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Federal Criminal Court

Federal Criminal Court

Federal Criminal Court Federal

Criminal Court

Case Number: CA.2022.8

The defendant's name has not been anonymized. The names of certain individuals mentioned in the judgment—who, given the historical context, are public figures—as well as the nom de guerre of the combatants have also not been anonymized. Finally, to make the judgment easier to read, the names of the other individuals mentioned in the judgment are fictitious; any resemblance to real names is purely coincidental.

Judgment of May 30, 2023, Court of Appeals

Composition

Judges Olivier Thormann, Presiding Judge,
Andrea Ermotti, and Jean-Paul Ros,
Clerk Rémy Allmendinger

Parties

ALIEU KOSIAH, born on (…), currently detained at W. Prison, represented by Attorney Dimitri Gianoli, court-appointed defense counsel, and by Attorney Philippe Currat,

appellant, respondent, and defendant

against

THE OFFICE OF THE ATTORNEY GENERAL OF SWITZERLAND,
represented
by Andreas Müller, Federal Prosecutor,

joint appellant, respondent, and prosecuting authority

and

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

   joint appellant, respondent, and complainant

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

   joint appellant, respondent, and complainant

3. **NICOLAS COOK,** residing in Liberia, represented by Attorney Hikmat Maleh,

joint appellant, respondent, and complainant

4. **EDDIE COULTER,** residing in Liberia, represented by Attorney Alain Werner,

joint appellant, respondent, and complainant

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

joint appellant, respondent, and complainant

6. **LEVI FARRELL,** residing in Liberia, represented by Attorney Alain Werner,

joint appellant, respondent, and plaintiff

7. **JAMES CAMDEN,** residing in Liberia, represented by Attorney Alain Werner,

joint appellant, respondent, and complainant

Subject

Violations of the laws of war (Art. 108 and 109 aCPM *in conjunction with* Art. 3 common to the CG and Art. 4 PA II), crimes against humanity (Art. *264a* CP)

Partial appeal of April 25, 2022; partial joint appeals of May 16 and 17, 2022; and appeal of April 20, 2022, against the judgment of the Criminal Division of the Federal Criminal Court SK.2019.17 dated June 18, 2021

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Facts :

A. Background of the Case

A.1 On July 3, 2014, through their counsel, Attorney Alain WERNER (Mr. WERNER), five Liberian nationals named James CAMDEN, Levi FARRELL, Eddie COULTER, Philip JORDAN, and Robbie CARY filed a criminal complaint with the Office of the Attorney General of Switzerland (OAG) against Alieu KOSIAH for crimes against humanity and war crimes (OAG 05-01-0001 et seq.).

A.2 On August 21, 2014, Georges ROSADO, a Liberian national, also filed a criminal complaint with the OAG, through his counsel, Attorney Raphaël JAKOB (Mr. JAKOB), against Alieu KOSIAH for crimes against humanity and war crimes (OAG 05-02-0001 et seq.).

A.3 On August 22, 2014, Nicolas COOK, a Liberian national, in turn filed a criminal complaint with the MPC, through his counsel, Attorney Hikmat MA-LEH (Attorney MALEH), against Alieu KOSIAH for crimes against humanity and war crimes (MPC 05-03-0001 et seq.).

A.4 On August 28, 2014, the MPC initiated, under case number SV.14.0828, criminal proceedings against Alieu KOSIAH for war crimes committed during the First Liberian Civil War, specifically including the murder of civilians, rape, and acts intended to enslave and terrorize the population (Articles 108 and 109 of the former Military Penal Code of June 13, 1927 [aCPM; RS 321.0], incorporated into Articles *264b* et seq. of the Penal Code of December 21, 1937 [CP; RS 311.0], in conjunction with Article 3 common to the Geneva Conventions of August 12, 1949 [GC; RS 0.518.12, 0.518.23, 0.518.42, and 0.518.51] and Article 4 of the Additional Protocol of June 8, 1977, to the Geneva Conventions relating to the protection of victims of non-international armed conflicts [AP II; RS 0.518.522] (MPC 01-01-0001 et seq.).

A.5 An arrest warrant was issued for Alieu KOSIAH on November 10, 2014. He was arrested in Lausanne on the same day and placed in custody at Prison V. (MPC 06-01-0001 et seq.). On November 13, 2014, the Cantonal Court for Coercive Measures of the Canton of Bern (Court for Coercive Measures) ordered the pretrial detention of Alieu KOSIAH for a period of three months (MPC 06-01-0134 et seq.). This detention was subsequently extended on a regular basis (MPC 06-01).

A.6 On November 11, 2014, Attorney Dimitri GIANOLI (Mr. GIANOLI) was appointed as Alieu KOSIAH's court-appointed defense counsel (MPC 16-01-0001 et seq.).

A.7 On the same day, Alieu KOSIAH was questioned for the first time by the MPC in his capacity as a defendant (MPC 06-01-0065). During the preliminary proceedings, which lasted from August 2014 to March 2019, Alieu KOSIAH was questioned 28 times (MPC 13-01-0001 et seq.; 13-02-0001 et seq.).

A.8 On June 23, 2016, Christopher GREENE, a Liberian national, filed a criminal complaint with the OAG, through his counsel, Attorney WERNER, against Alieu KOSIAH for war crimes (OAG 05-01-0017 et seq.).

A.9 On August 23, 2016, Carol ALEXANDER, a Liberian national, filed a criminal complaint with the MPC, through her counsel, Attorney Zeina WAKIM (Ms. WA-KIM), against Alieu KOSIAH for crimes against humanity and war crimes (MPC 05-04-0001 et seq.).

A.10 The MPC expanded the investigation to include the offenses of recruiting child soldiers and looting on September 2, 2015, and subsequently to include the offense of violating human dignity on November 3, 2016 (MPC 01-01-0005 et seq.). Following a criminal complaint filed on September 30, 2016, by the Social Welfare and Assistance Service of the Canton of Vaud (MPC 05-05-0031 et seq.), the MPC ordered the consolidation of the federal and cantonal proceedings and the expansion of the investigation to include the offenses of fraud and forgery of documents (MPC 01-01-0007 et seq. and 0012).

A.11 During the investigation, the MPC interviewed the complainants Levi FAR-RELL (MPC 12-07-0001 et seq.), Georges ROSADO (MPC 12-08-0001 et seq.), Nicolas COOK (MPC 12-09-0001 et seq.), Christopher GREENE (MPC 12-20-0001 et seq.), Carol ALEXANDER (MPC 12-21-0001 et seq.), Philip JORDAN (MPC 12-22-0001 et seq.), Eddie COULTER (MPC 12-26-0001 et seq.), Robbie CARY (MPC 12-27-0001 et seq.),
James CAMDEN (MPC 12-28-0001 et seq.), as well as 27 witnesses and individuals called upon to provide information (MPC 12-00-0000 et seq.).

A.12 Through national and international mutual legal assistance, various documents were added to the case file. These include, in particular, documents from the defendant's asylum file (MPC 18-01-0012 et seq.), transmitted by the State Secretariat for Migration (SEM), from the interrogation of Ryan WALDROP by the Norwegian National Criminal Investigation Service (MPC 18-05-0022 et seq.) and from the interrogation of Kwamex FOFANA by the U.S. Department of Homeland Security (MPC B18-03-01-0001 et seq.). Furthermore, on November 26, 2014, the MPC submitted a request for mutual legal assistance to Liberia seeking, in particular, the transmission of certain documents concerning Alieu KOSIAH as well as the possibility of conducting interviews in Liberia, either via videoconference or in person. This request was forwarded, via the Swiss Embassy in Abidjan and the Liberian Ministry of Foreign Affairs, to the Liberian Ministry of Justice, specifically to the Office of the Attorney General (MPC 18-02-0001 et seq.).

The Liberian authorities initially agreed to the request for mutual legal assistance (MPC 18-02-0028) but subsequently failed to respond to further requests from the Swiss authorities. The MPC sent a supplementary request for mutual legal assistance on December 20, 2016 (MPC 18-02-0030 et seq.), then repeated its requests on July 14 and December 12, 2017 (MPC 18-02-0040 et seq. and 0047 et seq.) and sent a final supplementary request for mutual legal assistance on May 4, 2018 (MPC 18-02-0055 et seq.). The MPC's requests remained unanswered.

A.13 On December 11, 2018, the MPC revoked Levi FAR-RELL's status as a complainant regarding the facts set forth in section 1.3.17 of the indictment (MPC 15-01-0737 et seq.). This decision was not challenged. On the same day, the MPC revoked Philip JORDAN's status as a complainant regarding the facts set forth in section 1.3.3 of the indictment (MPC 15-01-0730 et seq.). The appeal filed against this decision was dismissed by decision BB.2019.3 of the Complaints Chamber of the Federal Criminal Court (Complaints Chamber) dated May 22, 2019 (TPF 40.510.012 et seq.). On January 7, 2019, the Office of the Attorney General (OAG) withdrew Georges ROSADO's status as a complainant with respect to the facts set forth in section 1.3.5 of the indictment (OAG 15-02-0951 et seq.). The appeal filed against this decision was dismissed by decision of the Complaints Court BB.2019.14 dated May 22, 2019 (TPF 40.510.027 et seq.).

A.14 On March 22, 2019, the MPC filed an indictment with the Criminal Division of the Federal Criminal Court (Criminal Division), in which it charged Alieu KOSIAH with violations of the laws of war under Art. 109(1) aCPM *in conjunction with* Art. 108(2) aCPM and Art. 3 common to the General Provisions and Art. 4 of Part II of the Penal Code (TPF 40.100.001 et seq.).

B. First-instance proceedings SK.2019.17

B.1 On April 8, 2019, the Court of Coercive Measures ordered the pretrial detention of Alieu KOSIAH until September 21, 2019 (TPF 40.231.7.011 et seq.). This detention was subsequently extended on a regular basis (TPF 40.231.7.061 et seq., 094 et seq., 128 et seq., and 196 et seq.).

B.2 On May 7, 2019, at the request of the Criminal Court (TPF 40.110.001), the Office of the Attorney General issued two orders to dismiss the cases (TPF 40.110.008 et seq.; TPF 40.110.066 et seq.). The first concerned charges of violations of the laws of war, and the second concerned criminal proceedings for fraud and forgery of documents. Since the allegations made by Robbie CARY were dismissed, he lost his status as a party to the proceedings. The appeal filed by Attorney WAKIM against the first order to dismiss the case was rejected by decision of the Complaints Chamber BB.2019.106 dated November 7, 2019 (TPF 40.510.126 et seq.).

B.3 Transcripts of witness hearings conducted as part of the proceedings against Mohammed JABBATEH (alias JUNGLE JABBAH) in the United States (TPF 40.261.1.011-0001 et seq.) as well as the transcript of the hearing of Massa WASHINGTON by the authorities of the same country (TPF 40.261.1.024 et seq.), obtained through international mutual legal assistance, were added to the case file. On September 10 and October 14, 2019, the OAG submitted the transcripts of the hearings of Alieu KOSIAH held onMay and August 30, 2019, conducted in response to requests for mutual legal assistance from the Norwegian authorities and, in connection with the criminal proceedings against Kunti KAMARA (alias KUNDI), from the French authorities (TPF 40.510.074 et seq. and 104 et seq.).

B.4 On February 4, 2020, in response to a request for international mutual legal assistance, the Paris National Anti-Terrorism Prosecutor's Office (PNAT) transmitted to the Criminal Court, among other things, the criminal complaint filed by CIVITAS MAXIMA against Kunti KAMARA, the transcripts of a hearing and interrogations of the aforementioned defendant, as well as the transcripts of several hearings of civil parties, some of which were conducted in Liberia (TPF 40.261.3.0016 et seq.). On March 11, 2020, the PNAT submitted additional documents, including two transcripts of hearings with Kunti KAMARA (TPF 40.261.3.1031 et seq.).

B.5 The trial was initially scheduled for April 2020 (TPF 40.310.008), then postponed twice due to the COVID-19 health crisis (TPF 40.310.113 et seq.), and finally set for December 3, 2020 (TPF 40.310.140) and January 18, 2021 (TPF 40.310.151). Due to the health situation, the trial was divided into two parts (TPF 40.310.138 et seq.). The first part of the proceedings took place from December 3 to 9, 2020. Present were the Office of the Attorney General (MPC), its representatives, the defendant Alieu KOSIAH, assisted by his court-appointed defense counsel, and the counsel for the plaintiffs. The plaintiffs did not appear, as their presence was not deemed necessary by the Criminal Court for the first part of the proceedings and they were therefore merely invited to appear voluntarily (TPF 40.720.001 et seq.).

B.6 At the opening of the proceedings, Attorney JAKOB raised three preliminary questions regarding the application of Art. *264a* of the Swiss Penal Code (CP)—which criminalizes crimes against humanity—to the acts alleged in the indictment; the application of Articles *264b* et seq. of the Swiss Penal Code (CP)—which criminalize war crimes—in lieu of Articles 108 and 109 of the former Military Penal Code (aCPM); and the application of Article *264k* of the Swiss Criminal Code (CP)—which concerns the liability of superiors (TPF 40.720.004 and 011 et seq.). Mr. GIANOLI, for his part, raised the issue of whether the attorneys for CIVITAS MAXIMA were qualified to represent the plaintiffs in the proceedings, as well as the admissibility of certain pieces of evidence. He further requested the removal from the record of documents related to the identification of witnesses Russell and Brian HASTING by plaintiffs Eddie COU-TER and Levi FARRELL (TPF 40.720.017 et seq.). The Court essentially rejected the

preliminary questions raised (TPF 40.720.035 et seq.). Attorney JAKOB then raised 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 Art. *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 this preliminary question (TPF 40.720.038 et seq.).

B.7 The Court then commenced the evidentiary proceedings and heard testimony from the defendant Alieu KOSIAH. The proceedings were adjourned on December 9, 2020.

B.8 The proceedings resumed on February 15, 2021. Present at the hearing were the Office of the Public Prosecutor (MPC), its representatives, the defendant Alieu KOSIAH, assisted by his court-appointed attorney, the plaintiffs, and their respective representatives. Since the complainant Carol ALEXANDER was unable to attend, she was excused and represented by her counsel (TPF 40.720.045).

B.9 From February 15 to 26, 2021, the Criminal Court continued the evidentiary proceedings and heard testimony from the plaintiffs Christopher GREENE (TPF 40.751.001 et seq.), Carol ALEXANDER (TPF 40.752.001 et seq.), Nicolas COOK (TPF 40.753.001 et seq.), Eddie COULTER (TPF 40.754.001 et seq.), Georges ROSADO (TPF 40.755.001 et seq.), Levi FARRELL (TPF 40.756.001 et seq.), and James CAMDEN
(TPF 40.757.001 et seq.), the witnesses Walter VARGAS (TPF 40.761.001 et seq.), Philip JORDAN (TPF 40.762.001 et seq.), Kevin THOMAS (TPF 40.763.001 et seq.), John THOMAS (TPF 40.764.001 et seq.), Russell HASTING (TPF 40.765.001 et seq.), Brian HASTING (TPF 40.766.001 et seq.), Richard WALDROP (TPF 40.767.001 et seq.), Gary
THOMAS (TPF 40.769.001 et seq.) and the witness Kunti KAMARA (TPF 40.771.001 et seq.), as well as the supplementary hearing of the defendant (TPF 40.731.279 et seq.). Partial closure of the proceedings was ordered for the hearing of Carol ALEXANDER (TPF 40.720.042), which, like that of Richard WALDROP, took place via videoconference from the U.S. Embassy in Monrovia (TPF 40.720.052; TPF 40.767.002). Kunti KAMARA, who is detained in France, was heard via videoconference from the Paris Judicial Court (TPF 40.261.3.1165 et seq.).

B.10 Following the hearings of James CAMDEN and Georges ROSADO, the Office of the Attorney General requested permission to amend the indictment of March 22, 2019, on two points (TPF 40.510.181 et seq. and 40.720.052 et seq.):

- amending the date of the offense referred to in section 1.3.2, such that it is alleged to have been committed between February and April 1993 (rather than March 1993);
- the addition, in section 1.3.6 of the indictment, of a reference to Kunti KAMARA as the possible perpetrator of the stabbing with which the defendant

is charged,

with the result that the defendant's form of participation was reclassified, in the alternative, as joint commission or complicity.

This request was partially granted by the Criminal Court (TPF 40.720.052; see also judgment SK.2019.17, para. 2.2.5). With regard to the first amendment, the Court held that extending the period during which the offense referred to in section 1.3.2 of the indictment was committed did not constitute a violation of the adversarial principle, since it did not introduce any uncertainty or ambiguity regarding the event in question or the charge against the defendant. Regarding the second amendment, the lower court held that it amounted to adding another potential perpetrator to the offense referred to in section 1.3.6 of the indictment and that this was not permissible under established case law. It nevertheless reserved the right, pursuant to Art. 344 of the Code of Criminal Procedure of October 5, 2007 (CCP; RS 312.0), to examine the defendant's conduct in light of the various forms of conduct, namely commission (including as an indirect perpetrator), coercion, instigation, and aiding and abetting.

B.11 At the conclusion of the closing arguments, the defendant was given the floor to speak one last time, which he did (TPF 40.720.103 et seq.). The proceedings concluded on March 5, 2021, and the Criminal Court retired to deliberate (TPF 40.720.109).

B.12 On June 18, 2021, the Criminal Division rendered its judgment SK.2019.17, the operative part of which is reproduced here (TPF 40.930.296 et seq.):

"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(1) and 108(2)(a) of the Military Penal Code [aCPM] in conjunction with *Art. 3 common to the General Provisions [CG] and Art. 4(3)(c) of the Act on the Prosecution of War Crimes [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 section 1.3.6 of the indictment (Art. 109, para. 1, and Art. 108, para. 2, of the Military Criminal Code (aCPM), in conjunction with *Art. 3, para. 1, item 1, subitem a, common to the General Provisions, and Art. 4, item 2, subitem a, of the Military Criminal Procedure Code (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 Swiss Penal 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 (PA II));*

1.4 Order to loot as set forth in section 1.3.11 of the indictment (Art. 109, para. 1, and Art. 108, para. 2, aCPM in conjunction with Art. 18 aCPM, in conjunction with *Art. 3 common to the General Provisions and Art. 4, para. 2, subparagraph g, 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 the Act on the Implementation of International Criminal Law (PA II));*

2.2 Orders given to kill seven civilians and six civilians, respectively, as set forth in counts 1.3.2 and 1.3.5 of the indictment (Art. 109(1) and 108(2) of the Swiss Military Criminal 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);*

2.3 Order to kill two unarmed soldiers, as set forth in section 1.3.21 of the indictment (Art. 109, para. 1, and Art. 108, para. 2, of the 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 sections 1.3.3, 1.3.15, 1.3.17, and 1.3.18
of the indictment (pursuant to Art. 109(1) and Art. 108(2) aCPM in conjunction with *Art. 3(1)(1)(a), common to the General Provisions, and Art. 4(2)(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) aCPM in conjunction with *Art. 3(1)(1)(c) common to the General Provisions and Art. 4(2)(e) PA II);*

2.6 Order to treat seven civilians cruelly, as set forth in section 1.3.4 of the indictment (Art. 109(1) and 108(2) of the Military Penal Code (aCPM) in conjunction with Art. 18 of the Military Penal Code (aCPM), in conjunction with *Art. 3(1)(1)(a) common to the General Provisions and Art. 4(2)(a) of the Act on the Prosecution of War Crimes (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 Military Penal Code (aCPM) in conjunction with *Art. 3(1)(1)(c) common to the General Provisions and Art. 4(2)(e) of the Military Criminal Procedure Code (PA) II);*

2.8 Repeated orders to treat several civilians cruelly, or in a humiliating and degrading manner, as set forth in sections 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 the Military Penal Code (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(1) and 108(2) of the Swiss 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 the Military Criminal Procedure Code (PA II));*

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 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, section 2, subparagraph g of the II Act);*

3. Alieu Kosiah is sentenced to 20 years' imprisonment, with credit for pretrial detention served from November 10, 2014, to June 18, 2021, totaling 2,413 days.

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 Bern 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 Christopher GREENE;*
- *CHF 8,000 to Carol ALEXANDER;*
- *CHF 8,000 to Nicolas COOK;*
- *CHF 6,600 to Eddie COULTER;*
- *CHF 8,000 to Georges ROSADO;*
- *CHF 6,600 to Levi FARRELL;*
- *CHF 7,300 to James CAMDEN.*

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 Christopher GREENE;*
- *CHF 1,225.80 to Nicolas COOK;*
- *CHF 1,225.80 to Eddie COULTER;*
- *CHF 1,225.80 to Georges ROSADO;*
- *CHF 1,225.80 to Levi FARRELL;*

- *CHF 1,225.80 to James CAMDEN.*

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 litigation costs (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 Swiss Criminal Procedure Code are dismissed.

V. Compensation for the Court-Appointed Counsel

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 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. 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, subpar. b, CPP).

VI. Compensation for Pro Bono Legal Counsel

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 the 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), 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 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 to: CHF 434,000) (including VAT), less two-thirds of the advance payments made up to March 22, 2019, and the full amount of the advance payments made on or after March 23, 2019; this compensation is to be borne by the Confederation (Art. 138(1) CPP).'

B.13 Judgment SK.2019.17 was announced and the grounds for the decision were presented orally in a public hearing on June 18, 2021 (TPF 40.720.109). On the same day, the Criminal Court ordered that the defendant remain in custody for six months on security grounds to ensure the enforcement of the sentence (TPF 40.912.2.003 et seq.). This detention was subsequently extended twice, on December 23, 2021, and March 18, 2022, most recently until April 14, 2022, again to ensure the enforcement of the sentence (TPF 40.912.2. et seq. and 025 et seq.).

B.14 On August 13, 2021, the Criminal Court took note of the appointment of Attorney Jean-Pierre BLOCH (Mr. BLOCH) as the private defense counsel for Alieu KO-SIAH (TPF 40.201.022).

B.15 On June 25, 2021, Alieu KOSIAH, through Attorney GIANOLI, announced his intention to appeal the first-instance judgment (TPF 40.940.001).

B.16 On March 31, 2022, the reasoned judgment was sent to the parties (TPF 40.930.301 et seq.).

C. Proceedings before the Court of Appeals of the Federal Criminal Court

C.1 On March 31, 2022, the Criminal Division forwarded to the Appeals Chamber of the Federal Criminal Court (the Court) the reasoned judgment SK.2019.17 dated June 18, 2021, the defense's notice of appeal, and the case file (CAR 1.100.006 et seq. and 299 et seq.).

C.2 By Order CN.2022.3 dated April 14, 2022 (CAR 8.100.020 et seq.), the presiding judge ordered that Alieu KOSIAH remain in custody for security reasons

of security at the latest until the conclusion of the appellate proceedings, or until the commencement of the enforcement of any custodial sentence, considering, in support of its decision, that the risk of flight still persisted and had increased since the defendant's conviction in the trial court to a 20-year prison sentence (consideration 10).

C.3 On April 20, 2022, the Complaints Court referred to the Court, for reasons of jurisdiction, the appeal filed on April 14, 2022, by Mr. GIANOLI, through his counsel, Mr. Cyril KLEGER (Mr. KLEGER), challenging section V of the operative part of judgment SK.2019.17 concerning compensation for the court-appointed defense counsel (CAR.1.101.001 et seq.). It contains the following conclusions:

> *"I. Set aside Section V of the judgment rendered on June 18, 2021, by the Criminal Division of the Federal Criminal Court;*
>
> *II. Accordingly, to award the appellant, Attorney Dimitri Gianoli, compensation for services as a court-appointed defense counsel in the amount of 1,410,887.35 francs (including VAT and disbursements), less advance payments of 644,280.75 francs, said compensation to be borne by the Confederation;*
>
> *III. The costs and expenses are to be borne by the parties."*

C.4 On April 25, 2022, Alieu KOSIAH, represented by Attorney GIANOLI, filed a notice of appeal with the Court pursuant to Art. 399, para. 3 of the Swiss Criminal Procedure Code (CAR 1.100.303 et seq.). He stated that he intended to challenge the portions of the first-instance judgment that found him guilty, seek his acquittal, and thereby contest the imposition of civil claims against him, the allocation of costs and expenses, and the denial of compensation under Art. 429 of the Swiss Criminal Procedure Code (CPP).

