental integrity, in the form of cruel treatment, and as an infringement upon human dignity, in the form of humiliating and degrading treatment.

Forcing civilians to march for hours, carrying a heavy load, without providing them with food or water, and threatening them with weapons or beating them when they fail to keep up with the imposed pace, is likely to cause great suffering. This suffering is primarily physical, due to the length of the march the civilians were forced to undertake while carrying a heavy load and the beatings they endured if they did not walk fast enough. The suffering is also psychological, given the terror that gripped the civilians throughout the journey, as they were accompanied by armed and violent soldiers. Once again, it is clarified that even if the defendant did not personally inflict the blows or threaten the civilians with his weapon, these acts may be attributed to him. Indeed, to be the perpetrator of the offense, it is not necessary for him to have personally carried out all the acts constituting said offense. This was a joint plan that was carried out

by various participants, who thereby acted as co-perpetrators of the offense (on the concept of co-perpetration: see *supra*, para. 7.4.3.25).

The acts alleged against the defendant must also be classified as humiliating and degrading treatment. Forcing a person to carry a load under extremely difficult conditions, while threatening them with death or beatings if they do not keep up with the imposed pace, amounts to a violation of their dignity as a human being and constitutes a very serious form of humiliation. Any reasonable person would indeed feel deeply humiliated and mortified by such treatment.

Furthermore, the beatings inflicted on civilians and the death threats were considered components of the offenses of cruel, humiliating, and degrading treatment, and therefore do not constitute separate offenses that would need to be charged in addition.

Finally, it is clarified that, despite the seriousness of the facts, the offense of slavery has not been committed, insofar as the transport lasted only a few hours and this period of time is not sufficient to establish the exercise of powers arising from property rights over the civilians involved.

7.11.3.10 With regard to the order to transport the victims, Alieu Kosiah's role as leader can be established, given the consistent statements by Antoine W. and André, according to which the defendant issued the order in question without having received one himself. The order given involved the commission of offenses, namely the infliction of cruel, humiliating, and degrading treatment. It was because of the order they received from Alieu Kosiah that the soldiers accompanied the civilians during the transport under the conditions and with the conduct described above. The objective elements of Article 18 of the Military Criminal Code (aCPM) are therefore fulfilled.

7.11.3.11 Subjectively, Alieu Kosiah acted intentionally. With regard to the order given, he knew that by instructing his soldiers to carry out the transport, they would carry it out. The defendant was also aware that the persons involved were civilians.

Finally, these acts took place within the context of the armed conflict that occurred in Liberia during the first civil war, a fact of which Alieu Kosiah was aware.

7.11.3.12 In conclusion, Alieu Kosiah must therefore be convicted for having ordered, and for having personally inflicted, cruel, humiliating, and degrading treatment on civilians (Art. 109(1) and 108(2) aCPM in conjunction with Art. 18 of the Swiss Criminal Code (aCPM) *in conjunction with* Art. 3(1)(1)(a) and (c) common to the General Provisions and Art. 4(2)(a) and (e) of Part II of the Penal Code).

Murder of the civilian Didier X.

7.11.3.13 Pursuant to Art. 3(1)(1)(a) common to the General Provisions, attacks on life and physical integrity—including murder in all its forms, mutilation, cruel treatment, torture, and torment—are and remain prohibited at all times and in all places with respect to persons who do not directly participate in hostilities.

Pursuant to Article 4, paragraph 2, subparagraph a of Protocol II, the following are and remain prohibited at all times and in all places with respect to persons who are not directly participating or are no longer participating in hostilities, whether or not they are deprived of their liberty: attacks on their life, health, and physical or mental well-being, in particular murder, as well as cruel treatment such as torture, mutilation, or any form of corporal punishment.

7.11.3.14 For legal developments related to the offense of murder, see paragraphs 7.2.3.1 through 7.2.3.3 above.

7.11.3.15 In this case, both Antoine W. and André stated that they saw the defendant kill Didier X. with a firearm. Louis Z., for his part, reported that he had seen only the civilian's lifeless body and that he had been told that it was Alieu Kosiah who had shot him. All three witnesses provided consistent descriptions of the location where the incident allegedly occurred, namely on the banks of the Lofa River, before crossing toward Sassahun. Regarding the reason why Didier X. was allegedly killed, Antoine W. stated that it was because he had complained of being tired, while André stated that it was because he had dropped his load due to fatigue. While these two accounts are not entirely consistent, they are not incompatible. Indeed, it is entirely possible that Didier X. not only dropped his load but also complained of being tired, and that the two informants did not consider the same detail to be the decisive factor. As for the weapon used, Antoine W. and André both agree that it was a firearm; however, the former recalls that it was an AK-47, while the latter remembers it as a pistol. In this regard, the analysis presented in paragraph 7.10.3.24 above concerning the murder of Victor X. may be applied here. In light of such a traumatic event, witnesses may sometimes have fragmented memories due to the shock and fear it causes. It is therefore entirely normal and to be expected that the participants' accounts do not agree on every point, particularly given the trauma they experienced and the passage of time. These differences between the accounts are even somewhat reassuring. Indeed, perfectly identical accounts would raise suspicions of collusion. Finally, the Court considers that the statements of Antoine W. and André, as well as those of Louis Z., are highly credible.

7.11.3.16 With regard to the argument that there was only one Didier X. in Pasolahun during the war, reference should be made to what was set forth concerning Victor X. in paragraph 7.10.3.25 above. Apart from the fact that the statements of the three witnesses—Robert, Victor X., and Didier X.—are not considered credible, it is not possible to assert without risk of error that there was only one Didier X. in Pasolahun during the war, especially given the number of displaced civilians and the frequency of namesakes in Liberia. Moreover, Antoine W., Louis Z., and André all stated that the Didier X. heard by the Court was not the person whose execution they reported, but someone with the same name.

7.11.3.17 In light of the foregoing, the Court finds it established that Alieu Kosiah killed a civilian named Didier X. by shooting him with a firearm.

7.11.3.18 Subjectively, Alieu Kosiah acted intentionally. He was also aware that the victim was a civilian.

These acts took place within the context of the internal armed conflict that occurred during Liberia's first civil war, a fact of which the defendant was aware.

7.11.3.19 In conclusion, Alieu Kosiah will be found guilty of the murder of the civilian Didier X. pursuant to Art. 109(1) and Art. 108(2)(a) of the Military Criminal Code (aCPM), *in conjunction with* Art. 3(1)(1)(a) common to the General Provisions (CG) and Art. 4(2)(a) of Part II of the Penal Code (PA II).

7.12 Murder of a Civilian in Voinjama

7.12.1 Charge

Pursuant to section 1.3.18 of the indictment, Alieu Kosiah is charged with having, in the context of the internal armed conflict that took place in Liberia from 1989 to 1996 and in his capacity as a member of the ULIMO armed faction, executed a civilian in Voinjama in December 1993 or between early 1994 and May 1994.

7.12.2 Evidence

During the preliminary investigation

7.12.2.1 It appears from Jérôme's criminal complaint dated July 30, 2014, that he was a direct witness to crimes committed in the town of Voinjama by Alieu Kosiah personally or by ULIMO members under his command, in connection with the "Black Monday" events, during which civilians were arbitrarily shot on Mondays over a period of several years (05-03-0002 et seq.).

7.12.2.2 During his interview with the MPC, Jérôme described Alieu Kosiah at the time of the events as being Black with "very, very large eyes." He had *"pop eyes*," which means he gave the impression of having large eyes. The defendant had darker skin than he did and was not very imposing. Jérôme stated that he did

not

remember the man's hair because he always wore a cap; sometimes a military cap, sometimes an ordinary cap. Alieu Kosiah was taller than him (the complainant's height is estimated at 168 centimeters). The complainant did not recall the shape of Alieu Kosiah's face. He stated that he had never seen him wearing glasses. He could not say whether he had a beard, as he had "never been close to him." Every time he saw him, Alieu Kosiah was wearing three-color camouflage military pants and a long-sleeved military shirt. Sometimes, he wore military T-shirts. His tops were also camouflage-colored. He wore black military boots. Alieu Kosiah carried a pistol on his right hip (12-09-0009). When the Public Prosecutor's Office presented him with two photo lineups, Jérôme was unable to identify the defendant and stated that this was because the events had occurred more than 20 years ago. He admitted that he did not recognize the person he had identified in his complaint among the faces presented to him (12-09-0010). When the defendant appeared on a screen, Jérôme stated that this was the person mentioned in his complaint, because he had the same long face as the person he had seen at the time in Voinjama and also had *bulging eyes* (12-09-0010).

7.12.2.3 Regarding the facts of the case, Jérôme stated that his aunt, MMM., with whom he lived, was the head cook for the ULIMO soldiers (12-09-0013). The soldiers nicknamed her "MMM.a." One day, when "General Kosiah" and his soldiers ate at her house following an attack that had taken place on the Monrovia Highway, he declared: "Since the Lorma Defense Force wants to fight us, I will declare that next Monday will be Black Monday." The defendant added that he had lost one of his strongest men (12-09-0015). Jérôme explained that the term "Black Monday" meant that no civilians were allowed to leave their homes in Voinjama (12-09-0015). According to the complainant, Black Mondays occurred one after another for two to three months in Voinjama (12-19-0016). On the fourth day of "Black Monday," soldiers parked their car in front of Jérôme's house; he then saw "General Kosiah" in the passenger seat. Soldiers forced open the door of Jérôme's neighbors' house and took a young boy who was inside. They ordered him to get into the pickup truck, which he refused, telling them that everyone who got into the pickup truck was killed. "General Kosiah," who was wearing a camouflage uniform that day with a pistol holstered at his side, reportedly walked toward the boy, asked him what the problem was, and said: "You, let's go." When the boy refused again, Alieu Kosiah allegedly drew his pistol and shot him. According to Jérôme, the boy fell dead, and his body was left at the scene. After that, Alieu Kosiah and his soldiers allegedly resumed their normal activities (12-09-0016).

7.12.2.4 When questioned about the charges against him, Alieu Kosiah denied them. He stated that he had heard the expression "Black Monday" for the first time in the

in the context of the present proceedings (13-01-0184). He also stated that he had never uttered the phrase reported by Jérôme, nor had he heard anyone say it during the conflict. According to the defendant, the ULIMO did in fact know that the LDF was not an autonomous group and that "the real demon behind them" was the NPFL (13-01-0186). Alieu Kosiah asserted that Jérôme's statements were "1,000%" false (13-01-0186) and that he had never seen or heard of young boys being forcibly taken from their homes and taken away to be killed, whether in Voinjama or in any other town. He stated that he had never participated in roundups during the war in Liberia, anywhere. According to him, there was the *front line* where the fighting took place (13-01-0186). He also stated that he had never owned a white pickup truck, but primarily used a red Yamaha motorcycle (13-01-0185, 0186).

7.12.2.5 When questioned during the preliminary investigation about "Black Monday," former ULIMO members Olivier (12-16-0042), Bernard (12-19-0045), M. (12-29-0064), and NNN. (12-15-
0027) all stated that they did not know what it was.

7.12.2.6 When asked whether he knew a woman named "MMM.a." during the war, Bernard, a former member of Alieu Kosiah's personal security detail, stated that she was the woman who cooked for the soldiers when they returned from the front. He clarified that he knew only one "MMM.a." He added that he believed Alieu Kosiah knew "MMM.a.," who was like a mother to the soldiers (12-19-0075, 0079).

During the trial

7.12.2.7 During his testimony before the Court, Jérôme confirmed his accusation against Alieu Kosiah—namely, that he had killed a civilian in Voinjama. He explained that one Saturday, Alieu Kosiah and some soldiers had come to eat at his home. The incident reportedly took place between April and July 1994. The defendant reportedly stated: "Next Monday, I'll tell you to go inform the other communities that no civilians are to go out, because one of our *big men* was killed in the latest attack by the Lorma Defense Force, so on Monday, no one is to go out. Anyone seen outside, I'll kill them, and it'll be a Black Monday." According to Jérôme, Alieu Kosiah was the "inventor" of Black Monday, and that is how it all began (40.753.015). Black Monday took place in Voinjama for two or three months, from April to July 1994, every Monday (40.753.006). Regarding the specific facts of the case, he explained that the murder had occurred next to his house (40.753.010). The defendant, who was wearing camouflage clothing, was sitting in the front of a military-green Land Cruiser pickup truck (40.753.010, 011). It was a two-door open pickup truck, in the back of which, according to Jérôme's estimates, there were at least ten civilians, some of whom were bound (40.753.010 s.). Soldiers surrounded them. The complainant stated that he did not know the victim's identity. The victim was a teenager between the ages of 13 and 18 who lived in the house next to the

woman's (40,753,011). Soldiers entered the young boy's home by forcing open the door. They forced him to come out and ordered him to get into the pickup truck. The boy reportedly refused twice. One of the soldiers then approached Alieu Kosiah and explained that the boy was refusing to get into the pickup truck. The defendant allegedly got out of the vehicle and walked toward the boy. He allegedly ordered the boy to get into the pickup truck. When the boy refused once again, Alieu Kosiah allegedly drew his pistol from his side and shot him. The body was reportedly left at the scene, and the soldiers left on the defendant's orders (40.753.012, 014). As for why the defendant wanted the boy to get into the pickup truck, Jérôme hypothesized that it was with the intention of taking him away and killing him. This was a routine practice for the ULIMO every Monday. At the time of the incident, Jérôme stated that he was in his room, where he was hiding (40.753.012). He was then about ten meters away from Alieu Kosiah and could see what was happening from the window (40.753.012 s.). The complainant stated that he saw Alieu Kosiah shoot the boy in the chest on one occasion with a pistol (40.753.012 s.). He also indicated that he was in shock after this incident (40.753.014).

7.12.2.8 When asked about his knowledge of "Black Monday," Paul stated that he had heard of it and that it referred to a Monday on which many people were killed in Voinjama. The term "Black" signified mourning in connection with that day. According to the complainant, there were rumors that Alieu Kosiah and his men had killed people in Voinjama and on the road to Foya on a Monday. Many people in Lofa were said to have spoken about this event. Paul stated that anyone who lived in Lofa during the war must have heard of Black Monday (40.756.006). When questioned in turn on the matter, Raoul explained that the term referred to a day that no one in Lofa will ever forget, since on that day, a "massive genocide took place." Black Monday reportedly took place in Voinjama and Foya (40.755.006). It was a day of mourning, during which many people lost family members. According to Raoul, only someone who was not in Lofa during the war could be unaware of Black Monday (40.755.007). Georges, for his part, explained that it was a day of terror chosen to commit acts of cruelty against human beings (40.751.006). While the term "Black Monday" is associated with Voinjama, "Black Friday" refers to Foya (40.751.006 s.). During these events, ULIMO reportedly killed a large number of people, desecrated bodies, cut them into pieces, and then displayed these pieces and organs in public view, particularly in wheelbarrows. According to Georges, people in Lofa know what "Black Monday" and "Black Friday" are. He also stated that the ULIMO did this to demonstrate their power and the fact that they controlled the region (40.751.007). Louis Z., for his part, stated that he had heard of Black Monday. According to what he heard, on that Monday, the rebels killed many people in Voinjama, and in Lofa, the population knows what Black Monday is

(40.754.005). Antoine W. also stated that he had heard Black Monday was a Monday on which ULIMO carried out massacres. The bodies were reportedly loaded onto trucks to be dumped in a valley behind the Catholic school (40.756.006). According to Antoine W., everyone who was in Lofa during the war remembers Black Monday (40.756.007). Coralie, for her part, said she had heard of Black Monday but did not know what it meant (40.752.007). The witness Rémy stated that he was not familiar with Black Monday (40.762.004). André, for his part, explained that he had heard of it and specified that many people were reportedly killed in Voinjama (40.763.008).

7.12.2.9 Olivier stated that he did not know what "Black Monday" was (40.761.011), nor did Pierre, alias Pégase (40.77.007), Jean, alias Cassiopée (40.769.006), or Alfred (40.767.008).

7.12.2.10 When questioned during the proceedings about the charges against him, Alieu Kosiah denied them. He stated that between December 1993 and May 1994, he was in Bomi and in the Lofa region, in Voinjama (40,731,061). He also indicated that he did not believe the story of "Black Monday," even though the TRC mentions it. He had never heard of it before his arrest. The defendant further noted that, unlike Jérôme, who places "Black Monday" in 1994, the TRC places it in 1993, after the capture of Voinjama. Furthermore, the TRC reportedly mentions people who were loaded onto trucks headed for Macenta, whereas Jérôme maintains that, on five consecutive Mondays, people were allegedly taken to the Zeleba River—that is, in the opposite direction (40.731.062).

Physical Evidence

7.12.2.11 The TRC report indicates that "Black Monday" took place in Voinjama in 1993, during which 750 people were killed by ULIMO-K (14-01-0137). According to Jérôme, who recounted several "Black Mondays" and at one point mentioned a fourth "Black Monday," these were apparently a series of massacres that took place over time in Voinjama (10-01-0526, 0527). As for Georges, he confirms that "Black Monday" refers to several days of massacres (40.751.007). It therefore appears, in all likelihood, that these were events that spanned several days.

7.12.3 Law and Evaluation of Evidence

7.12.3.1 Pursuant to Art. 3(1)(1)(a) of the General Provisions, attacks on life and physical integrity—including murder in all its forms, mutilation, cruel treatment, torture, and torment—are and remain prohibited at all times and in all places with respect to persons who do not directly participate in hostilities.

Pursuant to Article 4, paragraph 2, subparagraph a of Protocol II, the following are and remain prohibited at all times and in all places with respect to persons who are not directly participating or are no longer participating in hostilities, whether or not they are deprived of their liberty: attacks on their life, health, and physical or mental well-being, in particular murder, as well as cruel treatment such as torture, mutilation, or any form of corporal punishment.

7.12.3.2 For legal developments related to the offense of murder, see recitals 7.2.3.1 through 7.2.3.3 above.

7.12.3.3 In this case, before the Office of the Attorney General, Jérôme provided details describing the defendant that recur throughout the proceedings, namely: his bulging eyes, his dark skin, his rather tall stature, his military clothing, and the pistol he carried on his right hip. These details alone allow the Court to accept as credible the fact that the complainant did indeed come into contact with Alieu Kosiah during the war. Furthermore, the complainant clearly recognized the defendant by his outbursts of anger during the proceedings (40.753.009), as did Paul (see 7.2.1.8). As for Jérôme's inability to identify the defendant in the lineup presented to him, reference may be made to the discussion in paragraph 6.4 above. The Court considers that this is not a decisive factor in proceedings involving war crimes committed by perpetrators whom the victims feared to approach and which date back more than twenty years.

7.12.3.4 With regard to the circumstances of the murder, Jérôme's statements to the MPC and later before the Court were entirely consistent. The "Black Monday" incident—which the defendant disputes—was recounted by numerous participants in the proceedings, all of whom provided the same account of it. Its occurrence is also confirmed by the TRC report. It is said to have involved mass killings that took place in Voinjama. Regarding the date, Jérôme places Black Monday after the ULIMO split that occurred in March 1994—that is, between April and May 1994—with the events unfolding over two or three months, according to him. The TRC, for its part, refers to the year 1993, while specifying that the crimes were committed by ULIMO-K. However, since the split within the group occurred in early 1994 (see TRC report, p. 158; 14-01-0337), it must be concluded that the TRC report likely contains an error regarding the date of Black Monday. It is also possible that several instances of Black Monday occurred in Voinjama, both in 1993 and 1994. According to Jérôme, "Black Monday" was proclaimed by the defendant—who is said to have "invented" it—in the context of the conflict between ULIMO and the LDF, a group formed in late 1993. The purpose of this faction was to fight against ULIMO in Lofa (see *supra*, consid. C.9). The events of "Black Monday" thus allegedly constituted an act of revenge by ULIMO against all those who supported the LDF or were suspected of supporting them. Even if Alieu Kosiah was

the “mastermind” behind Black Monday, the Court nonetheless considers that, while the explanations provided by Jérôme regarding Black Monday may generally be deemed credible, they are not decisive in assessing the charges against the defendant. Indeed, the TRC report indicates that actual massacres took place in Lofa during the war (14-01-0337), a fact confirmed by a number of participants in these proceedings. The term “Black Monday” in Voinjama, like “Black Friday” in Foya, was clearly used to refer to roundups of civilians. Even if it is not possible to determine all the specific circumstances—in terms of time and place—in which these atrocities were committed, what remains decisive is that they are established by the record. It is therefore reasonable to conclude that the murder described by Jérôme took place within the climate of terror that prevailed at the time in Lofa and was by no means extraordinary in the context of the civil war. As for the fact that former soldiers claim not to have heard of “Black Monday,” this is easily explained: it was a particularly dark chapter of the war, attributable to ULIMO, in which no soldier from that faction wishes to be suspected of having taken part.

7.12.3.5 Regarding Alieu Kosiah’s involvement in the murder of the civilian in Voinjama, the Court considers Jérôme’s statements to be credible. He provided the MPC with a detailed description of the scene, which he consistently reiterated before the Court. He stated that he saw the defendant sitting in the front of the pickup truck, which indicates the important role the defendant played. He also stated that he saw the defendant shoot the young boy with his pistol. Furthermore, during his testimony at trial, Jérôme spontaneously distinguished between a witness who had witnessed an event and one who had merely heard about an incident, specifying that, as far as he was concerned, he was not satisfied with hearsay (40.753.014). Furthermore, Jérôme provided details about the context of the incident in question, which were confirmed by other participants in the proceedings, such as the fact that his aunt worked as a cook for the ULIMO soldiers. This information was corroborated by Bernard, the defendant’s former bodyguard. Although this detail does not directly pertain to the alleged murder, it lends credibility to Jérôme’s statements. Finally, it should be noted that the fact that Jérôme did not know the young boy’s identity does not cast doubt on his credibility, as the Court was able to ascertain during the proceedings the complainant’s reserved nature and his reticence in dealing with others. In addition, there were a large number of displaced persons during the war, which may explain why Jérôme never had the opportunity to get to know the victim (see 40.753.036).

7.12.3.6 In light of the foregoing, and given that the historical reality of Black Monday is clearly established despite the defendant’s denials, the defendant’s arguments can be dismissed. Furthermore, the defendant does not dispute that he was present in Voinjama in 1994.

7.12.3.7 Ultimately, the Court finds that Alieu Kosiah killed a young boy in Voinjama by shooting him with a pistol.

7.12.3.8 Subjectively, Alieu Kosiah acted intentionally. He was also aware of the victim's civilian status.

The events took place within the context of the internal armed conflict that occurred in Liberia during the First Civil War, a fact of which the defendant was aware.

7.12.3.9 In conclusion, Alieu Kosiah will therefore be found guilty of the murder of a young boy under Art. 109(1) and Art. 108(2)(a) of the Military Criminal Code (aCPM), *in conjunction with* Art. 3(1)(1)(a) common to the General Provisions (CG) and Art. 4(2)(a) of Part II of the Penal Code (PA II).

7.13 Ordering a forced transport, by civilians, from Voinjama to Gbarlyeloh (Gui)

7.13.1 Charge

Pursuant to section 1.3.19 of the indictment, Alieu Kosiah is charged with having ordered a forced transport from Voinjama to Gbarlyeloh (Guinea) by civilians between September 1993 and December 1993, and between early 1994 and May 1994, respectively.

7.13.2 Evidence

During the Preliminary Investigation

7.13.2.1 In his criminal complaint dated July 30, 2014, Jérôme stated that in 1994, while residing in Voinjama, he and about ten other civilians were forced to carry a load from Voinjama to the village of Gbar-lyeloh, located about a four-hour walk away. Since the load was very heavy, a third person had to help place it on each porter's head. During the journey, one of the porters, named OOO., said he could no longer continue. The ULIMO members supervising the transport threatened to kill him. He then fled, running into the forest. The ULIMO members fired at him but failed to kill him. The order to carry the cargo to Gbarlyeloh had been given in Voinjama by Alieu Kosiah in the presence of Jérôme. Alieu Kosiah then delegated the task of leading the forced march to his subordinates (05-03-0002 et seq.).

7.13.2.2 During his interrogation by the MPC, Jérôme stated that in 1994, while he was sitting at home one morning, he was ordered by three soldiers to follow them to the Barzee neighborhood, where "General Kosiah" was sitting under a porch (12-09-0014, 0019). At that time, he did not know what he would be required to do. During the trip, he was alone with three soldiers behind him. In Barzee, other civilians were already there (12-09-0019). To get there, they crossed the main road and the Kolahun Road (12-09-0013).

The location was not far from the Kolahun Road (12-09-0019). Jérôme explained that “General Kosiah” had instructed his soldiers to have the civilians retrieve the cargo and take it to Gbarlyeloh (12-09-0014). He had also told them which route to take and that, if any civilian tried to flee, they were to shoot him and report it (12-09-0014, 0020). Jérôme stated that he had never seen anyone higher in rank than “General Kosiah” who had given him orders. He was the only one who gave orders (12-09-0026). According to him, there were eleven civilians and fifteen soldiers during the transport (12-09-0020). The civilians were required to carry oil, coffee, and cocoa. Jérôme stated that he, for his part, had to carry a can of oil. Since he could not lift it on his own, a soldier placed it on his head. The civilians took the road from Voinjama to Gbarlyeloh (12-09-0014). During the march, if the civilians did not walk fast enough, the soldiers would push them with their hands, telling them to go faster. Some civilians were struck with hands or slapped. However, the soldiers did not strike them with their weapons or any other object. Jérôme stated that he personally had not been struck because he picked up the pace whenever the soldier behind him ordered him to do so (12-09-0020). During the transport, OOO., the complainant’s brother, reportedly told the ULIMO soldiers behind him that he was tired. The soldiers replied that he had to walk faster. OOO. also asked to relieve himself, which he was allowed to do (12-09-0014). The entire group then stopped (12-09-0020). Once in the bush, OOO. fled (12-09-0014, 0020). According to Jérôme, he managed to save his life (12-09-0020). When he did not return after five minutes, the soldiers went to look for him in the bush, but to no avail. They then opened fire in the direction he had gone, firing their weapons while holding them at knee level. They then distributed the coffee cargo that OOO. had been carrying among other civilians who were carrying the goods, and the convoy continued on to Gbarlyeloh. After passing the *checkpoint*, the convoy unloaded the cargo. Three ULIMO soldiers remained at the scene, while twelve others returned with the civilians to Voinjama (12-09-0014). Jérôme stated that he did not know who the commander was who had led the transport and that he did not even know if there was one (12-09-0020).

7.13.2.3 When questioned about the allegations against him, Alieu Kosiah denied them. He stated that he had never gone to Gbarlyeloh with any goods (13-01-0259). Furthermore, according to him, OOO. was not a civilian, but an NPFL soldier who had been captured and had become a military police commander for the ULIMO (13-01-0247). He also indicated that, contrary to what Jérôme had stated, the walking time between Voinjama and Gbarlyeloh is not four hours, but two hours at a leisurely pace. By car, the trip takes only ten or fifteen minutes on a paved road. The distance between the two towns is reportedly 20 kilometers (13-01-0246).

During the proceedings

7.13.2.4 During the proceedings, Jérôme confirmed his accusation against Alieu Kosiah. He stated that the transport took place in early 1994, during the dry season (40,753,015 s.). He was rounded up by soldiers one morning while he was at home. The complainant stated that he had no choice but to participate in this transport, because refusing would have meant that he "did not want to live." He went with the soldiers to the Barzee neighborhood. He indicated that when he arrived, "General Kosiah" was giving orders (40,753,016). He asked the soldiers where the men he had asked them to fetch were and ordered them to tell those men to take the loads. Alieu Kosiah was sitting on the porch at the time, and the civilians had to walk past him to pick up the loads. The defendant reportedly also told his soldiers that if anyone tried to escape along the way, they were to kill him and report it to him (40.753.018). At the scene, no one appeared to outrank him. Jérôme explained that eleven civilians had taken part in the transport and that there were fifteen soldiers (40.753.017). The defendant, for his part, reportedly did not participate in the convoy (40.753.017 s.). The complainant was unable to say who was in charge during the transport. Jérôme stated that he had to carry oil on his head, while other civilians had to carry coffee and cocoa (40.753.018 s.). The container the complainant was carrying could hold six gallons (40.753.019). He stated that he did not know why the goods had to be taken to Gbarlyeloh (40.753.018). The convoy left in the morning and arrived around noon; it therefore took four or five hours to travel from Voinjama to its destination (40.753.018 s., 022). The road taken was passable. If the civilians did not walk fast enough during the journey, the soldiers—who were armed—would push them and beat them with rifle butts or their hands (40.753.019 s.). Jérôme noted that he was "lucky" not to have been beaten himself (40.753.019). He was, in fact, following the person in front of him "very, very closely." If a civilian left a gap in front of him, he risked being beaten because that meant he was lagging behind (40.753.020). The civilians were given neither food nor drink during the march (40,753,019). Regarding the formation of the convoy, Jérôme explained that some soldiers were at the front, others were among the civilians, and the rest were at the rear (40,753,021). When asked whether any breaks had been taken during the journey, the complainant replied that they had stopped once because his brother, OOO., needed to use the restroom (40.753.019). He was actually tired and used the need to relieve himself as an excuse (40.753.020). The civilians remained standing but were allowed to set their belongings down on the ground (40.753.019). OOO. was allowed to go into the bush to relieve himself, but five minutes later, he had not returned. Three soldiers went to look for him, but to no avail. At least five soldiers then lowered their rifles to knee level and fired for nearly a minute, according to the complainant. The soldiers then took the load of coffee that OOO. had been carrying and distributed it among the civilians

who were carrying the same goods. The convoy then continued on its way. Jérôme stated that he feared for his life during the transport (40.753.020). Upon arriving in Gbarlyeloh, the civilians crossed the border to deliver the goods. They then returned, accompanied by thirteen soldiers, while two remained in Guinea (40.753.022). The group members arrived in Voinjama that evening. Jérôme clarified that he had not been paid for participating in this transport (40.753.023). Regarding his brother OOO., he stated that his brother had returned to Voinjama in 1998 (40.753.021).