C.5 By Order CN.2022.4 of May 10, 2022 (CAR 8.102.036 et seq.), the presiding judge found that the motion seeking the appointment of Attorney BLOCH as court-appointed defense counsel in place of Attorney GIANOLI was moot and indicated that said motion, had it been maintained, would have been denied, since there were no grounds to revoke Attorney GIANOLI's appointment as court-appointed defense counsel. It further rejected the request to appoint Mr. BLOCH as a second court-appointed defense counsel. Prior to the hearings, the presiding judge, by Order CN.2022.6 of December 20, 2022 (CAR 8.103.009 et seq.), had rejected a new request seeking the appointment of Attorney BLOCH as a second court-appointed defense counsel (see *below*, consid. I.4, for further details regarding the defendant's defense).

C.6 On May 16, 2022, the Office of the Attorney General filed a joint statement of appeal pursuant to Art. 399(3) *in conjunction with* Art. 401(1) of the Swiss Criminal Procedure Code (CAR 1.400.005 et seq.), limited to the issue of the defendant's guilt in connection with certain acts, in which it made the following submissions:

> *"On procedural grounds*
>
> *1. Declare this joint appeal admissible. On*
>
> *the merits*
>
> *2. Amendment to Section I.1.2 of the operative part: Find Alieu KOSIAH guilty of attempted murder of a civilian, or alternatively, of causing bodily harm, or harm to health and physical well-being, as set forth in Section 1.3.6 of the indictment (Art. 109, para. 1, and Art. 108, para. 2, of the Military Criminal Code [aCPM],* in conjunction with *Art. 3, para. 1, item 1, subitem a, common to the General Provisions [CG], and Art. 4, item 2, subitem a, of the Military Penal Code [PA II]).*
>
> *3. Amendment to Section I.1.3 of the operative part: find Alieu KOSIAH guilty of complicity in the murder of a civilian pursuant to Section 1.3.8 of the indictment (Art. 109(1) and 108(2) of the Swiss Military Penal Code (aCPM)* in conjunction with *Art. 3(1), item 1(a) common to the General Provisions and Art. 4, para. 2, subpara. a of PA II).*
>
> *4. Amendment to Section I.1.4 of the operative part: to find Alieu KOSIAH guilty of ordering looting pursuant to Section 1.3.11 of the indictment (Art. 109(1) and 108(2) of the Swiss Military Penal Code (aCPM) in conjunction with Art. 18 of the Swiss Criminal Code (aCPM)* in conjunction with *Art. 3 common to the General Provisions and Art. 4, para. 2, subpar. g of the Penal Code (PA II)).*
>
> *5. In all other respects, affirm the judgment SK.2019.17 rendered by the Criminal Division of the Federal Criminal Court on June 18, 2021.*
>
> *6. Dismiss all other or contrary claims by Alieu KOSIAH.*
>
> *7. Order Alieu KOSIAH to pay the costs of the appeal proceedings."*

C.7 On May 17, 2022, Georges ROSADO, represented by Attorney JAKOB, filed a notice of appeal pursuant to Art. 399(3) *in conjunction with* Art. 401(1) of the Swiss Criminal Procedure Code (CAR 1.400.010 et seq.), challenging the acquittal of Alieu KOSIAH as set forth in point I.1.2 of the operative part of the judgment under appeal, the rejection of the application of Art. *264a* of the Swiss Penal Code (CP) – and, in the alternative, the rejection of the request to refer the indictment back to the Office of the Attorney General for supplementation – and the failure to convict Alieu KOSIAH of crimes against humanity, particularly with regard to the facts pertaining to him. Georges ROSADO requested that the judgment of first instance be amended as follows:

> *"Find Mr. Alieu KOSIAH guilty of attempted murder, or alternatively, of causing bodily harm, or harm to the health and physical well-being of Mr. Georges ROSADO, as set forth in paragraph 1.3.6 of the indictment.*

Find Mr. Alieu KOSIAH guilty of crimes against humanity for the acts set forth in sections 1.3.4, 1.3.6, and 1.3.7 of the indictment."

He further requested that the Court dismiss the defense's appeal insofar as it was directed against Point III.A of the operative part concerning the amounts awarded to the complainants for expenses incurred due to their presence in Switzerland, arguing that Alieu KOSIAH lacked standing to bring the appeal, since he would bear only a very small fraction of those expenses. Attorneys WERNER and WAKIM joined this request on June 7, 2022 (CAR 1.400.032 and 033).

C.8 On May 17, 2022, Nicolas COOK, through Attorney MALEH, filed a joint appeal pursuant to Art. 399(3) *in conjunction with* Art. 401(1) of the Swiss Criminal Procedure Code (CAR 1.400.020 et seq.), challenging the rejection of the application of Art. *264a* of the Swiss Penal Code and the failure to convict Alieu KOSIAH of crimes against humanity, particularly with regard to the facts concerning him, in which he requested that the judgment of the court of first instance be amended as follows:

"Find Mr. Alieu Kosiah guilty of crimes against humanity for the acts set forth in sections 1.3.19 and 1.3.20 of the indictment."

C.9 On May 17, 2022, Christopher GREENE, Eddie COULTER, Levi FARRELL, and James CAMDEN, represented by Attorney WERNER, filed a joint notice of appeal pursuant to Art. 399(3) *in conjunction with* Art. 401(1) of the Swiss Criminal Procedure Code (CAR 1.400.022 et seq.), challenging the rejection of the application of Art. *264a of* the Swiss Penal Code (CP) — and, in the alternative, the rejection of the request to refer the indictment back to the Office of the Attorney General for supplementation — and the failure to convict Alieu KOSIAH of crimes against humanity, particularly with regard to the facts concerning them. They requested that the first-instance judgment be amended as follows:

"Find Mr. Alieu KOSIAH guilty of crimes against humanity for the acts 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."

C.10 On May 17, 2022, Carol ALEXANDER, represented by Attorney WAKIM, filed a joint notice of appeal pursuant to Art. 399(3) *in conjunction with* Art. 401(1) of the Swiss Criminal Procedure Code (CAR 1.400.024 et seq.), challenging the court's refusal to apply Art. *264a* of the Swiss Penal Code—and, in the alternative, the rejection of the request to refer the indictment back to the Office of the Attorney General for supplementation—and the failure to convict Alieu KOSIAH of crimes against humanity, particularly with regard to the facts concerning her. She requested that the first-instance judgment be amended as follows:

"Find Mr. Alieu KOSIAH guilty of crimes against humanity for the acts set forth in sections 1.3.22, 1.3.23, and 1.3.24 of the indictment."

C.11 On June 20, 2022, the defense filed a motion to dismiss the joint appeals of the plaintiffs Carol ALEXANDER, Nicolas COOK, Georges ROSADO, Christopher GREENE, Eddie COULTER, Levi FARRELL, and James CAMDEN (CAR 1.400.038 et seq.), arguing that they lacked standing to appeal the legal characterization adopted by the Criminal Court because they had not suffered any concrete harm from the contested judgment, since they had prevailed on the charges that directly concerned them.

C.12 By decision of August 4, 2023 (CAR 1.400.057 et seq.), the Court accepted for consideration the appeal filed by Alieu KOSIAH as well as the consolidated appeals filed by the Office of the Attorney General (MPC) and the plaintiffs, and indicated that the appeal filed by Attorney GIA-NOLI regarding his compensation as a court-appointed defense counsel would be addressed within the framework of the present appeal proceedings. It further granted the MPC, pursuant to Art. 333(1) of the Criminal Procedure Code, the opportunity to amend the indictment of March 22, 2019, by September 5, 2022, so that the Court could rule on the application of Art. *264a* of the Swiss Penal Code, specifying that the case remained pending before it (see *below*, consid. I.1, for further details regarding the decision to proceed with the appeal).

C.13 On September[1,] 2022, the Court, after consulting with the parties, confirmed to them the dates set for the appellate hearings, namely from January 11 to February 3, 2023 (CAR 4.100.011 and 013 et seq.).

It is noted that Mr. WERNER, who, like all the parties, had been invited to provide his availability for the scheduling of the appellate hearings from November 2 to 16, 2022, had stated, on June 17, 2022, that it was highly unlikely that the hearings could have been held before December 2023, citing his participation, as well as that of the organization CIVITAS MAXIMA, of which he is the director, in the trial of Kunti KAMARA scheduled to take place in Paris beginning October 10, 2022, as well as logistical constraints (CAR 4.100.002 and 008 et seq.).

C.14 On September 2, 2022, the MPC submitted an amended version of the indictment dated March 22, 2019, in which it now charges the defendant with not only violations of the laws of war, but also crimes against humanity within the meaning of Art. *264a* of the Swiss Criminal Code (CAR 2.101.003 et seq.; see *below*, para. I.1.4, for further details regarding the review of the validity of the amended indictment).

C.15 On September 22, 2022, the Court ordered written proceedings in the context of the present appeal to address Mr. GIANOLI's appeal of April 14, 2022, since only the issue of his compensation as a defense counsel

was at issue, and gave Mr. KLEGER the opportunity to supplement his appeal brief (CAR 2.107.002 et seq.). On December 3, 2022, Mr. KLEGER indicated that he was waiving his right to supplement his appeal of April 14, 2022, and maintained the conclusions he had set forth therein (CAR 2.107.010). When asked to rule on the appeal filed on April 14, 2022, the Office of the Attorney General withdrew it (CAR 2.101.055).

C.16 On October 27, 2022, the parties were summoned to the appellate hearing (CAR 4.301.001 et seq.).

C.17 By order dated October 25, 2022 (*corrected* to: October 27, 2022), the Court granted certain requests for evidence, namely the hearing of the complainants, at the request of the MPC and the defense, the hearing of Walter VARGAS (CAR 5.310.001 et seq.), at the request of the MPC, and the hearing of Kevin THOMAS (son of Joshua), at the request of the defense (CAR 4.200.057 et seq.). It rejected the OCP's other motions for evidence, seeking to hear testimony from Kevin THOMAS and Philip JORDAN, as well as those from the defense, seeking in particular to hear testimony from Russell HASTING, Brian HASTING, Seth RAINES, Nathaniel THOMAS, Glenn THOMAS, Dean COULTER, and Louis DALE (son of Lucas DALE), and to produce the official case files from the proceedings conducted by the Finnish, Norwegian, and British authorities against Sean LANDA, Ryan WALDROP, and Troy BECKER (alias Troy BECKER_1), respectively.

C.18 On November 14, 2022, the Court provided the parties with the provisional schedule for the proceedings (CAR 4.100.022 et seq.).

C.19 On December 6, 2022, the Court informed the parties that it had entered into the record the transcripts of Walter VARGAS's hearings on March 15 and April 12, 2021, regarding his asylum application, in a redacted version provided to the Court by the SEM (CAR 4.200.155 et seq.).

C.20 By order dated December 22, 2022 (CAR 4.200.179 et seq.), the Court granted certain requests for evidence, namely the inclusion in the record of three documents from the criminal proceedings conducted in France against Kunti KAMARA (the judgment of the Paris Court of Appeal dated April 1er April 2021 [CAR 4.200.100 et seq.], the judgment of the Paris Assize Court dated November 2, 2022 [CAR 4.200.126 et seq.], and the statement of reasons dated November 3, 2022 [CAR 4.200.130 et seq.]), at the request of Attorney WERNER, and the hearing of Gina FARRELL, at the request of the defense (CAR 5.309.001 et seq.). It rejected the defense's motions for evidence seeking to call Mark CONNOR, Jamie HENNINGS, Regina McCREIGHT, Karen McCREIGHT
(married name HAYES), Larry CARR, Glenn THOMAS, Nathaniel THOMAS, Mary McCOY, Tania JACKSON, August HASTING, Chad HASTING, Jake HASTING
, and Jade COULTER. The Court also rejected the defense's motion to introduce into the record all video footage pertaining

the trial hearing before the Paris Assize Court of Kunti KAMARA, which had also been implicitly requested by Attorney WERNER. The Court noted in this regard that the video recordings in question could not be included in the case file for the reasons cited by the presiding judge of the Paris Assize Court in his response dated December 8, 2022 (CAR 3.101.048 et seq.).

C.21 On January 2, 2023, the parties were informed of a change in the Court's composition, with Judge Andrea ERMOTTI joining the Court as of that date (CAR 1.200.003 et seq.).

C.22 In preparation for the proceedings, the Court requested and obtained the following documents concerning Alieu KOSIAH: an extract from the Swiss criminal record, dated December 6, 2022 (CAR 4.401.004 et seq.); an extract from the debt collection registry, dated December 8, 2022 (CAR 4.401.010 et seq.); the most recent tax assessment decision, dated November 4, 2013 (CAR 4.401.015 et seq.); and the conduct report from V. Prison, dated December 9, 2022 (CAR 4.401.012 et seq.). At the request of Attorney JAKOB, she also submitted to the record a copy of the documentary film, provided by Attorney WERNER, titled "Liberia" and directed by Christophe NAIGEON (CAR 4.200.098 et seq., 150, and 153).

C.23 The appellate proceedings lasted twelve days and were held from January 11 to February 3, 2023, in the presence of representatives of the Office of the Public Prosecutor, the defendant Alieu KOSIAH, and his court-appointed counsel, the complainants—it being noted that they attended the evidentiary phase to the extent that they were involved and subsequently returned to Liberia—as well as their respective counsel, and an English interpreter (CAR 5.100.001 et seq.; see also *infra*, para. I.2.1.1).

C.24 The Court heard testimony from the accused, Alieu KOSIAH (CAR 5.301.001 et seq.), the complainants Carol ALEXANDER (CAR 5.302.001 et seq.), James CAMDEN (CAR 5.303.001 et seq.), Christopher GREENE (CAR 5.304.001 et seq.), Georges ROSADO (CAR 5.305.001 et seq.), Eddie COULTER (CAR 5.306.001 et seq.), Levi FARRELL (CAR 5.307.001 et seq.) and Nicolas COOK (CAR 5.308.001 et seq.), the witness Gina FARRELL (CAR 5.309.001 et seq.), and the person called to provide information, Walter VARGAS (CAR 5.310.001 et seq.), it being noted that the latter refused to make a statement and that the witness Kevin THOMAS (son of Joshua) did not appear at the hearing (CAR 5.100.016 and 026). Partial closure of the proceedings was ordered for the hearing of Carol ALEXANDER regarding the sexual offense she reported, as well as for the defendant's hearing on this matter (CAR 5.100.014).

C.25 During the trial, the Court admitted the following evidence and entered it into the record:

- a documentary film directed by Christophe NAIGEON about a child soldier who participated in the First Liberian Civil War, submitted by Attorney WERNER prior to the proceedings (CAR 4.200.191; CAR 5.100.012);
- two videos (CAR 5.200.001), the *"Report on Findings and Pictorials"* dated January 9, 2023 (CAR 5.200.002 et seq.), and a photographic dossier, all submitted on January 11, 2023, by Attorney GIANOLI;
- three files containing various emails and news articles regarding the methods employed by CIVITAS MAXIMA and the GLOBAL JUSTICE AND RESEARCH PROJECT (GJRP), submitted on January 17, 24, and 31, 2023, by Attorney GIANOLI (CAR 5.200.028 et seq., 096 et seq., and 207 et seq.);
- a map (CAR 5.200.329), a document on the average salary in Liberia (CAR 5.200.330 et seq.), and the form regarding Alieu KOSIAH's personal and financial circumstances (CAR 5.200.204 et seq.), submitted on January 31, 2023, by Attorney GIANOLI;
- an email from Attorney WERNER dated January 31, 2023, regarding a message sent to Daniel TODD online (CAR 5.200.332 et seq.).

A video titled *"Theater: Justice in Action*," available on the CIVITAS MAXIMA website, was viewed in court on January 31, 2023, at the request of Attorney GIANOLI (CAR 5.100.041).

The Court, which had been prepared to hear testimony from Carlos ELLIS, ultimately decided against doing so on January 31, 2023, based on information provided by his counsel (CAR 5.100.045 et seq.; for further details, see *infra*, consid. I.6.3.2).

C.26 The Court, again during the proceedings, rejected the following offers of evidence (for further details, see *infra*, para. I.6):

- the testimony of Nathaniel THOMAS, Mary McCOY, and Tania JACKSON requested on January 11, 2023, by Attorney GIANOLI (CAR 5.100.045 et seq.);
- the offers of evidence by Attorney GIANOLI dated January 11, 2023, relating to the *"Report on Findings and Pictorials"* of January 9, 2023, and in particular the depositions of Floyd ALLEN and Joey GRIMES (CAR 5.100.045);
- a new hearing of Walter VARGAS, at his request, on January 24, 2023, following his initial refusal on January 12, 2023, to make statements before the Court (CAR 5.100.034; see also *supra*, C.24);
- the hearings of Jesse SLADE and Vincent WALDROP requested on January 25, 2023, by Attorney GIANOLI (CAR 5.100.045 et seq.);
- two news articles submitted on January 31, 2023, by Attorney GIANOLI (CAR

5.100.045 s.);

- a dossier on hand pumps submitted on January 31, 2023, by Attorney GIANOLI (CAR 5.100.045 s.).

C.27 During the proceedings, the Court received two motions to depart from the legal assessment made by the Office of the Attorney General in its indictment, pursuant to Art. 344 of the Code of Criminal Procedure, and a motion to amend the indictment (for further details, see *below*, paras. II.4.5.2 and II.4.9.2):

- It granted the MPC's motion requesting that it reserve the right to assess the facts relating to section 1.3.11 of the indictment (ordering the looting of the Foya power plant) also from the perspective of acting as a co-perpetrator or principal perpetrator, respectively, pursuant to Art. 344 of the Code of Criminal Procedure (CAR 5.100.019).
- With regard to Counsel JAKOB's motion seeking the application of Art. 344 of the Criminal Procedure Code in connection with section 1.3.6 of the indictment (stabbing Georges ROSADO in Foya), the Court reviewed the indictment and indicated that it was prepared, at this stage, to reserve judgment on the legal classification of joint criminal liability, instigation, or complicity, and clarified that it would rule on the merits, including on the question of whether the facts as described in the indictment also encompass these classifications (CAR 5.100.024). It subsequently granted a motion by the Office of the Prosecutor to amend sections 1.3.5 (ordering the murders of six civilians in Foya) and 1.3.6 of the indictment (CAR 5.200.072 et seq.; CAR 5.100.026 et seq.).

C.28 At the conclusion of its closing argument, Alieu KOSIAH's defense made the following submissions (CAR 5.100.048):

> *"1. Acquit Alieu KOSIAH of all charges and, consequently, exempt him from any penalty;*
>
> *2. Consequently, order the Confederation to pay Alieu KOSIAH the following compensation:*
>
> *a. compensation for expenses incurred in the reasonable exercise of his right to a defense, to be determined on the basis of my bill of fees to be submitted;*
>
> *b. CHF 600,000.00 as compensation for economic damages suffered due to mandatory participation in the criminal proceedings;*
>
> *c. CHF 1,000,200.00 as compensation for non-economic damages suffered as a result of a particularly serious infringement of his personal rights;*
>
> *3. Dismiss the civil claims of the plaintiffs;*
>
> *4. Costs and expenses to be determined, noting that I am acting as court-appointed defense counsel and that, as such, my fees will be*

assessed in accordance with the brief to be filed with the Court's approval within three days following the conclusion of the proceedings."

C.29 At the conclusion of his closing argument, the Office of the Attorney General made the following submissions (CAR 5.100.048 et seq.), with the requested amendments in bold:

"1. The appeal filed by Alieu KOSIAH against judgment SK.2019.17 of the Criminal Division of the Federal Criminal Court dated June 18, 2021, is dismissed.

2. The joint appeal filed by the complainant, Georges ROSADO, against judgment SK.2019.17 of the Criminal Division of the Federal Criminal Court dated June 18, 2021, is granted insofar as it concerns point 1.2 of the operative part, namely the acquittal of Alieu KOSIAH of attempted murder of a civilian, or, in the alternative, causing bodily harm, or harm to health and physical well-being, as set forth in paragraph 1.3.6 of the indictment (the knife wound sustained by Mr. Georges ROSADO in Foya).

3. The joint appeal filed by the Office of the Attorney General of Switzerland against Judgment SK.2019.17 of the Criminal Division of the Federal Criminal Court dated June 18, 2021, is granted.

*4. Judgment SK.2019.17 of the Criminal Division of the Federal Criminal Court dated June 18, 2021, is amended as follows (**amendments in bold**):*

I. Acquittal and Conviction

1. Alieu KOSIAH is acquitted of violating the laws of war in connection with the recruitment of a child soldier as set forth in paragraph 1.3.1 of the indictment (Art. 109(1) and 108(2)(a) of the Swiss Military Criminal Code (aCPM)* in conjunction with *Art. 3 common to the General Provisions and para. 4, item 3, subitem (c) of the Penal Code (PA) Part I).

2. Alieu KOSIAH is found guilty of violations of the laws of war on the following counts:

2.1 Use of a child soldier pursuant to section 1.3.1 of the indictment (Art. 109(1) and 108(2) of the Military Penal Code (aCPM) in conjunction with *Art. 3 common to the General Provisions and Art. 4, section 3, subparagraph c of the Military Criminal Procedure Code (PA II));*

2.2 Issuing orders to kill seven civilians and six civilians, respectively, as set forth in counts 1.3.2 and 1.3.5 of the indictment (Art. 109(1) and 108(2) of the Swiss Military Criminal 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);*

2.3 Order given to kill two unarmed soldiers, as set forth in section 1.3.21 of

the indictment (Art. 109(1) and 108(2) of the 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)(1)(a) common to the General Provisions and Art. 4(2)(a) PA II);*

2.5 Attempted murder of a civilian, alternatively, causing bodily harm, or harm to health and physical well-being, as set forth in section 1.3.6 of the indictment (Art. 109(1) and 108(2) aCPM* in conjunction with *Art. 3(1), item 1(a) (common to the General Provisions) and Art. 4, para. 2(a) PA II);

2.6 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 Swiss Penal Code (aCPM)* in conjunction with *Art. 3(1)(1)(a) common to the General Provisions and Art. 4(2)(a) of the Military Criminal Code (PA II));

2.7 Rape of a civilian woman as set forth in section 1.3.24 of the indictment (Art. 109, para. 1, and Art. 108, para. 2, aCPM in conjunction with *Art. 3, para. 1, section 1, subparagraph c, common to the General Provisions, and Art. 4, section 2, subparagraph e, PA II);*

2.8 Order to treat seven civilians cruelly, as set forth in section 1.3.4 of the indictment (Art. 109(1) and 108(2) of the Military Penal Code (aCPM) in conjunction with Art. 18 of the Military Penal Code (aCPM), in conjunction with *Art. 3(1)(1)(a) common to the General Provisions and Art. 4(2)(a) of the Indictment (PA II));*

2.9 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 the Military Criminal Procedure Code (PA II));*

2.10 Repeated orders to treat several civilians cruelly, or in a humiliating and degrading manner, as set forth in counts 1.3.7, 1.3.10, 1.3.12, 1.3.14, 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 Swiss Military Penal Code (aCPM) in conjunction with Art. 18 of the former aCPM, together with *Art. 3(1)(1)(a) and (c) common to the General Provisions and Art. 4(2)(a) and (e) of the PA II);*

2.11 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(1) and 108(2) of the Swiss 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 the Military Criminal Procedure Code (PA II));*

2.12 Repeated orders to loot as set forth in counts 1.3.11,
1.3.13, and 1.3.22 of the indictment (Art. 109(1) and 108(2) of the Swiss Penal Code (aCPM) in conjunction with Art. 18 of the aCPM, in conjunction with *Art. 3 common to the General Provisions (CG) and Art. 4, item 2, subparagraph g of the II Act).*

5. Judgment SK.2019.17 of the Criminal Division of the Federal Criminal Court, dated June 18, 2021, is affirmed in all other respects.

6. Alieu KOSIAH is ordered to pay the costs of the appeal proceedings.

***

The Office of the Attorney General defers to the judgment of the Court of Appeals regarding the consolidated appeals filed by the plaintiffs Carol ALEXANDER, Nicolas COOK, James CAMDEN, Levi FARRELL, Eddie COULTER, Christopher GREENE, and Georges ROSADO against Judgment SK.2019.17 of the Criminal Division of the Federal Criminal Court dated June 18, 2021, insofar as these joint appeals concern the application of Art. 264a of the Swiss Criminal Code (crimes against humanity).