7.13.2.5 When questioned about the charges against him, the defendant denied them. He stated that he had never taken anyone to Gbarlyeloh and that it was strange that Jérôme's complaint mentioned that a "civilian" had fled, without specifying that it was his brother. Alieu Kosiah confirmed that he had been in Voinjama in 1994 (40.731.062). He asserted, however, that he did not know where the Barzee neighborhood was located, having spent all his time at the Voinjama headquarters while he was in that town (40.731.063).

7.13.3 Law and Assessment of Evidence

7.13.3.1 Pursuant to Article 3 common to the GCs, attacks on life and physical integrity—including murder in all its forms, mutilation, cruel treatment, torture, and cruel, inhuman, or degrading punishment (subparagraph a), as well as attacks on the dignity of persons, including humiliating and degrading treatment (subparagraph c).

7.13.3.2 Pursuant to Art. 4(2) of Additional Protocol II, attacks on the life, health, and physical or mental well-being of persons who are not directly participating or are no longer participating in hostilities—whether or not they are deprived of their liberty—are and remain prohibited at all times and in all places, in particular murder, as well as cruel treatment such as torture, mutilation, or any form of corporal punishment (subparagraph (a)), attacks on human dignity, including humiliating and degrading treatment, rape, forced prostitution, and any indecent assault (subparagraph (e)), slavery and the slave trade in all their forms (subparagraph f), and the threat to commit the aforementioned acts (subparagraph h).

7.13.3.3 With regard to legal developments concerning cruel treatment, violations of human dignity, and slavery, reference is made to recitals 7.4.3.2, 7.4.3.3, 7.5.3.3, and 7.5.3.4 above.

7.13.3.4 With regard to an order given by a superior within the meaning of Art. 18 aCPM, reference is made to recital 7.2.3.4 above.

7.13.3.5 In this case, the account given by Jérôme to the Office of the Attorney General and subsequently to the Court was highly consistent regarding the circumstances under which the transport took place and the defendant's involvement, as he saw and heard the defendant give the order for said transport. The extreme precision of the complainant's statements—particularly with regard to the numbers—is, moreover, surprising. Prior to the trial, it struck the Court as peculiar, to say the least, that the complainant was able, more than 20 years after the events, to state that there were eleven civilians and fifteen soldiers who took part in the transport. Jérôme's testimony, however, revealed that, as a compulsive number-cruncher, he attached particular importance to figures and systematically counted everything around him. Indeed, during his questioning, the Court asked the complainant how many people were in the courtroom. Without even turning around, he was able to give the exact number of attendees (in fact, he listed one more person because he hadn't noticed that one attendee hadn't returned after the lunch break). He also stated that he had counted the number of available chairs in the room, as well as the number of police officers present (40,753,034 seconds). Jérôme's testimony thus convinced the Court that when he cites figures, he has generally conducted a precise count. In addition, he demonstrated caution in his statements, not hesitating to admit when he did not know something (for example, who was in charge during the transport). Nor did he seek to portray himself as a victim at all costs, acknowledging, for example, that he had not been beaten during the transport. These factors lead the Court to find Jérôme's statements highly credible.

7.13.3.6 Jérôme's account is also corroborated by the numerous other accounts from complainants who reported such transports during the proceedings, which revealed that Alieu Kosiah was involved (see, in particular, *supra,* para. 7.10). The circumstances under which the various transports took place are consistently described in a similar manner, and the defendant plays a central role in each instance. Alieu Kosiah's presence at the goods drop-off location—which allowed him to oversee the convoy's departure—can be compared to the facts described in paragraph 7.12 above. Furthermore, the acts alleged against the defendant correspond to the role of "H&H" that several participants in the proceedings have attributed to him (see *supra*, para. 7.5.3.10). Olivier's statements regarding the existence of goods transport by civilians during the war further reinforce the credibility of Jérôme's testimony, as the former child soldier provides a convincing explanation as to why civilians were enlisted.

7.13.3.7 As for the defendant's argument regarding Jérôme's testimony—which does not state that OOO. is his brother—there is no contradiction between that testimony and the complainant's subsequent statements, as the latter simply clarified at a later stage what his relationship was with the civilian in question. It is

It is, moreover, difficult to understand what conclusion the defense would wish to draw from the alleged contradiction it has identified. Furthermore, the assertion that OOO. was an NPFL soldier is not supported by any evidence in the record and is entirely irrelevant, as it does nothing to confirm or refute Jérôme's credibility. It may therefore be dismissed without further discussion. Finally, regarding the duration of the journey between Voinjama and Gbarlyeloh, if the distance between the two locations is indeed 20 kilometers (which the Court cannot verify, as the village of Gbarlyeloh could not be clearly located), as the defendant maintains, the four-hour walk indicated by the complainant may be sufficient, provided that the porters were sufficiently beaten and threatened to keep up the pace. Furthermore, Alieu Kosiah's presence in Voinjama in 1994 is not disputed.

7.13.3.8 The Court finds that Jérôme's statements are far more credible than the defendant's denials; accordingly, it considers it duly established that the defendant ordered the transport of goods from Voinjama to Gbarleyeloh, as alleged by the complainant. These acts may be characterized both as an infringement upon physical and psychological integrity, in the form of cruel treatment, and as an infringement upon human dignity, in the form of humiliating and degrading treatment.

Forcing civilians to walk for hours carrying a heavy load, without giving them food or water, while threatening them and beating them if they do not keep up with the imposed pace, is likely to cause great suffering. This suffering is primarily physical, due to the long march the civilians were forced to undertake while carrying a heavy load and the beatings they endured if they did not walk fast enough. The suffering is also psychological, given the terror that gripped the civilians throughout the journey, as they were accompanied by armed soldiers who had received orders from the defendant to kill any civilians who resisted.

The acts must also be classified as humiliating and degrading treatment. Forcing a person to carry a load under extremely difficult conditions, while threatening them with death or beatings if they do not keep up with the imposed pace, amounts to a violation of their humanity and constitutes a very serious form of humiliation. Any reasonable person would indeed feel profoundly humiliated and degraded by such treatment.

Furthermore, the beatings inflicted on civilians and the death threats were considered components of the offenses of cruel, humiliating, and degrading treatment, and therefore do not constitute separate offenses that would need to be considered in addition.

Finally, it is clarified that, despite the seriousness of the facts, the offense of slavery has not been committed in this case, insofar as the transport lasted only a few hours and this period of time is not sufficient to establish the exercise of property rights over the civilians involved.

7.13.3.9 By ordering the soldiers to force the civilians to carry out the transport, Alieu Kosiah knew that he was compelling them to commit acts that constitute criminal offenses. The defendant's status as a commander can be established, as his presence at the goods depot and the orders he gave to the soldiers before their departure attest to his hierarchical superiority. Furthermore, it was precisely because he gave the order for the transport that the soldiers carried it out.

7.13.3.10 With regard to the subjective element, Alieu Kosiah acted intentionally. He knew that by instructing the soldiers to escort the convoy and to kill any civilians who resisted, they would carry out his orders. The defendant was also aware that the people forced onto the convoy were civilians.

Finally, these acts took place within the context of the armed conflict that occurred in Liberia during the first civil war, a fact of which Alieu Kosiah was aware.

7.13.3.11 In conclusion, Alieu Kosiah must therefore be convicted of having given the order to inflict cruel, humiliating, and degrading treatment on civilians (Art. 109(1) and 108(2) of the Military Criminal Code [aCPM] in conjunction with Art. 18 of the Swiss Criminal Code (aCPM) *in conjunction with* Art. 3(1)(1)(a) and (c) common to the General Provisions and Art. 4(2)(a) and (e) of Part II).

7.14 Ordering the forced transport, by civilians, from Voinjama to Solomba and from there to the Guinean border

7.14.1 Charge

Pursuant to section 1.3.20 of the indictment, Alieu Kosiah is charged with having ordered a forced transport from Voinjama to Solomba, carried out by civilians, between September 1993 and December 1993, and between early 1994 and May 1994, respectively.

7.14.2 Evidence

During the Preliminary Investigation

7.14.2.1 According to Jérôme's criminal complaint dated July 30, 2014, approximately two weeks after the forced transport to Gbarlyeloh—which took place during an offensive by the armed group LDF against Voinjama—he was once again forced to transport goods, along with about ten other civilians, from Voinjama to Solomba. The journey took two full days, including an overnight stay in the town of Kolahun. The convoy also passed through the town of Foya. The order to carry the cargo to Solomba was reportedly given in Voinjama by Alieu Kosiah, in Jérôme's presence. Alieu Kosiah then reportedly delegated the task of leading the forced march to his subordinates (05-03-0002 et seq.).

7.14.2.2 During his interrogation by the MPC, Jérôme stated that, a few days after the

transport to Gbarlyeloh (see *supra*, para. 7.13), five ULIMO soldiers came to his home again to conscript him. One of the soldiers, who was shorter and

younger than him, tried to strike him with his weapon. Jérôme had to follow them to the Barzee neighborhood. “General Kosiah” was there again, sitting on the porch. He asked where the people were whom he had ordered to be brought. One of the soldiers told him they were there. Alieu Kosiah then gave the order to transport the cargo to Kolahun. He also stated that if the soldiers could not find other civilians in Kolahun to take them to Solomba, they were to continue with those who had made the journey from Voinjama. He further ordered that if anyone tried to escape, they were to be shot. When one of the civilians asked why they were not going to Gbarlyeloh, a soldier replied that, shortly after leaving Voinjama, at Kuruka Junction, they had been ambushed during a transport operation carried out a few days earlier (12-09-0014). According to the complainant, seventeen soldiers were present during the transport (12-09-0021). The civilians took the cargo and walked for eight hours to Kolahun. There, a soldier who had a key opened a door and ordered them to unload the cargo inside. A few minutes later, two soldiers who had been part of the convoy brought a pan of food intended for the civilians. However, there was not enough to feed everyone, so each civilian received only a small handful. The next morning, around 6:00 or 7:00 a.m., the soldiers “opened the door,” and the civilians had to pick up the cargo again to carry it to Solomba. From Kolahun, the civilians walked to Foya, where they took a 20- to 30-minute break by the side of the road (12-09-0014). They then continued walking toward Solomba. Upon arrival, the convoy stopped at the Makona River, which marks the border between Liberia and Guinea. The civilians left the cargo on the road, and the soldiers asked five of them, including Jérôme, to load it into a canoe. The civilians did not cross the river; the soldiers instructed them to return the way they had come. The complainant stated that the civilians arrived in Kolahun between 11:00 p.m. and midnight, where they spent the night again. The next day, they returned to Voinjama. Fifteen soldiers accompanied them on the return trip, while two remained at the border with the cargo (12-09-0015).

7.14.2.3 When questioned about the allegations against him, Alieu Kosiah denied them. He stated that the route described by Jérôme did not make sense. Indeed, Voinjama is surrounded by Guinea, and there are at least fifteen places where it would have been possible to cross the border into Guinea. It therefore would not have been necessary to go all the way to Solomba. Regarding the ambush cited by the complainant to justify choosing Solomba as the destination instead of Gbarlyeloh, Alieu Kosiah stated that there had never been such an ambush on the road to Gbarlyeloh on the side indicated by Jérôme, since that road leads toward Guinea and the villages of Kuruka and Sakonedu are Mandingo villages, as is Gbarlyeloh on the Guinean side. Furthermore, according to the defendant, there were border crossings with Guinea located a 35-minute walk from the Voinjama garrison, so it was easier and faster to go that way to reach

the border. Alieu Kosiah believes that Jérôme made up the story about the ambush to justify his complaint (13-01-0106, 0649).

During the proceedings

7.14.2.4 When questioned by the Court, Jérôme confirmed his accusation against Alieu Kosiah. He stated that he had been conscripted by five soldiers who came to pick him up at his home one morning (40.753.023). One of them was an armed child soldier (40.753.023 s.). Jérôme was once again forced to go to the Barzee neighborhood. As with the first transport (see *supra*, para. 7.13), Jérôme asserted that he had no choice but to participate in the transport, as refusal would have put his life at risk. In Barzee, Alieu Kosiah issued instructions. He reportedly told his soldiers once again that if anyone tried to escape, they were to shoot. According to the complainant, there was no one higher in the chain of command than the defendant at that time, and he was the only one giving orders (40.753.024). Ten civilians and seventeen soldiers took part in the transport (40.753.024 s.). Alieu Kosiah, for his part, reportedly remained at the Barzee barracks. Jérôme stated that he did not know the names of the soldiers who led the transport and that he had not heard anyone give orders during the convoy, other than the order to move forward. All the soldiers were armed (40,753,025). The cargo being transported was of the same type as that of the previous transport (see *supra*, para. 7.13). For his part, the complainant stated that he carried a six-gallon oil can. He also explained that the convoy's destination was Solomba because he had heard that ULIMO forces had been attacked while traveling in the opposite direction. The convoy departed between 7:00 and 9:00 a.m. The road they took was passable. In some places, it was so narrow that the civilians had to walk in single file. The soldiers positioned themselves at the front, at the rear, and also among the civilians. At times, the civilians and soldiers stopped to drink water from the river because they were traveling under the sun. The civilians, however, were not given any food (40.753.027). After eight to nine hours of walking, the convoy stopped in Kolahun to spend the night (40.753.026). Jérôme stated that he received a palmful of food there. The civilians were also able to drink water from a well. During the night, the civilians were locked in a room that was secured from the outside. The convoy set off again the next day between 6:00 and 7:00 a.m. It traveled to Foya, a journey requiring three to four hours on foot. There, the civilians were able to rest (40.753.027). The soldiers and civilians then continued on their way, arriving at the Guinean border around 4:00 or 5:00 p.m. The road from Kolahun to the border was also passable, but it was not wide enough for a vehicle to pass because the bush had overgrown it. At the border, the civilians unloaded the goods onto the sand. Five of them were assigned to load the goods into canoes to transport them across the Makona River. Jérôme stated that once the goods had been unloaded, the civilians left, accompanied by fifteen soldiers, heading toward Kolahun, where they spent the night, while two soldiers remained at the border to look after the goods (40.753.028). The next morning, the civilians returned

toward Voinjama. When asked about the soldiers' conduct during the transport of the goods, Jérôme stated that they had behaved in the same manner as during the previous convoy (see *supra*, para. 7.13). The civilians thus reportedly suffered the same violence and threats. The complainant specified that he, for his part, had escaped the threats and violence (40.753.029). He further stated that he had not been paid for participating in the transport (40.753.030). When asked whether it would have been possible to make the journey by vehicle, Jérôme replied that a soldier had explained that if the enemy heard a vehicle, they would attack them; there was also the risk of hitting a landmine (40.753.030 s.).

7.14.2.5 When questioned during the proceedings about the charges against him, Alieu Kosiah continued to contest them, asserting that the transport described by Jérôme made no sense "for someone who was in Lofa." Indeed, according to him, it was illogical to travel to Solomba from Voinjama since there were fifteen to sixteen border crossings between Voinjama and Kolahun (40,731,063).

7.14.3 Law and Assessment of Evidence

7.14.3.1 Pursuant to Article 3 common to the Additional Protocols, attacks on life and physical integrity—including murder in all its forms, mutilation, cruel treatment, torture, and cruel, inhuman, or degrading punishment (subparagraph (a)), as well as attacks on the dignity of persons, including humiliating and degrading treatment (subparagraph (c)).

Pursuant to Art. 4(2) of Additional Protocol II, the following acts are and shall remain prohibited at all times and in all places with respect to persons who are not directly participating or who are no longer participating in hostilities, whether or not they are deprived of their liberty: attacks on the life, health, and physical or mental well-being of persons, in particular murder, as well as cruel treatment such as torture, mutilation, or any form of corporal punishment (subparagraph (a)), attacks on human dignity, including humiliating and degrading treatment, rape, forced prostitution, and any indecent assault (subparagraph (e)), slavery and the slave trade in all their forms (subparagraph f), and the threat to commit the aforementioned acts (subparagraph h).

7.14.3.2 With regard to legal developments concerning cruel treatment, violations of human dignity, and slavery, reference is made to recitals 7.4.3.2, 7.4.3.3, 7.5.3.3, and 7.5.3.4 above.

7.14.3.3 With regard to an order given by a superior within the meaning of Art. 18 aCPM, see paragraph 7.2.3.4 above.

7.14.3.4 In the present case, Jérôme's statements to the Office of the Attorney General and subsequently before the Court were entirely consistent regarding the circumstances under which

the transport took place and regarding the defendant's involvement. The complainant stated during the preliminary investigation and reiterated during the trial that Alieu Kosiah was present at the Barzee barracks, where the goods were stored, and that he ordered the ULIMO soldiers to carry out the transport, instructing them to shoot any civilians who resisted. As with the transport discussed previously in paragraph 7.13, Jérôme was, in this instance as well, extremely precise regarding the sequence of events and the number of soldiers and civilians who took part in the convoy, which—given the complainant's character—must be considered a clear indication of credibility (see *supra* para. 7.13.3.5). Furthermore, Jérôme once again demonstrated restraint in his statements by acknowledging that Alieu Kosiah had not taken part in the transport and that he himself had not been threatened or struck during said transport. This reinforces the reliability of his account.

7.14.3.5 Most of the complainants did not know one another or had no connection to one another. Consequently, the fact that they described forced transports that, in each case, followed a similar—if not identical—pattern regarding the type of goods transported, the roles of the soldiers and Alieu Kosiah, as well as the convoy's route and purpose (to sell the goods in Guinea), lends credibility to their statements. Indeed, it is highly unlikely that all these individuals would have colluded to provide a similar account. Furthermore, these forced transports are typical of civil war and fit within ULIMO's economic logic. The account provided by Jérôme echoes the statements of the other participants in the proceedings. The transport described by Jérôme differs from the others, however, in that the civilians were able to take a few breaks (including one to spend the night) and were given a small amount of food and some clean water. This difference is logical, given the particularly long duration of the journey and the distance traveled—about sixty kilometers. Without receiving even minimal sustenance and without taking any breaks, the civilians would undoubtedly have collapsed from exhaustion. Furthermore, the fact that it took two days to reach the destination is entirely credible given the distance traveled. Furthermore, Olivier's statements regarding the existence of forced transport during the war (see *supra* paras. 7.5.2.3 and 7.5.2.7) lend further credence to Jérôme's statements. Finally, the facts reported by Jérôme can be linked to the role of H&H assumed by Alieu Kosiah (see *supra*, para. 7.5.3.10).

7.14.3.6 Regarding the defendant's argument that it would have been illogical for the convoy to travel to Solomba given the number of border crossings between Voinjama and Kolahun, it is reiterated once again that the civil war in Liberia did not appear to follow any logical military pattern, as the enemy could be found anywhere at any time. It is therefore by no means impossible that goods may have had to be transported, for one reason or another, specifically

all the way to Solomba—for example, because the other border crossings were not close enough to Guinea's trading towns. Finally, the Court finds it difficult to understand what interest the complainant might have had in lying about the destination of a shipment of goods.

7.14.3.7 In light of the foregoing, the Court considers that Jérôme's statements are far more credible than those of the defendant and finds that it has been duly established that Alieu Kosiah ordered the shipment of goods reported by the complainant. The acts can be characterized both as an infringement upon physical and psychological integrity, in the form of cruel treatment, and as an infringement upon human dignity, in the form of humiliating and degrading treatment.

7.14.3.8 Forcing civilians to walk for hours carrying a heavy load, threatening them with weapons or beating them if they do not keep up with the imposed pace, and confining them for an entire night are acts likely to cause great suffering. This suffering is primarily physical, due to the long march the civilians were forced to undertake while carrying a heavy load and the beatings they endured if they did not walk fast enough. The suffering is also psychological, given the terror the civilians experienced throughout the journey—since they were accompanied by armed soldiers—and given their confinement for an entire night.

The acts alleged against the defendant must also be classified as humiliating and degrading treatment. Forcing a person to carry a load under extremely difficult conditions, while threatening them with death or beatings if they did not keep up with the imposed pace, amounts to a violation of their humanity and constitutes a very serious form of humiliation. Any reasonable person would indeed feel deeply humiliated and traumatized by such treatment.

Furthermore, the beatings inflicted on civilians and the death threats constitute offenses of cruel, humiliating, and degrading treatment and therefore do not constitute separate offenses that would need to be considered in addition.

Finally, it is clarified that, despite the seriousness of the facts, the offense of slavery has not been committed, insofar as the transport lasted two days and this period of time is not sufficient to establish the exercise of powers falling under the right of ownership over the civilians involved.

7.14.3.9 With regard to the order given in connection with Article 18 of the aCPM, the defendant's status as a leader may be established, given the situation described by Jérôme. Alieu Kosiah was, in fact, at the head of the convoy, at the location where the cargo was stored. It was there that he gave his instructions, specifying that any civilian who resisted was to be killed. On the few occasions when Alieu Kosiah did not participate in the alleged transports, he was always in a strategic position that attested to his role as a leader exercising his authority: either at the start of the convoy (as in this case), which allowed him to ensure that all the

loads were carried and to issue his instructions, or upon the convoy's arrival, which allowed him to verify that everything had proceeded in accordance with those instructions. The fact that his order was carried out further demonstrates his hierarchical superiority. Even though he did not specifically order the beating of civilians, this element must nonetheless be held against him under Article 18 of the Military Penal Code (aCPM). Indeed, it must be understood that such treatment went hand in hand with forced transport, just as did threats, in order to make the civilians move at the imposed pace. It must therefore be held that the order given by the defendant entailed the commission of offenses, namely the infliction of cruel, humiliating, and degrading treatment, and that it was because of the order they received that the soldiers accompanied the civilians during their transport under the conditions described above. The objective elements of Article 18(a) of the Military Criminal Code are therefore satisfied.

7.14.3.10 Subjectively, Alieu Kosiah acted intentionally. He knew that the instruction given to his soldiers to carry out the transport would be carried out. The defendant also knew, without a shadow of a doubt, that the persons involved were civilians.

Finally, these acts took place within the context of the armed conflict that occurred in Liberia during the first civil war, a fact of which Alieu Kosiah was aware.

7.14.3.11 In conclusion, Alieu Kosiah must therefore be convicted of ordering the infliction of cruel, humiliating, and degrading treatment upon civilians (Art. 109(1) and 108(2) of the Military Criminal Code (aCPM) in conjunction with Art. 18 of the Swiss Criminal Code (aCPM) *in conjunction with* Art. 3(1)(1)(a) and (c) common to the General Provisions and Art. 4(2)(a) and (e) of Part II of the Penal Code).

7.15 Ordering the murders of two ULIMO combatants of Krahn ethnicity, including , known as "Phoenix," in Voinjama

7.15.1 Charge

Pursuant to paragraph 1.3.21 of the indictment, Alieu Kosiah is charged with ordering the murders of two ULIMO combatants of Krahn ethnicity, including the man known as Phénix, in Voinjama, between September 1993 and December 1993, and between early 1994 and May 1994, respectively.

7.15.2 Evidence

During the preliminary investigation

7.15.2.1 During his interrogation by the Office of the Public Prosecutor, Jérôme stated that while he was returning from the market in Voinjama, passing through the Barzee neighborhood, and crossing the Kolahun road, he saw a group of ULIMO fighters, consisting of twenty to thirty people, with "General Kosiah" in the middle (12-09-0022). The latter was dressed in a "uniform"—a T-shirt and a

camouflage cap—and was carrying a pistol on his right hip, as was his custom, according to Jérôme (12-09-0022). Jérôme stated that he saw, in the middle of the group, two ULIMO soldiers tied up
“tabé.” One of them went by the nickname Phénix. Jérôme claimed to have

heard “General Kosiah” utter the following words: “Since the Krahns want to fight us, we will kill those who are among us.” The defendant also reportedly stated that there were three Krahn soldiers among them, one of whom had fled, and that the other two, bound in “tabé,” were to be executed. According to Jérôme, the defendant then ordered that the two soldiers be executed by having their throats slit with a knife (12-09-0015). Later, during his hearing, the complainant stated that “General Kosiah” had ordered the execution of the two soldiers by saying “execute them,” without specifying how to carry out the execution; he reportedly did not make any explicit gestures either (12-09-0022). The soldiers reportedly cut off Phénix’s head and took it to *the checkpoint* on Monrovia Highway at Iron Gate (12-09-0015). Jérôme stated that he did indeed see it there the following day (12-09-0022). They also displayed the head of the other Krahn soldier—whose name Jérôme does not know—at the Kolahun Highway *checkpoint* (12-09-0015). After the execution, Alieu Kosiah reportedly said or did nothing further (12-09-0022).

7.15.2.2 When questioned about the charges against him, Alieu Kosiah denied them. He stated that he did not know anyone named Phénix and had never heard of an incident in which Phénix was allegedly “beaten” and then killed, along with another ULIMO soldier, in Voinjama on the road to Kolahun (13-01-0178). The defendant also asserted that Jérôme’s account made no sense, since Jérôme dated the event to early 1994, whereas the ULIMO split reportedly took place later that same year. According to Alieu Kosiah, Jérôme claims that Kosiah killed the two soldiers to take revenge on ULIMO-J as well as for the deaths of two of his family members during the war. The defendant disputes this account, asserting that if he had wanted to avenge the deaths of his family members, he would have targeted the Gios—who were active combatants in Nimba at the time of those deaths—rather than Krahn soldiers (13-01-0178, 0180). Alieu Kosiah further added that he was in Bomi when the split occurred and that he had never been to Voinjama before that split (13-01-0106, 0178).

7.15.2.3 During the preliminary hearing, Olivier stated that he had regularly seen human skulls mounted on sticks at *checkpoints* at the entrances to towns in Lofa, particularly in Salayae, Zorzor, Voinjama, and Foya (12-16-0039). According to him, this practice was intended to intimidate the enemy. He clarified that these were not the bodies of civilians, but of NPFL soldiers captured by ULIMO or vice versa (12-16-0040).

7.15.2.4 Raoul, who was interviewed by the MPC two days before Jérôme, stated that he had heard that a man named “Patrick,” who was Krahn, had been killed by Alieu Kosiah’s soldiers during the ULIMO split (12-08-0034, 0037).

During the proceedings

7.15.2.5 When questioned by the Court, Jérôme confirmed his accusation against Alieu Kosiah. He specified that the event had occurred in 1994, though he could not say whether it took place before or after the ULIMO split. In fact, the complainant stated that he "knew nothing" about this split and that the only thing he could affirm was that Alieu Kosiah had said, referring to the Krahns: "Since they want to fight against us, then we must kill them" (40.753.031 s.). Jérôme explained that the murders took place in Voinjama, between the road leading to Monrovia and the one leading to Kolahun (40.753.031). He confirmed that he had been present at the crime scene while returning from the market. Three Krahn soldiers were to be executed, but one of them managed to escape. According to Jérôme, Alieu Kosiah ordered that the throats of the other two be slit. The complainant stated that he did not know whether there was a military officer present who outranked the defendant, but that the soldiers took orders from the defendant (40.753.032). The two soldiers were reportedly tied up in the "tabé" position, bare-chested, before being executed. According to Jérôme, they were not beaten. They were killed by two soldiers, who cut off their heads with long knives. The other soldiers present held the victims down to prevent them from moving. According to the complainant, one of the victims was named Phénix. The latter's head was reportedly placed on a stick at the city gate on the road to Monrovia, and the other soldier's head at the gate on the road to Kolahun (40.753.033).

7.15.2.6 When questioned by the Court about the charges against him, Alieu Kosiah denied them. He stated that he was in Tubmanburg at the time of the split and that he did not know any soldier named Phénix. When asked whether he had ever seen human body parts at *the checkpoints* on the Monrovia and Kolahun roads, the defendant answered in the negative.

7.15.3 Law and Assessment of Evidence

7.15.3.1 Pursuant to Art. 3(1)(1)(a) common to the GC, attacks on life and physical integrity—including murder in all its forms, mutilation, cruel treatment, torture, and cruel punishment—are and remain prohibited at all times and in all places with respect to persons who are not directly participating in hostilities.

Pursuant to Article 4, paragraph 2, subparagraph a of Protocol II, the following are and remain prohibited at all times and in all places with respect to persons who are not directly participating or are no longer participating in hostilities, whether or not they are deprived of their liberty: attacks on their life, health, and physical or mental well-being, in particular murder, as well as cruel treatment such as torture, mutilation, or any form of corporal punishment.

For legal considerations regarding murder and an order given by a superior officer within the meaning of Art. 18a of the Military Criminal Code (aCPM), reference is made to recitals 7.2.3.1 through 7.2.3.4 above.

7.15.3.2 In this case, Jérôme's statements remained consistent regarding the circumstances under which the two Krahn soldiers were executed and the role played by the defendant. During the trial, Jérôme confirmed his testimony before the Office of the Attorney General, in which he stated that he had seen and heard Alieu Kosiah order the soldiers to slit the throats of the two Krahn soldiers. The scene described took place against the backdrop of the conflict that erupted between the Mandingo and Krahn factions of ULIMO, a conflict that led to the group's split in March 1994. Jérôme, however, did not establish a link between this event and the crimes he reported, stating that he knew nothing about the split within the ULIMO group. He thus limited himself to reporting the words he claimed to have heard from the defendant, namely that, since the Krahns wanted to fight against "them," he had to kill them. Jérôme thus remained very factual in his description of the scene, which reinforces his credibility. Furthermore, once again, he did not seek to incriminate Alieu Kosiah any more than was necessary, stating that he had arrived at the scene while the two soldiers were already tied up in "tabé," so that he could not say whether or not the order to restrain them had been given by the defendant. Jérôme's testimony can also be corroborated by that of Raoul, who stated that he had heard that a man named Patrick had been killed by Alieu Kosiah's soldiers. Given the imprecision with which certain names or nicknames are pronounced or used in Liberia, it appears highly probable to the Court that this is the same person as the "Phoenix" mentioned by Jérôme. Finally, the details provided by Jérôme regarding the skulls of the two soldiers, which were reportedly placed two gates outside the town of Voinjama, are corroborated by the testimony of Olivier, a former member of Alieu Kosiah's personal security detail. These are certainly barbaric acts, but they are by no means exceptional in the context of a war where terror is routinely employed.

7.15.3.3 As for the defendant's denials, based on the time frames provided by Jérôme, they are not conclusive. Indeed, contrary to what he claims, Jérôme did not precisely date the event he reported, merely stating that it occurred in 1994. Since the split took place in March 1994, it is highly probable that the acts reported by Jérôme were committed around that time, during which Alieu Kosiah was indeed present in Voinjama.

7.15.3.4 It follows from the foregoing that Jérôme's testimony is highly credible, such that it is considered clearly established that Alieu Kosiah ordered his men to kill the two Krahn soldiers. There is no doubt, in the Court's view, that he was a leader. Indeed, Jérôme specified that the soldiers took their orders from the defendant. Furthermore, the order was carried out, which demonstrates

Alieu Kosiah's hierarchical superiority. Since the order entailed the commission of an offense, the objective elements of Article 18 of the Military Criminal Code (aCPM) are satisfied.

7.15.3.5 It should be noted that the two soldiers, having been disarmed (they were, in fact, tied up), are considered "persons not participating in hostilities" (see *supra*, para. 4.4.3) and are therefore protected by the legal provisions mentioned in para. 7.15.3.1 above.

7.15.3.6 Subjectively, Alieu Kosiah acted intentionally. He knew that by giving the order to kill the two Krahn soldiers, that order would be carried out and that he was committing a crime. Furthermore, he could not have been unaware of the protected status enjoyed by the two unarmed soldiers, given the knowledge he possessed as a result of the military training he had undoubtedly received in the regular army.

The events also took place against the backdrop of the internal armed conflict that unfolded in Liberia during the First Civil War, a fact of which Alieu Kosiah was aware.

7.15.3.7 Alieu Kosiah is therefore found guilty of ordering the killing of two unarmed soldiers within the meaning of Art. 109(1) and Art. 108(2) aCPM in conjunction with Art. 18 aCPM*, in conjunction* with Art. 3(1)(1)(a) common to the General Provisions and Art. 4(2)(a) PA II.

7.16 Ordering the looting of the village of Botosu, as well as ordering and directing the forced transport of property by civilians from Botosu

7.16.1 Charge

Pursuant to counts 1.3.22 and 1.3.23 of the indictment, Alieu Kosiah is charged with having ordered the looting of Botosu between March and December 1993 or between March 1994 and the end of 1995, and with subsequently having ordered and directed the forced transport of looted property from the village of Botosu by civilians.

7.16.2 Evidence

During the preliminary investigation

7.16.2.1 When she was interviewed by the MPC, Coralie described Alieu Kosiah as having very dark skin and large eyes—that is, prominent eyeballs (*"big big eye balls*")—and as being of average height. The complainant could not say whether he had any tattoos or scars. Since Alieu Kosiah had only removed his pants (during the events described in paragraph 7.17 below), she could not indicate whether he had any distinguishing marks on his torso. She further stated that she was afraid and did not pay attention to such details. Regarding the description of Alieu Kosiah's clothing, Coralie stated that he was wearing

uniform pants. What he was wearing on top, however, was not part of a uniform. She could not say whether he was wearing anything

on his head. In the first photographs shown to her, the complainant did not recognize anyone (12-21-0012). However, on the third day of her hearing, she was shown additional photographs in a larger format. Coralie was then able to identify Alieu Kosiah in the two photographs depicting him. She was subsequently confronted with the defendant and confirmed that he was indeed the perpetrator of the acts she had reported (12-21-0062).

7.16.2.2 During her testimony, Coralie stated that when the ULIMO soldiers arrived in the village of Botosu, they asked the villagers to cook for them. Some civilians cooked, while others, like Coralie, washed the dishes and fetched water from the stream. The civilians were tasked with bringing the food to a gathering place called “Palaver House” (12-21-0009). According to the complainant, “General Kosiah” ordered his men to gather all the rice and oil (12-21-0043). The soldiers thus forcibly took the rice and oil that the civilians possessed (12-21-0010). The soldiers gathered the rice they had found into a large bag used for long-term storage, which could hold up to 100 kilograms. According to Coralie, once the rice had been gathered, the bag was half full. Regarding the oil, the complainant stated that she saw soldiers fill fourteen cans with it (12-21-0089). After that, “General Kosiah” reportedly ordered the men to carry the rice, oil, and ammunition, while the women were to follow behind them (12-21-0010, 0043, 0089). According to Coralie, the convoy was organized as follows: first came Alieu Kosiah’s men, who were to protect him in case of an attack; then Alieu Kosiah himself; and behind him, the men carrying the loads, escorted by a second group of soldiers. The women brought up the rear (12-21-0043). Coralie stated that she had participated in the convoy, during which she had thought “only of her survival” (12-21-0108). She indicated, however, that she had managed to escape and hide in the *bush* (12-21-0010). During her testimony, the complainant clarified that no one other than Alieu Kosiah gave orders. According to her, he was the “General,” a *“big* man”—that is, a person above everyone else (12-21-0038 s.).

7.16.2.3 When questioned about the allegations against him, Alieu Kosiah denied them. He stated that he did not know the village of Botosu and had never been there. He claimed that he had never left the main road and that Botosu was not located along it. He also pointed out that Coralie had not mentioned a specific year, which would have allowed him to place the events she described in context, calling this omission strange (13-01-0652).

<u>During the proceedings</u>

7.16.2.4 During her testimony before the Court, via videoconference from the U.S. Embassy in Monrovia, Coralie confirmed her allegations against Alieu Kosiah (40.752.008). She stated that the looting of the village of Botosu had taken place

the rice-growing season. On the day of the looting, the soldiers had asked the civilians to cook for them at the “Palaver House.” Alieu Kosiah was present, according to the complainant (40.752.009). She confirmed that she heard him give the order to the ULIMO soldiers to collect the rice and oil that the civilians possessed. She stated that the defendant was the highest-ranking person at the time, as the soldiers called him “General.” She clarified that when she stated during the preliminary investigation that the soldiers had taken the rice and oil “by force” from the civilians, this meant that they had seized property that did not belong to them. In particular, the soldiers took everything that belonged to Coralie’s mother, with whom Coralie was living. The civilians had no choice but to hand over their belongings to the soldiers to avoid being killed (40.752.010). Coralie also confirmed that she heard the defendant give the order to transport the looted goods (40.752.011). She stated that she had heard that he was the highest-ranking commander on the scene. The transport took place on the same day as the looting. According to the complainant, if the civilians had refused to participate in the transport, they would surely have been killed (40.752.012). She explained that there were more civilians than soldiers, but since they were unarmed, they could not “avoid the attackers” (40.752.013). Coralie confirmed that she was among the civilians who were conscripted (40.752.012). According to her, women did indeed take part in the transport, but only the men carried the goods (40.752.014). When asked why the women had taken part in the transport without carrying anything, the complainant replied that she did not know (40.752.014). She also stated that Alieu Kosiah had been part of the convoy. He was at the front, with his bodyguards behind him, and he was the one giving orders, to the exclusion of everyone else (40.752.013). Behind him were those carrying ammunition and other supplies, and finally a group of soldiers flanking the entire convoy. The civilians carried the goods on their heads or shoulders (40.752.014). The soldiers, according to the complainant, were armed with rifles and bladed weapons. Alieu Ko-siah, for his part, was carrying a pistol on his side. Before leaving Botosu with the convoy, the soldiers fired several shots (40.752.015). Regarding the road taken, Coralie stated that it allowed only one person to pass at a time (40.752.014). When asked whether the soldiers had threatened the civilians during the transport, Coralie replied that she did not know, as she was positioned at the rear of the convoy (40.752.015). She also stated that the civilians had not been subjected to physical violence, as they would not have been able to carry their loads if they had been. According to her, the death threats were enough to force the civilians to participate in the transport; physical blows were not necessary to make them obey. Coralie added that she did not know whether Alieu Kosiah could see everything that was happening during the transport (40.752.016). She further stated that, since the soldiers were not keeping a close watch on her, she managed to escape (40.752.012). Because she fled, she was unable to indicate how far the goods had been transported. Nor was the complainant able to say how long she had

traveled with the convoy before fleeing (40.752.015). She specified that she had fled into the *bush* (40.752.016). When questioned again about the time that had elapsed from the start of the transport until she managed to escape, she stated that it had "not taken very long" (40.752.018).

7.16.2.5 When questioned by the Court about these facts, Alieu Kosiah continued to dispute them. He stated that he had never been to the village of Botosu during the war and that he did not even know it existed. Regarding the "Palaver House," the defendant explained that this referred to a place found in every village in Liberia. He also stated that he had never witnessed soldiers looting food, while noting that "various things happened," but that he had not been present (40.731.066). Alieu Kosiah further denied having ordered or directed a transport of oil, rice, and ammunition from the village of Botosu (40.731.066).

7.16.2.6 During the proceedings, numerous participants confirmed that the looting of civilian property was a common practice during the war, particularly the looting of coffee, cocoa, rice, and oil (Paul: 40.757.007; Raoul: 40.755.007; Antoine W.: 40,756,007; Louis Z.: 40,754,005; Jérôme:
40.753.007; André: 40.763.006). According to André, "They looted everything, even clothing, and especially anything containing metal or iron. This could include generators or sewing machines. They also looted food." (40.763.006). Olivier specifically stated that the ULIMO had committed acts of looting. Indeed, since they had no material support, whenever they arrived somewhere and saw something of value, they would take it (40.761.009).

7.16.3 Law and Evaluation of Evidence

Order to Loot

7.16.3.1 Pursuant to Art. 4, para. 2, subpar. g of PA II, looting is and remains prohibited at all times and in all places with respect to persons who are not directly participating or are no longer participating in hostilities, whether or not they are deprived of their liberty.

7.16.3.2 For legal discussions regarding looting, see paragraph 7.8.3.2 above. As for discussions regarding Article 18 of the Military Criminal Code (aCPM), which concerns the superior's liability for the order given, see paragraph 7.2.3.4 above.

7.16.3.3 In this case, Coralie provided descriptive details of the defendant that were frequently cited during the proceedings, namely his very dark skin, his bulging eyes, and his average height. This spontaneous description already constitutes evidence that the complainant did in fact come into contact with the defendant during the war. Added to this is the consistency of her account, first before the Office of the Attorney General and then during the trial. The consistency of her statements is of particular importance in this case

because Coralie is completely uneducated. She has never attended school, and the statements she made during the proceedings attest to this. Indeed, the complainant has always described the events in a very simple and factual manner. In particular, she was unable to speak of dates, durations, or distances, as she did not know how to count. Whenever she was asked questions, she never hesitated to state that she could not answer when that was the case. She thus never attempted to provide answers—which she was not capable of giving—to the criminal authorities who questioned her. Moreover, given her level of education, she would in all likelihood have been incapable of doing so. Given her abilities, the complainant would also not have been able to make statements before the Court while managing to make her answers as consistent as possible with the statements she had made previously. It thus appeared to the Court that whenever Coralie provided a piece of information, it was based on an actual memory, whether visual or auditory. In light of these elements and the consistency of the complainant's statements, the Court considers her account of the alleged facts to be highly credible. The reality of the looting during the war was further corroborated by numerous participants in the proceedings, and in particular by Olivier, who convincingly explained the reasons why the ULIMO soldiers engaged in looting. The acts alleged by Coralie can also be linked to the role attributed to Alieu Kosiah at H&H (see *supra*, para. 7.5.3.10).

7.16.3.4 The defendant defended himself by arguing that Coralie had not specified the time frame of the events she described. It is true that the complainant was unable to date the incidents she reported, stating only that they had occurred during the rainy season, at the time of the rice harvest. The reason Coralie did not provide more precise details is that, as the Court observed during the proceedings, she perceives her life as being governed simply by the alternation of day and night and the changing seasons. During the proceedings, for example, she was unable to answer precisely when asked what "a week" meant to her. She replied that, in her view, it was a period of time that was "neither too long nor too short," without being able to say more (40.752.028). It is therefore not surprising that she was unable to provide further details regarding the timing of the events she described. The Office of the Attorney General (MPC) also adopted a relatively broad time frame to situate this event, given Coralie's inability to provide further details on the matter. The Court finds that this lack of temporal precision does not infringe upon the rights of the defense, insofar as the defendant knows precisely which acts he is accused of, without needing to know the exact date they were committed in order to clearly identify them. Furthermore, it should be noted that the period identified by the prosecution is the one during which the defendant was, in all likelihood, in Lofa, such that his presence at the scene appears credible. The defense also highlighted the ties that existed between the

complainants Coralie and Jérôme in denouncing the conspiracy of which the defendant claims to be a victim. While it is certainly established that the two complainants had contact—the latter having, in particular, driven the former to the offices of the NGO RRR so that she could recount the events she had experienced during the first civil war—the Court struggles to understand what argument should be drawn from this. Indeed, there is absolutely nothing objectionable about one complainant helping another potential victim assert her rights. Furthermore, the facts alleged by Jérôme and Coralie are entirely distinct—that is, they do not overlap in any way—so that the complainant's account could not possibly serve Jérôme's interests. The defense's argument therefore fails. Finally, it should be noted that the defendant's position—denying that he witnessed any incident resulting in civilian casualties while he was in Lofa—lacks any credibility, as civilians were very often victimized during the war.

7.16.3.5 In light of the foregoing, the Court considers Coralie's statements to be far more credible than those of Alieu Kosiah. Since she confirmed during the proceedings that she had seen and heard the defendant order his soldiers to take the oil and rice belonging to the civilians of Botosu, the Court considers this fact to be established. Moreover, this is a practice that has already been described above (see *supra* para. 7.16.2.6).

7.16.3.6 Taking from a civilian population basic goods essential to its survival falls under Article 4(2)(g) of Protocol II. In this regard, it is immaterial whether the looting was the result of a decision made at the highest levels of the ULIMO hierarchy or an isolated act by the defendant, as this factor is not relevant to establishing the act of looting (see *supra*, para. 7.8.3.2).

7.16.3.7 As for Alieu Kosiah's status as a leader, who ordered the looting, this is established based on Coralie's statements, according to which he, for his part, received instructions from no one and called himself "General." The fact that the defendant's order was carried out is also an indication of his hierarchical superiority. The order given concerned the commission of a crime, and it was because of that order that the soldiers engaged in the alleged looting. The objective elements of Article 18 of the Military Penal Code (aCPM) are therefore satisfied.

7.16.3.8 Subjectively, Alieu Kosiah acted intentionally. He knew that the order he gave would result in the commission of a crime.

Furthermore, the events took place in the context of the internal armed conflict that occurred in Liberia during the First Civil War, a fact of which the defendant was aware.

7.16.3.9 In conclusion, Alieu Kosiah must be convicted for giving the order to loot the village of Botosu pursuant to Art. 109(1) and Art. 108(2) of the former Swiss

Military Criminal Code (aCPM), in conjunction with Art. 18 *of* the aCPM*,* Art. 3 common to the General Provisions, and Art. 4(2)(g) of PA II.

Forced Transportation

7.16.3.10 Pursuant to Article 3 common to the GC, attacks on life and physical integrity—including murder in all its forms, mutilation, cruel treatment, torture, and torment (subparagraph a), as well as attacks on the dignity of persons, including humiliating and degrading treatment (subparagraph c).

7.16.3.11 Pursuant to Art. 4(2) of Additional Protocol II, attacks on the life, health, and physical or mental well-being of persons—in particular murder—as well as cruel treatment such as torture, mutilation, or any form of corporal punishment (subparagraph (a)), attacks on human dignity, including humiliating and degrading treatment, rape, forced prostitution, and any indecent assault (subparagraph (e)), and slavery and the slave trade in all their forms (subparagraph (f)).

7.16.3.12 With regard to legal developments concerning cruel treatment, violations of human dignity, and slavery, reference is made to recitals 7.4.3.2, 7.4.3.3, 7.5.3.3, and 7.5.3.4 above. Regarding an order given by a superior within the meaning of Art. 18 aCPM, reference is made to recital 7.2.3.4 above.

7.16.3.13 In this case, Coralie's statements have been consistent regarding the manner in which the goods were transported following the looting and the role played by the defendant. As for the complainant's credibility, reference may be made in full to paragraph 7.16.3.3 above. Her account is, moreover, entirely consistent, insofar as it is logical that, following a looting, the goods would be transported for the purpose of being sold. It should be noted that the destination of the transport is unknown, as Coralie stated that she fled along the way. The absence of this information, however, does not cast doubt on either the complainant's credibility or the fact that the transport took place. The goods were, in all likelihood, transported to a town with a market, but the specific town is not decisive. Indeed, despite the lack of this detail, Alieu Kosiah is fully capable of understanding the allegation against him—namely, that he forced civilians to transport goods, looted from the village of Botosu, to a commercial area. The facts described by Coralie also echo the statements of other participants in the proceedings who reported such transports. The fact that Coralie managed to escape from the convoy is, however, relatively unusual compared to other accounts of forced labor, as the various participants in such incidents have all stated that it was impossible to flee without risking one's life. This discrepancy can, however, be explained by the fact that the complainant was not carrying any load, having merely

to accompany the convoy at the rear of the column, so that the soldiers' attention was likely not focused on her, but rather on the men who were responsible for transporting the looted goods. Finally, it should be noted that the facts reported by Coralie may be linked to the role at H&H attributed to Alieu Kosiah (see *supra*, para. 7.5.3.10).

7.16.3.14 With regard to the defendant's denials, reference is made to paragraph 7.16.3.4 above.

7.16.3.15 The Court considers Coralie's statements to be far more credible than those of the defendant. She stated before the Office of the Attorney General and repeated before the Court that she had seen Alieu Kosiah give the order to transport the goods and that she had participated in the transport. These facts are therefore considered to be validly established.

Forcing civilians to carry loads, while threatening them with weapons to make them move at the imposed pace, is likely to cause great suffering. This suffering is primarily physical, due to the exertion involved in carrying heavy loads over a long distance. The suffering is also psychological, given the terror that gripped the civilians throughout the journey, as they were accompanied by armed soldiers.

The acts alleged against the defendant must also be classified as humiliating and degrading treatment. Forcing a person to carry a load under extremely difficult conditions, in the presence of armed soldiers whose reputation for arbitrarily attacking civilians was well established, amounts to a violation of that person's dignity as a human being and constitutes a very serious form of humiliation. Any reasonable person would indeed feel deeply humiliated and degraded by such treatment.

It should be noted that, despite the seriousness of the facts, the offense of slavery has not been committed, insofar as the duration of the transport was not sufficient to establish the exercise of powers falling under the right of ownership over the civilians involved.

7.16.3.16 As for Alieu Kosiah's status as a leader—who ordered the transport—this is acknowledged in light of Coralie's statements, according to which the defendant received instructions from no one and referred to himself as "General." The fact that his order was carried out and his position at the front of the convoy, followed by his bodyguards, further indicate his hierarchical superiority. The order he gave involved the commission of a crime, and it was because of that order that the soldiers forced civilians to transport the looted goods. The objective elements of Article 18 of the Military Criminal Code (aCPM) are therefore fulfilled.

7.16.3.17 Subjectively, Alieu Kosiah acted intentionally. With regard to the order given, he knew that by instructing his soldiers to carry out the transport, they would carry

it out. The defendant also knew beyond any doubt that the persons involved were civilians.

Finally, these acts took place within the context of the armed conflict that occurred in Liberia during the First Civil War, a fact of which Alieu Kosiah was aware.

7.16.3.18 In conclusion, Alieu Kosiah must therefore be convicted for having ordered, and for having personally inflicted, cruel, humiliating, and degrading treatment on civilians (Art. 109(1) and 108(2) of the Military Criminal Code [aCPM] in conjunction with Art. 18 of the Swiss Criminal Code (aCPM) *in conjunction with* Art. 3(1)(1)(a) and (c) common to the General Provisions and Art. 4(2)(a) and (e) of Additional Protocol II).

7.17 Rape of Civilian Coralie

7.17.1 Charge

Pursuant to paragraph 1.3.24 of the indictment, Alieu Kosiah is charged with raping the civilian Coralie in a hamlet near Voinjama, between March and December 1993 or between March 1994 and the end of 1995.

7.17.2 Evidence

During the Preliminary Investigation

7.17.2.1 According to Coralie's criminal complaint dated August 17, 2016, when the ULIMO armed group attacked Gbortozo—the village where she lived with her parents and sisters, located in the Voinjama district—she fled with the other women of the village and took refuge in the bush. After a few days in the bush, Coralie set out one morning for Voinjama, hoping to find something to eat because she was hungry. In Voinjama, some men sitting on the porch of a house called out to her and asked her to follow them. They threatened to beat her if she refused. They said they wanted to take her to see their chief, whom they called "General Kosiah." Alieu Kosiah then took Coralie into a house and locked the door. He forced himself on her. She tried to fight him off, but he raped her. The next day, Coralie managed to escape. Following the rape, she bled heavily. Years later, at the time of filing her complaint, she said she was still suffering from the effects of the rape. Coralie described terrible physical and mental suffering (05-04-0002 s.).

7.17.2.2 During her interview with the Office of the Attorney General, Coralie stated that following the looting of the village of Botosu and the forced labor she was compelled to participate in (see *supra*, para. 7.16), she spent a week in the *bush* (12-21-0046). While she was on her way to get food in Voinjama, she saw a house on the side of the main road as she was crossing it (12-21-0023). It was the first house upon entering the town of Voinjama (12-21-0054). According to the complainant, a group of men belonging to "General Kosiah" was waiting there (12-21-0011). General Kosiah himself was also present (12-21-0023). As she crossed the main road, a young boy, who was carrying a piece of red cloth

and was armed, told her to

follow him because “General Kosiah” was waiting for her (12-21-0011, 0023). He reportedly said to her in English: “Come here” (12-21-0022). Coralie stated that it was Alieu Kosiah who had sent the boy to approach her (12-21-0024) and that she therefore went with him to meet the defendant. Once there, Alieu Kosiah allegedly took her to another house (12-21-0011, 0022). The complainant specified that he was wearing uniform pants at the time and civilian clothing on top. He was also carrying a weapon slung over his shoulder and a knife attached to his belt in such a way that it was clearly visible (12-21-0028 et seq.). Coralie explained that Alieu Kosiah had locked her inside the house by padlocking the door and had left. He returned a few hours later and told her that he was going to keep her and take her as his wife (12-21-0023, 0029). The complainant reportedly agreed out of fear that he would kill her. She stated that she felt sick and was afraid (12-21-0024). Alieu Kosiah then told her to undress. Coralie stated that she was not “happy” about it, but that she had to do it or risk being killed (12-21-0011). She stated that she then took off her clothes (12-21-0011, 0029). Alieu Kosiah, for his part, removed his boots and pants and then set down his gun and knife. The complainant explained that he then began to “have sex with her” (12-21-0029). He penetrated her while lying on top of her on the bed. She stated that Alieu Kosiah had “used” her and that he had repeated the act more than four times (12-21-0011, 0031). Coralie stated that she cried during the act but that, since the defendant allegedly told her he was going to kill her, she was afraid and therefore remained silent. After the act, Coralie and Alieu Kosiah spent the entire day inside and slept there (12-21-0030). The complainant stated that in the early morning, at dawn, Alieu Kosiah had left her in the house and gone to rejoin his group of men without locking the door. She had been watching him, and when she saw that he had left, she fled into the *bush*. On the way, she met people from her village who gave her something to eat (12-21-0011). She then explained to them what had happened to her and asked them to inform her mother, who was waiting for her in the *bush*, that she was leaving for Guinea (12-21-0011 et seq.). Coralie stated that she did not turn back because, if Alieu Kosiah had seen her, he would have killed her (12-21-0012). She therefore set out for Guinea and did not return to Liberia until after the war had ended (12-21-0012, 0054). During her questioning, Coralie clarified that she had never been beaten by Alieu Kosiah; he had indeed “used” her, but never beaten her (12-21-0030). She stated that this was the first time she had been penetrated by a man. She reportedly experienced pain in her lower abdomen during intercourse and bled. On the day she crossed the border into Guinea, she was still experiencing pain. When she was interviewed in Switzerland in November 2016, she indicated that she still occasionally experienced pain (12-21-0031).

7.17.2.3 When questioned about the charges against him, Alieu Kosiah denied them. He claimed not to know Coralie and to have never raped a woman. According to him, he had never had any trouble finding a woman; many of them “chased after him,” and he had to turn some of them down, so there was no reason for

him to

rape a woman. The defendant added that “it is men who have trouble getting women who might rape them” (13-01-0651, 0091). Alieu Kosiah also stated that there was no evidence that the complainant knew him, since she had been unable to identify him in a photograph dating from the war, but only in a photograph of him that had been published by Liberian newspapers at the time of his arrest (13-01-0456 et seq.).

During the proceedings

7.17.2.4 When questioned by the Court, Coralie confirmed her accusation against Alieu Kosiah. She stated that she recognized the perpetrator by his bulging eyes. She explained that she had been raped during the rainy season, while harvesting rice (40.752.018). She stated that the rape had taken place in Voinjama, while she had left the bush to go find something to eat. A child soldier, armed with a rifle, allegedly stopped her and took her “to the General’s place.” He allegedly told her:

“Come, the General is calling for you. If you don’t come, I’ll kill you.” Coralie stated that she was so afraid of being killed that she complied with the order. Alieu Kosiah wanted her to be his wife and took her to his home (40.752.019, 020). The defendant was dressed in military uniform and was armed with a knife, which the complainant estimated to be as long as her forearm (40.752.020). According to Coralie, once they arrived at the defendant’s house, he left after locking her inside. He then returned, and they reportedly spent the night together. The complainant stated that Alieu Kosiah had assaulted her four times and that she had not resisted, for fear of being killed. She therefore “said absolutely nothing.” Coralie clarified that she had not been struck by the defendant. He had, however, threatened to kill her if she refused to become his wife. The complainant explained that the four rapes took place throughout the night, at intervals of one or two hours. She stated that Alieu Kosiah had penetrated her but had not forced her to engage in other sexual acts (40.752.022). Coralie stated that the next day, while Kosiah was away and had left the door open, she took the opportunity to flee. When asked why she had not tried to escape the first time Alieu Kosiah left—that is, before he assaulted her—the complainant replied that she wanted to gain his trust. This had, in fact, worked, since the next day, the defendant had left without closing the door (40.752.021). Coralie stated that she had noticed bleeding when she fled into the bush and that it had lasted two days (40.752.022, 023). She said she first received “traditional treatment” and then went to the hospital to have her stomach pain treated. She reportedly experienced intense pain following the sexual intercourse and stated that she still feels pain today, which interferes with her sexual relations (40.752.023). The complainant specified that this was the first time she had had sexual intercourse with a man (40.752.024). She finally added that she felt humiliated by the acts she had reported (40.752.025).