The Office of the Attorney General of Switzerland (OAG) also defers to the judgment of the Court of Appeals regarding the appeal filed on April 14, 2022, by Attorney Cyril KLEGER on behalf of Attorney Dimitri GIANOLI concerning the compensation for court-appointed counsel awarded in the first-instance judgment."

C.30 At the conclusion of their arguments, counsel for all the plaintiffs presented the following conclusions (CAR 5.100.052 et seq.):

"In response to the Court's request, we hereby confirm in writing the conclusions reached on behalf of the plaintiffs Carol ALEXANDER, Levi FARRELL, Eddie COULTER, Christopher GREENE, James CAMDEN, Nicholas COOK, and Georges ROSADO.

***

Mr. Georges ROSADO *maintains the conclusions set forth in the joint appeal of May 17, 2022 (1.400.010):*

- *to find Mr. Alieu KOSIAH guilty of attempted murder, or alternatively, of causing bodily harm, and of endangering the health and physical well-being of Mr. Georges ROSADO, as set forth in paragraph 1.3.6 of the indictment;*
- *find Mr. Alieu KOSIAH guilty of crimes against humanity for the acts set forth in sections 1.3.4, 1.3.6, and 1.3.7 of the indictment.*

He further concludes:

- *that the main appeal filed by Alieu KOSIAH be dismissed;*
- *to uphold the contested judgment.*

He maintains, to the extent necessary, the civil claims filed before the Criminal Court (40.721.934).

***

Mr. Nicolas COOK *stands by the arguments set forth in his joint appeal of May 17, 2022 (1.400.020) and therefore makes the following arguments:*

- *to dismiss in its entirety the appeal filed by Mr. Alieu KOSIAH against the judgment of the Criminal Court dated June 18, 2021;*
- *to amend the judgment of the Criminal Court of June 18, 2021, as follows: to find Alieu KOSIAH guilty of crimes against humanity for the acts set forth in sections 1.3.19 and 1.3.20 of the amended indictment of September 2, 2022;*
- *in all other respects, affirm section 1.2.8 of the judgment of the Criminal Division dated June 18, 2021, insofar as it relates to sections 1.3.19 and 1.3.20 of the amended indictment dated September 2, 2022;*
- *affirm Section II of the judgment of the Criminal Court dated June 18, 2021, regarding the compensation for emotional distress in the amount of CHF 8,000 awarded to Mr. COOK.*

He maintains, to the extent necessary, the civil claims filed before the Criminal Court (40.721.903).

***

Ms. Carol ALEXANDER *maintains the claims set forth in her joint appeal of May 17, 2022 (1.400.024), but corrects a clerical error as follows:*

- *to find Mr. Alieu KOSIAH guilty of crimes against humanity for the acts set forth in counts ~~1.3.22~~, 1.3.23, and 1.3.24 of the indictment.*

It concludes as follows:

- *that the main appeal be dismissed and the joined appeals be allowed;*
- *that Alieu KOSIAH be convicted on all counts set forth in the amended indictment of September 2, 2022;*
- *upholding the trial court's judgment on the civil claims.*

It maintains, to the extent necessary, the civil claims filed before the Criminal Court (40.721.973).

***

Messrs. James CAMDEN, Levi FARRELL, Eddie COULTER, and Christopher GREENE *maintain the claims set forth in their joint appeal of May 17, 2022 (1.400.022):*

- *to find Mr. Alieu KOSIAH guilty of crimes against humanity for the acts 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.*

They therefore conclude:

- *that the main appeal be dismissed and the joined appeals be allowed;*
- *that Alieu KOSIAH be convicted on all counts set forth in the amended indictment, particularly with regard to the legal classification of crimes against humanity;*
- *that the judgment of the court of first instance be affirmed with respect to the civil claims.*

They maintain, to the extent necessary, the civil claims filed before the Criminal Court (Case No. 40.721.852).

C.31 The defendant was given the opportunity to speak one last time (Art. 347(1) CCP, by reference to Art. 405(1) CCP), which Alieu KOSIAH availed himself of (CAR 5.100.059 et seq.).

C.32 The proceedings concluded on February 3, 2023, and the Court retired to deliberate (CAR 5.100.061).

C.33 The Court issued its judgment on May 30, 2023, and briefly explained its reasoning during the public hearing on June[1,] 2023. On that occasion, the operative part of the judgment was provided to the parties present (CAR 5.100.061 et seq.; CAR 9.100.001 et seq. and 015 et seq.).

C.34 On October 4, 2023, the Court took note of the appointment of Attorney Philippe CURRAT (Mr. CURRAT), dated September 29, 2023, as the chosen counsel for Alieu KOSIAH (CAR 2.102.040 et seq.).

C.35 By Order CN.2023.22 of November 21, 2023, the presiding judge dismissed Mr. CURRAT's motion to revoke Mr. GIANOLI's appointment as court-appointed defense counsel and took note of the termination of Mr. BLOCH's appointment. It also indicated that future notifications in connection with this appeal proceeding would be sent to both Mr. GIANOLI and Mr. CURRAT.

C.36 The reasoned decision was served on the parties on February 29, 2024. Only an abridged version of the decision was served on the appellant, Mr. GIANOLI, containing the grounds relevant to his appeal.

The Court of Appeals finds:

I. Procedure

1. Admissibility

By decision of August 4, 2022, the Court decided to hear the appeal filed by Alieu KOSIAH as well as the joined appeals filed by the Office of the Attorney General and the complainants Georges ROSADO, Nicolas COOK, Christopher GREENE, Eddie COULTER, Levi FARRELL, James CAMDEN, and Carol ALEXANDER against the judgment of the Criminal Division of the Federal Criminal Court SK.2019.17 dated June 18, 2021 (*supra*, C.12).

1.1 Jurisdiction of the Swiss Federal Criminal Court ( )

1.1.1 The trial court examined the applicable legal provisions to determine whether Swiss courts had jurisdiction in this case. According to the Criminal Division, since procedural rules that extend the *ius puniendi* are subject to the principle of non-retroactivity, and since Art. *264m* of the Swiss Criminal Code—concerning acts committed abroad—which entered into force on January[1,] 2011, extends the scope of application of the Swiss Criminal Code, this provision would not be applicable. The trial court therefore held that jurisdiction should be based on Articles 9 and 108 through 114a of the Military Criminal Code (judgment SK.2019.17, para. 1.1).

While no party challenged Switzerland's jurisdiction, the Office of the Attorney General (OAG), at both the trial and appellate levels, and Attorney JAKOB, at the trial level, requested that the new law be applied. In its order dismissing the case on May 7, 2019, concerning acts prosecuted for violations of the laws of war (*supra*, B.2), the OAG further held that jurisdiction should be based on Art. *264m* of the Swiss Criminal Code (para. 2.1.2 [TPF 40.110.023 et seq.]). It subsequently referred to this during the first-instance proceedings (TPF 40.721.046). On appeal, the MPC argued for the application of Art. *264m* of the Swiss Criminal Code (CP), contending that the acts in question were already punishable in Switzerland at the time they were committed, that the provision in question does not have the effect of extending the *ius puniendi*, and that it may be applied to acts that occurred before its entry into force (CAR 5.200.749 et seq.). Attorney JAKOB appears to share this position, since he implicitly based Switzerland's jurisdiction on Art. *264m* of the Swiss Criminal Code when he requested the application of the new law on the merits in connection with the preliminary questions in the first instance (TPF 40.720.004 and 015), it being further noted that Mr. MALEH had concurred with this preliminary question (TPF 40.720.016). As for the defense, it does not challenge the jurisdiction of the Swiss courts. Moreover, it did not address this issue, either at the trial court level or on appeal, and

nor has it addressed the issue of the legal provisions on which such jurisdiction would be based.

1.1.2 On January[1], 2011, upon the entry into force of the amendment of June 28, 2010, Title 12[quater], comprising Articles *264k* through *264n* of the Swiss Criminal Code (CP), was introduced into the Swiss Criminal Code. According to the terms of Article *264m*(1) of the Swiss Criminal Code, anyone who commits abroad any of the acts referred to in Titles 12[bis](genocide and crimes against humanity) and 12[ter] (war crimes) or in Article *264k* (criminal liability of superiors) is punishable if they are in Switzerland and are not extradited or surrendered to an international criminal court whose jurisdiction is recognized by Switzerland, it being specified that Article *264m* of the Swiss Criminal Code is a *lex specialis* in relation to Article 7 of the Swiss Criminal Code (TPF 2018 151, para. 2.1; decision of the Complaints Court BB.2011.140 of July 25, 2012, para. 2.3, unpublished in TPF 2012 97). According to Art. 2, para. 2, of the Swiss Criminal Code (CP), a criminal provision is applicable only if the defendant is brought to trial after the date of its entry into force and if it is more favorable to the defendant than the law in force at the time of the offense (principle of non-retroactivity and the *lex mitior* exception). The principle of non-retroactivity does not apply to procedural rules, in particular to provisions governing questions of jurisdiction (ATF 117 IV 369, para. 4d; 109 IV 156, para. 2; DONGOIS/LUBISHTANI, Commentaire romand, 2nd[e] 2021 ed., n. 23 ad Art. 2 CP). The prohibition on retroactivity does, however, apply to procedural rules that define the very scope of Switzerland's *ius puniendi* (DONGOIS/LUBISHTANI, *op. cit.*, n. 24 ad Art. 2 CP; MALEH, Commentaire romand, 2017, n. 51 ad Art. *264m* of the Swiss Penal Code). However, rules modifying functional jurisdiction take effect immediately, unless a transitional provision provides otherwise (BERTOSSA, Switzerland's Universal Jurisdiction, in The Fight Against Impunity in Swiss Law, 2[e] ed. 2015, n. 5, p. 3; DONGOIS/LUBISH-TANI, *op. cit.*, n. 23, regarding Art. 2 of the Swiss Criminal Code).

1.1.3 In this case, it should be noted that the issue of jurisdiction to try crimes against humanity within the meaning of Art. *264a* of the Swiss Criminal Code (to which Art. *264m* of the Swiss Criminal Code refers by mentioning the acts covered by Title 12[bis] ») was not decided at the trial court level. Indeed, the Criminal Court found that the indictment did not contain the factual elements necessary to assess the acts committed by the defendant from the perspective of crimes against humanity and dismissed a preliminary question seeking the application of Article *264a* of the Swiss Criminal Code (Judgment SK.2019.17, para. 2.1.4.1). The plaintiffs subsequently appealed this decision on the preliminary ruling as well as the failure to convict the defendant of crimes against humanity (*supra*, C.7, C.8, C.9, and C.10).

It must therefore be determined whether, *in this case*, the application of Art. *264m* of the Swiss Criminal Code (CP) results in an extension of Switzerland's *ius puniendi*. To this end, it is necessary to examine whether Switzerland had jurisdiction at the time of the events—that is, between 1993 and 1995—to prosecute war crimes and crimes against humanity.

1.1.4 Jurisdiction over War Crimes

Offenses against international law within the meaning of Articles 108 through 114 of the former Military Criminal Code (aCPM), committed by civilians during an armed conflict, have been punishable in Switzerland since 1968 (Article 2, item 9, aCPM). The former Military Penal Code also applied to acts occurring abroad pursuant to Art. 9 of the aCPM. It is accepted that these provisions were applicable to the facts of the case at the time they occurred and remained so until December 31, 2010. The application of Art. *264m* of the Swiss Criminal Code (CP) therefore does not extend the *ius puniendi* (MALEH, *op. cit.*, n. 51 ad Art. *264m* CP and the references cited; contrary opinion: DONGOIS/LUBISHTANI, *op. cit.*, n. 24 ad Art. 2 Swiss Penal Code), but simply modifies functional jurisdiction, which shifts from military courts to civil courts, as war crimes are subject to federal jurisdiction pursuant to Art. 23(1)(g) of the Swiss Criminal Procedure Code.

Thus, from the perspective of the prosecution of war crimes, Art. *264m* of the Swiss Criminal Code applies in the present case, without prejudice to the principle of non-retroactivity.

1.1.5 Jurisdiction over Crimes Against Humanity

1.1.5.1 Unlike war crimes, the Swiss Criminal Code and the Military Criminal Code did not *expressly* criminalize crimes against humanity at the time of the events. It is therefore necessary to analyze whether the acts attributed to Alieu KOSIAH were nonetheless covered under Swiss law. In its indictment of March 22, 2019, amended on September 2, 2022, the OCP charged the defendant, under the category of crimes against humanity, with committing the following acts in Liberia, in Lofa County, between 1993 and 1995 (CAR 2.101.003):

- ordering the killings of seven civilians in Zorzor (section 1.3.2.);
- the murder of civilian Jeff JORDAN in Babahun (ch. 1.3.3.);
- ordering the cruel treatment of seven civilians, including Georges ROSADO, in Foya (ch. 1.3.4.);
- ordering the killings of six civilians in Foya (ch. 1.3.5.);
- stabbing the civilian Georges ROSADO (ch. 1.3.6.);
- ordering and directing the forced transport of coffee, cocoa, and palm oil by civilians from Foya to Solomba, and from there to the Guinean border (ch. 1.3.7.);
- participating in the murder of the civilian Martin McCREIGHT in Foya (section 1.3.8.);
- desecrating the corpse of Martin McCREIGHT (section 1.3.9.);
- ordering and directing the forced transport, by civilians, from Foya to Solomba, and from there to the Guinean border (section 1.3.10.);

- ordering and directing the forced transport of the generator from the Foya power plant, by civilians, from Foya to Solomba, and from there to the border with Guinea (ch. 1.3.12);
- ordering and directing the forced transport of the Pasolahun generator by civilians from Pasolahun to Kolahun (ch. 1.13.14);
- murder of civilian Russell HASTING near the Kehair River (ch. 1.3.15);
- ordering and directing the forced transport of ammunition by civilians from Gon-dolahun to Fassama (ch. 1.3.16);
- murder of civilian Brian HASTING near the Lofa River (ch. 1.3.17);
- murder of a civilian in Voinjama (ch. 1.3.18);
- ordering a forced transport by civilians from Voinjama to Gbarlyeloh, Guinea (ch. 1.3.19);
- ordering the forced transport of civilians from Voinjama to Solomba and from there to the Guinean border (ch. 1.3.20);
- ordering and directing the forced transport of property by civilians from Botosu (ch. 1.3.23);
- rape of the civilian Carol ALEXANDER (ch. 1.3.24);
- ordering and directing the forced transport of property by civilians from Zorzor to Salayae (section 1.3.25).

At the time of the events, these acts were punishable under Swiss law as murder (Art. 112 of the Swiss Criminal Code), serious bodily injury (Art. 122 Swiss Criminal Code), coercion (Art. 181 Swiss Criminal Code), rape (Art. 190 Swiss Criminal Code), and desecration of the dead (Art. 262 Swiss Criminal Code). It follows that the application of Art. *264m* of the Swiss Criminal Code would not, in terms of substantive law, expand the scope of criminal liability under Swiss law.

1.1.5.2 With regard to jurisdiction, the provision applicable from 1983 to 2007—which was subsequently replaced by Art. 7 of the Swiss Penal Code (amendment of December 13, 2002, effective as of January[1,] 2007; RO 2006 3459) for the prosecution of crimes committed abroad by non-nationals against non-nationals was Art. 6[bis]aCP. This provision governed Switzerland's extraterritorial jurisdiction (Message of March 24, 1982, concerning the European Convention on the Suppression of Terrorism and the amendment to the Swiss Penal Code, FF 1982 II 1, 6, and 11; HENZELIN, "Universal Jurisdiction and the Application of International Criminal Law in Armed Conflicts: The Situation in Switzerland," in The International Prosecution of the Rwandan Genocide, 2003, p. 157; STRÄULI, "The Prosecution of Violations of International Humanitarian Law in Switzerland: Aspects of Criminal Procedure," in National Prosecution of Violations of International Humanitarian Law

1997, pp. 217–219 and footnote 21). Pursuant to paragraph 1, the Penal Code applies to anyone who has committed abroad a felony or misdemeanor that the Confederation has undertaken to prosecute under an international treaty, provided that the act is also punishable in the State where it was committed and that the perpetrator is in Switzerland and is not extradited abroad; however, foreign law shall apply if it is more favorable to the accused. According to legal doctrine, in the absence of a treaty, criminal liability may and could be based on customary international law (THALMANN, Reasonable and Effective Universality: Conditions for the Exercise by National Courts of Universal Jurisdiction over International Crimes, 2018, p. 287; BERTOSSA, *op. cit.*, n. 19, p. 7; JAKOB/MALEH, Commentaire romand, 2017,
n. 47 et seq. in the introduction to Arts. *264–264n of* the Swiss Penal Code).

At the time of the events, Switzerland—like Liberia—was not bound by a treaty requiring it to prosecute crimes against humanity, which is why it is necessary to determine the content of customary international law at that time.

1.1.5.3 Crimes against humanity were first legally defined in Art. 6(c) of the 1945 Charter of the International Military Tribunal (also known as the Nuremberg Charter). The concept was subsequently expanded and supplemented in Article 5 of the Statute of the International Criminal Tribunal for the Former Yugoslavia of May 25, 1993 (ICTY Statute), in Article 3 of the Statute of the International Criminal Tribunal for Rwanda of November 8, 1994 (ICTR Statute), and finally in Article 7(1) of the Rome Statute of the International Criminal Court of July 17, 1998 (ratified on October 12, 2001, and entered into force on July[1,] 2002 [Rome Statute or ICC Statute; RS 0.312.1]) (GA-RIBIAN, Commentaire Romand, 2017, n. 1 et seq. on Art. *264a* of the Swiss Criminal Code). The Nuremberg trials also established the principle of universality (HENZELIN, The Principle of Universality in International Criminal Law, 2000, n. 1213 et seq., p. 387). The principles of law—including that of criminal liability for a crime under international law—established by the Charter and the judgment of the Nuremberg Tribunal were recognized in Resolution 95 (I) of 1946 of the General Assembly of the United Nations (UN) on the confirmation of the principles of international law, and were subsequently adopted in 1950 by the International Law Commission. In 1968, the UN General Assembly adopted the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, with the aim, in particular, of affirming the principle that crimes against humanity are not subject to statutory limitations and of ensuring its universal application. Finally, in 1973, through the adoption of the Principles of International Cooperation in the Detection, Arrest, Extradition, and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity (Resolution 3074 [XXVII], Principle 1), the General Assembly established a universal duty to prosecute crimes against humanity (THALMANN, *op. cit.*, p. 113 ff.). It follows from these considerations that, even at the time of the events in question, crimes against humanity were already defined and punishable under international law. This was also the position taken by the Federal Council in its proposal,

as part of the implementation of the Rome Statute, to incorporate crimes against humanity into the Swiss Penal Code (Message of April 23, 2008, regarding the amendment of federal laws for the implementation of the Rome Statute of the International Criminal Court [Message on the Implementation of the Rome Statute], FF 2008 3461, 3472, and 3474). The crimes against humanity set forth in the Rome Statute, moreover, reflected the state of customary international law (Message of November 15, 2000, concerning the Rome Statute of the International Criminal Court, the Federal Act on Cooperation with the International Criminal Court, and a revision of criminal law, FF 2001 359, 470 and the cited reference). Furthermore, the European Court of Human Rights (ECHR), in the case *of Šimšić v. Bosnia and Herzegovina*—which is comparable to the facts of the present case in that the acts in question took place from April to June 1992, during an armed conflict, and the respondent country's domestic law did not contain any provision criminalizing crimes against humanity at the time of the events, also concluded that crimes against humanity, at the time of the events, were defined and punishable under international law (ECHR judgment, Šimšić v. Bosnia and Herzegovina, April 10, 2012, No. 51552/10, paras. 23–25). Shortly thereafter, in the case *of Maktouf and Damjanović v. Bosnia and Herzegovina*, concerning the same conflict, the Grand Chamber of the ECHR, while recalling its aforementioned *Šimšić* case law, held that the competent courts had no choice but to apply the new law to punish crimes against humanity, since such crimes had not previously been provided for under domestic law (ECHR judgment in Maktouf and Damjanović v. Bosnia and Herzegovina [GC] of July 18, 2013, No. 34179/08, para. 55; see also, with regard to the prosecution of the crime of genocide, the judgment of the European Court of Human Rights in Vasiliauskas v. Lithuania [GC] of October 20, 2015, No. 35343/05, para. 166).

Without it being necessary to examine whether there was an obligation as such for States to prosecute crimes against humanity committed abroad, customary international law, even at that time, permitted the prosecution of such offenses without prejudice to the principle of non-interference (SASSÒLI, The Rwandan Genocide, the Swiss Military Justice System, and International Law, RSDIE, 2002, p. 165 ff.; THALMANN, *op. cit.*, n. 192 and 220, p. 119 and 133). The Court clarifies that it took other criteria into account in determining Switzerland's jurisdiction to prosecute the acts at issue in the present case and that these will be set forth below (*infra*, para. II.3.2.3.3).

1.1.5.4 Consequently, under domestic law and customary international law, Switzerland had jurisdiction at the time of the events examined in the present proceedings to prosecute crimes against humanity committed abroad. Art. *264m* of the Swiss Criminal Code (CP) thus does not extend the *ius puniendi* and is applicable *in this case*.

Consequently, Switzerland's jurisdiction to prosecute both war crimes and crimes against humanity must be based on current law, namely Article *264m* of the Swiss Criminal Code.

1.1.5.5 The Court further notes that reaching a contrary conclusion regarding Switzerland's jurisdiction to prosecute crimes against humanity committed abroad could lead it to violate its obligations under the Rome Statute. Indeed, according to paragraph 10 of the preamble, Article 1, and Article 17 of the ICC Statute, *a contrario*, the International Criminal Court (ICC), pursuant to the principle of complementarity, has jurisdiction to prosecute crimes against humanity when a State Party is unwilling or unable to do so (SCHABAS/EL ZEIDY, Rome Statute of the International Criminal Court, 4e ed. 2022, n. 4 ad Art. 17 StCPI). However, assuming that the extraterritorial jurisdiction established in Art. 6bis of the Swiss Criminal Code did not permit the prosecution of crimes against humanity in the absence of a relevant treaty, then Switzerland would not have jurisdiction to prosecute such acts until January1, 2007, the date of entry into force of Art. 7 of the Swiss Criminal Code. Consequently, Switzerland would lack jurisdiction between July 1July 2002, the date the Rome Statute entered into force, and January1, 2007, which would be contrary to Switzerland's objective of ensuring the comprehensive prosecution of crimes against humanity (Message on the Implementation of the Rome Statute, FF 2008 3461, 3462, and 3468), noting that the Confederation and the cantons are required, under the terms of Art. 5, para. 4, of the Federal Constitution of April 18, 1999 (Cst.; RS 101), to comply with international law.

1.1.5.6 In light of the foregoing, the question arises as to whether, at the time of the events, jurisdiction could also have been based on the former Military Penal Code (see HENZELIN, "Universal Jurisdiction and the Application of International Criminal Law in Armed Conflicts: The Situation in Switzerland," in University of Rouen [ed.], *The International Prosecution of the Rwandan Genocide*, 2003, pp. 158 ff.; SASSÒLI, *op. cit.*,
p. 164 ff.) may remain open.

1.1.6 Conclusion

In light of the foregoing, Switzerland has jurisdiction in this case to prosecute war crimes and crimes against humanity pursuant to Art. *264m* of the Swiss Criminal Code.

1.2 Jurisdiction of the Court of Appeal

1.2.1 Pursuant to the amendment of March 17, 2017, to the Federal Act on the Organization of the Confederation's Criminal Authorities (LOAP; RS 173.71), the Court of Appeals of the Federal Criminal Court, which began operations on January 1er January 2019, has jurisdiction to rule on appeals and petitions for review (Art. 38a of the Federal Act on

the Organization of the Federal Criminal Authorities [LOAP; RS 173.71]). An appeal is admissible against judgments of the courts of first instance that have concluded all or part of the proceedings (Art. 398(1) CPP).

If the Court of Appeals grants the appeal, it also has jurisdiction to rule on appeals against the decision of the trial court setting the compensation for the court-appointed defense counsel (ATF 139 IV 199, para. 5.6).

1.2.2 Since crimes against humanity and war crimes fall under federal jurisdiction pursuant to Art. 23(1)(g) of the Code of Criminal Procedure, the Court of Appeals, sitting as a panel of three judges, has jurisdiction to rule on the present appeals, consolidated appeals, and motions (Art. 21(1)(a) of the Code of Criminal Procedure; Art. 33, subpar. c, *38a,* and *38b of the* LOAP).