7.17.2.5 When questioned by the Court about the charges against him, Alieu Kosiah once again denied them. He stated that there was “no chance” that he had even attempted such an act, since his girlfriend was “ten times more beautiful” than the complainant. The defendant also expressed surprise that, in her criminal complaint, Coralie mentioned the ULIMO, whereas when she was questioned by the Public Prosecutor’s Office, she stated that she knew nothing about that faction (40.731.066). Furthermore, it would be strange if she knew only his name among 150,000 ULIMO fighters. In particular, the defendant cannot understand how the complainant could not know Vincent. In his view, it is because Coralie went “through the NGO” that she knows his identity (40.731.067).

7.17.2.6 During the proceedings, numerous participants confirmed that it was common during the civil war for soldiers to commit acts of sexual violence against women (Paul: 40.757.007; Raoul: 40.755.054 s.; Louis Z.: 40.754.045; Antoine W.: 40,756,063 sec.).

Physical Evidence

7.17.2.7 The TRC report indicates that all factions involved in the armed conflict systematically targeted women, primarily because of their gender, and committed sexual violence and sexist acts against them, including rape in all its forms, sexual slavery, forced marriages, forced recruitment, and abductions (14-01-0022, 0023).

7.17.3 Law and Assessment of Evidence

7.17.3.1 Pursuant to Article 3 common to the Additional Protocols, acts that violate human dignity—including humiliating and degrading treatment—are and remain prohibited at all times and in all places with respect to persons not directly participating in hostilities (subparagraph c).

Article 4, paragraph 2, subparagraph (e) of Protocol II, which supplements Article 3(c) common to the GC, states that, at all times and in all places, with respect to persons who are not directly participating or are no longer participating in hostilities—whether or not they are deprived of their liberty—attacks on human dignity, including humiliating and degrading treatment, rape, coercion into prostitution, and any indecent assault (subparagraph e) and the threat to commit the aforementioned acts (subparagraph h).

7.17.3.2 With regard to the offense of rape, the question arises as to whether the concept referred to in Art. 4, para. 2, subpar. e of PA II corresponds to that of Art. 190 of the Swiss Penal Code (CP) or whether, rather, one should refer to an international definition of rape as a war crime, namely that of the International Criminal Court (ICC) or the International Criminal Tribunals (ICTs). International definitions of rape do not take into account the victim’s sex and cover any act of sexual penetration committed against another person through

the use of force or coercion (see, in particular, ICTR, Akayesu Case, Judgment of September 2, 1998, paras. 597 and 688; ICTY,

Furundzija Case, Judgment of December 10, 1998, paras. 175 et seq. and 185; ICC, Katanga Case, Judgment of March 7, 2014, paras. 964 et seq.). By contrast, pursuant to Art. 190 of the Swiss Penal Code (CP), a person commits rape if, in particular by using threats or violence, by exerting psychological pressure on the victim, or by rendering the victim incapable of resistance, they have compelled a female person to undergo a sexual act. Swiss law thus requires forced sexual intercourse consisting of the penetration of a man's genitalia into those of a woman. As for other sexual acts, and in particular other forms of penetration, they fall under the offense of sexual coercion within the meaning of Art. 189 of the Swiss Criminal Code (Message on the Implementation of the Rome Statute, FF 2008 3522 ff.). The definition under Swiss law is thus much narrower than that recognized under international law. The question of the exact definition of rape under Part II of the Criminal Code may, however, remain open in the present case, since, as will be seen, the facts described by Coralie meet the definition of rape under both international and Swiss law (see *infra*, para. 7.17.3.5).

7.17.3.3 The complainant's statements regarding the sexual acts she reported were entirely consistent before the Office of the Attorney General and subsequently before the Court. She stated that she had been "used by the defendant" four times in the course of a single night, which must be understood to mean that she was subjected to penetration. She specified that she had been threatened with death by Alieu Kosiah should she refuse him. She therefore offered no resistance. She also stated that Alieu Kosiah had placed his weapon on a table in the room where the sexual acts took place. Given the consistency of the complainant's statements and her lack of deceit (see *supra*, para. 7.16.3.3), the Court considers her account to be highly credible. The discussion in paragraph 7.16.3.3 above regarding the complainant's credibility may be fully incorporated here.

7.17.3.4 As for the defendant's denials, they are entirely irrelevant and are therefore dismissed. Regarding the argument raised by the defense concerning the contradictions noted in Coralie's criminal complaint and in her account, reference is made to paragraph 6.3 above for the discussion regarding the probative value of criminal complaints in the present proceedings. It is reiterated that, in the Court's view, the consistency of the statements made by the complainants during the preliminary investigation and at trial carries greater probative weight than the content of a criminal complaint drafted by a third party; and that, in this case, Coralie was certainly not in a position to proofread, given her lack of training. Furthermore, the discrepancies between the content of the complaint and the complainant's account pertain to details that are irrelevant to the facts of the case. Furthermore, the mention of ULIMO in the complaint—even though Coralie stated that she was unaware of the existence of this group during her hearing before the Office of the Attorney General—can most likely be explained by the desire of the person who drafted the complaint

to place the reported events

within a certain military context. As for the fact that Coralie knew only the defendant's name—and notably not Vincent's—this should come as no surprise to the Court. Indeed, it seems natural that a young woman would remember the name of her assailant but not those of other combatants, who were of no concern to her. It is indeed easy to imagine that the names or nicknames of the soldiers conquering Lofa—even those of high rank, such as Vincent—were not the primary concern of civilians during the war. Finally, regarding the photograph from the war period in which the complainant was unable to identify the defendant, reference is made to paragraph 6.4 above.

7.17.3.5 The Court considers that the complainant's statements are far more credible than those of the defendant. Furthermore, the complainant's statements clearly exemplify the sexual assaults on civilians that have been recounted by numerous participants in the proceedings as well as in the TRC report. The Court therefore finds that it is well established that Alieu Kosiah forced Coralie, under threat of killing her, to engage in sexual intercourse on four separate occasions over the course of a single night. These acts constitute rape, both under international law and under Swiss law.

The question remains whether the four acts of sexual intercourse imposed in succession constitute a single natural course of action or four separate offenses. A single natural course of action exists when separate acts stem from a single decision and objectively appear as events forming a whole due to their close connection in time and space. It thus refers to the repeated commission of offenses—for example, a series of blows—or the commission of an offense in successive stages—such as spray-painting graffiti on a wall over several consecutive nights. However, a natural unit is ruled out if a sufficiently long period of time has elapsed between the various acts, even if they are interconnected. The concept of a natural unit of action must be interpreted restrictively (Federal Supreme Court decision 6B_911/2017 of April 27, 2018, para. 4.2.2, and the references cited).

In this case, the complainant was unable to be very precise regarding the time intervals that elapsed between the various sexual acts. She estimated the time span between them to be between one and two hours. During her hearing, however, it became apparent that Coralie has a rather approximate perception of time, so that the information she provided cannot be considered certain. Thus, in case of doubt, the Court adopts the scenario most favorable to the defendant, namely that the four acts of forced sexual intercourse constitute a single continuous act rather than four separate offenses.

It is further clarified that the death threats expressed both verbally and through gestures constitute coercion used to force the victim to submit to the act and thus do not constitute a separate offense, as rape is a specific

specific form of coercion (BERNARD CORBOZ, Criminal Offenses in Swiss Law, Volume 1, 2010, No. 42, *regarding* Art. 181 of the Swiss Criminal Code).

7.17.3.6 Subjectively, Alieu Kosiah acted intentionally. He knew full well that Coralie did not consent to the sexual intercourse he forced upon her.

Furthermore, the events took place within the context of the internal armed conflict that unfolded in Liberia during the first civil war, a fact of which the defendant was aware.

7.17.3.7 Alieu Kosiah will therefore be convicted of the rape of a civilian within the meaning of Art. 109(1) and Art. 108(2)(a) of the Military Criminal Code (aCPM), *in conjunction with* Art. 3(1)(1)(c) common to the General Provisions and Art. 4(2)(e) of Part II of the Penal Code (PA II).

7.18 Ordering and directing the forced transport of property by civilians from Zorzor to Salayae

7.18.1 Charge

Pursuant to section 1.3.25 of the indictment, Alieu Kosiah is charged with having ordered and directed a forced transport of goods (notably ammunition and weapons) from Zorzor to Salayae by civilians between March and December 1993 or between March 1994 and the end of 1995.

7.18.2 Evidence

During the Preliminary Investigation

7.18.2.1 According to Paul's criminal complaint dated July 3, 2014, he was in the town of Zorzor, in Lofa County, in 1994 when the ULIMO faction, under the command of Alieu Kosiah, invaded the town. Paul spent three months in Zorzor while the town was under the control of Alieu Kosiah's forces. During that time, he witnessed on numerous occasions Alieu Kosiah and ULIMO fighters forcing civilians to carry food supplies or military equipment, and in particular, he saw Alieu Kosiah giving such orders to civilians. Paul himself was forced by ULIMO fighters to transport ammunition from Zorzor to Salayae (05-01-0012).

7.18.2.2 During his interrogation by the MPC, Paul stated that, during the war in Liberia, while he was in Zorzor, civilians were summoned from house to house to gather at the town's gas station. When he arrived there, he saw the loads they were required to carry. The complainant stated that he saw Alieu Kosiah order the civilians to carry the loads directly to Salayae. The loads were distributed among the civilians, who then set off. Everyone was carrying loads, including women and children. There were large crates of ammunition, small arms, and large arms. The civilians walked from Zorzor to Salayae. According to Paul, the defendant accompanied them during the transport (12-21-0037). During the journey, the defendant gave

shouting orders at everyone to keep moving and that no one was to lag behind or run away. Hearing this, everyone was afraid (12-21-0039). During the march, Alieu Kosiah and his soldiers told the civilians that they must not even think of saying they were tired and that, if they complained of being tired, they would be executed on the spot. When the civilians walked too slowly, they were beaten with rifle butts (12-21-0037). The soldiers also pushed the civilians with their rifle butts to make them move forward. When they saw that someone was tired, they beat him to make him move faster. Many people were beaten during the transport. Paul stated that this had happened to almost everyone, including himself. The complainant asserted that no one had been killed during the transport (12-21-0038). Although the convoy had left Zorzor in the morning, it arrived in Salayae when it was almost dark. The civilians then continued on during the night and arrived in Zorzor around 4:00 a.m. (12-28-0037). Paul stated that he had been "traumatized by fear" during the transport, so much so that he was unable to count the soldiers accompanying Alieu Kosiah. As for the civilians, he indicated that there were many of them and that they formed a long line. Some of the soldiers were at the front of the line, others in the middle, and still others at the rear to ensure that all the civilians remained in front of them. Alieu Kosiah, for his part, was at the front of the group (12-28-0038 s.). Paul was unable to say whether there was another commander present during the transport. According to him, Alieu Kosiah was the sole leader—the only one whom everyone called "chief" (12-28-0040).

7.18.2.3 When questioned about the charges against him, Alieu Kosiah denied them (13-01-0623, 0653).

During the proceedings

7.18.2.4 When questioned by the Court, Paul confirmed his accusation against Alieu Kosiah. Regarding the date of the transport, the complainant stated that it took place shortly after the incident that occurred at the Zorzor gas station (see *supra*, para. 7.2). One morning, child soldiers went to fetch civilians from their homes and gathered them at the aforementioned gas station. There, Alieu Kosiah allegedly gave the order to transport loads from Zorzor to Salayae. According to the complainant, Alieu Kosiah gave the order by shouting, in order to frighten the civilians (40.757.018). Paul stated that he did not see any military personnel of higher rank than the defendant at that time. He estimated the number of civilians who took part in the transport to be more than twenty-five or thirty. Among them were women and children aged twelve or thirteen (40.757.019). According to Paul, the civilians had no choice but to participate in this transport. They were a
"tool" used by the factions. If a civilian refused, the soldiers—who were "bloodthirsty"—showed "absolutely no mercy." There was a risk of being considered a traitor and being killed. According to the complainant, killing was "their daily routine." He was unable to estimate the number of soldiers present. He stated that Alieu Kosiah was the one who

led the group. He allegedly participated in the convoy all the way to Salayae. He was in charge of the transport; he was the one who gave orders and required the soldiers to ensure that no one showed signs of fatigue or lagged behind, and, if necessary, to beat those who were too slow so that they would move faster (40.757.020). When asked whether anyone gave orders to the defendant, Paul replied that this might have been the case, but that he had never seen him receive orders from anyone. Among the soldiers present were Bertrand and Patrick. Alieu Kosiah was at the front of the convoy, while the soldiers were positioned on the sides and at the rear to ensure, on the defendant's orders, that no one could escape (40.757.021). Paul stated that he had to carry a crate of ammunition, which he described as heavy (40.757, 021, 022). Other civilians were carrying bags whose contents the complainant did not know, as well as weapons. The cargo was to be transported to Salayae because the fighting had shifted from Zorzor toward that location (40.757.021). According to the complainant, it took a day's walk to get from Zorzor to Salayae. The road connecting the two towns was wide but unpaved. Paul explained that along the way, the civilians could take breaks and quench their thirst when they came across a stream. However, they were not given any food. Regarding the soldiers' behavior, the complainant explained that they were very harsh and showed no sympathy. They struck the civilians with the butts of their rifles to make them move faster. They also threatened to kill them if they tried to escape. As for Alieu Kosiah, he was equally harsh, shouting and frightening the civilians. He also shouted at his soldiers (40.757.022). While the soldiers were armed with rifles, Paul stated that he did not see Alieu Kosiah carrying a weapon. He also stated that he was personally threatened by the soldiers—who told him that if he ran away, he would be killed—and that he was struck with the butt of a rifle to make him move faster. Alieu Kosiah, for his part, threatened his own soldiers, warning that if anything went against his instructions, there would be repercussions for them as well. As soon as he gave an order, the soldiers carried it out (40.757.023). According to the complainant, no one was killed during the transport. That said, he stated that he feared for his life (40.757.024). The convoy arrived in Salayae in the evening, before sunset. The goods were unloaded at a school in Salayae called the Lutheran Training Institute (LTI), after which the civilians immediately set off again toward Zorzor. Paul added that he was not paid for his participation in the transport (40.757.025). According to him, civilians were used for the transports because this was a way of making them understand that they were not important in the eyes of the soldiers. He stated that he did not know why the soldiers did not use vehicles to carry out these transports (40.757.026).

7.18.2.5 When questioned by the Court about the charges against him, Alieu Kosiah once again denied them. He stated that he had not been present in Zorzor between March and December 1993, but had been there between March 1994 and the end of 1995. The

defendant also indicated that the towns of Zorzor and Salayae were not very far from each other (40.731.067). According to his estimate, it took two or three hours to reach Salayae from Zorzor on foot (40.731.068).

7.18.3 Law and Assessment of Evidence

7.18.3.1 Pursuant to Article 3 common to the GCs, attacks on life and physical integrity—including murder in all its forms, mutilation, cruel treatment, torture, and cruel, inhuman, or degrading punishment (subparagraph (a)), as well as attacks on human dignity, including humiliating and degrading treatment (subparagraph (c)).

Pursuant to Art. 4(2) of Additional Protocol II, attacks on the life, health, and physical or mental well-being of persons—in particular murder—as well as cruel treatment such as torture, mutilation, or any form of corporal punishment (subparagraph (a)), attacks on human dignity, including humiliating and degrading treatment, rape, forced prostitution, and any indecent assault (subparagraph (e)), and slavery and the slave trade in all their forms (subparagraph (f)).

7.18.3.2 With regard to legal developments concerning cruel treatment, violations of human dignity, and slavery, reference is made to recitals 7.4.3.2, 7.4.3.3, 7.5.3.3, and 7.5.3.4 above. Regarding an order given by a superior within the meaning of Art. 18 aCPM, see recital 7.2.3.4 above.

7.18.3.3 In this case, the statements made by Paul during the preliminary investigation and at trial regarding this transport were consistent as to how he was conscripted, the conditions of the transport, its duration, the type of goods transported, the treatment of civilians during the convoy, and the role played by the defendant. The complainant also stated that he saw and heard Alieu Kosiah give the order for the transport and participate in it by issuing instructions throughout the journey. He described the defendant's behavior during the transport in detail, particularly regarding the way he shouted and the orders he gave to strike civilians who were moving too slowly. Paul was also precise in his statements, not hesitating to say that he did not know when the Court asked him whether the defendant also took orders from a superior during the convoy. He thus limited himself to saying that, for his part, he had not seen the defendant receive such orders. The complainant further acknowledged that he had not seen the defendant with a weapon, for example. The consistency of his statements and the restraint he demonstrated make Paul's testimony highly credible. Added to this is the emotion that overwhelmed the complainant when he

saw Alieu Kosiah during his hearing before the Office of the Attorney General, as well as the emotion he displayed during the trial proceedings when the defendant voiced his anger loudly (see *supra*, para. 7.2.2.8). This emotional reaction further lends credibility to Paul's testimony. It should also be noted that his account echoes numerous other descriptions of shipments reported in these proceedings, particularly regarding the defendant's involvement, the treatment of civilians, and the destination of the shipment. On this last point, in fact, it may be noted that all the reported ammunition shipments were bound for southern Liberia, where the conflict zones were located. It should also be noted that the role allegedly played by Alieu Kosiah, as described by Paul, can be linked to the "H&H" function that several participants in the proceedings attributed to Alieu Kosiah during the war (see *supra*, para. 7.5.3.10). Paul's estimate of the duration of the transport—from morning until late afternoon—is entirely plausible given the circumstances of a forced journey carried out under threat and beatings, as the route between Zorzor and Salayae is some 50 kilometers long. Finally, Olivier's statements regarding the rationale for transporting ammunition during the first civil war also corroborate Paul's account (see *supra,* paras. 7.5.2.3 and 7.5.2.7).

7.18.3.4 Alieu Kosiah's denials are not sufficient to call into question the credibility of Paul's statements. Indeed, regarding his presence in Zorzor in 1993, reference is made to paragraph 7.2.3.7 above. As for the time required to reach Salayae from Zorzor—which the defendant estimates at between two and three hours on foot—this estimate is an underestimate, given that the distance is 50 kilometers.

7.18.3.5 In light of the foregoing, the Court finds that Paul's statements are far more credible than the defendant's denials and concludes that it has been established that Alieu Kosiah ordered the transport of the ammunition in question and participated in it. The acts can be characterized both as an attack on physical and mental integrity, in the form of cruel treatment, and as an attack on human dignity, in the form of humiliating and degrading treatment.

7.18.3.6 The acts of forcing civilians to march for hours while carrying heavy loads, threatening them with death by means of weapons or beating them if they did not keep up with the imposed pace, are likely to cause great suffering. This suffering is primarily physical, due to the long march the civilians were forced to undertake while carrying a heavy load and the beatings they endured when they did not walk fast enough. The suffering is also psychological, given the terror that gripped the civilians throughout the journey, as they were accompanied by armed soldiers who struck them with rifle butts and threatened them with death.

The acts with which the defendant is charged must also be classified as humiliating and degrading treatment. Forcing a person to carry a load under extremely difficult conditions, while threatening them with death or beatings

if they do not keep up with the imposed pace, amounts to a violation of their humanity and constitutes a very serious form of humiliation. Any reasonable person would indeed feel deeply humiliated and traumatized by such treatment.

Furthermore, the beatings inflicted on civilians and the death threats constitute offenses of cruel, humiliating, and degrading treatment, and therefore do not constitute separate offenses that would need to be considered in addition.

Finally, it is noted that, despite the seriousness of the facts, the offense of slavery has not been committed, insofar as the transport lasted only a few hours and this period of time is not sufficient to establish the exercise of powers arising from property rights over the civilians involved.

7.18.3.7 With regard to the order given, in accordance with Article 18 of the Military Criminal Code (aCPM), the defendant's status as a commander can be established, based on the statements made by Paul. Alieu Kosiah ordered the transport, and during it, he was the only one giving orders to the soldiers, who then relayed the instructions they received to the civilians. The fact that the soldiers obeyed his orders demonstrates the defendant's hierarchical superiority. The position he occupied at the front of the convoy—while the soldiers were in the middle and at the rear to prevent the civilians from escaping—also attests to the fact that he was supervising the group, thereby fulfilling his role as leader. The objective elements of Article 18 of the Military Criminal Code (aCPM) are therefore fulfilled.

7.18.3.8 Subjectively, Alieu Kosiah acted intentionally. He knew that by instructing his soldiers to carry out the transport, they would carry it out. The defendant also knew, without a shadow of a doubt, that the individuals involved were civilians.

Finally, these acts took place within the context of the armed conflict that occurred in Liberia during the first civil war, a fact of which Alieu Kosiah was aware.

7.18.3.9 In conclusion, Alieu Kosiah must therefore be convicted of ordering the infliction of cruel, humiliating, and degrading treatment on civilians (Art. 109(1) and 108(2) of the Military Criminal Code [aCPM] in conjunction with Art. 18 of the Swiss Criminal Code (aCPM) *in conjunction with* Art. 3(1)(1)(a) and (c) common to the General Provisions and Art. 4(2)(a) and (e) of Part II of the Penal Code).

7.19 Summary of the Criminal Acts of Alieu Kosiah

Given the variety of offenses with which Alieu Kosiah is charged, it ultimately appears that the various forced transports in which the defendant participated served either to transport goods to Guinea for sale there to finance the war or to transport ammunition to the south, where the fighting was taking place. During these transport operations, Alieu Kosiah clearly served as a H&H or quartermaster general. In this capacity, he first resorted to theft and looting before forcing civilians to transport food or military equipment purchased with

the proceeds of those thefts. To instill obedience among the civilians by instilling

fear, the defendant and his men sometimes resorted to the murder of arbitrarily selected civilians, and, more rarely, to cannibalism and rape.

8. Determination of the Sentence

8.1 Pursuant to Art. 44 aCPM, the judge shall determine the sentence based on the offender's culpability, taking into account his motives, prior record, personal circumstances, and conduct during military service. This article corresponds to Art. 63 aCP and, in substance, to the current Art. 47 CP.

8.2 Under Article 49(1) of the former Military Penal Code (aCPM), when, through a single act or multiple acts, an offender has incurred multiple custodial sentences, the judge shall impose the sentence for the most serious offense and shall increase its duration according to the circumstances, but not by more than half the maximum sentence prescribed for that offense. Furthermore, the judge shall be bound by the statutory maximum for that type of sentence. This provision corresponds to the current Article 49(1) of the Swiss Penal Code (CP).

8.3 The requirement, for the application of Article 49(1) of the former Swiss Penal Code (aCPM), that the sentences be of the same type, presupposes that the judge examine, offense by offense, the nature of the sentence to be imposed. The imposition of a combined sentence pursuant to the principle of aggravation provided for in Article 49(1) of the former Military Penal Code (aCPM) is therefore possible only if the judge selects, in the specific case, the same type of penalty to punish each offense committed. The fact that the applicable criminal provisions provide, in particular, for penalties of the same type is not sufficient. If the penalties actually considered are not of the same type, they must be imposed cumulatively (ATF 144 IV 313, para. 1.1.1, and the cited decisions, applicable by analogy to Art. 49(1) of the former Military Penal Code).

8.4 In determining the sentence, the Court may apply the general principles governing sentencing under the current Art. 47 of the Swiss Criminal Code. Under this provision, the judge determines the sentence based on the offender's culpability. The judge takes into account the offender's criminal history and personal circumstances, as well as the impact of the sentence on the offender's future (para. 1). Guilt is determined by the severity of the harm or endangerment to the legal interest in question, by the reprehensible nature of the act, by the offender's motives and objectives, and by the extent to which the offender could have avoided the endangerment or harm, taking into account the offender's personal circumstances and external circumstances (para. 2).

8.5 Art. 44 aCPM, like Art. 47 CP, grants the judge broad discretion. Consequently, the judge violates federal law in imposing a sentence only if he or she exceeds the statutory framework, relies on criteria unrelated to Art. 47 of the Swiss Penal Code, fails to take into account factors for assessment provided for by that provision, or, finally, if the sentence imposed is so excessively severe or lenient

as to constitute an abuse of discretion (ATF 136 IV 55, para. 5.6).

8.6 The elements establishing guilt that the judge must examine first are those relating to the act itself (*Tatkomponente*), namely, from an objective standpoint, the severity of the harm or endangerment, the reprehensible nature of the act, and the manner in which it was carried out (objective *Tatkomponente*). With regard to the severity of the harm, consideration is given to the importance of the legally protected interest and the result of the unlawful act. From a subjective standpoint, the intensity of the criminal intent, as well as the perpetrator's motivations and objectives, are taken into account (*subjective Tatkomponente*). With regard to the intensity of the intent to commit a tort, it will be necessary, in particular, to determine to what extent the perpetrator was or was not free to choose between lawful and unlawful conduct and, therefore, whether or not it would have been easy for them to refrain from committing the act. The easier it would have been for the perpetrator to comply with the violated norm, the more seriously his decision to violate it is weighed, and consequently, the more serious his fault is; and vice versa (ATF 127 IV 101, para. 2a; 122 IV 241, para. 1a, and the cited decisions).

8.7 The judge must also assess factors related to the perpetrator himself (*Täterkomponente*), namely his criminal and non-criminal history, reputation, personal circumstances (state of health, age, family obligations, professional situation, risk of recidivism, etc.), vulnerability to the sentence, as well as conduct after the offense and during the criminal proceedings (ATF 142 IV 137, para. 9.1). The absence of a prior record generally has a neutral effect on sentencing. It need not be taken into account as a mitigating factor. In exceptional cases, however, it may be considered in the assessment of the offender's personality as a mitigating factor, provided that the offender's conduct is exceptionally law-abiding. However, this condition should be applied with restraint, given the risk of unequal treatment (ATF 136 IV 1, para. 2.6). To assess the foreseeable impact of the sentence on the defendant's future, the judge considers what, in all likelihood, will be the main consequences of the imposed sentence on the defendant's future life. Vulnerability to the sentence, however, should be considered a mitigating circumstance only if it makes the penalty considerably harsher for the defendant than for the average of other convicted persons, for example, in cases of serious illness, claustrophobic psychosis, or extreme poverty. The aim is not, in fact, to favor offenders from privileged social classes over ordinary citizens (Federal Supreme Court decision 6B_14/2007 of April 17, 2017, para. 6.4). The sentence must be determined with regard to the effect the punishment will have on the defendant. However, this requirement permits only marginal adjustments, as the sentence must always remain proportionate to the offense (Federal Supreme Court decision 6B_673/2007 of February 15, 2008, para. 3.1).

8.8 Pursuant to Art. 45 aCPM, the judge may reduce the sentence when the offender acted under the influence of a person to whom he owes obedience or

on whom he is dependent; in a state of deep distress or under the impression of a serious threat, unless the duties imposed by his service preclude taking this into account; when he has been led into serious temptation by the victim's conduct; when he has been driven by anger or by intense pain caused by unjust provocation or an undeserved offense; when he has demonstrated sincere repentance through his actions, particularly when he has made restitution for the damage to the extent that could reasonably be expected of him; when a relatively long period of time has elapsed since the offense and the offender has behaved well during that time; when the offender was between the ages of 18 and 20 and did not yet fully possess the capacity to appreciate the unlawful nature of his act (ATF 132 IV 1, consid. 6.1.2).

With regard to the passage of time, the underlying idea behind this mitigating factor is that, by behaving well over a relatively long period, the offender once again complies with the legal order, thereby reducing the need for punishment (ATF 132 IV 1, para. 6.1.2). In Decision 6B_665/2017 of January 10, 2018, para. 4.1, the Federal Supreme Court noted that, with regard to offenses not subject to a statute of limitations within the meaning of Art. 101 of the Swiss Criminal Code (SCC), Art. 101(2) SCC provides that the court may mitigate the sentence in cases where criminal prosecution is barred by the statute of limitations pursuant to Arts. 97 and 98 SCC. This provision clarifies Art. 48(e) of the Swiss Criminal Code with respect to offenses not subject to a statute of limitations. It thus establishes the time limit beyond which the judge may reduce the sentence in such cases. Article 48(e) of the Swiss Criminal Code (which corresponds to Article 45 of the former Military Criminal Code) is therefore not applicable to crimes for which there is no statute of limitations, as the judge has the discretion to reduce the sentence but is not obligated to do so (ATF 140 IV 145, para. 3.2, p. 148). Art. 59, para. 2, CPM (Art. 56bis, para. 2, aCPM) provides for the same rule as Art. 101, para. 2, CP.

8.9 Articles 5 of the Criminal Procedure Code (CPP) and 29(1) of the Constitution guarantee, among other things, every person's right to have their case heard within a reasonable time. These provisions enshrine the principle of promptness and prohibit undue delay in rendering a decision. The principle of promptness requires the authorities to conduct criminal proceedings without delay, from the moment the defendant is informed of the allegations against him or her. The accused must not be kept in the anxiety of criminal proceedings any longer than necessary (ATF 143 IV 353, para. 1.3.1; 133 IV 158, para. 8). Thus, to assess whether the principle of expeditiousness has been violated in a particular case, one must consider the period from the time the person concerned became aware—by any means—that the criminal authority harbors suspicions against them until the time the judgment of the court of last instance is served, excluding any review or pardon proceedings (YVAN JEANNERET/ANDRÉ KUHN, Précis de procédure pénale, 2nd[e]ed., 2018, no. 4079; WOLFGANG WOHLERS, Commentary on the Swiss Code of Criminal Procedure, 3[e]ed., 2020, no. 6 et seq. *re* Art. 5 CCP). It is therefore the overall duration of the proceedings that is

decisive (Federal Supreme Court decision 6B_122/2017 of January 8, 2019, para. 11.7.3). Two aspects of the principle of expeditiousness must be distinguished (SARAH SUMMERS, BSK-StPO, no. 8 *on* Art. 5 CPP): the total duration of the proceedings

may be disproportionate, or the total duration of the proceedings may not appear disproportionate, but there are obvious time gaps (“krasse Zeitlücke”) during certain periods that involve unjustified inactivity; these periods of inactivity may occur at any stage of the proceedings. It is therefore necessary, on the one hand, to examine the duration of the proceedings as a whole and, on the other hand, to determine whether unavoidable delays are of a shockingly long duration (LAURENT MOREILLON/AUDE PAREIN-REYMOND, Petit Commentaire du CPP, No. 5 *on* Art. 5 CPP). There is no standard acceptable duration for a proceeding, as it must be assessed based on all the specific circumstances of the individual case (YVAN JEANNERET/ANDRÉ KUHN, Précis de procédure pénale,[2nd]ed., 2018, No. 4079; LAURENT MOREILLON/AUDE PAREIN-REY-MOND, Brief Commentary on the CPP, No. 4 *regarding* Art. 5 CPP; SARAH SUMMERS, BSK-StPO, No. 7 *regarding* Art. 5 CPP). Whether the duration of proceedings is reasonable is assessed on a case-by-case basis, taking into account all the specific circumstances, which generally require a comprehensive evaluation (Federal Supreme Court decisions 6B_431/2019 of July 5, 2019, para. 6.1; 6B_545/2015 of February 10, 2016, para. 4.1; ATF 143 IV 373, para. 1.3.1). When proceedings appear particularly lengthy and therefore unreasonable, three factors must be examined to determine whether the duration of the proceedings is acceptable in light of the principle of expeditiousness: the conduct of the authorities—specifically, the pace at which the proceedings are conducted—the complexity of the case, and the attitude of the defendant and/or the defense (Federal Supreme Court decision 6B_431/2019 of July 5, 2019, para. 6.1; ATF 130 I 312, para. 5.1, p. 331; YVAN JEANNERET/ANDRÉ KUHN, Handbook of Criminal Procedure,[2nd]ed., 2018, no. 4079; SARAH SUMMERS, BSK-StPO,
[2nd]ed., nos. 9–13, *regarding* Art. 5 CPP).

8.10 According to Art. 50(1)(1)(e), sentence a, of the Swiss Criminal Code (aCPM), the judge shall deduct the period of pretrial detention from the custodial sentence to the extent that the convicted person has not, through his or her conduct following the offense, caused the pretrial detention or its extension. Pretrial detention is defined as any detention ordered during criminal proceedings for the purposes of the investigation or for security reasons (para. 3).

8.11 In this case, Alieu Kosiah was found guilty of multiple violations of the laws of war (Art. 109, para. 1, aCPM). This provision provides for imprisonment in simple cases (at least three days and no more than three years; see Art. 29(1) of the former Military Penal Code) and imprisonment with hard labor in serious cases (at least one year and no more than 20 years; see Art. 28(1) of the former Military Penal Code). Imprisonment and long-term imprisonment, two forms of custodial punishment, were replaced on January[1,] 2007, by custodial punishment as defined in the current Art. 34 CPM, which is equivalent to Art. 40 of the Swiss Criminal Code (CP). Since the Court cannot impose a sentence that no longer exists, the defendant will be formally sentenced to a custodial sentence in this judgment. That said, only the name has changed; the terms of

the sentence remain identical. The Court is furthermore bound by the maximum term of 20 years provided for in

Article 28(1) of the former Military Penal Code (aCPM), applicable by reference from Article 109(1) of the former Military Penal Code (aCPM) (application of the *lex mitior* principle; see *supra*, para. 4.3).

8.12 Alieu Kosiah has been found guilty of several violations of the laws of war within the meaning of Art. 109, para. 1 of the Military Criminal Code (aCPM). He used a child soldier, committed four murders, and ordered nineteen others to be committed, ordered the infliction of cruel treatment on seven people, ordered the infliction of and/or inflicted cruel, humiliating, and degrading treatment during nine instances of property transport, ordered the looting of a generator and a village, violated the dignity of a deceased civilian, and committed one rape. Since the penalties envisaged for each of the acts charged against the defendant are of the same nature—namely, a custodial sentence— the sentence must be determined for the most serious offense in the abstract, taking into account all relevant factors, and then increased to punish the other offenses committed, again taking into account all relevant circumstances, in accordance with the principle of aggravation (Art. 49(1) aCPM).

8.13 The most serious offense charged against Alieu Kosiah is murder or the order to kill. In total, the defendant committed four murders and ordered the killing of nineteen people. Since all these murders or orders to kill infringe upon the same legally protected interest (human life), the Court relied on the number of victims per alleged act to determine the most serious offense. It thus considers the primary offense to be the order given to kill seven civilians in Zorzor (section 1.3.2 of the indictment; see *supra*, para. 7.2).

8.13.1 From an objective standpoint, Alieu Kosiah's culpability is extremely grave because he took the lives of seven people—that is, the most precious legal right. His act is particularly reprehensible in that he ordered the murder of the seven civilians based on a completely arbitrary and haphazard decision, grounded in false suspicions that they belonged to the enemy faction. The method of operation is also abhorrent: the defendant merely gave the order to kill them, leaving other soldiers to carry out the dirty work. The civilians were beaten with rifle butts and clubs and died as a result of this treatment, which adds to the atrocity of the situation.

8.13.2 From a subjective standpoint, the gravity of Alieu Kosiah's crime is very significant. The fact that he was a rebel and possessed a weapon did not give him permission to kill innocent civilians, as the laws of war are strictly defined and were necessarily known to the defendant. He acted in a particularly reprehensible manner, as his motive was frivolous and feigned: he used the pretext that randomly selected civilians belonged to the enemy faction to justify their deaths. By the order he gave, he demonstrated his utter contempt for the lives of others. The intended goal was clearly to instill terror in the regions conquered by the ULIMO armed faction. His offense must therefore be classified as extremely serious.

8.13.3 With regard to factors related to the defendant himself, it should be noted that Alieu Kosiah has no known criminal record, which has a neutral effect on the sentence to be imposed. His cooperation with the criminal justice authorities during the proceedings was poor. In fact, the defendant did not admit to any of the charges against him and lashed out at the plaintiffs and their attorneys—often using very vehement and threatening language—to denounce what he calls a conspiracy on their part. He did not express the slightest compassion toward the victims, nor did he express any remorse. Alieu Kosiah also repeatedly lashed out at the Swiss authorities, claiming that he was the victim of a kidnapping by them (40.731.048). Furthermore, the defendant called witnesses before the Court who had no connection to the charges set forth in the indictment, with the clear intent of misleading the court. Finally, it should be noted, for the sake of completeness, that the quality of cooperation with criminal authorities is not assessed based on the number of pages of a defendant's interrogation, but rather on the substance of the statements made and their usefulness to the investigation. In this case, Alieu Kosiah certainly spoke at length during the preliminary investigation and at trial, but his statements did little to further the investigation. In fact, he went to great lengths to contest any allegation against him or any information that might be unfavorable to him, and to point out even the slightest contradictions in the statements of his accusers or witnesses in an attempt to discredit them. He also, on numerous occasions, digressed into the history of the Liberian war—most of which was irrelevant to the facts of the case—thereby attempting to drown out the relevant elements in a flood of useless and unverifiable information.

8.13.4 With regard to mitigating factors, none of them are relevant. In particular, from a temporal perspective, it is indisputable that a relatively long period of time has elapsed since the offenses were committed. That said, for this mitigating circumstance to be accepted, the passage of time must have had a healing effect, diminishing the justification for punishing the perpetrator. However, the wounds caused by the Liberian war crimes are still raw. So far, only the foundations of international justice for Liberia have been laid. Victims of war crimes are still waiting for justice to be served, even decades after suffering these crimes. The public interest in punishment has therefore not diminished over the years. From the perspective of special prevention, the passage of time has not had a healing effect either. The defendant certainly has no known criminal record since arriving in Switzerland. That said, despite the roughly 25 years that have passed since the end of the first civil war, Alieu Kosiah remains in a state of total denial regarding the charges against him and, more generally, regarding the atrocities committed by armed factions against civilians during that war. As already mentioned, he has never admitted to the charges against him—not even partially—and has shown not the slightest empathy toward the victims of the

war (not even toward the child soldier who was under his command), considering himself to be the only victim. He accused the plaintiffs and their attorneys of lying and conspiring. Thus, from the perspective of both general and special deterrence, the interest in punishing him remains intact, so that no reduction in sentence will be granted for the time that has elapsed. Moreover, Art. 59(2) CPM (or Art. 56bis(2) aCPM), which corresponds to Art. 101(2) CP, does not provide for mandatory mitigation of the sentence due to the long time that has elapsed, but only grants the judge the discretion to decide on such mitigation.

8.13.5 With regard to the defendant's young age, the Court notes that Alieu Kosiah committed most of the acts alleged against him when he was between 18 and 20 years old. That said, for the mitigating factor to apply, it must be established—in addition to the young age—that the perpetrator did not yet fully possess the capacity to appreciate the unlawful nature of his act. However, the defendant had full capacity to understand the unlawful nature of the acts he committed, given their extreme gravity. This finding is all the more compelling given that Alieu Kosiah underwent several months of military training, which in all likelihood included the basics of the law of war. The Court therefore has no doubt as to the defendant's ability to understand the unlawful nature of his acts. Furthermore, the defendant never claimed, during the proceedings, that he was unaware of the unlawfulness of all or part of the acts with which he was charged. This mitigating factor must therefore also be rejected.

8.13.6 In light of the foregoing, the Court sets the base sentence for the offense set forth in section 1.3.2 of the indictment at 20 years. Since this sentence is the maximum penalty Alieu Kosiah faces under the old law—which is more favorable to him than the new law, which provides for life imprisonment—the aggravation method required by the Federal Court's case law does not apply in this case.

It should be noted, however, that a maximum sentence of 20 years appears all the more justified in this instance because, in addition to ordering the killing of seven civilians, Alieu Kosiah is also charged with ordering the killing of six civilians and two unarmed soldiers, as well as with the murder, committed with his own hands, of four civilians on four separate occasions. These other homicides would also, without a doubt, warrant a 20-year prison sentence. The horrific acts of torture that Alieu Kosiah ordered against seven civilians—six of whom were subsequently executed—also constitute an offense that, on its own, could warrant at least five years' imprisonment, given how violent and painful the treatment inflicted was. The nine instances of forced labor that Alieu Kosiah ordered and/or participated in—during which hundreds of civilians were forced, under threat and beatings, to carry enormous loads over a total distance of several hundred kilometers—constitute serious offenses that, on their own, would have warranted a sentence of at least 10 years' imprisonment for the defendant. As for the rape of which Alieu Kosiah was guilty—committed through

the use of force and terror on four

occasions, he should have been sentenced to a prison term of at least two years. By ordering two instances of looting—of a generator and food supplies from a village—Alieu Kosiah deprived the civilian population of basic necessities and was further guilty of offenses that could have resulted in a prison sentence of at least a dozen months. As for the desecration of a corpse committed by Alieu Kosiah—by eating part of the corpse (the heart)—this would also have warranted a prison sentence of several months for the defendant. It thus appears that a maximum sentence of 20 years' imprisonment would be particularly justified in this case, as the defendant benefits here from the principle of *lex mitior* and the maximum sentence imposed by applicable law, at a time when the law in force permits significantly harsher penalties.

The Court notes, with regard to these other crimes attributed to Alieu Kosiah, that his culpability is also extremely grave because he has infringed upon the lives of numerous individuals, the physical and psychological integrity of many people, the sexual freedom of a young person, the freedom of movement of numerous civilians, the private property of a large number of people, and the honor of a deceased person through the desecration of his corpse. Through these acts, Alieu Kosiah demonstrated a great deal of violence, cruelty, arbitrariness, and selfishness, and very little regard for others or their property.

From a subjective standpoint, the criminal culpability of Alieu Kosiah is very significant. Here again, he acted for trivial reasons, resorting to vague pretexts or giving in to his momentary impulses. It seems clear that Alieu Kosiah has, on many occasions, given free rein to his destructive tendencies. Once again, Alieu Kosiah's offenses must be classified as very serious.

8.13.7 With regard to factors related to the defendant himself, it should be noted that Alieu Kosiah has no prior criminal record, that his cooperation with law enforcement authorities during the proceedings was poor, that he has not admitted to any of the charges against him, that he has maintained, against all evidence, the theory of a conspiracy directed against him, and that he has expressed neither compassion for the victims nor any remorse (see *supra*, para. 8.13.3).

Here, too, none of the mitigating factors apply. While it is true that a relatively long time has passed since the offenses were committed, this time has clearly not had a healing effect that would diminish the need for punishment. Indeed, the wounds of war are still raw, and the victims are still demanding justice. As for Alieu Kosiah, nearly 25 years after the events, he remains in complete denial regarding all the crimes with which he is charged and the atrocities suffered by Liberians during the first civil war. From the perspective of both general and special deterrence, the justification for punishment remains fully valid, such that no mitigation of the sentence could be granted on the grounds of the passage of time (Art. 59(2) CPM or Art. 56bis(2) aCPM) (see *supra*, para. 8.13.4).

There is no need to revisit here the possible effects of the defendant's young age, as the Court has found that, notwithstanding his age (between 18 and 20 years old), the defendant had full capacity to understand the unlawful nature of the acts he committed, given their gravity, which ranged from high to extreme depending on the crimes. This mitigating factor must also be set aside (8.13.5).

8.14 It remains to be determined whether the 20-year prison sentence should be reduced in light of the principle of expeditious proceedings. Although this argument was not raised by the defense, the Court must examine this issue on its own initiative.

In this case, the proceedings spanned a period of six years and seven months from the time of Alieu Kosiah's arrest to the Court's delivery of the judgment. While this period may certainly appear substantial, it is difficult to argue that the authorities would have been able to handle these proceedings in a significantly shorter timeframe. Since its inception, the proceedings have never been at a standstill, and the defense does not argue otherwise.

8.14.1 Thus, with regard to the pretrial phase, the Office of the Prosecutor took just over four years to indict Alieu Kosiah before this Court. This timeframe must be considered reasonable given the particular nature of this case and its complexity in terms of the facts to be established. Furthermore, Liberia was unable to provide the MPC with the results of any investigations it might have conducted on its territory. Liberia's reluctance to grant mutual legal assistance, the letters rogatory issued to foreign countries (England, Norway, and the United States), and the number of individuals residing in Liberia who were interviewed in Switzerland by the MPC readily explain the time that elapsed before the indictment was filed. The Court notes that the defendant's conduct during the preliminary investigation was such as to delay the proceedings. Indeed, as we have seen on several occasions, the defendant went to great lengths to contest all the facts described by the complainants and the so-called prosecution witnesses, including elements that were entirely irrelevant to the outcome of the case. He attempted to overwhelm the proceedings with vast amounts of information that was unnecessary and unrelated to the facts of the case. The Office of the Attorney General was therefore forced to sort through this information, which inevitably took time. It follows from these considerations that a duration of just over four years for the preliminary investigation phase is not open to criticism.

8.14.2 As for the trial phase, the Court received the indictment dated March 19, 2019, the very next day. The trial was initially scheduled to begin on April 14, 2020. This delay was justified by the need to prepare for an unprecedented trial. First, the case file was sent by the MPC while letters rogatory were still pending (with the United Kingdom and the United States). It was therefore necessary to follow up on these requests for mutual legal assistance by repeatedly contacting the foreign authorities on several

times. The Court also had to review the case file and familiarize itself with the abundance and complexity of the facts before it. It was then necessary to contact the numerous Liberian witnesses who were to be heard in Switzerland, which was no easy task given Liberia's previous refusal to grant Switzerland mutual legal assistance and the severely limited means of communication in that country. In order to avoid violating the principle of territoriality with respect to Liberia and in consultation with the Federal Office of Justice, the Court contacted the Swiss Embassy in Côte d'Ivoire—which also has jurisdiction over Liberia—so that the embassy could attempt to contact the Liberian authorities to obtain their consent for Liberian citizens to be summoned to Switzerland. The COVID-19 health crisis further complicated the organization of the trial. As a result, the Court had to postpone the proceedings on several occasions (first postponement to November 16, 2020; second postponement to November 30, 2020; proceedings held in two parts from December 3 to 9, 2020, and from February 15 to March 5, 2021). These successive postponements were justified to ensure the health and safety of those involved in the proceedings, particularly the safety of the plaintiffs and witnesses who had to be brought in from Africa. It was in the best interests of all those involved in the proceedings—including the defendant, who was present—that these repeated postponements of the hearings proved necessary. The judicial authorities therefore cannot be criticized for failing to hold the hearings more quickly. Indeed, there was absolutely no justification for unnecessarily endangering the health and lives of those involved in the proceedings by holding the hearings in the midst of a pandemic. During the periods of postponement, the Court worked, with the assistance of the Swiss Embassy in Côte d'Ivoire, to explore alternatives, including, where necessary, setting up videoconferences from Monrovia to hear the Liberian participants remotely. After months of discussions with various partners (foreign embassies in Monrovia, the UN, Liberia's Attorney General, and Liberia's Ministry of Justice), the Court finally secured the assistance of the U.S. Embassy, which provided facilities to conduct video-conference hearings as needed, with the consent of the Liberian authorities (in this instance, two hearings were conducted in this manner). All of these steps also took a great deal of time and required considerable effort, as evidenced by the Court's case file. Finally, to help ensure that trial participants faced as little risk as possible during their air travel, the Court approached the Federal Council to request that it make its aircraft available to the tribunal to transport witnesses via direct flight, with the assistance of the Federal Criminal Police, thereby allowing them to come into contact with as few people as possible en route and to spend as little time as possible on Swiss soil. Given all these efforts and the constraints imposed by the pandemic, the time taken to process the case cannot be considered excessive. There is therefore no basis for finding a violation of the principle of promptness and, consequently, for reducing the sentence on this ground.

8.15 In light of the foregoing, Alieu Kosiah shall be sentenced to 20 years' imprisonment, from which the days of pretrial detention already served—totaling 2,413 days as of the date of the oral pronouncement of the judgment on June 18, 2021—shall be deducted.

9. Deportation

9.1 Pursuant to Art. 40, para. 1, subpara. 1ª of the Swiss Criminal Code (aCPM) in effect at the time of the offenses, the judge may deport from Swiss territory, for a period of three to fifteen years, any foreign national sentenced to imprisonment or confinement.

9.2 This provision corresponds verbatim to Art. 55, para. 1, first sentence, of the former Swiss Penal Code (aCP). Articles 40 of the aCPM and 55 of the aCP were repealed on January 1, 2007. At that time, they provided only for the judge's discretion to expel a foreign national sentenced to imprisonment or detention. On October 1, 2016, judicial deportation was reintroduced into the Military Criminal Code (Articles *49a* and *49b*) and the Swiss Criminal Code (Articles *66a* through *66d*). These laws now provide for mandatory deportation for a list of offenses, including war crimes (Art. *49a*(h) CPM and *66a*(m) CP), and optional deportation as a supplementary measure for offenses not included on that list. As a result, from the perspective of deportation as well, the former law—which established only the discretion—and not the obligation—to deport the perpetrator of war crimes—is more favorable to the defendant, insofar as it left greater discretion to the court. Art. 40, para. 1 of the former Military Criminal Code (aCPM) is therefore applicable to the present case under the principle of *lex mitior*.

9.3 According to the Federal Supreme Court's case law regarding Art. 55(1) of the former Swiss Criminal Code (applicable by analogy to Art. 40(1) of the former Military Criminal Code), in deciding whether or not to order deportation, the judge must take into account both the criteria governing the determination of the sentence and the public safety objective sought by this measure. The decision regarding deportation required a specific examination of the individual's personal circumstances. The judge was thus required to take into account that deportation had a moderate impact on a foreign national who had come to Switzerland solely to commit crimes and who had no particular ties to this country, whereas it constituted a very severe penalty for someone who lived and worked in Switzerland, had been integrated there for several years, and, where applicable, had started a family there. Furthermore, as a general rule, there must be a certain consistency between the duration of the deportation and that of the principal sentence (Federal Supreme Court decision 6B_607/2018 of October 10, 2018, para. 1.1, and the decisions cited therein).

9.4 In this case, Alieu Kosiah was sentenced to 20 years' imprisonment, given the seriousness of the charges against him and his extremely grave culpability. His

lack of regret or remorse for his actions, as well as his hostile and threatening attitude toward the plaintiffs, their attorneys, and the prosecution witnesses, demonstrate that the defendant poses a threat to Switzerland. Furthermore, he has very few ties to

Switzerland. Although his adult son lives in the U. region, he appears to have very little contact with him. In fact, his son visited him in detention only very sporadically, and Alieu Kosiah did not deem it necessary to call him as a witness during the trial. Apart from his son, the defendant has no family members in Switzerland, except for a distant cousin. All other members of his family live abroad, notably in Liberia. Furthermore, at the time of his arrest, Alieu Kosiah was unemployed and receiving social assistance. In addition, he has never completed any education in Switzerland. Due to his detention, his permanent residence permit was not renewed, meaning that if released, he would be residing in Switzerland illegally. It must therefore be concluded that the defendant has only tenuous ties to our country and that nothing stands in the way of his deportation, once his sentence has been served, in order to ensure the security of our country.

9.5 In light of the foregoing, Alieu Kosiah will be deported from Swiss territory. To ensure the measure is commensurate with the sentence imposed and to take into account the magnitude of the threat to be prevented, the deportation will be ordered for a period of fifteen years.

9.6 The Ordinance of March 8, 2013, on the National Section of the Schengen Information System (N-SIS) and on the SIRENE Bureau (RS 362.0; N-SIS Ordinance) implements, at the national level, the alert procedure in the Schengen Information System as provided for by Regulation (EC) No. 1987/2006 on the establishment, operation, and use of the second-generation Schengen Information System (SIS II Regulation). In accordance with Art. 20 of the N-SIS Ordinance, third-country nationals may be entered into the SIS for the purposes of refusal of entry or a residence ban only on the basis of a decision issued by an administrative or judicial authority. The entry of alerts in the SIS for the purpose of criminal expulsion must be requested by the judge who ordered the measure. When ordering a criminal expulsion, the court is required to consider the issue of the SIS alert, regardless of any corresponding request from the public prosecutor’s office. It must assess the necessity of the alert and must explicitly state in the operative part of the judgment whether the alert is to be entered or whether it is waived (ATF 146 IV 172, para. 3.2.5).

9.7 In the present case, the Court finds that an SIS alert regarding the expulsion of Alieu Kosiah from Swiss territory for a period of fifteen years is warranted in light of the seriousness of the grounds justifying the imposition of said expulsion.

10. Conclusions , civil

10.1 Determination

10.1.1 Pursuant to Art. 47 CO, the court may, taking into account the specific circumstances, award the victim of bodily injury—or, in the event of a fatality,

the family—equitable compensation for non-pecuniary damages.

10.1.2 The specific circumstances referred to in the provision relate in particular to the extent of the infringement of the injured party's personality rights, as Article 47 of the Swiss Code of Obligations (CO) is an application of Article 49 of the CO. Bodily injury, which causes both physical and psychological harm, must therefore, in principle, result in significant physical or emotional pain or have caused lasting harm to health. Among the circumstances that may, depending on the case, justify the application of Art. 47 CO are, first and foremost, the nature and severity of the injury, the intensity and duration of the impact on the victim's personality, the degree of fault attributable to the perpetrator, and any contributory negligence on the part of the victim. The compensation awarded must be adequate. The judge applies the rules of law and equity when the law, such as Art. 47 CO, requires the judge to award compensation taking the circumstances into account (see Art. 4 CC) (ATF 141 III 97, para. 11.2, and the references cited). The extent of compensation for pain and suffering does not depend solely on the severity of the physical or psychological suffering resulting from the harm suffered by the entitled party, but also on the possibility of significantly alleviating, through the payment of a sum of money, the resulting emotional distress. Due to its nature, compensation for non-pecuniary damages—which is intended to remedy harm that is difficult to quantify in monetary terms—cannot be determined mathematically; therefore, the monetary amount awarded must not be excessive. The compensation awarded must, however, be fair (Federal Supreme Court decision 6B_484/2020 of January 21, 2020, para. 12.1). The judge will therefore proportion the amount to the severity of the harm suffered and ensure that the sum awarded does not appear derisory to the victim (ATF 129 IV 22, para. 7.2).

When, if necessary, a lower cost of living must be taken into account to calculate compensation for non-pecuniary damages, one cannot simply apply a proportional calculation based on the cost of living in Switzerland compared to the cost of living in the injured party's country of residence. Rather, the Federal Supreme Court has recognized a non-formulaic reduction in compensation for non-pecuniary damages when the cost of living at the injured party's place of residence is significantly lower than in Switzerland (ATF 125 II 554, para. 4a, p. 559: Vojvodina, where purchasing power is 18 times higher, allowing for a reduction in compensation; however, this reduction was scaled back from 14 times to 2 times; Federal Supreme Court decision 1A.299/2000 of May 30, 2001, para. 5c: Bosnia and Herzegovina, purchasing power 6 to 7 times higher, allowing for a 75% reduction in compensation, deemed high by the Federal Supreme Court but nevertheless remaining within the limits of the cantonal court's discretion; Federal Supreme Court decision 1C_106/2008 of September 24, 2008, para. 4.2: Portugal, where the cost of living is 70% of the Swiss cost of living, does not justify a reduction; Federal Supreme Court Decisions 6B_984/2018 and 6B_990/2018 of April 4, 2019, para. 5.4.1; Federal Supreme Court Decision 6B_974/2020 of March 31, 2021, para. 2.2: Georgia: 80% reduction in the allowance. The court took into account that, according to the

statistical data most favorable to the appellant, the cost of living in Switzerland was 3.6 times higher than in Georgia and the average wage in Switzerland was 18.4 times higher.

It followed that the ability of an average Georgian employee to purchase the same goods as an average Swiss employee was approximately 18.4/3.6, or 5.1 times lower.

10.1.3 Siblings are among the family members who may be entitled to compensation for non-pecuniary damages. However, this right depends on the circumstances, and the legal practice in this area is rather restrictive. In particular, living under the same roof is an important indicator of the closeness of the relationship that may exist among siblings, which may thereby give rise to a right to compensation. If the siblings were not living together at the time of the brother's or sister's death, compensation for emotional distress may be awarded only if there were very close ties, which alone are likely to cause exceptional emotional suffering (Federal Supreme Court decision 6B_484/2020 of January 21, 2020, para. 12.1). Unless there are very exceptional circumstances, the amount of compensation awarded to a brother or sister does not exceed CHF 10,000 (Federal Supreme Court decision 6B_369/2012 of September 28, 2012, para. 2.1.2, and the decisions cited therein).

10.1.4 In the present case, each of the seven plaintiffs in the proceedings sought payment of CHF 8,000 as compensation for the non-pecuniary harm suffered. It is necessary to examine, for each of them, what amount appears proportionate to the harm suffered.

10.2 Paul

10.2.1 Paul is a complainant in connection with the murder of his brother N. (section 1.3.2 of the indictment; see *supra*, para. 7.2) and for the transport of ammunition from Zorzor to Salayae, which constitutes cruel, humiliating, and degrading treatment (count 1.3.25 of the indictment; see *supra*, para. 7.18).