1.3 Admissibility

1.3.1 Attorney JAKOB moved to dismiss the appeal filed by Alieu KO-SIAH insofar as it challenges Section III.A of the operative part of the contested judgment, concerning the costs awarded to the plaintiffs, on the grounds of lack of standing, since Alieu KO-SIAH would bear only a very small fraction of those costs. Attorney WERNER concurred with Attorney JAKOB on this point (*supra*, C.7). However, as the Court noted in its decision to hear the appeal dated August 4, 2022 (*supra*, C.12; para. 8), the defendant, as appellant, has a legal interest in appealing on issues relating to costs, since they form part of the procedural expenses and Alieu KOSIAH has been ordered to bear a portion of them (KISTLER VIANIN, Commentaire romand,2nded., 2019, n. 35 ad Art. 399 CPP; JEANNERET/KHUN, Précis de procédure pénale,2nded., 2018, p. 611). It is also noted that the plaintiffs and the Office of the Attorney General did not file a motion to dismiss the other contested issues raised in Alieu KOSIAH's appeal. Alieu KOSIAH therefore has standing to file an appeal (Art. 382(1) CPP). Furthermore, he complied with the 10-day deadline from the date of service of the judgment to file notice of appeal (Art. 399(1) of the Code of Criminal Procedure) as well as the 20-day deadline from the date of service of the reasoned judgment to submit a written statement of appeal to the Court of Appeals (Art. 399(3) of the Code of Criminal Procedure).

1.3.2 The defense challenged the admissibility of the joint appeals filed by all the plaintiffs, arguing that they lacked standing to appeal the legal classification adopted by the Criminal Court, since they had not suffered any concrete harm from the contested judgment, given that they had prevailed on the charges that directly concerned them (*supra*, C.11). However, the Court has already had occasion, in its aforementioned decision to hear the case (consideration 10), to note that the plaintiffs, as joint appellants, were otherwise entitled to challenge the legal classification applied to the defendant in the first instance

(ATF 141 IV 231, paras. 2.5 and 2.6; 139 IV 84, para. 1.1; Federal Supreme Court decision 6B_422/2019 and 6B_447/2019 of June 5, 2019, para. 4.1). This applies regardless of whether the plaintiffs were successful at the trial court level on the charges against them (139 IV 84, para. 1.1). In this regard, it should be emphasized that the plaintiffs requested a change in the legal characterization of the charges against Alieu KOSIAH as early as the preliminary proceedings and that they reiterated their request at the trial court level (see 148 IV 124, para. 2.6.8). The Court further notes that the defense explicitly stated that it did not contest Georges ROSADO's joint appeal, as it was directed against section I.1.2 of the operative part of the contested judgment (CAR 1.400.040), and that the MPC's joint appeal was not the subject of any motion to dismiss. In light of the foregoing, the joint appellants—namely, the MPC, Christopher GREENE, Carol ALEXANDER, Nicolas COOK, Eddie COULTER, Georges ROSADO, Levi FARRELL, and James CAMDEN—have standing to file a joint appeal (Art. 381, para. 1, and Art. 382, para. 1, of the Swiss Criminal Procedure Code). Furthermore, they complied with the 20-day deadline from the date of receipt of the notice of appeal to file a joint appeal (Art. 400, para. 3, let. b, of the Swiss Criminal Procedure Code).

1.3.3 Mr. GIANOLI has standing to file an appeal (Art. 135, para. 3, subpar. a of the Criminal Procedure Code, as in effect—until December 31, 2023—at the time the appeal was filed and when the Court issued the operative part of this judgment on May 30, 2023, *in conjunction with* Art. 382(1) of the Code of Criminal Procedure) and he complied with the ten-day deadline from the date of notification of the reasoned judgment to file his appeal brief with the Complaints Court, it being noted that said authority forwarded it to the Court of Appeals, within the scope of its jurisdiction, on the very day it was received (Art. 396, para. 1, *in conjunction with* Art. 91, para. 4, of the Code of Criminal Procedure).

1.4 Amendment to the indictment ( )

1.4.1 In its decision to take up the case dated August 4, 2023, the Court granted the Office of the Public Prosecutor (OPP), pursuant to Art. 333(1) of the Criminal Procedure Code (CPP), the opportunity to amend the indictment of March 22, 2019, so that the Court could rule on the application of Art. *264a* of the Swiss Criminal Code (SCC). The OAG availed itself of this option and submitted to the Court an amended version of the indictment dated September 2, 2022, in which it now charges the defendant with having committed not only violations of the laws of war but also crimes against humanity within the meaning of Art. *264a* of the Swiss Criminal Code (*supra*, C.14). The Court notes that neither the OAG's authority to amend the indictment nor the amendments actually made by the prosecuting authority have been challenged by the parties.

Pursuant to Art. 329(1)(a) of the Swiss Criminal Procedure Code (CPP), however, it is incumbent upon the Court to examine ex officio whether the indictment—and its amendment—were properly drafted.

1.4.1.1 Article 9 of the Swiss Criminal Procedure Code (CPP) enshrines the principle of specific charges. According to this provision, an offense may be the subject of a judgment only if the public prosecutor has filed an indictment with the competent court against a specific person based on precisely described facts. Indeed, the defendant must know exactly what facts are alleged against him or her and the penalties and measures to which he or she is subject, so that he or she may explain himself or herself and effectively prepare his or her defense (ATF 143 IV 63, para. 2.2; 141 IV 132, para. 3.4.1; Federal Supreme Court decision 6B_558/2023 of September 11, 2023, para. 1.1). The court is bound by the facts described in the indictment (principle of the immutability of the indictment), but may deviate from the legal assessment made by the public prosecutor's office (Art. 350(1) CPP), provided that it informs the parties present and invites them to comment (Art. 344 CPP). The principle of indictment is also derived from Art. 29, para. 2, of the Constitution (right to be heard), Art. 32, para. 2, of the Constitution (the right to be informed, as soon as possible and in detail, of the charges brought against one) and from Art. 6, para. 3(a) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights [ECHR]; RS 0.101) (the right to be informed of the nature and cause of the charge).

1.4.1.2 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 CPP, the indictment must describe, as briefly as possible but with precision, 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, the offenses committed, and the applicable legal provisions in the opinion of the public prosecutor. In other words, the indictment must contain the facts which, in the opinion of the public prosecutor's office, correspond to all the elements constituting the offense with which the defendant is charged. The indictment defines the subject matter of the trial and also serves to inform the defendant (delimiting and informational functions; ATF 143 IV 63, para. 2.2; 141 IV 132, para. 3.4.1, and the references cited therein; Federal Supreme Court decision 6B_558/2023 of September 11, 2023, para. 1.1). Art. 329(1) of the Criminal Procedure Code provides that the presiding judge shall examine whether the indictment and the case file have been properly prepared (subpar. a), whether the conditions for initiating criminal proceedings have been met (subpar. b), and whether there are any impediments to proceeding (subpar. 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 for completion or correction (Art. 329(2) CPP).

1.4.1.3 Pursuant to Art. 333(1) of the Criminal Procedure Code, which also applies on appeal (ATF 149 IV 42, para. 3.2; 147 IV 167, para. 1.4; Federal Supreme Court decision

6B_428/2013 of April 15, 2014, para. 3.3), the court gives the public prosecutor 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. This provision applies to situations in which an indictment sets forth a set of facts that relates to only a single offense, omitting elements that would allow one to conclude that the same set of facts constitutes another offense (see Message of December 21, 2005, regarding the unification of criminal procedure law, FF 2006 1263, comment on Art. 334(1); 148 IV 124, para. 2.6.2; Federal Supreme Court decision 6B_135/2022 of September 28, 2022, para. 2.1.3, and the decisions cited therein). The jurisdiction granted to the court by Art. 333(1) CPP goes beyond that of Art. 329(2) CPP and allows for an amendment to the indictment, with Art. 333(1) CPP typically applying when the facts forming the basis of the indictment could, in the court's view, constitute another offense, the elements of which are not, however, (fully) described in the indictment (ATF 149 IV 42, para. 3.4.1; Federal Supreme Court decision 6B_1216/2020 of April 11, 2022, para. 1.3.2 and the references cited). Art. 333(1) of the Criminal Procedure Code applies, subject to the prohibition against *reformatio in peius*, when the court finds that the facts set forth in the indictment could satisfy the elements of a different offense (reclassification [*Umqualifizierung*]) or, in the case of concurrent offenses, an additional offense (149 IV 42, paras. 3.2 and 3.4.1; 148 IV 124, para. 2.6.2; 147 IV 167, para. 1.4). It is also possible to amend the indictment when the court finds that the facts described in the indictment constitute an aggravated form of the elements of the offense being prosecuted, but the indictment sets forth only the basic elements of the offense, while a description of the qualifying element is missing (ATF 149 IV 42, para. 3.4.1; Federal Supreme Court decision 6B_1216/2020 of April 11, 2022, para. 1.3.2 and the references cited). However, the purpose of referring the case back to the public prosecutor's office is not to allow for the consideration of other acts that were not previously the subject of criminal prosecution (ATF 147 IV 167, para. 1.4). Furthermore, an amendment to the indictment within the meaning of Art. 333(2) of the Swiss Criminal Procedure Code—namely, when it becomes apparent during the trial that the defendant has committed other offenses—is no longer possible in appellate proceedings (148 IV 124, para. 2.6.3, and the references cited).

1.4.2 In the present case, the Office of the Attorney General, in its amended indictment of September 2, 2022, now charges Alieu KOSIAH with having committed not only violations of the laws of war (Art. 108 and 109a of the Military Criminal Code [aCPM] *in conjunction with* Art. 3 common to the General Provisions and Art. 4 PA II), but also of crimes against humanity (Art. *264a of* the Swiss Penal Code). More specifically, the MPC has expanded the charges to include crimes against humanity relating to 20 counts already contained in the indictment of March 22, 2019 (see *supra*, consid. I.1.1.5.1, for a detailed list of these counts). It appears from

Upon review of the amended indictment, it is evident that the elements constituting the crimes against humanity are described therein, and in particular those corresponding to “a systematic and/or widespread attack against a civilian population,” namely the contextual elements or common elements of the crime against humanity, it being specified that they also include the subjective element of “knowledge of the attack” (see *below*, para. II.3.2.5). Thus, the MPC, in accordance with case law, supplemented its description of the facts already set forth in its indictment of March 22, 2019, since it determined that they met the elements of an additional offense (*supra*, para. I.1.4.1.3). The substantive change made by the MPC is the addition of a section 1.2^{bis}titled “On the systematic and widespread attack launched against the civilian population of Liberia, and of Lofa in particular.” This section reiterates the finding made in the indictment of March 22, 2019—namely, that civilians in Liberia, and in particular in Lofa County, were deliberately and systematically targeted throughout the conflict—and elaborates on it by referring to the sources already cited in the indictment of March 22, 2019, namely, in particular, the report of the Truth and Reconciliation *Commission* of Liberia (TRC) dated June 30, 2009 (cited as follows: TRC, Volume II: Consolidated Final Report, June 30, 2009) and the Federal Judicial Police (PJF) analysis report dated June 8, 2018, on the context of the first civil war in Liberia (1989–1996) and the specific role of the *United Liberation Movement of Liberia for Democracy* (ULIMO). Citing these sources and drawing in particular on the TRC’s conclusions, the MPC elaborated on the nature of the acts committed by ULIMO against the civilian population and provided a non-exhaustive list of the acts attributed to this faction for the years 1993 and 1994. By clarifying and elaborating on the elements already contained in its indictment of March 22, 2019, the MPC clarified the subject matter of the trial and, consequently, informed the defendant of the scope of the charges he faces in relation to crimes against humanity, which is all the more important given the severe penalty incurred for these charges. However, the acts listed on page 14 of the amended indictment (CAR 2.101.017)—which correspond to events that the preliminary investigation allegedly “brought to light” and which “could not be attributed to Alieu KOSIAH”—were the subject of the dismissal order of May 7, 2019 (*supra*, B.2), must be dismissed, since their inclusion violates the principle of the immutability of the indictment enshrined in Art. 350, para. 1, of the Code of Criminal Procedure. These are, in fact, new facts that were not previously the subject of criminal prosecution, and which the referral to the public prosecutor’s office pursuant to Article 333(1) of the Swiss Criminal Code (CP) does not permit to be taken into account (ATF 148 IV 124, para. 2.6.3, and the references cited; 147 IV 167, para. 1.4). The Court further notes that the Office of the Attorney General, in section 1.2.1 of its amended indictment, corrected an error regarding the number of victims recorded by the TRC for Lofa County—namely, 11,300 instead of 93,000, the latter figure referring to Liberia as a whole. This amendment has

any consequence, since it is a clerical error, the source cited in the amended indictment was already cited in its March 22, 2019, version, and the information is easily identifiable in that source—namely, the aforementioned PJF report of June 8, 2018. Moreover, this amendment has the effect of reducing the scope of the attack and, consequently, the scope of the charge. Finally, it should be noted that the defense did not contest the amendment to the indictment.

1.4.3 In light of the foregoing, and noting further that the remainder of the amended indictment raises no other issues, it must be concluded that the amended indictment of September 2, 2022, includes the factual elements necessary to understand the facts not only from the perspective of violations of the laws of war (Art. 108 and 109a MCP *in conjunction with* Art. 3 common to the General Provisions and Art. 4 of Protocol II), but also as crimes against humanity (Art. *264a* of the Swiss Penal Code), and that it allows the defendant to present his case and effectively prepare his defense.

1.5 Prohibition of *Reformatio in Peius*

1.5.1 In criminal proceedings, the principle prohibiting *reformatio in peius* is codified in Art. 391(2) of the Swiss Criminal Procedure Code (CPP). Its purpose is to allow the defendant to exercise their right to appeal without fear that the judgment will be modified to their detriment. This provision stipulates that the appellate court may not modify a decision to the detriment of the defendant or the convicted person if the appeal was filed solely in their favor (ATF 149 IV 91, para. 4.1.1, and the references cited).

1.5.2 In the present case, it follows from this principle that the Court cannot modify judgment SK.2019.17 to the detriment of Alieu KOSIAH with regard to the civil claims of the plaintiffs, since he is the only one to have filed an appeal on this point (*supra*, C.4 and C.28).

1.6 Conclusion

1.6.1 In light of the foregoing, it must be held that Switzerland, and in particular the Court of Appeals, has jurisdiction to hear this case, that the appeal, the joined appeals, and the petition meet the conditions for admissibility, and that there is no obstacle to proceeding.

1.6.2 Accordingly, the Court has decided to hear the appeal filed by Alieu KOSIAH, the joined appeals filed by the MPC, Christopher GREENE, Carol ALEXANDER, Nicolas COOK, Eddie COULTER, Georges ROSADO, Levi FARRELL, and James CAMDEN, as well as the petition filed by Attorney GIANOLI.

2. Oral Proceedings and Written

These appeal proceedings took a hybrid form, with the appeal and the joined appeals being heard in oral proceedings and the motion concerning the court-appointed counsel's compensation being decided in written proceedings.

2.1 Oral Proceedings

2.1.1 Pursuant to Art. 405(1) of the Swiss Criminal Procedure Code (CPP), the provisions governing first-instance proceedings apply by analogy to appellate proceedings. The presiding judge summons the defendant or the complainant who filed the appeal or the joined appeal to appear at the appellate hearing (Art. 405(2) CPP).

The appellate proceedings concerning the appeal and the joined appeals lasted twelve days and were held from January 11 to February 3, 2023, in the presence of representatives of the Office of the Attorney General, the defendant Alieu KOSIAH and his court-appointed counsel, the plaintiffs Christopher GREENE, Carol ALEXANDER, Nicolas COOK, Eddie COULTER, Georges ROSADO, Levi FARRELL, and James CAMDEN, as well as their respective counsel, and an English interpreter. It should be noted that the plaintiffs did not attend the entire appeal hearing but were present during the evidentiary phase to the extent that they were involved in the proceedings. Subsequently, at their request, they were excused from participating in the remainder of the proceedings. The witness Gina FARRELL and the person called to provide information, Walter VARGAS, also appeared; however, it should be noted that the latter refused to make any statements. The Court heard testimony from all the complainants and the witness Gina FARRELL regarding their personal circumstances as well as the facts of the case, and gave Alieu KOSIAH the opportunity, at the conclusion of each of these hearings, to respond to the charges brought against him. Following these hearings, the defendant's testimony regarding the facts was concluded before his personal circumstances were addressed (*supra*, C.23).

2.1.2 Under Article 117(1) of the Code of Criminal Procedure, the victim is entitled to specific rights, including, in particular, the right to protection of personal dignity (subparagraph (a)), the right to protective measures (subparagraph (c)), and the right to a specific composition of the court (subparagraph (f)). Other provisions of the Code of Criminal Procedure define the scope of these rights. Thus, if the court is hearing a case involving a sexual offense, it must, at the victim's request, include at least one member of the same sex as the victim (Art. 335(4) CCP). Furthermore, the questioning of a victim of a sexual offense must be conducted by a person of the same sex as the victim if the victim so requests and the proceedings are not unduly delayed as a result (Art. 68(4) CPP). The court may also partially restrict public access to the hearing or order that the hearing be held in camera if

public safety and public order or the interests worthy of protection of a person participating in the proceedings, in particular those of the victim, so require (Art. 70, para. 1, letter a, CCP).

In this case, the Court indicated on November 14, 2022, that it was considering replacing Judge Frédérique BUTIKOFER REPOND in the present case with Judge Andrea ERMOTTI, who was elected on September 28, 2022, as a regular judge of the Court of Appeals (CAR 2.104.001 et seq.). In response, Attorney WAKIM, in a letter dated November 29, 2022, indicated that Carol ALEXANDER was waiving her request that a female judge be included in the Court's composition (CAR 2.104.005). She also waived, at the same time, her request that a female interpreter be appointed. However, on December 7, 2022, she requested a partial closed hearing, which was ordered for her testimony regarding the sexual offense she had reported, as well as for the defendant's testimony on the same subject (CAR 2.104.008 and 009 et seq.; CAR 5.100.014). During the proceedings, Carol ALEXANDER was heard at the beginning of the hearing for family reasons and was then excused from participating in the remainder of the hearing (CAR 2.100.011 et seq.; CAR 5.100.012 and 015). Her counsel was present at her side throughout her testimony, while the defendant and his court-appointed counsel were in another courtroom, though they were able to communicate with the Court.

2.2 , written proceedings

2.2.1 To alleviate the burden on the courts, the legislature has provided for the possibility of handling appeals through written proceedings (KISTLER VIANIN, *op. cit.*, n. 1 ad Art. 406 CPP; Message on the Unification of Criminal Procedure Law of December 21, 2005, FF 2006 1057, 1301). In particular, an appeal may be heard in written proceedings when the appeal concerns only costs, compensation, or damages for non-pecuniary harm (Art. 406(1)(d) CPP), even though oral proceedings should, in principle, be the rule and written proceedings the exception (ATF 147 IV 127, para. 2.3).

2.2.1.1 In the present case, the appeal proceedings concern, in particular, the appeal filed by Attorney GIA-NOLI regarding his compensation as a court-appointed defense counsel (*see below*, consid. I.3), it being noted that the subject matter of said appeal is significantly narrower than that of the remainder of the appellate proceedings, by which Mr. KLEGER, counsel for Mr. GIANOLI, is moreover not affected. Accordingly, the Court, guided by the principle of procedural economy, ordered that the appeal concerning the compensation of the court-appointed counsel be heard through written proceedings, noting that no party objected to this approach and that Mr. KLEGER explicitly stated that he waived the right to an oral hearing on appeal (CAR 2.107.001). Moreover, even if no appeal had been filed against judgment

SK.2019.17, the appeal would also have had to be heard in written proceedings before the Complaints Court (Art. 135(3)(a) CPP *in conjunction with* Art. 397(1) CPP).

3. Subject Matter of the Proceedings and Power of -Cognition

3.1 Pursuant to Art. 398 of the Code of Criminal Procedure (CCP), the appellate court has full power of review over all contested aspects of the judgment (para. 2). 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 (para. 3(a)), on the grounds of an incomplete or erroneous finding of fact (para. 3(b)), and on the grounds of impropriety (para. 3(c)). Pursuant to Art. 391(1)(a) of the CPP, the appellate court is not bound by the parties' submissions, except when ruling on a civil action. Barring exceptions, it reviews only those points of the first-instance judgment that are being challenged (Art. 404 of the Code of Criminal Procedure). In any event, its power of review is limited to the subject matter of the proceedings.

3.1.1 Alieu KOSIAH's appeal concerns his guilt in connection with the offense of violating the laws of war (Art. 109(1) aCPM *in conjunction* with Art. 108(2) aCPM and Art. 3 common to the General Provisions and Art. 4 of Part II), and consequently on the length of the sentence and the deportation order issued against him, as well as on the civil claims of the plaintiffs, the costs of the proceedings, and damages (*supra*, C.4).

3.1.2 The joint appeal by the Office of the Attorney General concerns the defendant's guilt in connection with the acquittals handed down at the trial court level for the following charges (*supra*, C.6):

- attempted murder of a civilian, or alternatively, bodily harm, or harm to health and physical well-being, pursuant to section 1.3.6 of the indictment (section I.1.2 of the operative part of the judgment under appeal);
- aiding and abetting the murder of a civilian under section 1.3.8 of the indictment (section I.1.3 of the operative part of the judgment under appeal);
- giving an order to loot, pursuant to section 1.3.11 of the indictment (section I.1.4 of the operative part of the judgment under appeal).

3.1.3 Georges ROSADO's joint appeal concerns the defendant's guilt in connection, on the one hand, with the acquittal handed down at first instance on the charge of attempted murder of a civilian, or alternatively, causing bodily harm, or harm to health and physical well-being, pursuant to section 1.3.6 of the indictment (Section I.1.2 of the operative part of the judgment under appeal), and, on the other hand, to the offense of crimes against humanity (Art. *264a* of the Swiss Criminal Code), particularly with regard to the facts concerning him (*supra*, C.7).

3.1.4 The joint appeals of Nicolas COOK, Christopher GREENE, Eddie COULTER, Levi FARRELL, James CAMDEN, and Carol ALEXANDER concern guilt in connection with the offense of crimes against humanity (Art. *264a* of the Swiss Criminal Code), in particular with regard to the facts pertaining to each of them, respectively (*supra*, C.8, C.9, and C.10).

3.1.5 Attorney GIANOLI's appeal concerns his compensation as a court-appointed defense counsel (*supra*, C.3).

3.1.6 The Court further notes that on September 2, 2022, the Office of the Attorney General (MPC) submitted an amended indictment (*supra*, C.14), in which it now charges the defendant with having committed not only violations of the laws of war (Art. 109(1) aCPM *in conjunction with* Art. 108(2) aCPM and Art. 3 common to the General Provisions and Art. 4 PA II), but also of crimes against humanity (Art. *264a* of the Swiss Criminal Code).

3.2 It follows in particular from the foregoing that the following points of judgment SK.2019.17 have become final and are therefore not subject to the present appeal proceedings:

- the acquittal of Alieu KOSIAH regarding the charge of recruiting a child soldier under section 1.3.1 of the indictment (section I.1.1 of the operative part of the judgment under appeal);
- the compensation awarded for the pro bono legal counsel of the plaintiffs (Section VI of the operative part of the judgment under appeal).

4. Defense of the accused,

4.1 Pursuant to Article 132(1) of the Code of Criminal Procedure, the presiding judge shall order the appointment of a public defender: in cases where defense counsel is mandatory, if the defendant, despite being invited to do so by the presiding judge, fails to appoint private counsel (subparagraph a, section 1); if the defendant lacks the necessary means and the assistance of a defense counsel is justified to safeguard his or her interests (subletter b). Private defense, for its part, is governed by Art. 129 of the Criminal Procedure Code (CPP), paragraph 1 of which provides that the defendant, in all criminal proceedings and at any stage thereof, has the right to retain legal counsel within the meaning of Art. 127(5) (private defense) or, subject to Article 130, to defend themselves.