10.2.2 Paul was the brother of N., one of the seven victims executed on the orders of Alieu Kosiah in Zorzor. The complainant stated during the proceedings that he lived under the same roof as his older brother and that the latter's death had had a profound impact on the family. Paul's father had invested money so that he could attend school. The complainant stated that he loved his brother very much and that, upon his death, he had lost a role model who cared for him, helped him, and guided him (40.757.015, 016). The Court noted during the proceedings that Paul expressed his grief in a very restrained manner. Nevertheless, the court perceived his suffering as genuine and profound, all the more so because he had witnessed his brother being killed, cold-bloodedly and arbitrarily, on the defendant's orders. N. was also expected to provide for Paul's family and thus had to serve as a surrogate father to Paul. Given the gravity of the act committed and the fact that the victim served as a foster brother to the plaintiff, it is justified, under the circumstances of this case, to award the sum of CHF 12,000 as compensation for emotional distress.

10.2.3 With regard to the cruel, humiliating, and degrading treatment inflicted on Paul during the transport of ammunition from Zorzor to Salayae, it should be noted that the defendant violated fundamental legal rights, namely the physical and mental integrity of individuals. Having to carry a heavy load on his head for nearly an entire day, without taking a break and without receiving anything to eat or drink, while enduring blows with rifle butts and death threats, must have caused the complainant significant physical and psychological suffering. The fear of dying must have haunted him every moment of the journey, as he knew that the ULIMO soldiers—and the defendant in particular—were capable of committing murders in a completely brutal and arbitrary manner, as had been the case with his brother. Alieu Kosiah's culpability in connection with these events is extremely grave, as he completely disregarded Paul's humanity, and Paul likely suffered significant trauma. The fact that he came to testify in Switzerland on two occasions is, moreover, a strong indication of his suffering, which has not subsided even more than 20 years after the events. Given the gravity of these events and the circumstances mentioned above, it is justified to award the sum of CHF 10,000 as compensation for non-pecuniary damages.

10.2.4 Paul resides in Liberia. Since the cost of living in that country is much lower than in Switzerland, the amount of CHF 22,000.- set forth above should be reduced. Given that the average monthly wage in Liberia is approximately CHF 800.- per month, the Court decides to reduce the amount by two-thirds.

The amount awarded to Paul as compensation for emotional distress is therefore CHF 7,300.

10.3 Raoul

10.3.1 Raoul is the complainant in the case regarding the cruel treatment he suffered in Foya in the form of "tabé" (section 1.3.4 of the indictment; see *supra*, para. 7.4) and for the transport of goods from Foya to Solomba, which constitutes cruel, humiliating, and degrading treatment (count 1.3.7 of the indictment; see *supra*, para. 7.5).

10.3.2 The "tabé" treatment that Raoul endured constitutes a thoroughly barbaric and cruel act of extreme violence. Tying a person's hands in front and binding their elbows behind their back undoubtedly causes excruciating pain in the upper limbs and compresses the chest in a way that impedes breathing. Added to this is the fact that the complainant was dragged along the ground for a distance of several dozen meters, which left his skin raw. Raoul stated that, more than 20 years after the events, he still felt pain in his left arm and right leg. Admittedly, the complainant did not provide the Court with a medical certificate attesting to this pain. However, it is important to take into account the fact that Raoul resides in Liberia, a country that certainly does not

the same practices as Western countries regarding medical certificates and the probative value attributed to them. There is no doubt that physical aftereffects may persist following an act as barbaric as the one he endured, compounded by psychological trauma fueled by the fear of death that Raoul experienced. Alieu Kosiah's culpability is extremely grave, as he ordered his soldiers, in a completely arbitrary manner, to inflict cruel and highly harmful treatment on the plaintiff. In light of these facts, he deems it appropriate to award compensation in the amount of CHF 10,000.

10.3.3 With regard to the cruel, humiliating, and degrading treatment inflicted on Raoul during the transport of goods from Foya to Solomba, it should be noted that the defendant violated two essential legal rights: physical integrity and mental well-being. Having to carry a heavy load on his head for nearly an entire day without a break, without receiving anything to eat or drink, while enduring beatings and death threats, is likely to cause significant physical and mental suffering. This is all the more so given that Raoul must have lived in constant fear of death throughout the journey. Alieu Kosiah's culpability in connection with these events is extremely grave, as he completely trampled on Raoul's humanity. During the proceedings, the plaintiff described what he had endured in a very matter-of-fact manner. This, however, in no way diminishes the trauma he experienced: this likely explains, in part, why he agreed to come to Switzerland to testify on two separate occasions so long after the events. Given the seriousness of the events, it would be justified to award the plaintiff the sum of CHF 10,000 as compensation.

10.3.4 Since Raoul is domiciled in Liberia, a country where the cost of living is much lower than in Switzerland, the compensation of CHF 20,000 should be reduced by two-thirds (see *supra*, para. 10.5.4).

However, since the Court cannot award the complainant a sum greater than the amount he claimed, the amount awarded to him as compensation for non-pecuniary damages is set at CHF 8,000.

10.4 Georges

10.4.1 Georges has standing as a complainant in connection with the two shipments of goods from Foya to Solomba in which he was forced to participate, which constitute cruel, humiliating, and degrading treatment (section 1.3.10 of the indictment, see *supra* para. 7.7 and section 1.3.12 of the indictment, see *supra* para. 7.9).

10.4.2 With regard to the cruel, humiliating, and degrading treatment inflicted on Georges during the shipments of goods from Foya to Solomba, it should be noted that the defendant violated two fundamental legal rights: the physical and psychological integrity of the person. Being forced to carry

a heavy load on his head for nearly an entire day without taking a break, without receiving anything to eat or drink, while being pushed and subjected to blows and death threats, is likely to cause significant physical and mental pain. Alieu Kosiah's culpability in connection with these acts is extremely grave, as he completely disregarded Georges's humanity. During the proceedings, the complainant also stated that he had feared for his life (40.751.024, 033). He further declared that it had been a terrible experience that could have killed him and that he had been traumatized by being forced to carry heavy loads over a long distance (12-20-0032). The complainant's arrival in Switzerland suggests that this trauma persists more than 20 years after the events. Given the severity of the events and the conditions under which the transports took place, it is justified to award the sum of CHF 10,000 per transport.

10.4.3 Since Georges is domiciled in Liberia, a country where the cost of living is much lower than in Switzerland, the compensation of CHF 20,000 should be reduced by two-thirds (see *supra*, consid. 10.5.4).

The amount awarded to Georges as compensation for pain and suffering is therefore CHF 6,600.

10.5 Louis Z.

10.5.1 Louis Z. is a complainant in connection with the two shipments of goods in which he was forced to participate, namely the shipment of the generator from Pasolahun to Kolahun (item 1.3.14 of the indictment; see *supra* para. 7.10) and the transport of ammunition from Gondolahun to Sassahun (count 1.3.16 of the indictment; see *supra* para. 7.11), which constitute cruel, humiliating, and degrading treatment, respectively.

10.5.2 By being responsible for the cruel, humiliating, and degrading treatment inflicted on Louis Z. during the two transports in which he was forced to participate, Alieu Kosiah violated two fundamental legal rights: physical and mental integrity. Having to carry a heavy load for an entire day without taking a break, without receiving anything to eat or drink, and while being beaten and threatened with death, is likely to cause significant physical and mental pain. The fear of death must have haunted the complainant at every moment of the journey, all the more so because other civilians were cold-bloodedly executed before his eyes due to their state of exhaustion. The defendant's offense is extremely grave, as he completely disregarded Louis Z.'s humanity. During the trial, Louis Z. recounted the events he experienced in a very matter-of-fact manner. This, however, in no way diminishes the trauma he suffered. His two visits to Switzerland to recount his story are a testament to his suffering, which remains vivid more than 20 years after the events. Given the gravity of these events and the profound harm caused

by the two transports in question, it is justified to award the sum of CHF 10,000 for each of them.

10.5.3 Since Louis Z. resides in Liberia, a country where the cost of living is much lower than in Switzerland, the compensation of CHF 20,000 should be reduced by two-thirds (see *supra*, consid. 10.5.4).

Ultimately, the amount awarded to Louis Z. as compensation for pain and suffering totals CHF 6,600.

10.6 Antoine W.

10.6.1 Antoine W. is a complainant with respect to the two shipments of goods in which he was forced to participate, namely the shipment of the generator from Pasolahun to Kolahun (count 1.3.14 of the indictment; see *supra* para. 7.10) and the transport of ammunition from Gondolahun to Sassahun (count 1.3.16 of the indictment; see *supra* para. 7.11), which constitute cruel, humiliating, and degrading treatment, respectively.

10.6.2 The reasoning set forth in paragraph 10.5.2 above regarding Louis Z. applies in full to Antoine W., as both complainants were forced to participate in the same transports. Thus, for him as well, given the seriousness of the acts, it is justified to award the sum of CHF 10,000 for each of the two transports.

10.6.3 During the preliminary investigation, the Office of the Attorney General recognized Antoine W. as a complainant in connection with the murder of his uncle, Victor X. (para. 1.3.15 of the indictment; see *supra*, para. 7.10). During the trial, Antoine W. was questioned about his relationship with his uncle. He stated that his mother had taken him to his uncle's home in Bolahun so that he could attend school there. When asked whether, in Pasolahun, he lived with his uncle or near his uncle's home, Antoine W. replied that he did not remember exactly, but that they were in any case in the same neighborhood (40.756.020). Antoine W. did not provide any further information regarding his relationship with his uncle. The ties he described are not close enough to be capable of causing exceptional emotional distress that would justify the award of compensation for emotional distress. Indeed, Antoine W. gave the Court no reason to believe that his relationship with Victor X. was of such intensity that it could be equated with the relationship he might have had with his father, for example. Under these circumstances, he will not be awarded any compensation for his uncle's death.

10.6.4 Since Antoine W. is domiciled in Liberia, a country where the cost of living is much lower than in Switzerland, the compensation of CHF 20,000 should be reduced by two-thirds (see *supra*, para. 10.5.4).

Ultimately, the amount awarded to Antoine W. as compensation for non-pecuniary damages amounts to CHF 6,600.

10.7 Jérôme

10.7.1 Jérôme is a complainant in connection with the two shipments of goods in which he was forced to participate—one from Voinjama to Gbar-lyeloh (item 1.3.19 of the indictment; see *supra*, para. 7.13) and the other from Voinjama to Solomba (count 1.3.20 of the indictment; see *supra*, para. 7.14), which constitute cruel, humiliating, and degrading treatment, respectively.

10.7.2 By being responsible for the cruel, humiliating, and degrading treatment inflicted on Jérôme during the two transports in which he was forced to participate, Alieu Kosiah violated two fundamental legal rights: physical and mental integrity. Having to carry a heavy load over a long distance while being threatened with beatings and death is likely to cause significant physical and mental pain. Jérôme stated that he feared for his life (40.753.020). The defendant's culpability is extremely grave, as he disregarded Jérôme's status as a human being. During the proceedings, Jérôme recounted the events he experienced with some reluctance. This, however, in no way diminishes the extent of his trauma. His two visits to Switzerland to tell his story are evidence of suffering that persists even more than 20 years after the events. Given the severity of these events and the terrible conditions under which the transports took place, it is justified to award the sum of CHF 10,000 for the transport described in paragraph 7.13 and CHF 15,000 for the one examined in paragraph 7.14. Indeed, the latter transport spanned two days, including one night spent in captivity. The Court considers that these two factors justify the award of compensation in an amount greater than that granted for the first transport.

10.7.3 Since Jérôme is domiciled in Liberia, a country where the cost of living is much lower than in Switzerland, the compensation of CHF 25,000 should be reduced by two-thirds (see *supra* para. 10.5.4).

10.10.4 However, since the Court cannot award the complainant an amount greater than what he claimed, the amount granted to him as compensation for emotional distress is CHF 8,000.

10.8 Coralie

10.8.1 Coralie is the complainant in the case of the rape of which she was a victim (section 1.3.24 of the indictment; see *supra*, para. 7.17).

10.8.2 By forcing the complainant to have sexual intercourse four times in one night, Alieu Kosiah violated an extremely important legal right: sexual integrity. He used his power and the fact that he was armed to force Coralie to submit to the act. Furthermore, he threatened to kill the victim if she did not comply. His conduct is extremely grave. The complainant, who had never before had sexual relations with a man, stated that she endured the act without saying a word out of fear of dying. Following the forced sexual intercourse, she reported losing blood and stated that she still experiences pain to this day that affects her intimate relationships (40.752.024). She testified during the proceedings that she still feels humiliated by these events (40.752.025). The Court considers these events to be very serious. Given the terror Alieu Kosiah used to achieve his ends, the death threats he made, and the fact that Coralie had never before had sexual relations with a man at the time, it is justified to award her compensation for emotional distress in the amount of CHF 30,000.

10.8.3 With regard to the transport of goods from Botosu following the looting of that village (count 1.3.23 of the indictment; see *supra*, para. 7.16), Coralie stated that she did not have to carry any loads and merely accompanied the convoy, from which she claims to have managed to escape. She was unable to say how long after the incident she had fled. The fact of accompanying a convoy, without carrying any cargo, for an indeterminate period of time, does not constitute sufficient grounds to have caused suffering warranting compensation. No compensation will therefore be awarded in connection with these facts.

10.8.4 Since Coralie is domiciled in Liberia, a country where the cost of living is much lower than in Switzerland, the compensation of CHF 30,000 should be reduced by two-thirds (see *supra*, para. 10.5.4).

10.8.5 However, since the Court cannot award the complainant an amount greater than what she claimed, the amount granted to her as compensation for non-pecuniary damages is set at CHF 8,000.

11. Costs

11.1 Pursuant to Art. 433(1) of the Criminal Procedure Code (CPP), the complainant may request fair compensation from the defendant for the necessary expenses incurred in the proceedings if the complainant prevails (sublet. a) and if the defendant is ordered to pay the costs in accordance with Art. 426(2) (sublet. b). The complainant must submit their claims to the criminal authority; they must quantify and substantiate them. If

she fails to fulfill this obligation, the criminal authority will not consider the claim.

Pursuant to Art. 434(1) of the Criminal Procedure Code (CPP), third parties who suffer damage as a result of procedural acts or assistance provided to the criminal authorities are entitled to fair compensation if the damage is not otherwise covered, as well as to compensation for non-pecuniary harm. Art. 433(2) applies by analogy.

11.2 In this instance, to take into account the specific circumstances of the case, the Court decided to apply Article 434(1) of the Criminal Procedure Code by analogy with respect to the expenses incurred by the plaintiffs' travel to Switzerland. Without such assistance, given their financial hardship, the plaintiffs would not have been able to remain in our country during the three weeks of proceedings.

11.3 Thus, the Court is covering the expenses related to the stay in Bellinzona of the six plaintiffs who traveled from Liberia. These expenses totaled CHF 25,494.90.

The Court has also committed to reimbursing the expenses that were advanced to the complainants (presumably by the Civitas Maxima association) for their stay in Geneva from Thursday, March 11, to Sunday, March 14, 2021. Their presence a few days prior to the proceedings was deemed necessary so that the six complainants could have time to prepare for the proceedings with their respective attorneys. Based on the evidence submitted, the Court decided to award CHF 1,225.80 to each of the following plaintiffs: Jérôme, Louis, Raoul, Antoine W., and Paul, and the sum of CHF 1,197.75 to Georges for the expenses incurred during their stay in Geneva.

11.4 The aforementioned expenses are part of the litigation costs to be borne by the defendant (see *below*, para. 12).

12. Costs

12.1 The criminal authority sets the costs in the final decision (Art. 421(1) CPP). Procedural costs consist of fees intended to cover expenses and disbursements actually incurred (Art. 422(1) CPP).

Fees are due for actions performed or ordered by the Federal Judicial Police and the Office of the Attorney General of Switzerland during the preliminary proceedings, as well as by the Criminal Division of the Federal Criminal Court. The amount of the fee is calculated based on the scope and complexity of the case, the conduct of the parties, their financial situation, and the workload of the court registry (Art. 424(1) CPP *in conjunction with* Art. 5 of the Federal Criminal Court's Regulations on Costs, Fees, Expenses, and Compensation in Federal Criminal Proceedings [RFPPF; RS 173.713.162]). Fees for police investigations upon the initiation of a preliminary investigation

range from CHF 200 to CHF 50,000 (Art. 6, para. 3, subpar. b RFPPF); those for investigations concluded with an indictment range from CHF 1,000 to CHF 100,000 (Art. 6, para. 4, subpar. c RFPPF). However, the total fees for the entire preliminary proceedings may not exceed CHF 100,000 (Art. 6(5) RFPPF). With regard to proceedings before the Criminal Division of the Federal Criminal Court, the related fees for a panel of three judges range from CHF 1,000 to CHF 100,000 (Art. 7(b) RFPPF).

Disbursements are amounts paid in advance by the Confederation. They include, in particular, costs attributable to court-appointed defense counsel and free legal aid, translation costs, expert witness fees, costs associated with the participation of other authorities, postage and telephone charges, and other similar expenses (Art. 422(2) CPP). Out-of-pocket expenses are set at the price invoiced to or paid by the Confederation (Art. 9 RFPPF).

12.2 In this case, the Office of the Attorney General (OAG) estimated the procedural costs at CHF 1,664,852.07, consisting solely of disbursements. It declined to specify an amount for fees.

Since the OAG did not quantify its fee, the Court sets it, ex officio, at CHF 60,000. This amount appears appropriate in light of the duration of the investigative proceedings and the number of hearings conducted by the OAG.

12.3 With regard to the disbursements that may be charged to the defendant, these must be reduced. First, the costs of court-appointed defense counsel are calculated separately (see *below*, consid. 14.2). They may be charged to the defendant only under the conditions set forth in Art. 135(4) of the Criminal Procedure Code (Art. 426(1) *in fine* of the Criminal Procedure Code), meaning that their treatment does not follow that of procedural costs. Second, the costs of pretrial detention do not constitute disbursements within the meaning of Art. 422 of the Criminal Procedure Code and therefore cannot be charged to the defendants (ATF 141 IV 465, para. 9.5.2). Medical expenses not directly related to the criminal proceedings must also be excluded (ATF 141 IV 465, para. 9.5.4). Finally, with regard to translation costs, those related to the hearing of the complainants and witnesses are borne by the defendant. By contrast, translation costs related to the defendant's own hearings cannot be charged to him and are therefore not included in the disbursements (see Art. 426(3)(b) CPP). After these deductions, the disbursements that the defendant may be required to pay amount to CHF 217,581.61.

12.4 As for the fees for the first-instance proceedings, they are set at CHF 40,000. The disbursements that may be imposed on the defendant amount to CHF 113,288.50. This amount consists of the court costs of the Court of Coercive Measures for decisions regarding the detention of Alieu Kosiah on security grounds, the costs incurred by the

travel of the plaintiffs and witnesses to Switzerland, costs related to the Office of the Attorney General's presence during the hearings, and translation costs (excluding, however, those incurred for the defendant's hearing).

12.5 The total costs incurred for the entire proceedings amount to CHF 1,349,739.23 (preliminary proceedings: CHF 60,000 [fee] and CHF 1,114,852 [two-thirds of total disbursements, one-third of which was settled in the OAG's dismissal order of May 7, 2019]; trial proceedings: CHF 40,000 [fee] and CHF 134,887.25 [disbursements]). The costs that may be charged to the defendant amount to CHF 378,342.90 (preliminary proceedings: CHF 60,000 [fee] and CHF 145,054.40 [two-thirds of the disbursements, one-third of which was settled in the OAG's dismissal order of May 7, 2019]; trial proceedings: CHF 40,000 [court fees] and CHF 113,288.50 [out-of-pocket expenses]).

12.6 Pursuant to Art. 426(1) of the Criminal Procedure Code (CPP), the defendant bears the costs of the proceedings if convicted. The criminal court may grant a deferral of payment of the costs of the proceedings. It may reduce or waive the costs, taking into account the financial situation of the person required to pay them (Art. 425 CPP).

12.7 In this case, the defendant was partially acquitted of the charges set forth in the indictment. To take this partial acquittal into account, the Court reduces the costs to be borne by the defendant by a flat rate of ten percent, resulting in CHF 340,508.61. That said, taking into account Alieu Kosiah's incarceration, his irregular and temporary status in Switzerland, and the fact that he has no income or assets, the Court decides to further reduce the portion of the costs attributable to him to a total of CHF 50,000, with the balance to be borne by the Confederation.

13. Compensation for the defendant

13.1 Pursuant to Art. 429(1) of the Criminal Procedure Code, if the defendant is acquitted in whole or in part or if the case is dismissed, he is entitled to compensation for expenses incurred in the reasonable exercise of his procedural rights (subpar. a), compensation for economic loss suffered as a result of his mandatory participation in the criminal proceedings (subparagraph b), and compensation for non-pecuniary harm suffered as a result of a particularly serious infringement of his or her personal rights, particularly in the event of deprivation of liberty (subparagraph c).

13.2 In this case, Alieu Kosiah filed claims based on Art. 429 of the Swiss Criminal Procedure Code. He sought compensation to be determined for the expenses incurred in the reasonable exercise of his rights of defense, CHF 500,000 as compensation for the economic loss he allegedly suffered as a result of his participation in these proceedings, and CHF 856,000 as compensation for non-economic damages.

13.3 Since the defendant has been convicted, he is not entitled to any compensation for the economic loss and non-pecuniary damages he claims to have suffered. Indeed, if Alieu Kosiah had not been prosecuted for the few crimes of which he has now been acquitted, he would not have suffered any economic losses as a result of his participation in the proceedings (Art. 429(1)(b)), and the infringement of his personality rights would not have been significantly diminished, given that the crimes alleged against him severely undermine his honor and reputation (Art. 429(1)(c)). No compensation for participation in the proceedings or for non-pecuniary damages is warranted. With regard to the reimbursement of defense costs that Alieu Kosiah will be ordered to pay, the Court will take his partial acquittal into account in determining the amount (see *below*, para. 14).

The defendant's claims based on Art. 429 of the Code of Criminal Procedure are dismissed.

14. Compensation for the Public Defender and Free Legal Counsel

14.1 Determination

14.1.1 Art. 135(1) of the Criminal Procedure Code (CPP) governs the compensation of the court-appointed defense counsel by referring to the fee schedule for attorneys of the Confederation or the canton where the trial is held. If this regulation provides for a reduced fee, it applies regardless of the outcome of the trial (ATF 139 IV 261, para. 2.2.1). Articles 11 et seq. of the RFPPF govern the compensation awarded to court-appointed defense counsel. Reference may be made to these provisions. In accordance with the established practice of the Criminal Division of the Federal Criminal Court, the hourly rate (excluding VAT) for cases of moderate difficulty is CHF 230 for hours of work, CHF 200 for the defense counsel's travel time, and CHF 100 for hours worked by a trainee attorney (Federal Criminal Court decision SK.2017.38 of November 23, 2017, para. 4.2, and the case law cited therein).

In the present case, there is no justification for deviating from the standard hourly rates applied by the Court. Indeed, while the proceedings presented a certain degree of complexity from a factual standpoint, the legal analysis itself did not pose any significant difficulty. This is evidenced by the fact that the majority of the attorneys involved in the proceedings did not present any legal arguments during the oral arguments. The compensation was therefore set based on the aforementioned rates.

14.1.2 Furthermore, in accordance with the indictment of March 22, 2019, and the dismissal order of May 7, 2019, approximately two-thirds of the total costs of the proceedings against Alieu Kosiah for war crimes correspond to the facts set forth in the indictment, and one-third of the costs correspond to facts that have already been dismissed (40,100,040; 40,110,054 s.). This allocation formula must be applied by the Court to determine the portion of costs incurred prior to

March 22, 2019, to be taken into account in this judgment. It should be

noted, however, that the considerations and calculations made by the Office of the Public Prosecutor in connection with the dismissal order are in no way binding on this Court (40.110.055). The calculation of the two-thirds share is thus based on the amounts determined by the Court in the following recitals.

14.2 Attorney Dimitri Gianoli

14.2.1 By decision of the MPC dated November 11, 2014, Attorney Dimitri Gianoli was appointed as court-appointed defense counsel for the defendant Alieu Kosiah (16-01-0001 s.).

14.2.2 For the period from November 11, 2014, to December 31, 2017, Attorney Dimitri Gianoli billed 1,780 hours and 30 minutes of legal work (including court appearances), broken down as follows: 52 hours and 15 minutes in 2014, 633 hours and 20 minutes in 2015, 495 hours and 10 minutes in 2016, and 599 hours and 45 minutes in 2017. For the year 2014, the Court deducts 20 minutes of court time that were over-reported. In 2015, 36 hours and 45 minutes of work were deducted for the following reasons: 14 hours and 20 minutes of hearing time that had been over-reported, billing for secretarial tasks that are not billable (5 minutes on January 14, 15 minutes on February 25), 9 hours and 10 minutes of court time billed at the attorney's rate even though his intern presided (August 21), and billing for manifestly excessive time for certain tasks (a reduction of 4 hours and 15 minutes for preparing a timeline of names and events between May 11 and 12, 3 hours and 55 minutes for various research tasks and the preparation of questions for Alieu Kosiah between September 9 and 10, and 4 hours and 45 minutes for submissions to the Court of Coercive Measures on December 11 [hereinafter: Tmc]). For 2016, 64 hours and 20 minutes must be deducted, as 5 hours and 10 minutes of hearing time were over-reported and must be subtracted; 13 hours and 15 minutes were billed between January 16 and 31 for a position statement to the Office of the Attorney General that is not in the case file; secretarial tasks cannot be accepted (10 min. on December 22), and the time billed for certain tasks is clearly exaggerated (reduction of 16 hours for the preparation of a 14-page unsolicited brief to the MPC between March 5 and 11; 5 hours for submissions to the Tmc between March 13 and 14; a reduction of 12 hours and 15 minutes for a letter to the MPC regarding the complainant Antoine W. between June 17 and July 22, a reduction of 4 hours and 15 minutes for submissions to the Tmc on September 15, and a reduction of 8 hours and 15 minutes for submissions to the Tmc between December 11 and 12). For 2017, 77 hours and 20 minutes are deducted: 25 hours and 50 minutes of court hearings were overcounted; 32 hours and 10 minutes relate to appeals that must therefore be billed in the relevant proceedings; and the time spent on certain tasks is deemed excessive (deductions of 2 hours and 45 minutes for reviewing a procedural document whose attachments were already known on June 5; 4 hours and 45 minutes for submissions to the Tmc on June 9; and 11 hours and 50 minutes for

submissions to the Tmc between September 7 and 9).

A total of 1,601 hours and 45 minutes of legal work is therefore accepted. Applying the rate of CHF 230 per hour and adding 8% VAT results in CHF 397,874.70.

The 411 hours of travel time recorded are accepted. Applying the rate of CHF 200 per hour and adding 8% VAT results in CHF 88,776.

For work performed as an intern during the same period, Attorney Dimitri Gianoli billed 179 hours and 45 minutes. The 9 hours and 10 minutes of court time on August 21, 2015, which were deducted from the hours billed at the attorney's rate, must be added here. For the year 2016, 50 minutes of court time were overbilled and are therefore deducted. In addition, 120 hours and 40 minutes of client meetings were billed during that same year. Since 66 hours and 45 minutes have already been accepted as attorney work for this same item, 85 hours are deducted here, as approximately 100 hours of meetings (combined attorney and intern time) are deemed more than sufficient to exchange relevant information.

For this period, 78 hours of travel time were billed at the intern's rate. Travel time related to client meetings that were rejected by the Court must also be deducted here; 21 hours of travel time are thus deducted.

Consequently, a total of 160 hours and 5 minutes of trainee work and travel time is retained. Applying the rate of CHF 100 per hour and adding 8% VAT results in a total of CHF 17,290.80.

14.2.3 For the period from January[1,] 2018, to March 22, 2019, Attorney Dimitri Gianoli recorded 408 hours and 30 minutes of legal work (including court appearances), comprising 267 hours and 40 minutes in 2018 and 140 hours and 50 minutes between March 1and March 22, 2019. For the year 2018, [the following]must be deducted: 2 hours and 20 minutes of court appearances that were over-reported, 1 hour and 40 minutes for appeals to the Complaints Chamber of the Federal Criminal Court (TPF), which must be billed in the relevant proceedings, 2 hours and 10 minutes for secretarial tasks, and 32 hours and 25 minutes for an excessively long time spent drafting position papers for the Tmc (a deduction of 9 hours and 30 minutes between March 7 and 9 and 22 hours and 55 minutes between September 4 and 7). A deduction of 50 hours must also be made from the 94 hours and 25 minutes billed for client meetings, as such hours cannot be justified given that only six days of hearings took place in 2018. For the first part of 2019, 1 hour and 45 minutes of over-reported hearing time must be deducted, as well as 6 hours and 5 minutes for a hearing that was billed twice (January 15). In addition, 20 hours and 20 minutes are deducted from the time recorded for preparing submissions to the Tmc on March 7 and 8, 2019, as this was deemed excessive.

Thus, a total of 291 hours and 45 minutes of legal work is accepted. Applying the rate of CHF 230 per hour and adding 7.7% VAT results in a total of CHF 72,269.40.