4.1.1 In this case, the defendant is subject to mandatory representation (Art. 130 of the Code of Criminal Procedure). Attorney GIANOLI was appointed by the Office of the Attorney General on November 11, 2014, as Alieu KOSIAH's court-appointed defense counsel (MPC 16-01-0001 et seq.), and his appointment was upheld on appeal, with the court noting that the conduct of the proceedings, by orders CN.2022.4 of May 10, 2022, and CN.2022.6 of December 20, 2022, rejected two motions seeking the appointment of the defendant's chosen defense counsel, namely Mr. BLOCH, as a second court-appointed defense counsel (*supra*, A.6

and C.5). On September 29, 2023, following the appellate proceedings and notification of the operative part of this judgment, Mr. CURRAT appeared as the chosen counsel for Alieu KOSIAH (*supra*, C.34). When questioned by the presiding judge, he requested the revocation of Mr. GIANOLI's appointment as court-appointed defense counsel. This request was denied by order of the presiding judge of the Court of Appeals, CN.2023.22, dated November 21, 2023 (*supra*, C.35). The presiding judge also took note of the termination of Mr. BLOCH's appointment and indicated that future notifications in connection with the present appeal proceedings would be sent to both Mr. GIANOLI and Mr. CURRAT. The presiding judge noted that Alieu KOSIAH lacked the financial means to cover his defense costs in connection with the proceedings on the merits and considered that maintaining Mr. GIANOLI's appointment as court-appointed counsel, alongside Alieu KOSIAH's new chosen defense counsel, Mr. CURRAT, until the conclusion of the appellate proceedings, was in the best interests of justice and ensured the continued effective defense of Alieu KOSIAH, while emphasizing that his right to freely choose his own defense counsel had been respected (consideration 2.1.2.1).

4.1.2 In light of the foregoing, the operative part of the judgment of May 30, 2023, is amended to reflect the changes that have occurred within the defendant's defense team since the parties were notified of said operative part. Specifically, Attorney BLOCH is replaced by Attorney CURRAT on the list of persons to whom this judgment is to be served.

5. Detention on grounds of public se

5.1 By Order CN.2022.3 of April 14, 2022, the presiding judge ordered that Alieu KOSIAH remain in detention for security reasons at the latest until the conclusion of the appellate proceedings, or until the commencement of the enforcement of any custodial sentence, respectively, finding, in support of its decision, that the risk of flight still existed and had increased since the defendant's conviction at first instance to a 20-year custodial sentence (*supra*, C.2).

5.2 The presiding judge of the appellate court must also ensure, on their own initiative, that the legal conditions for detention are still met (in particular, the grounds for detention [Art. 221 CPP] and the proportionality of the detention in relation to its duration) (FORSTER, Basler Kommentar, 3e ed. 2023, n. 1 ad Art. 233 CPP; LOGOS, Commentaire romand, 2e ed. 2019, n. 1 ad Art. 233 CPP). In the present case, in light of the judgment of May 30, 2023, which found the defendant guilty of violations of the laws of war and crimes against humanity and sentenced him to 20 years of imprisonment (*supra*, C.33), and noting that

the Court received no request for release during the appeal proceedings (Art. 233 CPP), it must be concluded that the legal conditions are still met and that there is therefore no justification for reversing Order CN.2022.3 of April 14, 2022.

6. d Administration of Evidence

6.1 Pursuant to Art. 389(1) of the Code of Criminal Procedure (CCP), the appeal proceedings are based on the evidence presented during the preliminary proceedings and the trial proceedings. Art. 389(3) of the CCP governs supplementary evidence. Thus, the appellate court takes, on its own motion or at the request of a party, the additional evidence necessary for the adjudication of the appeal. Evidence is necessary when it may influence the outcome of the proceedings (ATF 147 IV 409, para. 5.3.2 and the reference cited therein; Federal Supreme Court decision 6B_933/20222 of May 8, 2023, para. 2.1.1). Pursuant to Art. 139(2) CPP, evidence need not be taken regarding facts that are irrelevant, well-known, known to the court, 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 decisions 6B_1355/2022 of March 22, 2023, para. 3.2; 6B_619/2022 of February 8,
2023, para. 4.1; 6B_1270/2021 of June 2, 2022, para. 3.2, unpublished
in ATF 148 IV 288). The appellate court may thus refuse new evidence when a preliminary assessment of such evidence demonstrates that it will not be likely to alter the outcome of the evidence already presented (136 I 229, para. 5.3; Federal Supreme Court decision 6B_933/20222 of May 8, 2023, para. 2.1.1). A refusal to admit evidence violates the parties' right to be heard and Art. 389(3) of the Criminal Procedure Code only if the court's preliminary assessment of the relevance of the offered evidence is marred by arbitrariness (144 II 427, para. 3.1.3; 141 I 60, para. 3.3; 136 I 229, para. 5.3; decision of the
Federal Supreme Court, 6B_933/20222, dated May 8, 2023, para. 2.1.1).

6.2 In the present case, the Court took certain evidence on its own motion, primarily concerning the defendant's personal circumstances, and admitted offers of evidence seeking to hear the complainants and witnesses, as well as to include in the record documents from the criminal proceedings conducted in France against Kunti KAMARA, documentary films, videos, and various written documents (*supra*, C.17, C.19, C.20, C.22, and C.25). The Court, however, rejected offers of evidence by orders dated October 27 and December 22, 2022. For details regarding these requests for evidence and the grounds on which the Court rejected them, reference is made here to the aforementioned orders on evidence (*supra*, C.17 and C.20 and the cited references). The Court also rejected offers of evidence during the oral arguments (*supra*, C.26). The reasons for this are set forth below (see also the transcript of the appellate proceedings [CAR 5.100.001 et seq.]).

6.3 As a reminder, the defense's offers of evidence rejected during the hearing (*supra*, C.26) were primarily intended to:

- Call Nathaniel THOMAS (the *Town Chief* of the village of Pasolahun at the time of the events), Mary McCOY (Levi FARRELL's mother), and Tania JACKSON (Levi FARRELL's sister) to testify;
- to call the witnesses named in the *Report on Findings and Pictorials* dated January 9, 2023, and in particular Floyd ALLEN and Joey GRIMES (both of whom were members of the village authorities of Bethesu);
- to hear testimony from Jesse SLADE, who is alleged to have collaborated with Daniel TODD, and Vincent WALDROP, a child soldier who fought for ULIMO;
- admit into the record two news articles submitted on January 31, 2023, by Attorney GIANOLI;
- to admit to the record a document regarding hand pumps.

The Court also decided not to hear testimony from Carlos ELLIS, former head of investigations at the Special Court for Sierra Leone (SCSL).

6.3.1 With regard to the evidence presented on the merits of the case, the Court found, at the conclusion of the evidentiary proceedings, that it had sufficient grounds to assess the facts related to the charges against Alieu KOSIAH set forth in the indictment. It referred to the principles it had set forth in its orders on evidence dated October 27 and December 22, 2022, namely that it follows from case law that the defendant must be afforded, at least once during the proceedings and at any stage thereof, an appropriate and sufficient opportunity to challenge the testimony and cross-examine the witnesses (Federal Supreme Court decision 6B_862/2021 of June 21, 2022, para. 1.1 and cited references; CAR 4.200.062); that it is necessary to examine whether the witnesses have direct knowledge of the facts and to take into account the transcripts of hearings already in the record (CAR 4.200.067) ; that testimony that is not essential to assessing issues concerning family ties or interactions that may exist between the individuals mentioned in the proceedings is excluded (CAR 4.200.062). In accordance with these principles, the Court, at the conclusion of the evidentiary proceedings, rejected the defense's offers of evidence seeking to call Nathaniel THOMAS, Mary McCOY, and Tania JACKSON, stating that they were not essential for assessing issues concerning family ties or interactions that may exist between the individuals mentioned in the proceedings (see also the grounds cited by the Court when it rejected these same offers of evidence in its orders issued prior to the trial [CAR 4.200.066 et seq. and 185 et seq.]), as well as those related to the *"Report on Findings and Pictorials"* dated January 9, 2023, submitted by Attorney GIANOLI at the opening of the trial, and in particular

the testimony of Floyd ALLEN and Joey GRIMES. In addition to these grounds, it should be noted that the latter could not have direct knowledge of the facts, since they clearly do not come from the same village as Carol ALEXANDER, who stated, on the one hand, that she did not know them (CAR 5.302.009, Q/A nos.[os] 43 and 46), and, second, that the individuals mentioned in the report in connection with the village of Bethesu belonged to a different ethnic group than her own (CAR 5.302.009 and 012, Q&A [nos.] 45, 50, 67, 69, and 70). It also appears from the aforementioned report that its author, instead of going to Botosu as he had been instructed, went to another village, namely Bethesu (CAR 5.200.005:
"*[…] the next stop of our investigative tour took us to Bethesu in the Upper Waum Clan […] instead of Botosu as was mentioned in the email sent to me*.").

6.3.2 With regard to the defense's offers of evidence related to procedural matters, the Court reiterated that it was prepared to hear Carlos ELLIS on the basis of the July 19, 2021, email sent by him to Mr. GIANOLI and submitted by the defense during the proceedings (CAR 5.200.028 et seq.), emphasizing that the key point was that Carlos ELLIS stated in that email that he had personally spoken with witnesses who said that Daniel TODD had offered them money and relocation to a first-world country in exchange for false testimony against Alieu KOSIAH: (*"I've personally spoken to a couple of witnesses who said that Todd offered them money and relocation to a first-world country if they would provide false testimony against Kosiah*."). It should be noted that Attorney GIANOLI was requested to provide Carlos ELLIS's address in order to finalize the procedures for issuing a subpoena through international mutual legal assistance (CAR 5.100.033; CAR 5.200.173). However, the Court noted that, according to the information provided by Carlos ELLIS's attorney to Mr. GIANOLI, "(…) the hearing of her client in his capacity as an 'expert investigator' would, in any case, be of little interest, since he believes he does not personally possess sufficiently relevant evidence directly related to the cases " (CAR 5.200.175), which completely refutes the allegations contained in the July 19, 2021, email. The Court further notes that the complainants Nicolas COOK, Georges ROSADO, Levi FARRELL, and Eddie COULTER, to whom a photograph of Carlos ELLIS was shown during the hearing, stated that they had had no contact with him (CAR 5.100.031).

6.3.3 With regard to Barry ORTEGA, who is both the author of the emails submitted by Counsel GIANOLI and the person who suggested to the defense that the witnesses Jesse SLADE and Vincent WALDROP be called (CAR 5.200.175), the Court noted that an *open-source* search showed that a person by that name was trained and specialized, among other things, in combating war crimes and terrorism and was active in an NGO, namely NGO No. 1. However, the Court noted that this person communicated solely via email and did not indicate who his employer was or, more importantly, what his current mandate was. The Court was

also expressed surprise at the level of English used in the emails in question, given the alleged position. The Court nevertheless held that the question of whether this was indeed the person identified by the defense in its pleadings could remain open, since the motion had to be dismissed on other grounds. Indeed, it is already clear from the motion that the child soldier Vincent WALDROP has no direct connection to the present case. Even based on Barry ORTEGA's allegation, it was clear that Vincent WALDROP would have had no impact on the proceedings, since he would have refused to testify or to provide evidence related to the matter (CAR 5.200.175). With regard to the evidence concerning Jesse SLADE, the Court noted that these were general allegations, with no indication of any specific testimony that had been tampered with in the case of Alieu KOSIAH. Furthermore, SLADE's name is mentioned only once in the case file, in the hearing of Daniel TODD, and refers to a deceased person (MPC 12-31-0226). In addition to these grounds, it should be noted that Daniel TODD maintained, in his statements taken by Attorney JAKOB and subsequently relayed by Attorney WERNER, that Jesse SLADE was never his employee or that of the GJRP and that the latter had no involvement in the case concerning Alieu KOSIAH (CAR 5.200.203-A). Furthermore, the Court, in its order on evidence dated October 27, 2022, held that the role played by CIVITAS MAXIMA and the GJRP must be analyzed primarily in light of the facts underlying the present proceedings and the manner in which they were initiated (CAR 4.200.072). It also noted that the circumstances surrounding the filing of the complaints were described by the complainants as well as by Daniel TODD, the director of the GJRP, who was heard twice during the preliminary proceedings, on August 28 and November 20, 2017, each time in the presence of the defendant and his court-appointed counsel (CAR 4.200.065). The Court thus has a complete record that allows it to assess the arguments raised regarding the steps taken by CIVITAS MAXIMA and the GJRP in connection with these proceedings. On this point as well, the Court refused to admit into the record a news article displaying the message *"page not* found" and another written in a language the Court does not understand. It added that it would be able to assess the probative value of all these elements, having notably noted that, according to one of the submitted articles, Jesse SLADE was an undercover witness (CAR 5.200.207 et seq.), an additional factor weighing against holding a hearing.

6.3.4 The Court further rejected the admission of a file on hand pumps, as the document had no temporal or geographical connection to the facts at issue in the present proceedings.

6.4 It should also be noted that the Court denied the motion filed on January 24, 2023, by the person called to provide information, Walter VARGAS, seeking to be heard again on appeal. The Court based its denial

on the basis of Walter VARGAS's conduct during his hearing on January 12, 2023, during which he had refused to make any statements, and after reviewing the requests for evidence submitted to the Court in preparation for the present proceedings (CAR 5.100.034; see also *supra*, C.24).

II. On the e of the merits

1. ly General Grievances

The defense raises general objections that challenge the very principle of the proceedings against the defendant. Although these arguments sometimes overlap, three themes emerge: the theory of a conspiracy organized by CIVITAS MAXIMA and the GJRP, the validity of the criminal complaints, and the identification of the defendant by the plaintiffs and witnesses. These three themes form the basis of the Court's preliminary analysis of principle.

1.1 The Allegation of a Conspiracy Organized by CIVITAS MAXIMA and the GJRP ( )

The defense contends that the testimonies implicating Alieu KOSIAH are false. In the defendant's view, as expressed throughout the proceedings, the individuals accusing him were paid to lie and were instructed on what to say to the Court. The conspiracy was allegedly organized and directed by Mr. WERNER and CIVITAS MAXIMA, respectively, with the assistance of, among others, Daniel TODD and the GJRP (see, in particular, MPC 13-01-0494; TPF 40.731.069 et seq.; CAR 5.301.005 et seq. and 174).

1.1.1 Arguments of the Parties

1.1.1.1 In its closing argument, the defense presents a series of arguments (CAR 5.200.364–415), which essentially correspond to those raised at the trial court (TPF 40.721.470–497), the substance of which is as follows. It accuses Mr. WERNER and Daniel TODD of having worked together, at the instigation of the former, to conduct investigations into the defendant, noting that Daniel TODD—who, like his organization, the GJRP, is said to be in a subordinate relationship to Mr. WERNER—is neither credible nor professional. The defense alleges that the two men prepared affidavits in support of Jody WALDROP as part of her asylum proceedings, which it claims constitutes evidence of assistance provided to the plaintiffs. The defense further argues that the charges brought against Joyce PRINCE, the ex-wife of Charles TAYLOR, in the United Kingdom were dropped in 2019 and that witnesses called by CIVITAS MAXIMA and the GJRP allegedly falsely accused Sean LANDA in the proceedings against him in Finland, noting that Sean LANDA was acquitted on April 29, 2022. The defense also submitted several documents during the appeal proceedings to demonstrate

the existence of a conspiracy (*supra*, C.25). These consist primarily of emails sent by Carlos ELLIS and Barry ORTEGA to Attorney GIANOLI, as well as news articles reporting allegations of witness bribery and tampering against Attorney WERNER, Daniel TODD, and the organizations they lead. The defense views this as confirmation of the theory that the plaintiffs were prepared by CIVITAS MAXIMA and the GJRP, a theory that is further corroborated by the fact that the plaintiffs' statements are sometimes—or even often—contradictory. It is therefore on this basis that the testimonies were allegedly *"fabricated from* scratch" (CAR 5.200.434, 450, 469, 523, 531,
539, and 592).

1.1.1.2 The MPC argues that there is no evidence of a conspiracy orchestrated by CIVITAS MAXIMA and the GJRP (CAR 5.200.723 et seq.). It challenges the defense's arguments, which seem to view both instances—when the plaintiffs contradict themselves and when they do not—as evidence of a conspiracy. Regarding the news articles presented during the proceedings, the MPC maintains that they contain allegations of unknown origin and recalls the context of an election year in Liberia, emphasizing that the fight against impunity is a major issue there.

1.1.1.3 In his closing argument on behalf of all the complainants, Mr. JAKOB disputes the existence of a conspiracy and the logic of the defense's arguments on this point, noting that the defense accuses the complainants of lying if they say two different things and of having learned a lesson if they say the same thing (CAR 5.200.813). During the appellate proceedings, Attorney JAKOB also addressed the documents introduced into the proceedings by the defense (CAR 5.100.038 et seq. and 042 et seq.). In particular, he noted that Jody WALDROP had stated that he had received no compensation in connection with his testimony and that said testimony was not unfavorable to Alieu KOSIAH, adding that the affidavits signed by Mr. WERNER and Daniel TODD were not problematic, misleading, or false. Attorney JAKOB also argued that the articles should be viewed in their proper context, namely that of a political battle waged against Keith BELMONT, the former *Solicitor General* of Liberia.

1.1.1.4 In his closing argument, Mr. WERNER spoke in particular about the proceedings in which CIVITAS MAXIMA had been involved abroad (CAR 5,200,796 et seq.). Regarding the proceedings in the United Kingdom against Joyce PRINCE, he argued that she was never acquitted and that she was not tried due to a lack of evidence concerning a legal prerequisite—control of the territory by the *National Patriotic Front of Liberia* (NPFL)—for criminal prosecution for the crime of torture. As for the proceedings in Finland against Sean LANDA, Mr. WERNER notes that individuals claiming to have been bribed by Daniel TODD were heard, but argues that the

acquittal did not cite any criminal, problematic, or inappropriate acts on the part of members of CIVITAS MAXIMA or the GJRP. Attorney WERNER had also ruled during the proceedings on the news articles submitted by the defense, insofar as he was directly involved (CAR 5.200.203-A). He thus explained that he had been the target of absurd accusations as part of a smear campaign launched against Daniel TODD, in which Carlos ELLIS allegedly played a major role, although the latter never repeated his allegations before any authority.

1.1.1.5 As for Daniel TODD, it should first be noted that he had already been confronted, in an adversarial proceeding during the preliminary investigation and in the presence of the defendant, with the claim that testimonies had been purchased and staged, and that he had consistently refuted any such allegations (MPC 12-31-0001 et seq.). Following the new evidence presented by the defense, the Court gave him the opportunity to respond through the plaintiffs. He then submitted the following written observations, which were presented during the proceedings (CAR 5.200.203-A). He explained that a public smear campaign with ramifications in the Liberian political debate had been launched against him in connection with the proceedings against Sean LANDA and that Jesse SLADE and Barry ORTEGA were among his accusers. With regard to Jesse SLADE, Daniel TODD maintained that he had never been his employee or an employee of the GJRP. He contested all charges brought against him and maintained that he had always acted honestly and in accordance with the GJRP's ideals in all his activities related to the case involving Alieu KOSIAH and, more generally, in all GJRP activities.

1.1.2 Examination *of the Case*

1.1.2.1 As a preliminary matter, the Court notes that the defense submitted news articles regarding the methods allegedly employed by CIVITAS MAXIMA and the GJRP in the form of three files dated January 17, 24, and 31, 2023, without sorting through the articles provided. It also notes that the defense did not specifically refer to the content of said files during its closing arguments and did not draw any conclusions regarding the concrete impact these news articles might have on the present proceedings. The Court notes, however, that the defense had sufficient time to do so, given that it received the first news articles and the first email from Carlos ELLIS in May and July 2021—approximately 18 months before the appellate hearings.

1.1.2.2 The Court further emphasizes that various elements in the record make it possible to understand the basis for some of the allegations raised by the defense. It has

thus established that Attorney WERNER and Daniel TODD assisted Jody WALDROP in connection with her asylum proceedings by signing affidavits (18-01-0643 et seq. and 0648 et seq.). However, in these documents, Attorney WERNER and Daniel TODD merely express their opinion that the individual in question would be in danger if returned to Liberia. Their actions therefore do not in any way invite criticism. Moreover, to claim that Mr. WERNER and Daniel TODD enabled Jody WALDROP to obtain asylum in Switzerland is to ignore how the asylum process works in that country. It should also be emphasized that the individual's testimony in the proceedings before us was anything but negative toward the defendant. He stated that Alieu KOSIAH "had a reputation for being a philanthropist who cared deeply for children, even those from the Lofa ethnic groups who had persecuted us" (MPC 12-25-0018, lines 17 ff.). Furthermore, none of the plaintiffs filed an asylum application in Switzerland during their various visits to that country, and the only person to have exercised this right was Walter VARGAS, who fought under Alieu KOSIAH's command during the war. The case file also contains evidence that may have fueled the defense's allegations that the complainants and witnesses received material benefits. James CAMDEN, for example, stated that when he traveled from Zorzor to Monrovia, to the GJRP offices, for a four-day stay to recount what had happened to him during the war, the GJRP paid USD 10 per night for lodging, as well as USD 5 per day for meal expenses, and covered transportation costs (MPC 12-28-0007 et seq.). These modest amounts and their justifications clearly constitute mere reimbursement of expenses and do not appear to be equivalent to financial rewards, even within Liberia's specific socioeconomic context. On the contrary, the absence of compensation for the loss of earnings inevitably caused by such a stay tends to underscore the sincerity of the complainant's actions. There is therefore no tangible evidence to support the claim that the testimonies were purchased or falsified by CIVITAS MAXIMA and the GJRP. The Court notes in particular that minor variations and contradictions within any given testimony or between different testimonies do not constitute evidence of a conspiracy, but rather indicators of credibility (see also *infra*, para. II.1.2.4.2). These variations considerably weaken the *"witness* coaching" argument, the very purpose of which would be to provide the authorities with "flawless" testimony (see also *below*, para. II.1.3.4.2). Similarly, the few inconsistencies identified by the defense in Daniel TODD's statements do not demonstrate either a conspiracy or any intent on his part to cause harm. With regard specifically to documents MPC 12-31-00218 and 0232, which—according to the PJF report of April 20, 2018—were allegedly drafted by Daniel TODD (the second one only partially) (MPC 10-01-0213 et seq.), it is difficult to see how they would support the conspiracy theory, given that they consist of the "date and place" notation on a power of attorney and a

Note regarding contacts made in Lofa. As for the allegation that he lied during the proceedings by failing to admit to being the author of these documents, while Daniel TODD's denials contradict the conclusions of the PJF, it should nevertheless be noted that the PJF's report offers no certainty regarding the author of the documents in question. More generally, it should be emphasized that the GJRP is a relatively young organization and that its director has explained that it has improved its processes since its creation. The care taken by CIVITAS MAXIMA and the GJRP in training the latter's staff—at an internationally recognized institution—on how to conduct investigations in the field of international criminal law further attests to the seriousness of their approach. As for the proceedings in the United Kingdom and Finland in which CIVITAS MAXIMA and the GJRP are also involved, the fact that Sean LANDA and Joyce PRINCE were not convicted does not provide grounds to conclude that there is evidence of witness tampering. Moreover, the charges against the latter were dropped on a legal ground related to an impediment to proceeding, without a trial ever having taken place (THE GUARDIAN, "Judge dismisses torture charges against Charles Taylor's ex-wife," December 6, 2019, <https://www.the-guardian.com/world/2019/dec/06/uk-judge-dismisses-torture-charges-against-charles-taylors-ex-wife-liberia>, accessed February 27, 2024; see also LE MOLI, "Torture by Non-state Actors: Four Inquiries," Journal of International Criminal Justice, 2021, vol. 19(2), p. 363 ff.).