Regarding travel during the same period, the 90 hours billed by Attorney Gianoli are accepted, with the clarification that, although the Court considers the number of hours spent in meetings with the client during this period to be excessive, it accepts their frequency and, consequently, the travel required to attend them. Applying the rate of CHF 200.00 per hour and adding 7.7% VAT

results in a total of CHF 19,386.00.

During this same period, 7 hours of work and 6 hours of travel were billed at the trainee's rate. This is accepted in full. Applying the rate of CHF 100 per hour and adding 7.7% VAT results in CHF 1,400.10.

14.2.4 For the period from March 23, 2019, to March 12, 2021, Attorney Dimitri Gianoli billed 1,296 hours and 15 minutes of legal work (including court appearances), broken down as follows: 264 hours and 10 minutes from March 23 to December 31, 2019, 626 hours and 55 minutes in 2020, and 405 hours and 10 minutes in 2021. For the end of 2019, 24 hours and 20 minutes were deducted due to time deemed excessive for the completion of certain tasks (a deduction of 8 hours for submissions to the TMC on March 28 and 29, 6 hours and 30 minutes for drafting a letter to PPP between August 5 and 8, 8 hours and 50 minutes for appearances at the Tmc on September 20, and 1 hour for a meeting with PPP on September 30). Furthermore, the 156 hours and 55 minutes of client meetings billed for 2019 are greatly exaggerated in light of the procedural steps taken that year; 100 hours are therefore deducted. For the year 2020, the Court does not allow compensation for 4 hours and 45 minutes of court proceedings that were over-reported, 35 minutes of contact with a foreign attorney not involved in the proceedings (January 28 and November 9), 21 hours and 40 minutes of drafting documents that proved unnecessary because they were never submitted to the Court (between February 25 and April 2), 1 hour and 55 minutes of secretarial tasks, 6 hours and 30 minutes of case preparation for a trip to Bellinzona (November 28), and 49 hours and 20 minutes that were over-reported for various tasks to be performed (deduction of 26 hours and 45 minutes for submissions to the TMC between March 20 and 22, 25 minutes for reviewing a procedural document on March 27, 18 hours and 30 minutes for various research tasks between April 9 and 17, 3 hours and 30 minutes for a statement of position at the TMC on September 24 and 25, and 10 minutes for reviewing correspondence from the TMC on September 29). For the same year, 60 hours of client meetings were deducted from the 158 hours and 5 minutes billed for this purpose, as were 100 hours from the 200 hours billed for hearing preparation, as such a number of hours was deemed excessive. In 2021, the Court deducted 4 hours and 25 minutes of hearing time that had been over-reported, 5 hours and 40 minutes of contact with a lawyer not involved in the proceedings (January 28, January 29, February 5, February 6), 7 hours and 35 minutes of case preparation for hearings (February 11 and 13), 7 hours and 40 minutes organizing said cases (March 5 and 7), and 14 hours and 20 minutes preparing the expense and fee statement (between March 8 and 12). Once again, the time spent preparing for hearings—168 hours—was deemed excessive; as a result, another 100 hours were deducted.

Consequently, a total of 787 hours and 30 minutes of legal work is accepted. Applying the rate of CHF 230 per hour and adding 7.7% VAT results in CHF 195,071.65.

For this period, Attorney Dimitri Gianoli billed 198 hours and 10 minutes of

travel time. The following must be deducted: 3 hours for October 20, 2020, and 1 hour and 10 minutes for January 22, 2021, as these travel periods did not correspond to any activity that would have justified them; as well as 1 hour and 10 minutes for January 28, 2021, as this travel period corresponded to a meeting with an attorney not involved in the proceedings, for which the Court does not provide compensation.

Thus, 192 hours and 50 minutes of travel time are approved. Applying the rate of CHF 100.00 per hour and adding 7.7% VAT results in a total of CHF 41,539.90.

For his work as an intern, Attorney Dimitri Gianoli billed 600 hours and 45 minutes for the same period, broken down as follows: 3 hours and 50 minutes at the end of 2019, 506 hours and 50 minutes in 2020, and 90 hours and 5 minutes in 2021. The Court does not address the client meetings—totaling 1 hour and 30 minutes in 2019, 497 hours and 10 minutes in 2020, and 15 hours and 35 minutes in 2021—as these have already been excessively billed as work performed by Attorney Dimitri Gianoli himself. Regarding the preparation for hearings billed in 2021, 34 hours and 30 minutes are deducted from the 74 hours and 30 minutes billed, as this amount of time is deemed excessive in light of what Attorney Dimitri Gianoli has already recorded for his personal work.

Regarding the 191 hours of travel billed at the intern's rate, these are rejected in their entirety, as this travel relates to meetings with the client that were not permitted by the Court.

Therefore, a total of 52 hours of work and travel by the trainee are accepted. Applying the rate of CHF 100.00 per hour and adding 7.7% VAT results in CHF 5,600.40.

14.2.5 For the entire duration of his retainer, Attorney Dimitri Gianoli billed disbursements totaling CHF 62,597.60, comprising CHF 41,657.35 for the period prior to March 22, 2019, and CHF 20,940.25 for the subsequent period.

Photocopies, billed at a rate of CHF 0.50 per copy, are reduced to a rate of CHF 0.20 per copy (November 17 and 18, 2014; March 13, 17, 26, and 30, 2015; April 29 and
April 30, 2015; May 19, 21, and 29, 2015; June[1], 16, 17, 18, 22, and 23, 2015; March 14,
2016, December 19 and 21, 2016, March 13, 2017, May 30, 2017, and June 2, 2017, October 5,
October 2018, December 18, 2019, January 6, 2020, February 19, 2020, October 22, 2020,
December 3, 2020, and March 12, 2021). Expenses related to appeals to the Complaints Court of the Federal Criminal Court have been deducted (CHF 7.70 between September 26 and October 11, 2017). Parking fees for June 18, 2016, have been reduced from CHF 160 to CHF 16, a more plausible amount for a few hours of parking. The parking fees for February 6, 2020, which were billed twice, have been reduced to CHF 34, and those for February 10, 2021, also billed twice, to CHF 27.40. The parking fees for February 19, October 20, October 22, and December 3, 2020, as well as those for January 28, 2021, have been eliminated, as they do not correspond to any approved travel. Out-of-pocket expenses related to travel for client meetings not approved by the Court have been deducted (seven trips by an intern at CHF 102.50 in 2016, one trip by an intern at CHF 102.50 in 2019, one trip by Attorney Dimitri Gianoli in

2020, and one in 2021). Since all client meetings billed at the intern's rate in 2020 and 2021 were rejected by the Court, the expenses corresponding to travel related to these meetings as well as meals on those days are deducted in full. Meals billed between December 10 and 18, 2020

are not included, nor are those for February 13 and March 6, 2021, as no hearings took place on those dates. For February 14, 2021, only the evening meal is included, as the proceedings began the following day. Meals billed twice are also excluded (February 15, 16, 17, 18, 22, 23, 24, 25, 2021; March[1], 2, 3, 4, 5, 2021). Finally, the rental costs for a single apartment in the Bellin area for the duration of the proceedings are allowed.

The approved expenses thus total CHF 25,759.55 for the period from November 11, 2014, to March 22, 2019, and CHF 13,652 for the period from March 23, 2019, to March 12, 2021.

14.2.6 With regard to the reading of the judgment of June 18, 2021, the Court awards each attorney a lump sum of CHF 3,550, which covers all of their fees, including VAT, as well as their disbursements.

14.2.7 The Court therefore awards a total of CHF 622,756.55, including fees and disbursements, for the period prior to the indictment. Two-thirds of this amount, or CHF 415,171, is taken into account for the compensation of Attorney Dimitri Gianoli in the present proceedings. The amount of CHF 255,863.95 for fees and disbursements incurred after the indictment is, for its part, taken into account in full. Added to these amounts is a lump sum of CHF 3,550 for the reading of the judgment.

In light of the foregoing, the total amount of compensation for Attorney Dimitri Gianoli for defending the interests of Alieu Kosiah, including VAT and disbursements, amounts to CHF 674,585, rounded to CHF 674,900, after deducting two-thirds of the advance payments made through March 22, 2019, and the full amount of any advance payments made thereafter.

14.2.8 Upon reviewing Attorney Dimitri Gianoli's expense reports and fee statements, the Court was, to say the least, surprised by the number of hours billed and the tasks listed. While a lawyer's work must naturally be compensated, the Confederation should not be made to bear the costs of unnecessary or nonexistent activities. In this regard, the bill of fees prepared by Attorney Dimitri Gianoli contains very significant inconsistencies. The Court considers it useful to review a few figures. The hours spent drafting observations and position statements for the Tmc resulted in significant reductions (118h20), as successive extensions of detention generally required the same arguments. Furthermore, the number of hours billed for meetings with the client particularly caught the Court's attention (187 hours and 25 minutes in 2016, 94 hours and 25 minutes in 2018, 157 hours and 25 minutes in 2019, 655 hours and 15 minutes in 2020, and 51 hours and 10 minutes in 2021). While it is true that a defendant's attorney must take the time to listen to and advise the defendant, it is also the attorney's duty to structure these meetings in order to effectively elicit and convey relevant information from and to the client. Consequently, 295 hours had to be deducted. The Court further notes the excessive number of hours devoted to preparing for trial (442 hours and 30 minutes,

equivalent to more than 55 full working days). It reiterates that the attorney is presumed to be familiar with the facts of the case, on which he has worked for many years, and that these facts did not, in this instance, require any complex legal analysis—a point that was further underscored by Maître Dimitri Gianoli's oral argument. Consequently, 274 hours and 30 minutes were deducted in this regard. Finally, the Court notes—as an example of the many other hours that had to be deducted—that the preparation and organization of case files do not constitute billable activities (21 hours and 45 minutes), nor does the preparation of the bill of fees (14 hours and 20 minutes). In light of all the hours that had to be deducted from Maître Dimitri Gianoli's bill, the Court is unsure whether to attribute the excesses it has observed to a particular, more or less conscious, lack of diligence or to a lack of familiarity with criminal matters and the need to acquire a great deal of additional legal knowledge as the proceedings progressed. Remaining in doubt, the Court refrains for the time being from making any formal complaint to the appropriate authorities.

14.2.9 Pursuant to Art. 135(4)(a) of the Swiss Criminal Procedure Code (CPP), when the defendant is ordered to bear the costs of the proceedings, he is required to reimburse the Confederation for the legal fees as soon as his financial situation permits.

In this case, taking into account Alieu Kosiah's financial situation, the Court sets the amount that he must reimburse to the Confederation for the costs and fees of Attorney Dimitri Gianoli at CHF 100,000.

14.3 Attorney Raphaël Jakob

14.3.1 By decision of the Office of the Attorney General (MPC) dated September 5, 2014, Attorney Raphaël Jakob was appointed as pro bono legal counsel for the complainant Raoul, effective retroactively as of August 21, 2014 (15-02-0002 et seq.).

14.3.2 For the period from August 21, 2014, to December 31, 2017, Attorney Raphaël Jakob billed 509 hours and 30 minutes of court time, from which 17 hours and 55 minutes that were overbilled must be deducted. For the remainder of his legal work, Attorney Raphaël Jakob billed 328 hours and 55 minutes. The Court does not take into account the time spent drafting a letter regarding the offense of recruiting and using child soldiers (30 minutes on May 15, 2016; 3 hours on May 29, 2016; 2 hours on May 10, 2016; 2 hours on May 12,
2016, 3 hours on May 13, 2016, 1 hour and 30 minutes on July 23, 2016, and 1 hour on July 25, 2016), as this charge did not concern his client. Furthermore, the 15 minutes billed on June 23, 2016, for reviewing a draft complaint by Attorney Alain Werner, as well as the 30 minutes billed on October 27, 2016, for reviewing a letter from the same colleague, are deducted.

Therefore, a total of 806 hours and 50 minutes of legal work is accepted.

Applying the rate of CHF 230 per hour and adding 8% VAT results in CHF 200,624.40.

The 170 hours of travel time recorded are accepted. Applying the rate of CHF 200.00 per hour and adding 8% VAT results in a total of CHF 36,720.00.

For the same period, 7 hours of court appearances were billed at the trainee's rate, from which 45 minutes that were over-reported must be deducted. The 18 hours and 30 minutes of other activities performed by the trainee attorneys are accepted, as are the 4 hours of travel time billed.

Therefore, a total of 28 hours and 45 minutes of trainee work and travel time is accepted. Applying the rate of CHF 100 per hour and adding 8% VAT results in CHF 3,105.

14.3.3 For the period from January[1,] 2018, to March 22, 2019, 33 hours and 45 minutes of court appearances were recorded; 2 hours and 10 minutes must be deducted. The remaining hours billed for Attorney Raphaël Jakob's legal services—24 hours and 35 minutes—are accepted.

Therefore, a total of 56 hours and 10 minutes of legal services is accepted. Applying the rate of CHF 230 per hour and adding 7.7% VAT results in CHF 13,913.05.

The 22 hours and 35 minutes of travel time billed are accepted. Applying the rate of CHF 200 per hour and adding 7.7% VAT results in a total of CHF 4,864.45.

For this same period, Attorney Raphaël Jakob billed 43 hours and 20 minutes of court appearances at the intern's rate, 31 hours and 5 minutes for non-court-related work, and 12 hours of travel time. All of these are accepted.

Thus, a total of 86 hours and 25 minutes of trainee work and travel time are accepted. Applying the rate of CHF 100 per hour and adding 7.7% VAT results in CHF 9,307.10.

14.3.4 For the period from March 23, 2019, to March 5, 2021, 144 hours and 10 minutes of court time were billed, all of which are accepted in full. The 102 hours and 50 minutes recorded for the remainder of Attorney Raphaël Jakob's work are also accepted.

Thus, a total of 247 hours of legal work is accepted. Applying the rate of CHF 230.00 per hour and adding 7.7% VAT results in CHF 61,184.35.

Attorney Raphaël Jakob billed 50 hours and 20 minutes for travel time, all of which is accepted. Applying the rate of CHF 200 per hour and adding 7.7% VAT results in CHF 10,841.80.

For the same period, Attorney Raphaël Jakob billed 25 hours and 15 minutes for court hearings attended by his interns, as well as 8 hours and 30 minutes for other activities performed by them. These are fully accepted. Similarly, 10 hours of travel time are accepted.

Applying the rate of CHF 100.00 per hour and adding 7.7% VAT results in CHF 4,711.90.

14.3.5 For the entire duration of his retainer, Attorney Raphaël Jakob billed disbursements totaling CHF 16,263.50, consisting of CHF 10,713.80 through March 22, 2019, and CHF 5,549.70 for the subsequent period. Since the amount charged for lodging for the period from April 8, 2017, to March 22, 2019, was at a rate higher than that allowed by the Court, the lodging costs for that period are reduced from CHF 1,765.10 to CHF 1,530.

The disbursements allowed by the Court thus amount to CHF 10,478.70 for the period prior to March 22, 2019, and CHF 5,549.70 for the period after that date.

14.3.6 The Court therefore awards a total of CHF 279,012.70, including both fees and disbursements, for the period preceding the indictment. Two-thirds of this amount, or CHF 186,008.45, is taken into account for the compensation of Attorney Raphaël Jakob in these proceedings. The amount of CHF 82,287.75 for fees and disbursements incurred after the indictment was filed is, for its part, taken into account in full. Added to these amounts is the lump sum of CHF 3,550.00 set by the Court for the reading of the judgment.

In light of the foregoing, the total amount of compensation for Attorney Raphaël Jakob for representing the complainant Raoul, including VAT and disbursements, amounts to CHF 271,846.20, rounded to CHF 271,900, after deducting two-thirds of the advance payments made through March 22, 2019, and the full amount of any advance payments made thereafter.

14.4 Attorney Hikmat Maleh

14.4.1 By decision of the Office of the Attorney General (MPC) dated September 5, 2014, Attorney Hikmat Maleh was appointed as pro bono legal counsel for the complainant, Jérôme, retroactive to August 22, 2014 (15-03-0002 et seq.).

14.4.2 For the period from August 22, 2014, to December 31, 2017, in his capacity as an attorney, Attorney Hikmat Maleh billed 235 hours and 45 minutes of court time, from which 11 hours and 20 minutes that were overbilled must be deducted. For the remainder of his work, 78 hours and 30 minutes were recorded. The following must be deducted: 12 hours and 10 minutes billed for "TPF appeals" (2 hours and 30 minutes on November 21, 2016; 30 minutes on November 23, 2016; 2 hours on November 25,
November 2016, 2 hours and 20 minutes on November 26, 2016, 1 hour on February 9, 2017, 1 hour on February 10,
2017, 25 minutes on February 13, 2017, 2 hours and 30 minutes on September 12, 2017), as these hours must be billed in the context of the related proceedings.

A total of 290 hours and 50 minutes of legal work is therefore accepted. Applying the rate of CHF 230.00 per hour and adding 8% VAT brings the total to

CHF 72,247.15.

Travel time, for which Attorney Hikmat Maleh billed 78 hours, is accepted in full. Applying the rate of CHF 200 per hour and adding 8% VAT results in CHF 16,848.

For the same period, regarding the intern's work, Attorney Hikmat Maleh billed 125 hours and 35 minutes of court time, of which 3 hours and 20 minutes—which were overbilled—must be deducted. A total of 18 hours and 45 minutes was billed for the intern's work outside of court. Two hours under the "TPF appeal" line item must be deducted (billed on November 28, 2016) for the reason mentioned above. Travel time, totaling 47 hours and 25 minutes, is accepted.

Therefore, a total of 186 hours and 15 minutes of intern work and travel time is accepted. Applying the rate of CHF 100 per hour and adding 8% VAT results in a total of CHF 20,104.20.

14.4.3 For the period from January[1,] 2018, to March 22, 2019, 3 hours and 20 minutes of attorney work were billed; these are accepted. Applying the rate of CHF 230.00 per hour and adding 7.7% VAT results in CHF 817.05.

For the same period, 20 minutes of trainee work were recorded. This is also accepted. Applying the rate of CHF 100.00 per hour and adding 7.7% VAT results in CHF 32.30.

14.4.4 For the period from March 23, 2019, to March 10, 2021, Attorney Hikmat Maleh billed 123 hours and 10 minutes of court time, from which 4 hours and 10 minutes that were over-billed must be deducted. With regard to legal services for this period—57 hours and 35 minutes billed—10 minutes corresponding to a ruling on an appeal must be deducted (November 25, 2019).

This results in a total of 176 hours and 25 minutes of legal work being accepted. Applying the rate of CHF 230 per hour and adding 7.7% VAT brings the total to CHF 43,708.40.

The 28 hours and 30 minutes recorded for travel time are accepted. Applying the rate of CHF 200 per hour and adding 7.7% VAT results in CHF 6,138.90.

For the same period, 48 hours and 20 minutes of court appearances were billed at the intern's rate; 10 minutes that were over-reported should be deducted from this total. Of the 9 hours billed as intern work for this period, 1 hour spent preparing the expense report must be deducted (November 2, 2020).

All billed travel hours, totaling 9 hours, are accepted.

Therefore, a total of 64 hours and 50 minutes of trainee work and travel time are accepted. Applying the rate of CHF 100.00 per hour and adding 7.7% VAT, this amounts to CHF 6,978.95.

14.4.5 For the entire duration of his engagement, Attorney Hikmat Maleh billed CHF 8,970.95 in disbursements, specifically CHF 4,197.30 between August 22, 2014, and March 22, 2019, and CHF 4,773.65 between March 23, 2019, and March 10, 2021. Train tickets totaling CHF 298.20 billed in 2018 (1April 1, April 4, April 19, and December 4) and CHF 92.50 billed in 2019 (January 19) are excluded, since no attendance at any hearing was recorded for those years and these trips are not justified in relation to the present case.

Thus, expenses totaling CHF 3,806.60 are accepted for the period from August 22, 2014, to March 22, 2019, and CHF 4,773.65 for the period from March 23, 2019, to March 10, 2021.

14.4.6 The Court therefore allows, including both fees and disbursements, a total of CHF 113,838 for the period prior to the indictment. Considering that the dismissal order of May 7, 2019 (40.110.059) did not pertain to charges related to his client, Attorney Hikmat Maleh had refrained from submitting a statement of disbursements and fees in connection with that order. The full amount mentioned above is therefore awarded to him in these proceedings. For the period following the indictment, an amount of CHF 61,599.90 is awarded. Added to these amounts is the lump sum of CHF 3,550 retained by the Court for the reading of the judgment.

In light of the foregoing, the total amount of compensation for Attorney Hikmat Maleh for representing the plaintiff Jérôme, including VAT and disbursements, amounts to CHF 178,987.90, rounded to CHF 179,100, net of advance payments made.

14.5 Attorney Zeina Wakim

14.5.1 By decision of the Office of the Attorney General (MPC) dated November 3, 2016, Attorney Zeina Wakim was appointed as pro bono legal counsel for the complainant Coralie, effective August 23, 2016 (15-04-0013 et seq.).

14.5.2 For the period from August 23, 2016, to December 31, 2017, Attorney Zeina Wakim billed 104 hours and 5 minutes for time spent participating in hearings. The excess hours billed, amounting to 9 hours and 55 minutes, must be deducted. For the remainder of her work as an attorney, Attorney Zeina Wakim billed 44 hours and 5 minutes, including 20 hours and 30 minutes spent reviewing court transcripts and drafting a summary during November and December 2017. She continued to perform such activities for a total of 35 hours and 5 minutes in 2018. The Court considers this total of 55 hours and 35 minutes (20 hours and 30 minutes + 35 hours and 5 minutes) to be too high; it allows only a total of 25 hours for this task, i.e., 10 hours in 2017 and 15 hours in 2018. Consequently, 33 hours and 35 minutes are accepted for legal work outside of court proceedings through December 31, 2017.

Thus, a total of 127 hours and 45 minutes (104 hours and 5 minutes – 9 hours and 55 minutes + 33 hours and 35 minutes) of legal practice is recognized for the aforementioned period. Applying the rate of CHF 230 per hour and adding 8% VAT results in a total of CHF 31,733.10.

For this same period, the 20 hours of travel time billed at the attorney's rate are accepted. Applying the rate of CHF 200 per hour and adding 8% VAT results in CHF 4,320.

For the court hearings attended by her intern during the same period, Attorney Zeina Wakim billed 110 hours, from which 40 minutes that were overbilled must be deducted. She also billed 10 hours and 10 minutes for the trainee's other activities, from which the Court deducts—pursuant to the MPC's decision of February 2, 2017 (15-04-0087)—1 hour and 40 minutes billed on October 25, 2016, for booking a plane ticket for her client's companion. As for the 60 hours of travel time billed, 4 hours are deducted because they pertain to court hearings at which the intern accompanied Attorney Zeina Wakim; this deduction is in accordance with the MPC's decision of February 2, 2017 (15-04-0089).

Therefore, a total of 173 hours and 50 minutes of the intern's work and travel time is accepted. Applying the rate of CHF 100 per hour and adding 8% VAT results in a total of CHF 18,770.40.

14.5.3 For the period from January[1,] 2018, to March 22, 2019, 69 hours and 20 minutes of court appearances were billed, from which 3 hours and 35 minutes that were over-billed must be deducted. As for legal work outside of court appearances, 40 hours were billed. As already explained above (see *supra*, para. 14.5.2), the 31 hours and 20 minutes billed for reviewing court transcripts and drafting a summary were reduced to 15 hours by the Court.

Thus, a total of 89 hours and 25 minutes of legal work is accepted. Applying the rate of CHF 230 per hour and adding 7.7% VAT results in a total of CHF 22,145.25.

The 36 hours and 25 minutes billed for travel during this period are accepted. Applying the rate of CHF 200 per hour and adding 7.7% VAT results in CHF 7,840.55.

For the same period, 33 hours and 50 minutes of court appearances were billed at the intern's rate. The 2 hours and 25 minutes that were overbilled must be deducted. No other activities were billed at the intern's rate. The 8 hours billed for travel are accepted.

Therefore, a total of 39 hours and 25 minutes of trainee activity and travel time is accepted. Applying the rate of CHF 100 per hour and adding 7.7% VAT results in CHF 4,243.40.

14.5.4 For the period from March 23, 2019, to the end of the proceedings, Attorney Zeina Wakim billed 187 hours and 40 minutes of court appearances, of which 16 hours and 55 minutes were overbilled and must be

excluded. A total of 250 hours and 20 minutes was recorded as out-of-court legal work for this period, of which 126 hours and 35 minutes correspond to preparation for hearings in 2020 and 56 hours and 40 minutes relate to the same task for 2021. The Court considers that such preparation is disproportionate in light of the preparation time spent by the attorneys for the other plaintiffs, noting that Attorney Zeina Wakim did not argue her case during the first part of the hearings in December 2020, nor did she raise any preliminary issues at that time; her oral argument in March 2021 lasted less than one hour (40.720.084); and she was required to address only two counts of the indictment relating to a single plaintiff. The Court therefore allows 20 hours of preparation for the trial for the year 2020 and 25 hours for the year 2021. Furthermore, the 2 hours and 30 minutes of legal research related to the dismissal order must be deducted (May 13 and 14, 2019), as well as the 9 hours and 5 minutes billed in connection with appeals to the Federal Criminal Court (May 14, 2019, June 25, 2019, 1er and July 2, 2019), for the reason previously stated.

Therefore, a total of 271 hours and 15 minutes of legal work is accepted. Applying the rate of CHF 230.00 per hour and adding 7.7% VAT results in CHF 67,191.35.

For this period, the 88 hours and 30 minutes of travel time reported by Attorney Zeina Wakim are accepted. Applying the rate of CHF 200.00 per hour and adding 7.7% VAT results in CHF 19,062.90.

14.5.5 For the entire duration of her retainer, Attorney Zeina Wakim billed disbursements totaling CHF 21,961.50, specifically CHF 12,343.30 for the period up to March 22, 2019, and CHF 9,618.20 for the subsequent period. The costs related to the train and plane tickets for Coralie's companion, as well as the price of Coralie's own train ticket, must be deducted (November 7, 2011; train tickets billed at CHF 150.00 for three people, whereas only Attorney Zeina Wakim's travel expenses—CHF 50.00—can be accepted). The travel expenses for the intern billed on the same date, also CHF 50.00, are likewise deducted, as the intern was accompanying Attorney Zeina Wakim. Furthermore, travel from Geneva to Bellinzona, billed at CHF 224.00 (December 3, 2020), must be reduced to CHF 112.00, the applicable rate for such a trip. An amount of CHF 98.30, corresponding to the intern's meal expenses during the week of hearings in Bern, during which he accompanied Attorney Zeina Wakim, and an amount of CHF 666.50, relating to the intern's hotel stays during that same period, as well as an overrun by Attorney Zeina Wakim of the amount allocated for her own hotel stays, must also be deducted, in accordance with the OAG's decision of February 2, 2017 (15-04-0089). For the entire assignment, an overrun of the meal budget in the amount of CHF 32.10 is also deducted. In 2017, hotel stays totaling CHF 3,690.70 were billed; this amount must be reduced by CHF 383, as the maximum amount allocated per night was exceeded by that amount. In 2020, hotel stays totaling

CHF 852.50 were billed. This amount must be reduced by CHF 122.50, which corresponds to the night of December 6, 2020, to December 7, 2020, for Attorney Zeina Wakim, as she was replaced at the hearing on December 7, 2020, by Attorney Léna Laghzaoui, for whom the billed hotel stay was approved.

Thus, disbursements totaling CHF 9,142.40 are approved for the period from August 23, 2016, to March 22, 2019, and CHF 9,095.95 for the period from March 23, 2019, to March 10, 2021.

14.5.6 The Court therefore accepts, including both fees and disbursements, a total of CHF 98,195.10 for the period prior to the indictment. Two-thirds of this amount, or CHF 65,463.40, is taken into account for the compensation of Attorney Zeina Wakim in these proceedings. The amount of CHF 95,350.20 for costs and disbursements incurred after the indictment is, for its part, taken into account in full. Added to these amounts is the lump sum of CHF 3,550.00 awarded by the Court in connection with the reading of the judgment.

14.5.7 In light of the foregoing, the total amount of compensation for Attorney Zeina Wakim for representing the complainant, Coralie, including VAT and disbursements, amounts to CHF 164,363.60, rounded to CHF 164,400, after deducting two-thirds of the advance payments made through March 22, 2019, and the full amount of any advance payments made thereafter.

14.6 Attorney Alain Werner

14.6.1 By decisions of the Office of the Attorney General (MPC) dated October 3, 2014, Attorney Alain Werner was appointed as pro bono legal counsel for the complainants Paul (15-01-0008 et seq.), Louis Z. (15-01-0017 et seq.) and Antoine W. (15-01-0020 et seq.) with retroactive effect as of September 17, 2014.