1.1.2.3 We must now examine the documents submitted by the defense in support of its conspiracy theory during the appellate proceedings. In his email dated July 19, 2021 (CAR 5.200.028 et seq.), addressed to Attorney GIANOLI, Carlos ELLIS asserts that Attorney WERNER and Daniel TODD allegedly earned millions of euros by suing Liberian nationals outside of Liberia, thanks to the recruitment of false witnesses paid with money or resettlement, notably in Europe. He adds that Jody WALDROP allegedly received asylum in Switzerland in exchange for false testimony against Alieu KOSIAH and that he personally spoke with witnesses who said that Daniel TODD had offered them money and relocation in exchange for false testimony against Alieu KOSIAH. In a second email, dated April 29, 2022, Carlos ELLIS apparently sent Attorney GIANOLI, on his own initiative, two news articles concerning the acquittal of Sean LANDA and the work of CIVITAS MAXIMA and the GJRP (CAR 5.200.064). The Court notes that the allegations contained in the July 19, 2021, email regarding witnesses to whom Daniel TODD allegedly offered benefits in exchange for false testimony were refuted by the information provided by Carlos ELLIS's attorney to Mr. GIANOLI, which indicates that her client recanted ("the hearing [of Carlos ELLIS] in his capacity
'expert investigator' would, in any case, be of little interest, since he believes
he does not personally possess sufficiently relevant evidence directly related to the cases"; *supra*, para. I.6.3.2). It should also be noted that the

remaining allegations made by Carlos ELLIS are vague and based on information obtained indirectly (*infra*, para. II.1.1.2.5). Furthermore, the fact that he spontaneously contacted Mr. GIANOLI seems to indicate that he acted out of personal interest. His email of July 19, 2021, copied to the attorney representing Sean LANDA—to whom he reportedly recommended contacting Mr. GIANOLI—further suggests that he is involved in the Finnish proceedings on the defense's side.

1.1.2.4 In various emails sent to Mr. GIANOLI beginning on January 24, 2023—that is, during the appeal proceedings— Barry ORTEGA forwarded several news articles reporting allegations of witness bribery and tampering against Mr. WERNER and Daniel TODD and the organizations they lead (CAR 5.200.096 et seq. and 207 et seq.). In one of these emails, Barry ORTEGA claims to have concrete evidence (*"hard* evidence") that the two men employed such methods, particularly in connection with the proceedings against Alieu KOSIAH (CAR 5.200.096). However, it must be noted that this evidence was never provided to the Court. It should also be recalled that the Court had expressed surprise at the level of English used in the emails in question, given the alleged positions held by the authors (*supra*, para. I.6.3.3).

1.1.2.5 The news articles submitted by the defense were written primarily by Barry ORTEGA and cover the period from May 2021 to January 2023. The Court notes at the outset, in connection with the aforementioned lack of filtering, that one of the articles submitted, which deals with juvenile delinquency, has no connection to the proceedings, or to Attorney WERNER or Daniel TODD (CAR 5.200.288 et seq.), and that other articles were submitted multiple times. As for the content of the articles submitted by the defense, it is characterized by the repetition of vague information and the frequent citation of Jesse SLADE as a source; it should be noted that his credibility is undermined by the fact that he is described as an undercover witness (see also *supra*, consid. I.6.3.3) and that Daniel TODD maintains that he never employed him. It is further noted that most of the articles do not cite sources or avoid naming them. One article, however, reports more specific allegations made during the trial of Sean LANDA in Monrovia, according to which Daniel TODD allegedly offered USD 16,000 to a witness to lie about the defendant and also asked him to testify against Alieu KOSIAH (CAR 5.200.159 et seq.). However, these are mere allegations, containing few details—and indeed no details whatsoever regarding the nature of what the witness was allegedly asked to do in connection with the proceedings against Alieu KOSIAH. Furthermore, the credibility of the witness in question is called into question in the same article. The article reports on the prosecution's rebuttal, which allegedly revealed that the witness in question exchanged WhatsApp messages with Carlos ELLIS. The Court further notes

further that the same information is frequently repeated. This is notably the case with witnesses who were allegedly housed in hotels in West Africa and paid to give false testimony in the proceedings against Joyce PRINCE (CAR 5.200.038 et seq., 054, 056, 062, 099, 209, and 319), as well as material benefits—including asylum in a Western country—offered in exchange for false testimony (CAR 5.200.061; 159, 253, and 319), or, more specifically with regard to the present proceedings, reports alleging that Jody WALDROP gave false testimony in the proceedings against Joyce PRINCE before being granted asylum in Switzerland (CAR 5.200.099, 106, 115, and 227). However, merely repeating an allegation is not sufficient to establish its validity. The Court has, moreover, already had occasion to note that evidence in the record makes it possible to understand the origin of the accusations regarding alleged material benefits offered in exchange for false testimony, in particular that of Jody WALDROP. It also notes that there is no concrete evidence in the record to support this argument (*supra*, para. II.1.1.3). While the conspiracy theory cannot be upheld in light of these facts, it must be noted that the theory of a smear campaign directed in particular against Daniel TODD and Attorney WERNER is thereby substantiated. The tone used in some of these articles is, moreover, consistent with such a campaign. For example, Daniel TODD, Mr. WERNER, and their organizations are accused of having "run a criminal cartel by coaching witnesses to incriminate innocent Liberians" (*"ran a criminal cartel by producing coached witnesses into incriminating innocent Liberians* " [CAR 5.200.034]), of being "criminals engaged in a global organized criminal enterprise and pathological liars" (*"criminals engaged in a Global Organized Criminal Enterprise and pathological liars* " [CAR 5.200.209]), or even of being "involved in a well-crafted international syndicate for a money-making scheme *disguised as* human rights groups" (*"are involved with a well-crafted international syndicate for money making scheme under the guise of Human Rights* Groups" [CAR 5.200.227]). Finally, it is surprising that six articles are dated January 25 and 26, 2023—that is, during the appellate proceedings—which constitutes further evidence of a smear campaign.

1.1.2.6 Thus, based on the documents produced by the defense, and in the absence of tangible evidence—quite the contrary—a conspiracy orchestrated by the aforementioned organizations appears highly implausible.

1.1.3 Conclusion

In light of the foregoing, the conspiracy theory must be dismissed.

1.2 Criminal Complaints and Assessment of the Credibility of the Complainants' al Statements

Both at first instance and on appeal, the defense argues that there are discrepancies between the criminal complaints and the statements of the complainants. Since these complaints are all the result of the work of CI-VITAS MAXIMA and the GJRP, the Court first addresses the points that the defense repeatedly raises.

1.2.1 Arguments of the Parties

1.2.1.1 In its closing argument (CAR 5.200.723 et seq.), the Office of the Public Prosecutor contends that Alieu KOSIAH allegedly attempted throughout the proceedings to dismiss every charge at the first sign of a contradiction, whereas the defendant, on the other hand, allegedly relied on every piece of evidence that supported—or appeared to support—his case. The MPC argues, citing examples, that the defendant distorts the complainants' statements in order to create contradictions. It further refers to its closing argument at the trial and explains that the complainants did not recount "the" truth, but "their" truth, marked by contradictions, doubts, or errors—which is normal and serves as evidence of their authenticity (TPF 40.721.175 et seq.). The MPC argues that while the case file does not contain absolutely irrefutable evidence, it does contain a vast amount of circumstantial evidence, information, and proof—including material that has no connection whatsoever to the GJRP and CIVITAS MAXIMA or where no influence from them can be alleged. All these elements, when read together, cross-referenced, and compared, form the whole that underlies the MPC's firm conviction and that is said to have shaped that of the Criminal Court when it rendered its guilty verdict.

1.2.1.2 Attorney JAKOB, in his closing argument on behalf of all the plaintiffs (CAR 5.200.811 et seq.), argues that there are a myriad of factors that have caused the statements of the various parties to evolve and that, at a more fundamental level, the memories of the various parties have been partially altered. He maintains that the accounts have evolved over time and that the opposite would be a sign that they are fabricated. Attorney JAKOB explains, regarding the work of the attorneys, that the drafting of the complaints could have been improved, but that, more generally, their work consists in part of helping their clients structure their accounts and make them understandable to the authorities, which inevitably carries the risk of influencing their memories. He adds that there are difficulties no interpreter can overcome, such as the fact that most of the Liberians interviewed do not pronounce the

final "s" sounds, so that it is often impossible to determine with certainty whether a word is singular or plural, or whether the reference is to a "WAR BOY" or a "WAR BOSS." Mr. JAKOB also notes the cultural difficulty of providing direct answers to questions and emphasizes that the Swiss context and

the judicial context would be profoundly foreign to the complainants and witnesses.

1.2.1.3 In his closing argument (CAR 5.200.794 et seq.), Attorney WERNER explains that to ensure the reliability of the information provided, CIVITAS MAXIMA collaborates with local actors, trained in investigative work, to gather information from victims or witnesses on the ground, adding that the model represented by CIVITAS MAXIMA has certain limitations inherent to its activities. He emphasizes that the admission of evidence took place in a strictly adversarial manner during the years of the preliminary investigation and argues that when he met with the future complainants, prior to the filing of the respective criminal complaints, he had no doubt regarding the authenticity of the people he met and their sincere desire for justice. Finally, he maintains that the evidence gathered and the testimonies collected throughout this proceeding have only served to reinforce the credibility of the complainants.

1.2.2 Criminal Complaint

1.2.2.1 A criminal complaint is a statement made by a person to a competent authority that a crime (prosecuted ex officio) has been committed (see Art. 301 of the Code of Criminal Procedure). It may be directed against a specific person or against an unknown person. Unlike a criminal complaint, a criminal report is not a declaration of intent (*Willenserklärung*) but a declaration of knowledge (*Wissenserklärung*). A criminal report is neither necessary nor sufficient for the initiation of criminal proceedings. Thus, criminal prosecution authorities are also required to initiate proceedings when they become aware of offenses based on their own observations (Art. 7 of the Swiss Criminal Procedure Code). Furthermore, filing a criminal complaint does not automatically entitle the complainant to the initiation of an investigation or the conduct of criminal proceedings, as there is the possibility of the case being dismissed without further action (Art. 310 CPP) (RIEDO/BONER, Basler Kommentar, 3e, 2023 ed., n. 3 et seq. on Art. 301 CPP). From a substantive standpoint, a statement made to an authority should be considered a criminal complaint—and treated as such—only if it contains specific information regarding the possible commission of an offense. General allegations (*Pauschalbehauptungen*) are insufficient. The requirements for criminal complaints must not be excessive. In particular, non-specialists must be given the opportunity to revise their complaint (Art. 110(4) CPP). If necessary, the authorities are required to assist the complainant in clarifying the facts. Nor is it necessary

to provide evidence (RIEDO/BONER, *op. cit.*, n. 11 et seq. ad Art. 301 CPP).

1.2.2.2 To establish the facts, the criminal authorities, in accordance with Art. 139(1) CPP, employ all lawful means of evidence which, according to the state of scientific knowledge and experience, are suitable for establishing the truth. The Code of Criminal Procedure lists as personal means of evidence (*persönliche Beweismittel*) the examination of the accused (Art. 157 et seq.), witnesses (Art. 162 et seq.), and persons called upon to provide information (Art. 178 et seq.), as well as the use of experts (Art. 182 et seq.). Material evidence (*sachliche Beweismittel*) includes documentary evidence (documents, etc.), inspections, the production of files, and requests for reports and information (Art. 192 et seq.). The Code of Criminal Procedure does not provide an exhaustive list of evidence. The principle of free evaluation of evidence applies to all evidence that is actually available and lawful, provided it is admissible (TOPHINKE, Basler Kommentar, 3e, 2023 ed., n. 47 ad Art. 10 CPP). Art. 139 CPP, in implementation of Art. 6(1) CPP, refers to the principle of investigation. Indeed, only if the criminal prosecution authorities fulfill their duty to investigate ex officio are they in a position to consider a set of facts as proven and, within the framework of the free evaluation of evidence (Art. 10(2) CPP), able to render a legal decision on that basis. The open-ended nature of the findings of fact and the obligation to prove all facts relevant to the decision further serve as safeguards for the presumption of innocence. Finally, the obligation of criminal authorities and courts to establish the relevant facts is accompanied by the right of the parties to request the taking of evidence (GLESS, Basler Kommentar, 3e, 2023 ed., n. 9 et seq. on Art. 139 CPP).

1.2.2.3 In light of the foregoing, the Court considers that criminal complaints are allegations that define the initial issues of the investigation (“Beweisthemen”) and allow for the assessment of the probative value of statements, without, however, constituting evidence *in the strict sense*.

1.2.3 Presumption of Innocence

1.2.3.1 In ATF 144 IV 345 (JdT 2019 IV 147), which addresses the presumption of innocence, the Federal Supreme Court addressed the question of the scope of application of the *"in dubio pro reo"* rule in relation to the determination of the facts.

1.2.3.2 According to Article 10, paragraph 3, of the Criminal Procedure Code (CPP), the court shall base its decision on the facts most favorable to the defendant when insurmountable doubts remain regarding the factual elements justifying a conviction. This provision gives concrete expression to the constitutional principle of the presumption of innocence (*in dubio pro reo*; Art. 32(1) of the Constitution and Art. 6(2) of the ECHR). It prohibits, during the legal assessment of an objective element of the offense, the consideration of a factual element unfavorable to the defendant if, following an objective evaluation of all the evidence, serious doubts remain as to whether the facts actually occurred in that manner, or whether a set of facts more favorable to the defendant cannot be reasonably ruled out. Mere plausibility is therefore insufficient. However, absolute certainty cannot be required either; abstract and theoretical doubts can in fact almost never be completely ruled out (ATF 144 IV 345, para. 2.2.1, and the cited decisions).

1.2.3.3 The Federal Supreme Court uses the term "evidence assessment" in a broad sense that encompasses the entire process leading to the determination of the facts. In the context of the following discussion, however, this term should be understood in its literal sense. This distinction is important because the principle *of in dubio pro reo* does not apply to the question of which pieces of evidence must be considered and, where applicable, how they must be evaluated. Thus, in the event of conflicting evidence, the court does not automatically rely on the evidence most favorable to the defendant. In other words, the principle does not provide any guidance regarding the conclusions that should be drawn from the available evidence. The evaluation of evidence as such is governed by the principle of free evaluation of evidence: pursuant to Art. 10(2) of the Criminal Procedure Code (CPP), the court freely assesses the evidence gathered in accordance with the firm conviction it derives from the proceedings as a whole. Criminal justice authorities must decide whether to consider a fact established without being bound by rules of evidence and relying solely on their personal conviction based on a conscientious examination of the available evidence. In doing so, however, they are not guided solely by their own intuition but are also bound by (objective) rules of methodology, natural causation, and experience, as well as by scientific knowledge (ATF 144 IV 345, para. 2.2.3.1 and the references cited).

1.2.3.4 The assessment of evidence follows the presentation and sifting of (procedurally admissible) evidence that may contribute to establishing the relevant facts with respect to the offenses in question. Evidence is first assessed in terms of its fundamental suitability and quality: on the one hand, the various pieces of evidence must, by their nature and content, be capable of effectively contributing to the clarification of the specific factual issue (probative value). On the other hand, its fundamental probative value must be established (e.g., using credibility criteria for witness statements [see ATF 129 I 49, para. 5; 128 I 81, para. 2] or methodological requirements regarding forensic expert reports [see 141 IV 369, para. 6.1]). The assessment of evidence then involves evaluating the content of the evidence admitted (115 IV 267, para. 1). This is carried out, where applicable, with the aid of guidelines (e.g., a hierarchy regarding the probative value of different types of expert opinions; see 141 IV 369), but not on the basis of rules of evidence or theories relating to the outcome. Provided that the trial judge adheres to the standards for evaluating evidence, he or she has broad discretion. When, for example, there are conflicting expert opinions on a decisive issue regarding the merits of the case, the judge must determine which assessment to follow without regard to the presumption of innocence. He cannot simply follow the expert opinion most favorable to the defendant. This applies by analogy to all forms of evidence (144 IV 345, para. 2.2.3.1, and the references cited).

1.2.3.5 The principle *of in dubio pro reo* applies only after all evidence deemed necessary by the judge has been presented and evaluated. Thus, it is precisely not a rule for evaluating evidence. In cases where the evidence is disparate and contradictory, the judge must compare the various elements and determine the outcome of the presentation of evidence. Depending on the assessment, this outcome may appear to be certain—to the extent that the contradictions can be resolved—or may remain subject to uncertainty. The outcome of the presentation of evidence may, however, also be open to debate in the sense that it allows for multiple interpretations within the framework of the established facts and thus raises several alternative factual scenarios. The rule *of "in dubio pro reo"* comes into play only when examining the result of the evaluation of the evidence, that is, at the stage following the free assessment of the evidence, which leads from the outcome of the presentation of evidence to the determination of the facts constituting the substantive basis for a guilty verdict (ATF 144 IV 345, para. 2.2.3.2, and the references cited).

1.2.3.6 A fact that conforms to the legal definition of the offense and is capable of contributing to a guilty verdict is relevant as soon as the judge recognizes that the reliability of the outcome of the presentation of evidence cannot be seriously doubted. In the event of reasonable doubts regarding the defendant's guilt, the free assessment of the evidence authorizes the judge to acquit the defendant of the criminal charges. With

regard to the application of the principle *of *in dubio pro reo** as the rule governing the burden of proof (ATF 127 I 38, consid. 2a), a factual finding may be established to the judge's satisfaction only with certainty, or at least with a high degree of probability; otherwise, it cannot be attributed to the defendant (Federal Supreme Court decision 6B_355/2012 of September 28, 2012). The *"in dubio pro reo"* rule is thus a requirement pertaining to the standard of proof. For the judge to declare himself or herself thoroughly convinced, the judgment must exclude any reasonable doubt that a thoughtful observer with some life experience might harbor (144 IV 345, para. 2.2.3.3, and the references cited).

1.2.3.7 Only clear evidence leads to sufficient certainty regarding the presence of a qualified objective element of the offense: the evidence in question must unequivocally contribute, in the given context, to a factual justification of the objective element of the offense to be proven. This is not the case when a piece of evidence appears ambiguous because it allows for multiple interpretations and therefore fits just as well with an alternative scenario. Evidence may also positively point to a very specific alternative hypothesis or undermine the claim that a factual situation conforms to the legal definition in favor of an alternative factual situation that cannot be determined more precisely. The presumption of innocence is violated when the degree of plausibility with which an alternative scenario (defined in terms of its content or even merely its existence) is grounded is misjudged or not even taken into consideration (ATF 144 IV 345, para. 2.2.3.5, and the reference cited).

1.2.3.8 The *"in dubio"* rule requires legal practitioners to pay attention to serious indications of alternative factual scenarios and to examine whether, if applicable, this gives rise to an insurmountable doubt that prevents them from accepting the factual scenario consistent with the legal factual statement. It also serves as a corrective to the practical phenomenon whereby the criminal prosecution authority may be tempted to give greater weight to incriminating evidence rather than exculpatory evidence, given the presumption of guilt existing at the outset of the investigation as well as the principle of *"in dubio pro duriore"* governing the preliminary proceedings (ATF 138 IV 86, para. 4), and that the courts then tend, for reasons of decision-making psychology, to overestimate information that confirms the accusation and to underestimate that which contradicts the presumption of guilt (144 IV 345, para. 2.2.3.6 and cited references).

1.2.3.9 If the evidence is contradictory or ambiguous, it must then be examined (if necessary, on the basis of a broader range of evidence) whether the alternative hypothesis is sufficiently plausible to raise persistent doubts regarding the version of events that satisfies the elements of the offense (ATF 144 IV 345, para. 2.2.3.7).

1.2.4 Assessment of the Credibility of Statements and Applicable Criteria

1.2.4.1 According to case law, what is important in the search for the truth is the credibility of the specific testimony, which is verified through a methodical analysis of its content, in order to determine whether the details regarding a specific event stem from the witness's actual experience. For a testimony to be considered reliable, it is necessary to verify, in particular, the presence of criteria of reality and, conversely, the absence of signs of fantasy. The decisive factor is whether the person testifying could, given the circumstances, their intellectual abilities, and their motivations, make such a statement even without actual experience (Federal Supreme Court decision 6B_760/2016 of June 29, 2017, para. 4.2). From a methodological standpoint, the verification is conducted as follows: the result obtained through a hypothesis-driven process—involving content analysis (intrinsic quality characteristics of the testimony, known as "real distinguishing features") and an evaluation of the history of the statement as well as the overall manner of the testimony—is examined for sources of error, and the personal competence of the person testifying is assessed. Initially, it is assumed that the assertion is not based on reality, and only when this basic hypothesis (*null hypothesis*) can no longer be upheld due to the established criteria of reality that it is concluded that the statement corresponds to an actual experience and is true (Federal Supreme Court decisions 6B_760/2016 of June 29, 2017, para. 4.2; 6B_298/2010 of November 30, 2010, para. 2.3; see ATF 133 I 33, para. 4.3; 129 I 49, para. 5; 128 I 81, para. 2). The assessment of the plausibility of statements is primarily a matter for the courts (Federal Supreme Court decision 6B_200/2015 of October 7, 2015, para. 1.3). The initial statement is of decisive importance in the psychology of testimony due to the psychological conditions of memory (Federal Supreme Court decision 6B_760/2010 of December 13, 2010, para. 2.4.1). However, it must be taken into account that different interrogation techniques can influence a witness's freedom of speech, and that there are situations in which the method of analyzing actual distinguishing features reaches its limits (Federal Supreme Court decision 6B_494/2012 of February 21, 2013, para. 1.4.1).

1.2.4.2 With regard to the applicable criteria, the Court, in line with the practice of the Federal Supreme Court (see, in particular, Federal Supreme Court decisions 7B_202/2022, 7B_203/2022 of October 18, 2023, para. 4.3.1), refers to scholarly works on the analysis of statements in relation to their degree of credibility (LUDEWIG/BAUMER/TAVOR, "Einführung in die Aussagepsychologie," in *Aussagepsychologie für die Rechtspraxis*, Ludewig et al. [eds.], 2017, p. 49 ff.; LUDEWIG/BAUMER/TAVOR, "Between Truth and Lies," Justice - Justiz - Giustizia [Richterzeitung], 2012/2, no. 65 ff.). On this basis, the following criteria

have been established and validated in a significant number of studies. Thus, the Court drew upon the following criteria (see LUDEWIG/BAUMER/TAVOR, “Introduction to Testimony Psychology,” in Testimony Psychology for Legal Practice, Ludewig et al. [eds.], 2017, p. 49 ff.):

Cognitive Elements (A)

Analysis of statements as a whole (A1)

- Logic/consistency: the key elements are coherent and free of contradictions.
- Details: the account of the key elements is detailed.
- Disorganized presentation: the free-form narrative is characterized by jumps and does not follow a chronological order.

Analysis of specific elements – special content (A2)

- Links in space and time: The main action is linked to specific local circumstances, temporal details, and certain habits of the narrator or people in the social environment.
- Descriptions of interactions: descriptions of actions and reactions that illustrate interactions and bring the narrative to life.
- Narrative of discussions: the content of discussions related to key elements is reported.
- Account of complications: Unforeseen obstacles related to key elements, as well as attempts and disappointments, are part of the narrative.

Analysis of Certain Elements – Unexpected Content (A3)

- Extraordinary details: original, surprising, and extraordinary details—but not impossible ones.
- Stories focus on details: these details are irrelevant to the key elements.
- Stories about points the victim does not understand: factual elements are not properly understood.
- Accounts of indirect events: similar events involving other people.
- Accounts of psychological experiences: accounts of thoughts, emotions, and “resentment” toward the perpetrator.
- Accounts of the perpetrator’s psychological aspects: descriptions of the perpetrator’s presumed thoughts and feelings.

“Forensic” evidence (A4)

- Elements of the account correspond to elements typical of the commission of these offenses.

Strategic elements (B)

Lack of strategic emphasis (B1)

- Spontaneous corrections of narrative errors: the content of the statements is corrected without the speaker being made aware of a contradiction.
- Admission of memory lapses: spontaneous admission of not remembering something or of a lack of knowledge.
- Doubts about one’s own statements: the credibility of one’s own statement is called into question.
- Self-incrimination: admission of “shared responsibility.”
- Defense of the accused, or downplaying the charges: refusal to accept an exaggerated accusation or offering excuses for the defendant’s behavior.

1.2.5 Examination of discrepancies between criminal complaints and subsequent statements

1.2.5.1 In this case, among the discrepancies highlighted by the defense, certain issues were raised repeatedly. These include errors in dates, errors in identification—particularly regarding locations and family relationships—as well as inconsistencies regarding the scope of the allegations made.

1.2.5.2 Before examining these discrepancies, it should be noted that the criminal complaints were drafted after a single meeting between each of the complainants and Attorney WERNER, a fact that he later regretted during his closing argument at the trial: “In 2014, when I traveled to Liberia to meet with certain individuals at the GJRP offices, I sincerely believed—based on my experience since 2002—that I could very quickly and accurately understand their story. It is clear that I erred due to overconfidence; I should not have spoken with the complainants for such a short time and on only one occasion ” (TPF 40.721.230 s.). The lack of care taken in drafting the complaints was also acknowledged by Attorney JAKOB in his appellate argument, when he spoke on behalf of all the complainants (CAR 5.200.812). The statements of the complainants also illustrate this. James CAMDEN thus stated that, while he was aware that his complaint had been sent to Switzerland, he had “never had the opportunity to review it to confirm it” and that he believed Mr. WERNER “was one of

others who wanted to know what had happened in Liberia during the war" (TPF 40.757.012, Q/A No. 48).