By decision of the Office of the Attorney General (MPC) dated July 29, 2016, Attorney Alain Werner was also appointed as pro bono legal counsel for the complainant Georges, retroactive to June 24, 2016 (15-01-0301 et seq.).

14.6.2 For the period from September 17, 2014, to December 31, 2017, Attorney Alain Werner billed 1,181 hours and 30 minutes for his work as an attorney, as well as 277 hours and 15 minutes for the work of his associate, Attorney Romain Wavre, during the year 2017. With regard to the expense report for the period from September 17, 2014, to March 31, 2015, 7 hours and 15 minutes of court time that were over-reported have been deducted, as well as 22 hours and 30 minutes of administrative tasks that can be considered non-billable secretarial work. As for the hours billed for the period from April[1,] 2015, to December 10, 2015, only 9 hours and 55 minutes of court time that were over-reported need to be deducted. With regard to the billed working time for the period from December 10, 2015, to October 31, 2016, 14 hours and 10 minutes of court

time that were overbilled are deducted, as well as 11 hours of client meetings that the Court deems excessive and 13 hours and 30 minutes of non-billable administrative tasks

(5 hours and 45 minutes related to a witness's visit to Switzerland and 7 hours and 45 minutes related to the complainant Georges's visit to Switzerland). In addition, 25 hours and 30 minutes were billed for meetings with Attorneys Raphaël Jakob and Hikmat Maleh, 6 hours and 30 minutes for preparing the hearings of two witnesses, and 92 hours and 15 minutes for reviewing the case file. For all of these items, the Office of the Attorney General determined that a total of 50 hours was sufficient (15-01-0379 et seq.). The Court concurs with this argument and thus deducts 74 hours and 15 minutes for the three aforementioned items. Starting in 2017, Attorney Alain Werner delegated part of his work on this case to his colleague at Civitas Maxima, Attorney Romain Wavre. In order to correctly calculate the fees due, the hours billed and those accepted or rejected for each attorney are treated separately. For the period from November[1,] 2016, to October 3, 2017, the following must be deducted from Maître Alain Werner's workload: 22 hours and 10 minutes of hearing time that were over-reported, 2 hours of preparation for Coralie's hearing (November 3, 2016), 18 hours and 30 minutes of preparation for the hearings of the other plaintiffs, 2 hours and 30 minutes for preparing a report for the Office of the Attorney General (May 10 and 11, 2017), 2 hours and 15 minutes of preparation for witness hearings, and 24 hours of non-billable administrative tasks. For the same period, with regard to Attorney Romain Wavre, 10 hours and 20 minutes of overbilled hearing time and 14 hours and 15 minutes of preparation time for witness hearings are deducted. The hours billed for the end of 2017—totaling 160 hours and 10 minutes—all pertain to Attorney Romain Wavre's work. An additional 3 hours and 10 minutes of overbilled court time must also be deducted. The Court further considers that the 79 hours and 15 minutes dedicated to reviewing the case file and drafting a letter are excessive and therefore deducts 39 hours and 15 minutes.

During the same period, Attorney Alain Werner billed 154 hours for his travel and 18 hours for Attorney Romain Wavre's travel. Four hours billed by the former on September 2, 2017—a Saturday on which there was no hearing and for which a round trip had already been billed the previous day—are deducted (see MPC decision of November 8, 2017; 40.851.064).

Attorneys Alain Werner and Romain Wavre are employees of the Civitas Maxima association, from which they receive a regular salary. Their work for said association consists of defending the interests of war victims seeking compensation. Since this work fully overlaps with their role in the present case, the amount of compensation due for the representation of the plaintiffs—for whom Attorney Alain Werner was appointed as pro bono legal counsel—should be reduced by the amount of the salary he received from Civitas Maxima.

Between 2014 and 2017, Maître Alain Werner received a gross annual salary of CHF 117,000 from Civitas Maxima.—which corresponded to an hourly rate of CHF 53.60 (the Court assumes that full-time work consists of 2,182 hours per year [12 months × 4.33 weeks per month × 42 hours per week], i.e., 117,000 ÷ 2,182.32). A total of 984 hours of legal work is recognized for the period from

September 17, 2014, to December 31, 2017. Applying the rate of CHF 176.40 per hour (230 – 53.60) and adding VAT

at 8%, the total comes to CHF 187,463.80. With regard to travel, 150 hours are recognized. Applying the rate of CHF 146.40 per hour (200–53.60) and adding 8% VAT results in the amount of CHF 23,716.80.

Attorney Romain Wavre received a salary of CHF 5,520 from Civitas Maxima for the seven months during which he worked for the association in 2017, representing an hourly wage of CHF 4.35 ([5,520 ÷ 7 × 12] ÷ 2,182.32). A total of 210 hours and 15 minutes of work is recognized for the aforementioned period. Applying the rate of CHF 225.65 per hour (230 – 4.35) and adding 8% VAT results in a total of CHF 51,465.40. As for travel time, 18 hours are recognized. Applying the rate of CHF 195.65 per hour (200–4.35) and adding 8% VAT results in a total of CHF 3,803.45.

For the period prior to December 31, 2017, the amount of CHF 238,929.20 is thus recognized as legal services, and CHF 27,520.25 as travel expenses for the attorney.

Finally, 253 hours and 45 minutes of work were billed for services and travel expenses incurred by other parties. First, the 86 hours and 15 minutes of research conducted by an American attorney at the Library of Congress in Washington, D.C., between April 16 and September 3, 2015, are billed at a rate of CHF 100 per hour. Next, of the 97 hours of court appearances recorded by Attorney BBBB—an associate of the Civitas Maxima association—during 2016, 30 hours and 25 minutes that were over-reported are deducted; it is specifically noted that her presence, when combined with that of Attorney Alain Werner, is not compensated. The Court therefore accepts, for the hearings in which the aforementioned individual participated, 66 hours and 35 minutes of work and 12 hours of travel time at a rate of CHF 100 per hour. Finally, for the period from November[1,] 2016[,] to October 3, 2017, 42 hours and 30 minutes were billed for Ms. AAAA's work. In accordance with the MPC's decision of November 8, 2017 (40.851.063), the Court finds that the status of the aforementioned individual—who was acting as an employee of Civitas Maxima—cannot be equated with that of a trainee attorney, as she was not sworn in nor subject to the obligations associated with that role. Consequently, the hours recorded for her work and travel are not taken into account.

Thus, a total of 164 hours and 50 minutes at a rate of CHF 100.00 per hour is billed; adding 8% VAT results in a total of CHF 17,801.65.

14.6.3 For the period from January[1,] 2018, to March 22, 2019, Attorney Alain Werner billed 54 hours and 10 minutes of legal services between JanuaryJanuary and October 3, 2018, and 30 hours between October 4, 2018, and March 22, 2019, as well as 116 hours and 20 minutes for Attorney Romain Wavre's services during the first period and 146 hours and 35 minutes for his services during the second period. Between January[1]and October 3, 2018, the hours recorded by Maître Romain Wavre must be reduced as follows: 3 hours and 20 minutes of court time that were over-recorded, 11 hours spent reviewing and finalizing a

letter to the Office of the Attorney General, the time devoted to this activity

is deemed excessive, and 16 hours allocated to “paperwork,” as this constitutes a clerical task that cannot be billed as a typical attorney’s activity. For this same period, 40 hours of meetings and phone calls with the various clients as well as the attorneys for the other plaintiffs were recorded, all of which are fully accepted. Due to a lack of specificity in the billing for these items, they are included in Maître Alain Werner’s bill. Regarding the period between October 4, 2018, and March 22, 2019, 1 hour and 10 minutes of court appearances overbilled by Attorney Alain Werner and 15 hours and 35 minutes of court appearances overbilled by Attorney Romain Wavre are deducted. The remainder of the work for this period is accepted.

The travel hours billed for the same period—4 hours for Attorney Alain Werner and 48 hours for Attorney Romain Wavre—are accepted in full. In addition, the Court agrees to compensate 1 hour at a rate of CHF 200 per hour for Attorney Romain Wavre’s attendance at a hearing that was ultimately canceled due to the absence of the person who was to be heard (March 28, 2018).

In 2018 and 2019, Attorney Alain Werner received a gross annual salary of CHF 117,000 from Civitas Maxima, which corresponded to an hourly rate of CHF 53.60 (117,000 ÷ 2,182.32). A total of 83 hours is recognized for his work between January[1,] 2018, and March 22, 2019. Applying the rate of CHF 176.40 per hour (230 – 53.60) and adding 7.7% VAT results in CHF 15,768.55. As for travel time, 4 hours are recognized. Applying the rate of CHF 146.40 per hour (200–53.60) and adding 7.7% VAT results in CHF 630.70.

Attorney Romain Wavre received a gross annual salary of CHF 52,000 from Civitas Maxima for the year 2018, which amounts to CHF 23.85 per hour (52,000 ÷ 2,182.32). A total of 86 hours is recorded for his work during the period from January[1]to October 3, 2018. Applying the rate of CHF 206.15 per hour (230 – 23.85) and adding 7.7% VAT results in a total of CHF 19,094.05. As for travel time for the same period, 21 hours are recognized. Applying the rate of CHF 176.15 per hour (200 – 23.85) and adding 7.7% VAT results in CHF 3,984. For the year 2019, Attorney Romain Wavre received a gross annual salary of CHF 60,000, or CHF 27.50 per hour (60,000 ÷ 2,182.32). For the period from October 4, 2018, to March 22, 2019, an average hourly wage of CHF 25.65 per hour ([23.85 + 27.50] ÷ 2) should be used. A total of 130 hours and 45 minutes is recorded for Maître Romain Wavre’s work during this period. Applying the rate of CHF 204.35 per hour (230 – 25.65) and adding 7.7% VAT results in CHF 28,809.15. As for travel time for the same period, 28 hours are recognized. Applying the rate of CHF 174.35 per hour (200–25.65) and adding 7.7% VAT results in an amount of CHF 5,257.75.

For the period from January[1,] 2018, to March 22, 2019, the total amount of CHF 63,809.15 is therefore recorded for legal services, and CHF 9,872.45 for travel expenses.

14.6.4 Finally, the amounts billed for the period from March 23, 2019, to March 10, 2021, should be itemized. For the end of 2019, the billable hours of 1 hour and 30 minutes recorded by Attorney Alain Werner and 58 hours and 45 minutes recorded by Attorney Romain Wavre were accepted. For the hearings held before the Court in 2020 and 2021, the simultaneous and compensated presence of Attorneys Alain Werner and Romain Wavre was approved, given the number of plaintiffs (four) for whom Attorney Alain Werner was providing pro bono legal counsel. For the year 2020, each attorney billed 34 hours of court time. This total is reduced by 1 hour and 25 minutes, which was over-billed for each attorney. Maître Alain Werner's out-of-court work in 2020, totaling 31 hours and 30 minutes, is accepted. Regarding Maître Romain Wavre's non-courtroom work for the same year, 229 hours and 15 minutes were billed, from which 12 hours and 50 minutes billed between September 23 and November 9, 2020, for administrative procedures related to the plaintiffs' travel, must be deducted. For the year 2021, the 141 hours and 55 minutes of court time billed by each attorney are accepted. The 99 hours and 15 minutes of out-of-court work by Attorney Alain Werner are also accepted. For the same year, Maître Romain Wavre billed 125 hours and 20 minutes of non-hearing work, of which 8 hours recorded between January 20 and February 9, 2021, are deducted, as these again involved administrative procedures related to the plaintiffs' travel to Switzerland. Between 2020 and 2021, Attorney Alain Werner billed 83 hours and 30 minutes for case preparation, and Attorney Romain Wavre billed 178 hours and 30 minutes for the same activity. The time recorded by the latter is deemed excessive; a total of 85 hours is sufficient given the combined time spent by both attorneys on this preparation. A reduction of 46 hours and 45 minutes is therefore applied to the hours approved for Attorney Romain Wavre in 2020, and an identical deduction is made for 2021.

With regard to their travel for the period following the indictment, Maître Alain Werner and Maître Romain Wavre each reported 19 hours for the year 2020 and 9 hours and 30 minutes for the year 2021. This is accepted. Only the costs related to the reading of the judgment are deducted from the statement, as these are included in the flat fee applied by the Court.

Between 2019 and 2021, Attorney Alain Werner received a gross annual salary of CHF 117,000 from Civitas Maxima, which corresponds to an hourly rate of CHF 53.60 (117,000 ÷ 2,182.32). A total of 306 hours and 45 minutes of legal work is recognized for the period following the indictment. Applying the rate of CHF 176.40 per hour (230 – 53.60) and adding 7.7% VAT results in CHF 58,277.20. For travel time, 4 hours are allowed. Applying the rate of CHF 146.40 per hour (200–53.60) and adding 7.7% VAT results in CHF 4,493.65.

Attorney Romain Wavre received a gross annual salary of CHF 60,000 from Civitas Maxima for the year 2019, which equates to an hourly rate of CHF 27.50 (60,000 ÷ 2,182.32). A total of 58 hours and 45 minutes is recorded for work performed during the period from March 23, 2019, to December 31, 2019. Applying the rate of CHF 202.50 per hour (230 – 27.50) and adding 7.7% VAT

results in the

total of CHF 12,812.95. For the year 2020, Attorney Romain Wavre received a net annual salary of CHF 65,500, which equates to an hourly rate of CHF 30 per hour (65,500 ÷ 2,182.32). A total of 202 hours and 15 minutes is reported for legal practice in 2020. Applying the rate of CHF 200 per hour (230–30) and adding 7.7% VAT results in CHF 43,564.65. As for travel time for the same period, 19 hours are recognized. Applying the rate of CHF 170 per hour (200–30) and adding 7.7% VAT results in CHF 3,478.70. For the year 2021, Attorney Romain Wavre received a salary of CHF 16,317 between early January and mid-March, representing an hourly wage of CHF 35.90 ([16,317 ÷ 2.5 × 12] ÷ 2,182.32). A total of 212 hours and 30 minutes is recorded for his work as an attorney in 2021. Applying the rate of CHF 194.10 per hour (230 – 35.90) and adding 7.7% VAT results in CHF 44,422.20. As for travel time for the same period, 9 hours and 30 minutes are allowed. Applying the rate of CHF 164.10 per hour (200–35.90) and adding 7.7% VAT results in a total of CHF 1,679.

For the period following the indictment, the total amount of CHF 159,077 is thus recognized for the services of the two attorneys, and CHF 11,330.35 for their travel expenses.

14.6.5 For the entire duration of his retainer, Attorney Alain Werner billed disbursements (relating to his work and that of Attorney Romain Wavre) totaling CHF 29,698.45, comprising CHF 18,187.05 for the period prior to the indictment and CHF 11,511.40 for the period thereafter. In 2016, the disbursements clearly identified as expenses of the plaintiffs were deducted (CHF 22.10 on August 26, CHF 10.20 on August 29, CHF 28.20 and 20.- on August 30, CHF 100.- on August 31, CHF 15.00 on September 5, CHF 14.80 and 4.10 on September 12). Furthermore, for expenses recorded between November[1,] 2016[,] and October 3, 2017, a total amount of CHF 4,720.80 (CHF 1,925.80 for transportation, CHF 1,245.00 for lodging, and CHF 1,540.00 for meals) is retained in accordance with the OAG's decision of November 8, 2017 (40.851.064 s.), in lieu of the CHF 7,293.55 invoiced. Also deducted from the final fee statement are the two amounts of CHF 203 each charged for travel to the reading of the judgment, as these expenses are already included in the lump sum provided by the Court.

Thus, disbursements totaling CHF 15,399.90 are retained for the period from September 17, 2014, to March 22, 2019, and CHF 11,105.40 for the period from March 23, 2019, to March 10, 2021.

14.6.6 The Court therefore awards, including both fees and disbursements, a total of CHF 373,195.20 for the period prior to the indictment. Two-thirds of this amount, or CHF 248,796.80, is taken into account for the compensation of Attorney Alain Werner in these proceedings. The amount of CHF 181,512.75 for costs and disbursements incurred after the indictment is, for its part, taken into account in full. Added to these amounts is the lump sum of CHF 3,550.00 awarded by the Court in connection with the reading of the judgment.

14.6.7 In light of the foregoing, the total amount of the fees for Attorney Alain Werner (and, by extension, those for Attorney Romain Wavre) for representing the plaintiffs Georges, Louis Z., Antoine W., and Paul, including VAT and disbursements, amounts to CHF 433,859.55, rounded to CHF 434,000, after deducting two-thirds of the advance payments made through March 22, 2019, and the full amount of any advance payments made thereafter. The Court emphasizes that, in setting forth the grounds for this judgment, it found that an error—detrimental to Attorney Alain Werner (the omission of several items from the fee statement dated October 3, 2017, amounting to 181 hours and 20 minutes of legal work)—had been made in the total calculation of the compensation due to him. This error is corrected ex officio pursuant to Art. 83(1) of the Code of Criminal Procedure, and the operative part of the judgment will be amended accordingly (LAURENT MOREIL-LON/AUDE PAREIN-REYMOND, Petit Commentaire du code de procédure pénale,2nded., 2016, No. 3 *regarding* Art. 83 of the Code of Criminal Procedure).

For these reasons, the Court hereby rules:

I. Acquittal and Conviction

1. Alieu Kosiah is acquitted of violations of the laws of war on the following counts:

1.1 Recruitment of a child soldier as set forth in paragraph 1.3.1 of the indictment (Art. 109, para. 1, and Art. 108, para. 2, aCPM, *in conjunction with* Art. 3 common to the General Provisions and Art. 4, item 3, letter c, PA II);

1.2 Attempted murder of a civilian, alternatively, causing bodily harm, or harm to health and physical well-being, as set forth in Count 1.3.6 of the indictment (Art. 109(1) and 108(2) of the Military Criminal Code (aCPM) *in conjunction with* Art. 3(1)(1)(a) common to the General Provisions and Art. 4, item 2, subitem a, PA II);

1.3 Aiding and abetting the murder of a civilian as set forth in section 1.3.8 of the indictment (Art. 109(1) and 108(2) of the Military Criminal Code (aCPM) *in conjunction with* Art. 3(1)(1)(a) common to the General Provisions and Art. 4(2)(a) of Part II of the Penal Code);

1.4 Order to loot as set forth in section 1.3.11 of the indictment (Art. 109(1) and 108(2) of the aCPM in conjunction with Art. 18 of the aCPM*, in conjunction with* Art. 3 common to the General Provisions and Art. 4, section 2, subparagraph g of PA II).

2. Alieu Kosiah is found guilty of violations of the laws of war on the following counts:

2.1 Use of a child soldier as set forth in section 1.3.1 of the indictment (Art. 109(1) and 108(2) of the former Swiss Military Penal Code (aCPM) *in conjunction with* Art. 3 common to the General Provisions and Art. 4(3)(c) of PA II);

2.2 Orders to kill seven civilians and six civilians, respectively, as set forth in 1.3.2 and 1.3.5 of the indictment (Art. 109(1) and 108(2) of the Military Criminal Code (aCPM) in conjunction with Art. 18 of the Military Criminal Code (aCPM) *in conjunction with* Art. 3(1)(1)(a) common to the General Provisions and Art. 4(2)(a) of Protocol II);

2.3 Order given to kill two unarmed soldiers, as set forth in paragraph 1.3.21 of the indictment (Art. 109(1) and 108(2) of the former Swiss Military Penal Code (aCPM) in conjunction with Art. 18 aCPM *in conjunction with* Art. 3, para. 1, item 1, subitem a, common to the General Provisions, and Art. 4, item 2, subitem a, PA II);

2.4 Murder of four civilians as set forth in counts 1.3.3, 1.3.15, 1.3.17, and 1.3.18 of

the
indictment (Art. 109(1) and 108(2) aCPM *in conjunction with* Art. 3(1), item 1, subitem a, common to the General Provisions, and Art. 4, item 2, subitem a, PA II),

2.5 Rape of a civilian as set forth in section 1.3.24 of the indictment (Art. 109(1) and 108(2) of the former Swiss Military Penal Code (aCPM) *in conjunction with* Art. 3(1)(1)(c) common to the General Provisions and Art. 4(2)(e) of PA II);

2.6 Order to treat seven civilians cruelly, as stated in section 1.3.4 of the indictment (Art. 109(1) and 108(2) aCPM in conjunction with Art. 18 aCPM, *in conjunction with* Art. 3(1)(1)(a), common to the General Provisions, and Art. 4, ch. 2, let. a, PA II);

2.7 Violation of the dignity of a deceased civilian as set forth in section 1.3.9 of the indictment (Art. 109(1) and 108(2) of the former Swiss Military Penal Code (aCPM) *in conjunction with* Art. 3(1)(1)(c) common to the General Provisions and Art. 4(2)(e) of PA II);

2.8 Repeated orders to treat several civilians cruelly, or in a humiliating and degrading manner, as set forth in items 1.3.7, 1.3.10, 1.3.12, 13.14, 1.3.16, 1.3.19, 1.3.20, 1.3.23, and 1.3.25 of the indictment
(Art. 109(1) and 108(2) of the former Military Criminal Code (aCPM) in conjunction with Art. 18 of the former Military Criminal Code (aCPM) *in conjunction with* Art. 3(1)(1)(a) and (c) common to the General Provisions and Art. 4(2)(a) and (e) of PA II);

2.9 Repeated infliction of cruel, humiliating, and degrading treatment on several civilians as set forth in counts 1.3.7, 1.3.10, 1.3.12, 1.3.16, 1.3.23, and
1.3.25 of the indictment (Art. 109, para. 1, and Art. 108, para. 2, of the Military Criminal Code, *in conjunction with* Art. 3, para. 1, subpar. 1, letters a and c, common to the General Provisions, and Art. 4, subpar. 2, letters a and e, of Part II of the Act);

2.10 Repeated orders to loot, as set forth in counts 1.3.13 and 1.3.22 of the indictment (Art. 109(1) and 108(2) of the former Swiss Penal Code (aCPM) in conjunction with Art. 18 of the aCPM*, in conjunction with* Art. 3 common to the General Provisions and Art. 4, subparagraph 2, letter g of PA II).

3. Alieu Kosiah is sentenced to 20 years' imprisonment, with credit for the 2,413 days spent in pretrial detention from November 10, 2014, to June 18, 2021.

4. Alieu Kosiah is to be deported from Swiss territory for a period of fifteen years.

5. Alieu Kosiah's expulsion will be reported in the Schengen Information System.

6. The authorities of the canton of V. are responsible for enforcing the sentence and the deportation.

II. Civil Claims

As compensation for emotional distress, Alieu Kosiah is ordered to pay the following amounts (Art. 47 and 49 CO):

- CHF 6,600 to Georges;

- CHF 8,000 to Coralie;
- CHF 8,000 to Jérôme;
- CHF 6,600 to Louis Z.;
- CHF 8,000 to Raoul;
- CHF 6,600 to Antoine W.;
- CHF 7,300 to Paul.

III. Costs and Expenses

A. Costs

The following amounts are awarded to cover expenses incurred as a result of their presence in Switzerland (Art. 434(1) CPP, as amended):

- CHF 1,197.75 to Georges;
- CHF 1,225.80 to Jérôme;
- CHF 1,225.80 to Louis Z.;
- CHF 1,225.80 to Raoul;
- CHF 1,225.80 to Antoine W.;
- CHF 1,225.80 to Paul.

B. Costs

1. The costs of the proceedings amount to CHF 1,349,739.25 (preliminary proceedings: CHF 60,000 [fees] and CHF 1,114,852 [disbursements]; first-instance proceedings: CHF 40,000 [court fees] and CHF 134,887.25 [disbursements]).

2. Alieu Kosiah is ordered to pay CHF 50,000 of the costs of the proceedings (Art. 425 and 426, paras. 1 and 2, of the Swiss Criminal Procedure Code), with the balance to be borne by the Confederation.

IV. Compensation for the Defendant

Alieu Kosiah’s claims based on Art. 429 of the Criminal Procedure Code are dismissed.

V. Compensation for the Public Defender

1. The compensation to be paid to Attorney Dimitri Gianoli is set at CHF 674,900 (including VAT and disbursements), less two-thirds of the advance payments made up to March 22, 2019, and the full amount of advance payments made on or after March 23, 2019; this compensation is to be borne by the Confederation (Art. 135, para. 2, CPP).

2. Alieu Kosiah is required to reimburse this compensation to the Confederation in the amount of CHF 100,000 as soon as his financial situation permits (Art. 135, para. 4, let. a, CPP).

3. Alieu Kosiah is required to reimburse Attorney Dimitri Gianoli, as soon as his financial situation permits, for the difference between his compensation as a court-appointed defense counsel and the fees he would have received as a private defense counsel (Art. 135, para. 4, let. b, CPP).

VI. Compensation for Pro Bono Legal Services

1. The compensation to be paid to Attorney Raphaël Jakob is set at CHF 271,900 (including VAT), less two-thirds of the advance payments made through March 22, 2019, and the full amount of advance payments made on or after March 23, 2019; this compensation is to be borne by the Confederation (Art. 138, para. 1, CPP).

2. The compensation to be paid to Attorney Hikmat Maleh is set at CHF 179,100 (including VAT), less any advance payments already made; this compensation is to be borne by the Confederation (Art. 138(1) CPP).

3. The compensation to be paid to Attorney Zeina Wakim is set at CHF 164,400 (including VAT), after deducting two-thirds of the advance payments made through March 22, 2019, and all advance payments made on or after March 23, 2019; this fee is to be borne by the Confederation (Art. 138(1) CPP).

4. The compensation to be paid to Attorney Alain Werner is set at CHF 408,300 (*corrected*: CHF 434,000) (including VAT), less two-thirds of the advance payments made up to March 22, 2019, and the full amount of advance payments made on or after March 23, 2019; this compensation is to be borne by the Confederation (Art. 138(1) CPP).

On behalf of the Criminal Division of the
Federal Criminal Court

The President The Clerk

Service (judicial document):

- Office of the Attorney General of Switzerland, Mr. Andreas Müller, Federal Prosecutor
- Attorney Dimitri Gianoli
- Attorney Jean-Pierre Bloch
- Attorney Alain Werner
- Attorney Raphaël Jakob
- Attorney Hikmat Maleh
- Attorney Zeina Wakim

Once the judgment becomes final, it will be served on:

- The Office of the Attorney General of Switzerland (as the enforcement authority)

Information on Legal Remedies

Appeal to the Appeals Chamber of the Federal Criminal Court

An appeal may be filed against judgments of the Criminal Division of the Federal Criminal Court that have concluded all or part of the proceedings. The appeal must be filed in writing or orally with the Criminal Division of the Federal Criminal Court **within 10 days** of the judgment being served (Art. 399(1) in conjunction with Art. 398(1) of the Criminal Procedure Code; Art. 38a of the Act on the Organization of Criminal Proceedings).

The appellate court has full authority to review all contested aspects of the judgment. An appeal may be filed on the grounds of a violation of the law, including excess or abuse of discretion, denial of justice, and undue delay; on the grounds of an incomplete or erroneous finding of fact; or on the grounds of impropriety (Art. 398, paras. 2 and 3, CPP).

If an appeal concerns only the civil claims, the appellate court reviews the first-instance judgment only to the extent that the civil procedure law applicable in the forum would permit the appeal (Art. 398, para. 5, CPP).

The party filing the appeal must submit a written notice of appeal to the Court of Appeals of the Federal Criminal Court **within 20 days** of receiving notice of the reasoned judgment. In the notice, the party must indicate whether it intends to challenge the judgment in its entirety or only certain parts thereof, the modifications to the first-instance judgment it seeks, and its requests for evidence. Any party challenging only certain parts of the judgment is required to specify definitively in the notice of appeal which parts are the subject of the appeal (Art. 399, paras. 3 and 4, CPP).

Appeals to the Complaints Chamber of the Federal Criminal Court

An appeal against orders, decisions, and procedural acts of the Criminal Division of the Federal Criminal Court acting as a court of first instance—with the exception of decisions by the presiding judge—may be filed in writing and with a statement **of grounds within 10 days** with the Complaints Chamber of the Federal Criminal Court (Art. 393(1)(b) and Art. 396(1) of the Criminal Procedure Code; Art. 37(1) of the Act on the Organization of Criminal Proceedings).

The court-appointed defense counsel may file a written and reasoned appeal **within 10 days** with the Complaints Chamber of the Federal Criminal Court against the decision setting the compensation (Art. 135(3)(a) and Art. 396(1) of the Criminal Procedure Code; Art. 37 of the Act on the Appointment of Defense Counsel).

An appeal may be filed on the following grounds: violation of the law, including excess or abuse of discretion, denial of justice, and undue delay; incomplete or erroneous findings of fact; and inappropriateness (Art. 393(2) CPP).

Compliance with Deadlines

Documents must be submitted no later than the last day of the deadline to the criminal authority, Swiss Post, a Swiss consular or diplomatic mission, or, in the case of detained persons, to the prison administration (Art. 91(2) CPP).

Date of dispatch: March 31, 2022