1.2.5.3 Regarding the dating errors raised by the defense, the criticism leveled against various complainants is that they referred to the year 1994 or 1995 in their complaint before changing that date during their hearing in Switzerland (CAR 5.200.399 et seq.). However, as the defense notes in its closing argument, these changes occurred "after the start of the investigation and the clarifications that the proceedings […] made possible regarding the chronology of events that took place during the first civil war." It is important to bear in mind here that the events took place some twenty years before the complaints were filed. In this regard, while it is certainly already difficult to remember what one did ten years ago (see the defense's closing argument [CAR 5.200.417]), significant events are etched in one's memory, as the defense argued on appeal (CAR 5.200.418 et seq.), even if determining their exact dates can obviously pose problems. The events before the Court took place in a region of northern Liberia consisting largely of villages scattered throughout the bush. Most of the complainants themselves—as the Court has observed—are engaged in daily activities and work for which the practice of precise dating does not appear to be essential or systematic. In this context, the Western concept of methodically linking an act to the exact date and year in which it occurred must be viewed in perspective. Moreover, the case file has highlighted—given the historical context and the difficulty, even at that time, of obtaining information on the chronology of certain events—that dating must be done by contextualizing events in relation to one another. This is also what the defendant—who admitted to having been mistaken about the dates—argued from the preliminary investigation phase onward, stating
"[o]ne can be mistaken about the year but not about the event" (MPC 13-01-446, line 22), and later during the appellate proceedings, stating the following: "It is only the events that remain in your memory," and "from the outset, I indicated the events that had taken place in order to situate them in relation to one another" (CAR 5.301.050, lines 30 and 39 ff.). An examination of the complaints reveals that the plaintiffs do indeed refer to such events in connection with the charges they are bringing. For example, James CAMDEN speaks of
"when the ULIMO faction […] invaded the town" of Zorzor (MPC 05-01-0012), Levi FARRELL of "when ULIMO took the town" of Kolahun, of the time when soldiers were sent to dismantle the generator in his village near Kolahun, and of fighting between the *Lorma Defense Force* (also known as *the Lofa Defense Force*, hereinafter: LDF) and ULIMO while he was in Foya (MPC 05-01-0012), and Georges ROSADO regarding the attack carried out by ULIMO against Foya (MPC 05-02-0002). The same observation applies to Eddie COULTER, who refers to the time when "ULIMO fighters came

from Kolahun to dismantle and transport a large electric generator to Kolahun" (MPC 05-01-0013), and Philip JORDAN, who speaks of "[w]hen ULIMO was around Kolahun" (MPC 05-01-0013 et seq.). The Court further observes that when the statements are drafted by a single author, this increases the risk of repeating information from one statement to another—sometimes inaccurately—particularly with regard to the dates on which the alleged events took place. Finally, the hearing itself is likely to trigger memories. By way of illustration, the Court refers here to the statements of James CAMDEN, who, when asked why he had mentioned an event for the first time that very morning, explained as follows: "At the time I told my story? Sometimes certain things are on your mind at a specific moment, and you don't think about other things. When I told my story, I didn't think about that event. But as I kept talking during this investigation, certain things came back to me, which is why I thought of it. Furthermore, when I told my story, it wasn't like this hearing here. I only had one hour of questioning to tell Alain everything I had in mind. That wasn't enough" (MPC 12-28-0053, lines 21–26).

1.2.5.4 The defense argues that the timeline presented by James CAMDEN regarding the filing of his complaint is inconsistent, in that the complaint was allegedly filed after he saw a photograph of the defendant in the newspapers, even though that photograph was reportedly published after the defendant's arrest following the filing of criminal complaints, among which was James CAMDEN's (CAR 5.200.366). While the complainant's explanations on this point appear confusing (MPC 12-28-0006 et seq.), it is nonetheless plausible that, nearly three years after filing his complaint, the complainant's recollections became somewhat muddled, all the more so since this issue was addressed at the beginning of the hearing, at a time when the complainant was likely to be experiencing stress—as he himself stated—related to learning how legal proceedings work in a country that was completely foreign to him (MPC 12-28-0012, lines 21–30). The complainant's statements, in which he relied on his memory to answer the questions posed to him, constitute a further illustration of the absence of *"witness* coaching" (see also *supra*, consid. II.1.1.2.2, and *infra*, consid. II.1.3.4.2).

1.2.5.5 Regarding the errors in identification pointed out by the defense, the Court finds that the defense's arguments are irrelevant. These errors do not, in fact, call into question the credibility of the complainants' statements, but rather illustrate the quality of the criminal complaints. Thus, with regard to Carol ALEXANDER, the defense criticizes her for having identified the village of Gbortozo, in the district of Voinjama, in her complaint (MPC 05-04-0002), and then the village of Botosu during her hearing before the MPC (MPC 12-21-0015, line 17) (CAR 5.200.371). However, these refer to the same village, but

the pronunciation differs, as is clear from the complainant's statements (TPF 40.752.0035, Q&A No. 257). It is also worth noting here that she can neither read nor write (MPC 12-21-0064, lines 27 ff.). James CAMDEN is further accused of having stated that he was born in Zorzor in his complaint, and then in Kolahun during the preliminary investigation (CAR 5.200.365). However, it is difficult to see how this could call into question the credibility of the complainant's statements. He answered the question posed to him by the defense during the preliminary investigation and explained that Kolahun was the place where he was told he was born (MPC 12-28-0069, line 20). The defense itself noted in its question that the information contained in the complaint came from the complainant's attorney, which points to the manner in which the complaints were drafted.

1.2.5.6 With regard to the errors in description related to the scope of the allegations made by the complainants, the Court notes, on the one hand, that the inaccuracies stem from the fact that there is clearly a lack of differentiation in the complaints between what was personally experienced and what was reported by hearsay, and, on the other hand, that the questions asked inevitably elicit responses containing additional details—it being recalled, moreover, that the complaint is "summary." Thus, for example, James CAMDEN (see the objections raised by the defense in its closing argument [CAR 5.200.365 et seq.]), in his complaint, stated that he saw soldiers cut open the abdomen of a pregnant woman (MPC 05-01-0012), but then, during his hearing before the MPC, stated that he had not seen the incident, but had seen the fetus (MPC 12-28-0026). It must be noted that it is the complainant himself who specifies the content of his complaint and, in particular, how he witnessed the event in question. It also appears from James CAMDEN's complaint that it concerns several transports, whereas according to his statements before the MPC, he was a witness to only one large-scale forced transport organized by the defendant (MPC 12-28-0040, lines 17–20). In this case, there is a linguistic imprecision in the text of the complaint: "During this three-month period, Mr. CAMDEN saw on numerous occasions Alieu Kosiah and ULIMO fighters forcing civilians to carry food supplies or military equipment. He was present when Alieu Kosiah directly gave such orders to civilians in Zorzor. " (MPC 05-01-0012). While the complaint appears to refer to several transports, the complainant explained, upon questioning, that apart from the one in which he had participated, he had not witnessed any other large-scale transports ordered directly by the defendant. Finally, while the defense accuses James CAMDEN of adding new charges against Alieu KOSIAH during his testimony—reproaching him for having played an active role in the massacre of elderly women who were alleged to have practiced witchcraft (MPC 12-28-0042, lines 14 ff.) and that he had taken a very young girl as his wife (MPC 12-28-0046, lines 21 ff.), it must be noted that the complainant is answering the questions put to him and that this triggers memories. Moreover, one cannot expect the complainant to

to provide, in a brief criminal complaint, a detailed account of all the crimes he may have witnessed—all the more so in the context of such a civil war, which, as will be seen below (*infra*, para. II.2), was marked by countless atrocities.

1.2.6 Conclusion

1.2.6.1 In light of the foregoing, it should be noted that the task at hand is to assess the credibility of the statements (ATF 147 IV 534, para. 2.3.3) and not that of the complainants, contrary to what the defense contends (CAR 5.200.416). The differences—not the contradictions—can be explained, first, by the manner in which the complaints were filed. The significant amount of time that has elapsed since the alleged events constitutes a second explanation. Finally, the differences can also be explained by the progression of a criminal investigation, which, by definition, involves a series of additions and clarifications. Thus, at this stage, the Court cannot accept the defense's conclusions, bearing in mind that the conspiracy theory has already been rejected by the Court (*supra*, consid. II.1.1.3). Admittedly, it is unusual to have so many discrepancies between the content of criminal complaints and subsequent hearings. However, as the defense itself points out (CAR 5.200.417) and as is also evident from the initial caveats raised by Alieu KOSIAH during his testimony at the appellate hearing (CAR 5.301.003), it is appropriate to take into account the context, linguistic and cultural barriers, as well as the length of time that has elapsed since the events occurred—factors that, on their own—and especially when combined—are equally unusual. The Court emphasizes in this regard that, by hearing the complainants and a witness, it was able to take these various factors into account through direct observation, with a view to assessing the credibility of the statements made by the individuals heard in the context of these proceedings.

1.2.6.2 That said, the identification of these main weaknesses in the defense's argument does not exempt the Court from conducting, to the extent necessary, an examination of the discrepancies identified by the defense in connection with the various allegations as part of the analysis of the charges set forth in the indictment, it being understood that the statements will be examined in light of the criteria identified by scientific research, as set forth above (*supra*, para. II.1.2.4.2).

1.3 Identification of the accused,

The defense challenges the validity of the identifications as well as their interpretation by the trial judges.

1.3.1 Arguments of the Parties

1.3.1.1 In its brief (CAR 5.200.416 et seq.), which reiterates and expands upon the arguments presented at the trial court (TPF 40.721.498 et seq.), the defense argues, supported by scientific references, that traumatic events remain deeply etched in the victims' memories. It follows that the plaintiffs should be able to recall precise and consistent memories. These conclusions are further corroborated by the statements of Daniel TODD, who, when questioned by the defense, affirmed—drawing on his own experience—that one never forgets one's torturer. The defense is therefore surprised that the majority of the plaintiffs were unable to identify Alieu KOSIAH in the photo lineups. As for in-person identification, the defense points out that the defendant was the only Black person present on each occasion. Specifically, the defense notes that only James CAMDEN recognized Alieu KOSIAH based on a photograph from his youth in which he was wearing a uniform. It further points out that James CAMDEN, Levi FARRELL, Georges ROSADO, Nicolas COOK, Kevin THOMAS, Christopher GREENE, Philip JORDAN, Eddie COULTER, Gina FARRELL, and Robbie CARY were unable to identify Alieu KOSIAH from the photo lineups featuring a recent photograph of the defendant. Although Carol ALEXANDER was able to identify the defendant in the photo lineup, the defense notes that a recent photograph of Alieu KOSIAH had been shown to her in Liberia before she was interviewed in Switzerland. The defense concludes from the foregoing that thethe identification of Alieu KOSIAH by the complainants and witnesses is not convincing, and that their difficulty in recognizing him in both historical and current photographs demonstrates that identifying the defendant as the perpetrator of the acts with which he is charged would amount to a "learned response" and, more broadly, to a conspiracy against him.

1.3.1.2 Attorney TOUTOU-MPONDO, in her closing argument on behalf of all the plaintiffs (CAR 5.200.889 et seq.), maintains that all of the plaintiffs have described Alieu KOSIAH's physical appearance in precise detail and that they have recognized him in person. With regard to the photo lineups, she argues that they were made difficult by various factors. First, the photograph—which was pixelated and taken with a flash—did not allow for the recognition of the true shade of Alieu KOSIAH's skin color, noting that this shade—described as ebony—was one of the physical characteristics cited by the plaintiffs. Second, most of them were minors at the time of the alleged incidents and would have remembered only what immediately caught their eye. Attorney TOUTOU-MPONDO adds that the complainants had never seen him in a photograph, but only in person and in very specific contexts. Finally, the complainants were not close associates of Alieu KOSIAH and thus would not have had the opportunity to scrutinize him. Furthermore, Counsel MALEH, in his

opening statement at the trial, had addressed in greater detail the identification of the defendant through the use of his name and the description of his physical appearance and character as reflected in the case file (TPF 40.721.285 et seq.).

1.3.1.3 In his closing argument at the trial (TPF 40.721.231 et seq.), Mr. WERNER emphasized that his clients had access to the case file and, consequently, to the photo lineups presented during the first hearing of a complainant before the Office of the Attorney General (MPC), namely that of Levi FARRELL. He explained that it would have been easy at that time to grant the complainants access to the photo spreads so that they could identify Alieu KOSIAH, which Mr. WERNER asserts he did not do in order to avoid skewing the proceedings.

1.3.1.4 The MPC did not address this issue, either during its closing arguments at the trial or on appeal.

1.3.2 Applicable Principles

According to the Federal Court, the Code of Criminal Procedure does not contain any specific rules on how to conduct a lineup to identify the perpetrator of a crime. To ensure that the identification is as reliable as possible, legal doctrine recommends presenting the witness, the victim, or the person called upon to provide information with several suspects or several photographs of suspects, ranging from six to nine individuals (Federal Supreme Court decision 6B_315/2013 of October 14, 2013, para. 1.3.1; THORMANN/MÉGEVAND, Commentaire romand,[2nd]ed., 2019, n. 7 ad Art. 146 CPP). These individuals should be of similar appearance and match the description previously provided by the person who is to identify the perpetrator. Furthermore, according to legal doctrine, it is important to avoid any contact with the suspect prior to the identification. However, if the identification violates these rules, it is not automatically inadmissible; rather, the judge must take this circumstance into account when exercising his or her discretion in evaluating the evidence (Federal Supreme Court decision 6B_315/2013 of October 14, 2013, para. 1.3.1; HÄRING, Basler Kommentar, 3[e], 2023 ed., n. 11 ad Art. 146 CPP; THORMANN/MÉGEVAND, *op. cit.,* n. 7 ad Art. 146 CPP; BLÄTTLER,
On the Issues of Suspect Identification in the Context of a Confrontation from the the Perspective of Police Practice, PJA 2000, p. 1374 ff.; GARBADE, Minimum Requirements for Perpetrator Identifications—Forum “Redlich aber falsch” Bern, PJA 2000,
p. 1375 ff.).

1.3.3 Examination *of the Case at Hand*

1.3.3.1 In the present case, the Office of the Attorney General conducted identifications using photographs, via photo lineups, and in person, by projecting the image into the interrogation room where the defendant was located.

1.3.3.2 The photo spreads presented to the plaintiffs during their first hearing before the MPC, which include a vintage portrait of Alieu KOSIAH, feature nine individuals. A first group, consisting of Levi FARRELL, Georges ROSADO, and Nicolas COOK, were shown photo lineups featuring portraits of four men wearing sunglasses, while the other complainants and Philip JORDAN—whose status as a complainant was revoked during the proceedings (*supra*, A.13)—were shown different lineups (MPC 12-07-0043; MPC 12-08-0044; MPC 12-09-0032); (MPC 12-20-0035 et seq.; MPC 12-21-0017 et seq.; MPC 12-22-0029 et seq.;
MPC 12-26-0024 et seq.; MPC 12-28-0031). Given that the defendant's eyes proved to be a recurring feature in his description (see *below*, para. II.1.3.3.6), the fact that the eyes of four out of nine individuals cannot be seen calls into question the relevance of the exercise, since the group of individuals presented does not share a similar appearance. Furthermore, the use of two types of photographs of differing quality prevents the formation of a comparable group. The Court also notes that the upper part of Alieu KOSIAH's face is overexposed in all of these photographs, noting that the same portrait of the defendant is used for identification in each instance, which again proves problematic given the significance of the defendant's skin tone in the way he was described during the proceedings (*infra*, consid. II.1.3.3.6). The Court notes, however, that three former members of ULIMO and one civilian, who were interviewed in connection with these proceedings, were able to identify Alieu KOSIAH from a photograph. They are Kwamex FOFANA (MPC B-18-03-008 and 0009), Walter VARGAS (MPC 12-16-0040, lines 30 ff.), Eugene CORBIN (MPC 12-19-0013, line 50), and the civilian Tyron BAKER (MPC 12-15-009, Q/A nos. 17 et seq.). This raises the question of whether there is a possible explanation for the fact that most of the complainants were unable to identify Alieu KOSIAH in the photo lineups, whereas some witnesses were able to do so. In this regard, it should be noted that the photographs included in the lineups in question were indeed of Alieu KOSIAH, since witnesses close to him identified him. These individuals had, in fact, come into contact with Alieu KOSIAH on several occasions during the war, whether within the ULIMO, or, in the case of Tyron BAKER, because he described him as a friend with whom he would sometimes drink tea (MPC 12-15-0008, lines 24 ff. and 44 ff.). The likelihood that they would be able to recognize him is thus greater than in the case of people who crossed paths with him only once or a few times. It is

in any case irrelevant that other people—in this case, the plaintiffs—were unable to recognize the defendant as easily as his close associates did, although it should be noted here that the civilian Tyron BAKER also expressed hesitation in identifying the defendant (MPC 12-15-009, Q&A No. 17). Consequently, and in light of the foregoing, the Court considers the probative value of the photo lineup identification to be null and void and inadmissible, both for the prosecution and the defense.

1.3.3.3 Video identification was conducted with the complainants Levi FARRELL, Georges ROSADO, and Nicolas COOK (MPC 12-07-0009, Q&A No. 20; MPC 12-08-0011, Q&A No. 22; MPC 12-09-0010, Q&A Nos. 19 et seq.).

The Court notes from the outset that the defense's criticisms of the methods used by the MPC are justified. Indeed, the defendant was the only person of color present in the room. While legal doctrine recommends the presence of six to nine people, there were no comparison subjects in this case. Under these circumstances, the complainants could identify only one person or none at all, which is why the lineup was highly suggestive in nature. The Court therefore finds that the probative value of the in-person identification is nil and that it is inadmissible, both as evidence for the prosecution and for the defense.

1.3.3.4 Since both the photo lineup and in-person identifications are inadmissible, it is necessary to examine whether identification can be made by other means.

1.3.3.5 It appears from the statements of James CAMDEN that the ULIMO members shouted their names during the capture of a village and that they did so to draw attention to themselves (MPC 12-28-17, lines 7–14 et seq.). Philip JORDAN made similar remarks, stating that he had clearly heard the name *"Chief* KOSIAH" during the capture of his village because "everyone was repeating it" (MPC 12-22-0008, lines 29–31). He was the one leading the group, and his soldiers called him *"Chief* KOSIAH" (MPC 12-22-0012, lines 26 ff.). As for Levi FARRELL, he stated that he had heard the name Alieu KOSIAH during the transport of ammunition from Kolahun to Fassama and specified that there was only one "Alieu KOSIAH" among the ULIMO (MPC 12-07-0024). These three examples, among others, demonstrate that the defendant can be identified by having heard his name, as well as by associating him with his status as a superior officer. In this regard, it should be emphasized that there is no record in the case file of the existence of any other "Alieu KOSIAH," *"Chief* KOSIAH," or "C.O. KOSIAH" (where C.O. stands for "commander" or *"commanding* officer") in Lofa County, whether within ULIMO or within any other faction that participated in Liberia's first civil war. Nor did the defendant raise this point. On the contrary, he explained that two other individuals bearing the name "KOSIAH" had taken part in the war as members of ULIMO, namely Leo KOSIAH and Samuel KOSIAH,

the defendant's cousin, but that they were "really low" in the hierarchy (MPC 13-01-0034, lines 31–39). Nor can there be any misunderstanding regarding the spelling of the name "KOSIAH," although the defendant, when confronted with the mention of the name "Alieu KORSIA" in a newspaper article listing a
"List of Perpetrators," claimed that there was only one way to spell his name in Liberia (MPC 13-01-0127). In fact, the case file contains several different spellings of his last name, and the defendant himself explained, during his asylum proceedings, that his name is spelled differently in various Mandinka communities (MPC 18-01-0046). The defense also submitted several newspaper articles in which the defendant's name is spelled differently, specifically "KOSHIA" (CAR 5.200.213) and
"KOSIA" (CAR 5.200.056 and 251). Furthermore, the witness Jarred McBRIDE explained that it was not unusual in Liberia for multiple spellings to be used for the same name, even in official documents (MPC 12-17-0035, lines 11–14). The Court notes that the record contains numerous examples of this.

1.3.3.6 The statements of the complainants and Philip JORDAN highlight several physical characteristics of Alieu KOSIAH. This includes his skin color, described as being particularly dark (MPC 12-07-0008; MPC 12-08-0010; MPC 12-09-0009; MPC 12-20-0021; MPC 12-21-0012;
MPC 12-22-0006; MPC 12-28-0018), his relatively tall stature (MPC 12-07-0008; MPC 12-08-0010; MPC 12-09-0009; MPC 12-18-0009; MPC 12-19-0013; MPC 12-21-0012; MPC 12-22-0006), and his
slender build, at the time of the events (MPC 12-07-0023; MPC 12-08-0010; MPC 12-09-0009; MPC 12-18-0009; MPC 12-20-0021; MPC 12-28-0018), and
in particular his eyes, which were described as bulging. The plaintiffs and Philip JORDAN referred to them as *"pop eyes*," *"big eyes*," *"bulb eyes*," and *"big* eyeballs" (MPC 12-07-0008, MPC 12-08-0010; MPC 12-09-0009; MPC 12-20-0021; MPC 12-21-0012; MPC 12-22-0006; MPC 12-26-0020; MPC 12-28-0018). This description of the
defendant's eyes matches that given by Walter VARGAS (MPC 12-16-0018, lines 1 through 4, and 0070, lines 12 ff.), Eugene CORBIN
(MPC 12-19-0013, lines 40–42) and Lawrence WILKIN (MPC 12-29-0017,
lines 9–11), three ULIMO veterans close to Alieu KOSIAH, as well as the statements made by Jeffrey MOSS (MPC 12-10-0042, lines 13–16), a former NPFL combatant, and the civilian Tyron BAKER (MPC 12-15-0009, lines 8–10). As for the former ULIMO combatant Gary THOMAS, he stated during the trial proceedings that he had recognized Alieu KOSIAH in particular by his eyes, which he described as *"pop* eyes" (TPF 40.769.002, Q&A No. 5). The defendant himself made statements corroborating this description, explaining that he had *"big ey[e] balls "* (MPC 13-01-0150, Q/A No. 17), an expression corresponding to the one used by Carol ALEXANDER to describe him (MPC 12-21-0012, line 21). Finally,

it should be noted that Alieu KOSIAH stated that he did not see anyone among the ULIMO in his circle who fit his description of *"pop* eyes" (MPC 13-01-0150, Q&A No. 16).

1.3.3.7 Certain character traits of the defendant brought to light during the proceedings may also aid in his identification. Eddie COULTER thus stated the following during the trial: "I was able to see and recognize his behavior when he loses his temper. He was the kind of person who, when he got angry, could get you killed. " (TPF 40.754.007, lines 20 ff.). When questioned during the appellate proceedings about the nature of the behavior in question, the complainant referred to the defendant's "way of speaking," adding that "Sometimes, when he gets angry, he reacts in that same way. " and "When KOSIAH got angry, you didn't stick around." (CAR 5.306.007, Q&A nos· 36 ff.). Eddie COULTER's description bears similarities to an incident that occurred during the trial proceedings, in the course of James CAMDEN's testimony, when the defendant lost his temper, which frightened the complainant and plunged him back into his memories of the time of the first civil war (TPF 757.038, lines 26–42).

1.3.4 Conclusion

1.3.4.1 It follows from the foregoing that the convergence of the criteria detailed above—namely, the defendant's name, which may be linked to his status as a superior, the description of his physical appearance, and that of his character traits—makes it possible to identify the defendant. The issue of the credibility of the identification, however, must be addressed in detail for each of the complainants—as well as for Philip JORDAN—who are the basis for the charges set forth in the indictment; for this reason, the Court refers here to its examination of those charges (*infra*, consid. II.4).

1.3.4.2 The Court further notes that if the complainants had been prepared in advance to construct a coordinated narrative—as the defense alleges—such preparation would certainly have extended to the identification via a photo lineup, which they would have been able to do as early as the hearing of the second complainant. However, the difficulties they encountered in recognizing Alieu KO-SIAH in the photo lineups reinforce the Court's conviction that the conspiracy theory is in no way substantiated. Furthermore, the Court refers here to its findings on this subject (*supra*, para. II.1.1).

2. , contextual evidence

2.1 ULIMO Presence in Lofa County,

2.1.1 In response to the defendant's recurring allegation that the plaintiffs have put forward a fanciful theory concerning, in particular, the conduct of the ULIMO toward the civilian population—an attitude stemming from a conspiracy orchestrated by CIVITAS MAXIMA and Attorney WERNER (TPF 40.731.287; CAR 5.301.005 and 163; see also, specifically regarding the conspiracy theory, *supra*, consid. II.1.1), who allegedly bribed the plaintiffs to make false accusations in exchange for money (CAR 5.301.174) or promised asylum to certain individuals (TPF 40.731.289), the Court considers it essential to understand the facts, namely what effects the arrival of ULIMO in Lofa as early as 1993 had on the civilian population, as well as the consequences for them of ULIMO's establishment there.

As a preliminary matter, it should be noted that the facts alleged in the indictment are said to have taken place in a part of the world with which members of Swiss civil society are unfamiliar. They are said to have occurred three decades ago. These events are said to have taken place against the backdrop of a contemporary civil war, a historical circumstance with which no member of the Court has had personal experience. When questioned during the appellate proceedings, the defendant emphasized the need to understand Liberian culture (CAR 5.301.003), before posing the following question:
"The real question is this: Mr. White Man, what are you looking for—justice or something else?" (CAR 5.301.049, lines 11 ff.). In order to gain a concrete understanding of the context in which the alleged acts took place, the Court relied on all credible and independent sources, the documentation of which is included in the present proceedings, while excluding from this contextual analysis the statements of the complainants themselves. Primary sources were given priority.

2.1.1.1 The following principal references, incorporated into the record during the preliminary investigation or upon request by the preceding tribunal, appear suitable for shedding light on the reality of the events that took place at that time and in that location. These include articles from Liberian newspapers, notably from the *Monrovia Daily News* (MDN), dispatches from the AFP and UPI news agencies, the TRC's final report dated June 30, 2009, the January 26, 1995, report titled **Horror and Slavery in* Liberia* by Doctors Without Borders (MSF), the study published in August 2011 titled **Violent Order: Rebel Organization and Liberia's Civil War** by NICHOLAI HART LIDOW, and the 2013 study titled **Civil War and State Formation** by FELIX GERDES, the testimony of reporter Jerry SHEPHERD given on September 8, 2018, before a French court; the testimony of a witness during the trial of Charles TAYLOR before the SCSL on August 29, 2008; as well as

several witnesses heard in the context of the French and Dutch proceedings, whose transcripts were incorporated into the proceedings concerning Alieu KOSIAH. The Court also took into consideration the reports from the French Judicial Police (PJF) dated June 8 and October 1erOctober 2018 (final report), as well as *the Analysis concerning the ULIMO armed group* prepared by the Paris Public Prosecutor's Office and dated September 6, 2018 (Parquet/F). Added to this are the statements of two witnesses close to Alieu KOSHIA, namely Walter VARGAS and Gary THOMAS. The Court's approach, therefore, in this process of general contextualization, was to exclude documents originating from CIVITAS MAXIMA, Mr. WERNER, and individuals and organizations affiliated with them, as well as all transcripts of the hearings of the parties to the proceedings.

2.1.2 During his testimony in the proceedings, the defendant asserted that there had been no collective actions by ULIMO aimed at killing civilians (TPF 40.731.025) and that he had never witnessed mistreatment of civilians by ULIMO (TPF 40.731.161). Regarding practices involving the desecration of corpses or the consumption of internal organs, the defendant clearly stated that he had never heard of cannibalism being practiced within ULIMO (CAR 5.301.023).

2.1.2.1 The documents and testimonies contained in the file highlight the following facts.

2.1.2.2 In February 1993, ULIMO forces captured *Upper Lofa* and then attacked Voinjama (MDN of February1, 1993 [MPC 15-02-0454]). During June 1993, ULIMO's attempt to capture the town of Foya from the NPFL faction proved unsuccessful. Foya was finally captured in July of that same year (Reuters dispatch of July 16, 1993 [MPC 10-01-0335]). Once the town of Foya and its surroundings were captured in July 1993, Lofa County came entirely under ULIMO control (The Eye, July 13, 1993 [MPC 15-02-0300 ff.]).

2.1.2.3 In this context, as early as March 1993, mass executions were attributed to ULIMO (AFP dispatch of March 24, 1993 [MPC 10-01-0311]). At Yeala Bridge (north of Zorzor), early that year, ULIMO murdered six young men from the same family who had been handed over to them by the Guineans (MSF, *Horror and Slavery in Liberia*, January 25, 1995, p. 34 [MPC B15-02-0169-0108]). In the town of Zorzor, 114 young men were executed in March of that same year because they were suspected of supporting the NPFL (TRC, *op. cit.*, p. 227 [MPC 14-01-0127]). During this period, hundreds of civilians died or were deliberately killed during ULIMO's takeover of the Lofa and Bong districts (TRC, *op. cit.*, p. 228 [MPC 14-01-0127]). ULIMO was suspected of having executed 300 members of

the Lorma ethnic group in Voinjama because they opposed that faction's control of the town. In October 1993, ULIMO allegedly carried out large-scale executions of civilians belonging to the Kissi ethnic group in the Foya region as well as in Voinjama (AFP dispatch of November 12, 1993 [MPC 10-01-0316]); they burned villages in the Lofa region (New York Times, November 5, 1993 [MPC 10-01-0329 et seq.]). It was also reported that tribes whose homes had been burned by ULIMO in Lofa joined an armed faction opposed to ULIMO (MDN, December 6, 1993 [10-01-0363]). Ultimately, thousands of deaths were attributed to ULIMO in Lofa County in 1993 (TRC, *op. cit.*, p. 248 [MPC 14-01-0137]). This violence continued into 1994. In August of that year, at least 20 civilians were killed in Gbesseh, Lofa County (TRC, *op. cit.*, p. 229 [MPC 14-01-0128]). In general, it appears that the execution of civilians ethnically associated with enemy factions was often considered legitimate in Liberia (GERDES, Civil War and State Formation, 2013, p. 70 [MPC 14-01-0665]). Moreover, violence was largely directed against other ethnic groups or tribes based on the perceived characteristics of that tribe, including a tribe's perceived support for certain political or military leaders (TRC, *op. cit.*, p. 279 [MPC 14-01-0153]).

2.1.2.4 The issue of sexual violence has also been documented. The use of rape by ULIMO appears to have been chosen as a deliberate means of terrorizing the population. Rapes occurred primarily in combat situations. Higher-ranking commanders could rape anyone; lower-ranking men needed the commander's permission. Sexual violence was often perpetrated in groups (PJF report of June 8, 2018, p. 43 [MPC 10-01-0283 et seq.]; INTERNATIONAL LABOR OFFICE, Ex-
Experiences of Girl-Combatants in Liberia, 2006, p. 46). Desperate families encouraged young girls to become "wives" of [ULIMO] soldiers in order to gain access to food and a degree of security (LIDOW, Violent Order: Rebel Organization and Liberia's Civil War, 2011, p. 219 [MPC 14-01-0368]). In April 1995, it was reported that in the vicinity of the town of Fassama, ULIMO-K members had, among other things, committed rapes (TRC, *op. cit.*, p. 224 [MPC 14-01-0125]).

2.1.2.5 Regarding allegations of acts of cannibalism committed by ULIMO, it appears that fighters from this faction went so far as to rip out a man's heart while he was still alive, roast it over a fire, and then eat it (REUTERS [WEIZMAN], "Magic and Machine Guns in the Forests of Liberia," July 4, 1994 [MPC 10-01-0339]). Organs, such as the heart, were often eaten in the belief that their flesh would give the fighters courage (TRC, *op. cit.*, p. 279 [MPC 14-01-0153]). When ULIMO fighters removed the heart from a corpse, it was a matter of *"African magic*," intended for use in magical rituals; according to them, the heart and liver were

the two organs taken from the enemy (testimony of Jerry SHEPHERD [TPF 40.261.3.819]). In Lofa County, it was thus observed during the period 1993–1994 that ULIMO soldiers were moving about with buckets filled with human organs (livers, hearts). They ate dishes made from human flesh for ritual purposes; in 1994 in Gorlu (Saleyea District, Lofa County), ULIMO child soldiers killed people, removed their hearts, cooked them, and prepared them as the meal of the day (MSF, *op. cit.*, pp. 11 and 13 [MPC B15-02-0169-0085 and 0087]). Such incidents were attested to during the proceedings by Gary THOMAS (TPF 40.769.013, Q/A nos. 84 ff.). Also in Lofa, during 1993–1994, observers witnessed that the regional commander known as PEPPER AND SALT (alias Ousman KONNEH) owed his nom de guerre to his penchant for consuming human remains when they were seasoned (MSF, *op. cit.*, p. 11 [MPC B15-02-0169-0085]). As a deterrent, human intestines were used as barriers at *checkpoints*. For the same purpose, corpses were dismembered and scattered around villages to frighten the enemy (PJF report of June 8, 2018, p. 43, citing AMNESTY INTERNATIONAL, "A New Peace Agreement: An Opportunity to Establish Human Rights Safeguards," September 20, 1995, p. 12 [MPC 10-01-0283]). Before the trial court, Walter VARGAS, who fought alongside the defendant, explained: "Sometimes we used human skulls at checkpoints" (TPF 40.761.023, line 2).

The Court notes that there are multiple and converging sources attesting that cannibalism and acts of dismemberment perpetrated by the ULIMO, particularly in Lofa, were widespread and served simultaneously as tools of terror to coerce collaboration from, but also to enslave, the civilian population. These practices had the corollary effect of galvanizing the troops, who were often composed of young men unfamiliar with the pressures faced by a combatant in a guerrilla context. It is inconceivable that the defendant, who was mobile and frequently traveled in Lofa (see below, para. II.2.2), was not confronted—at the very least indirectly, without prejudging any potential guilt—with these atrocious practices reported by so many independent sources.

2.1.2.6 In his statements before the Court, the defendant asserted, regarding the looting: "As for me, the only looting I saw was in Monrovia. When I went to Lofa, the area was relatively calm; there was no looting" (CAR 5.301.029, lines 44 ff.). He stated before the lower court that he had never seen a single civilian participate in the transport of goods (TPF 40.731.162, Q&A No. 90), nor had he even heard of such an occurrence (TPF 40.731.162 ff., Q&A No. 91).

Independent sources paint a different picture of ULIMO's activities in this area during the period under review. It is undeniable that

In the conquered regions, including Lofa, ULIMO members—sometimes without the central government's approval—began a widespread campaign of looting (both organized and disorganized) as early as 1993, targeting businesses and humanitarian organizations, as well as portions of the villagers' property. The looting proved to be systematic against civilians in the conquered villages of Lofa, with the aim not only of stripping them of their possessions but also of organizing forms of forced labor to increase the production of foodstuffs for sale. With regard to the war effort required for the armed action undertaken by the ULIMO faction in Lofa, it appears, first and foremost and in general, that poor management of supplies drove ULIMO combatants to loot in order to meet their own needs (PJF report of June 8, 2018, p. 18 and cited references [MPC 10-01-0258]). Such looting of villages by ULIMO soldiers was thus very frequent, even systematic (Prosecution/F, p. 26 and cited references [TPF 40.261.3.978]). Between July 1993 and December 1994, in Foya Kamala and in various villages near Kolahun and Voinjama, residents were also used as slaves. ULIMO combatants subjected them to forced labor to tend to the crops or in preparation for diamond mining; they forced them to transport supplies to Guinea to be sold (MSF, *op. cit.*, p. 67 [MPC B15-02-0169-0141]). In October 1993, it was also noted that the NPFL and ULIMO factions were engaging in torture and forced labor. Elderly people and children were also forced to carry heavy loads containing goods previously stolen by the two groups and to transport them toward the Makona River, so that these goods could be resold in Guinea (The Eye, October 4, 1993 [MPC 10-01-0382 et seq.]). In December 1993, in Yandehun, the systematic looting of property belonging to humanitarian organizations was observed (MSF, *op. cit.*, p. 67 [MPC B15-02-0169-0124]). More broadly, some ULIMO commanders abandoned their posts on the front lines to engage in looting and other *business activities* alongside military operations, which increased insecurity in ULIMO-controlled territories (The Inquirer, May 12, 1993 [MPC B15-02-0394-0076]). It was reported that civilians were forced to carry tons of food and stolen goods, or were sent under escort to fish and hunt for the soldiers. Even in major cities, civilians could be robbed by ULIMO forces with complete impunity. Before a raid, ULIMO fighters would send one of their spies into a village to see what there was to loot. Then they would launch the attack. They would subsequently gather the residents at a central location before forcing the village chief to identify the people whose homes the soldiers would loot (PJF report of June 8, 2018, p. 42, citing AMNESTY INTERNATIONAL, "A New Peace Agreement: An Opportunity to Establish Human Rights Safeguards," September 20, 1995, p. 15 [MPC 10-01-0282]). Electric generators, which could be exchanged for ammunition (LIDOW, *op. cit.*, p. 189 [MPC 14-01-0353]), were also

been among the spoils prized by ULIMO; it was reported in October 1993 that PEPPER AND SALT organized the looting of civilian property to resell it in neighboring Guinea; in particular, he had ordered the looting of two high-powered generators near Bolahun (UPI dispatch of October 29, 1993 [TPF 40.261.3.035]). This same commander was known for exerting heavy pressure on the civilian population and ignored calls from his superiors to exercise restraint (LIDOW, *op. cit.*, p. 187 ff. [MPC 14-01-0352]). The split within the ULIMO movement destabilized the fighters and led to an increase in acts of looting, which then served as a means for soldiers to obtain food. Following this split, in 1994, large parts of the Lofa region were destabilized by the rival ULIMO-J and ULIMO-K forces, which drove even more soldiers to loot in order to feed themselves (LIDOW, *op. cit.*, p. 191 [MPC 14-01-0354]). This situation was not denied by a close associate of the defendant, Walter VARGAS, who stated before the trial court: "[…] the soldiers had no vehicles. So if they had loads to transport, they had no choice but to call on civilians. " and "[…] if you're armed and you tell someone to do something, that person will do it—so they're forced to. When asked, most of the time, the civilians didn't refuse. If you tell them to do something, they'll do it out of fear for their lives" (TPF 40.761.009, Q/A No.^{os} 18 s.). And he added later: "We used civilians to carry ammunition. We carried the weapons, and someone had to carry the ammunition. It was the ULIMO organization that wanted this. It wasn't just Alieu Kosiah who did this. It was the ULIMO organization that made civilians bring ammunition to the front lines" (TPF 40.761.026, Q/A No. 120). The use of civilians to transport ammunition to the front lines is also confirmed by the TRC report. The report notes that combatants from all factions used brutal tactics to terrorize the civilian population and that they notably relied on civilians to transport ammunition (TRC, *op. cit.*, p. 256 [MPC 14-01-0141]).

2.1.2.7 The Court notes a discrepancy between the defendant's account and the findings of widespread violence and systematic looting in Lofa. This discrepancy undermines the defendant's credibility, given that—as will be seen below—the nature of his missions made him extremely mobile and thus well-positioned to observe the acts committed by ULIMO against the civilian population in Lofa beginning in 1993.

2.2 The Defendant's Career with ULIMO Until His Arrival in the Lofa County'

2.2.1 We must now examine Alieu KOSIAH's military career up to his arrival in Lofa County.

2.2.1.1 The defendant stated that he joined the AFL (*Armed Forces of Liberia*) in January 1990, when he was fifteen years old—just a few days after the start of Liberia's first civil war (MPC 13-01-009, lines 35–37). During the trial proceedings, he explained his reasons for enlisting, stating that

"It was to bring stability to our people […] That is why our people pushed us to become more involved in politics, which was an area that had absolutely no interest for us before" (TPF 40.731.248 et seq., Q&A No. 519). He made similar remarks on appeal: "You know, I was young. I felt at the time that the AFL wasn't protecting us because all the Mandingos who were killed in Gba (phonetic)—it was the NPFL who killed them—but that was because of the AFL's mistakes, because they abandoned them. So, as young men, most of us thought that perhaps if we were in the AFL, the AFL would better protect our people" (CAR 5.301.114, Q/A No. 281). The defendant stated that he subsequently joined what would become ULIMO at the age of sixteen, in 1991, in Sierra Leone (MPC 13-01-0233), explaining his decision to join as follows: "[…] as I told you, with everything Charles TAYLOR had done to us, we wanted to make sure he didn't succeed. That's all" (CAR 5.301.116, Q&A No. 291). The defendant also asserted that the Mandingos were the primary victims and that they had been attacked, along with the Krahns, because of their ethnicity, and described these acts as genocide (MPC 13-01-0378, lines 2–9; see also CAR 5.301.108, Q/A No. 258). He also accuses the NPFL of killing his brother in 1990 (CAR 5.301.108 et seq.). It must therefore be noted that the struggle against the NPFL is a motivating factor for the defendant. It should also be noted here that the war against the NPFL may have been experienced as an act of revenge, as illustrated by an ULIMO song which, according to the defendant's statements, addresses the NPFL with the following words: "You killed us in 1990, but now we are back and we are armed, and now we can defend ourselves. " (CAR 5.301.065, lines 6–8). In addition to these martial motivations, there were also material ones. Thus, at the outset of the proceedings, the defendant made the following statement before the Office of the Prosecutor:

"After two or three days [in Sierra Leone], I joined the ULIMO camp, which was in Kenema, because I was a former soldier and it allowed me to make a living" (MPC 13-01-0024, lines 3 ff.). The defendant's subsequent explanations on this subject—that his enlistment was a "gift for [his] protection"—are not convincing (CAR 5.301.116, Q/A No.^{os} 292 ff.), given that he had just left Guinea to join a cousin in Sierra Leone (MPC 13-01-0024, lines 1 ff.).

2.2.1.2 In the context of ULIMO's presence in Lofa County, Alieu KOSIAH's military assignments were closely linked to money and *business*. According to his statements, the defendant belongs to an ethnic group of merchants (CAR 5.301.106, 108, and 111). His nom de guerre was *"Physical Cash*."

Contrary to what he claimed before the trial court (TPF 40.731.033, Q/A No. 133), it was not only upon joining the police that he began to be called by that name. Before the Court of Appeals, he stated that he had received this name from PEPPER AND SALT at Lofa Bridge, admitting at the same time that he was called by that name but denying any connection to looting he himself allegedly carried out (CAR 5.301.090, 091, and 143). The defendant had, in fact, already stated during the preliminary investigation that "if people really know me, they know that my nickname during the war was PHYSICAL CASH," adding that the plaintiffs should be aware of this (MPC 13-01-0215, lines 14 ff.). This phrase is closely linked to the money he received from Liberian armed factions that were negotiating with the Guineans for goods such as palm oil or coffee in order to subsequently obtain *cash* (Charles TAYLOR Trial [TPF 40.261.3.323]). Regarding the defendant, Gerald PETERSON also stated before the PJF: "We knew Alieu KOSIAH by his nom de guerre, which was 'FISCAL CASH.' (…) From what I know, he always had the means to pay for whatever he wanted. " (MPC 12-01-0006, lines 26–29). Kwamex FOFANA also provided an explanation for the defendant's nickname along these lines, stating that he allegedly spent *cash* on drinks in an unusual manner during outings in Guinea (MPC B18-03-01-0238). Regarding the specific geographical context of the events at issue in these proceedings, a relative of the defendant further stated before the lower court that Foya was a commercial region bordering Guinea; there were buyers of goods at the border. Kolahun and Foya were thus commercial areas (statements by Gary THOMAS [TPF 40.769.012]). During the preliminary investigation, the defendant did not conceal his role in Lofa at that time. As summarized by the PJF: "Alieu KOSIAH was in charge of the logistical and financial aspects of the organization. To carry out his duties, he had to travel frequently, which (…) also aligns with the role of *'floating officer'* mentioned by the defendant himself" (PJF report of October[1,] 2018, MPC 10-01-0545). He also stated before this Court that one of the ways he obtained money "was at the border" (CAR 5.301.010, Q/A No. 20) and that at the border one can buy and sell whatever one wants (CAR 5.301.081, lines 3 ff.).

2.2.1.3 The defendant was a close associate of PEPPER AND SALT, a commander whose nom de guerre was explained above (*supra*, para. II.2.1.2.5), and was from the same region as him, in Nimba County (MPC B18-03-01-0309). The defendant admitted to having been with him at Lofa Bridge (CAR 5.301.091). However, PEPPER AND SALT, who was considered the "most ruthless of the ULIMO commanders ," was already in Lofa in October 1993 and was then in control of Foya and Voinjama, towns where he is known to have stolen valuables from civilians and taken the goods to neighboring Guinea to sell them (UPI dispatch

of October 29, 1993 [TPF 40.261.3.034 ff.). The defendant's presence in Lofa County, and in close proximity to PEPPER AND SALT as part of the *Strike Force,* was also confirmed by Kwamex FOFANA when he was questioned by U.S. authorities. Kwamex FOFANA stated that Alieu KOSIAH had joined PEPPER AND SALT when the latter arrived in Lofa in 1993, likely in the town of Zorzor (MPC B18-03-01-0333 et seq.). This joint presence in Zorzor—following the ULIMO's capture of the town, which had previously been in the hands of the NPFL—of Alieu KOSIAH and PEPPER AND SALT was confirmed by Kunti KAMARA (TPF 40.771.013, Q/A No. 77, 014, Q/A No. 89, 015, Q/A No. 94,
016, Q/R No. 98, and 017, Q/R No. 108). Kwamex FOFANA also confirmed that the two were close (MPC B18-03-01-0309 et seq.). The defendant was reportedly then in Voinjama (MPC B18-03-01-0358), a town captured by ULIMO from the NPFL in early March 1993 (AFP dispatch of March 8, 1993 [MPC 15-02-0461 et seq.]). Alieu KOSIAH was also part of the battalion's general staff in Voinjama, under PEPPER AND SALT*,* according to Gary THOMAS (TPF 40.769.007, Q/A No. 36). He subsequently went to Foya, a town he captured alongside Kunti KAMARA, according to the latter (TPF 40.771.005, Q/A Nos. 23 and 26), noting that the capture of the town—again at the expense of the NPFL—took place in July 1993 (The Eye, July 13, 1993 [MPC 15-02-0300 ff.]). From the outset, he joined *the Alligator Battalion* (MPC B18-03-01-0117 ff.). As early as 1993, allegations concerning Alieu KOSIAH centered on his exploitation and looting of civilians in Lofa (MPC B18-03-01-0296). At the outset of the proceedings, the defendant himself confirmed his presence in Lofa, at the very least immediately after the capture of Voinjama, even though he appeared to want to downplay his involvement in this matter (MPC 13-01-0073, Q&A No. 6).

2.2.1.4 The Court notes that the sequence of events described corresponds to the dates of the captures of various towns documented for the first two quarters of 1993, and that the statements of Kwamex FOFANA and Kunti KAMARA corroborate one another, are consistent with each other, and describe a coherent chronological sequence of events. The presence of Alieu KOSIAH—who at the time was close, at least militarily, to Commander PEPPER AND SALT—in Lofa during the relevant period is attested to by several credible and consistent statements, primarily those of Kunti KAMARA and Kwamex FOFANA. Moreover, these statements are even partially corroborated by contextual details provided by witnesses who were close to the defendant during the events in question and have remained loyal to him and to the authority of the former commander that he still represents to them. This is notably the case for Walter VARGAS, who stated that he left Tubmanburg five to six months after the capture of Todi—which he places in 1992—to go to Lofa with the defendant, specifying that they had gone to Zorzor, then Voinjama, Ko-lahun, and Foya, among other places, and that the defendant was part of *the staff* (the *"big men"*) and had been sent to Lofa as reinforcements (MPC 12-16-0010 et seq.; see also *infra*, para. II.4.1, particularly regarding the date of the capture of Todi). This is

also true of Richard WALDROP (alias ADVISOR), who stated that the group to which he belonged had left the defendant in Bomi (also known as Tubmanburg) when they set out for Lofa to capture Zorzor (TPF 40.767.008 et seq., Q/A nos.os 44 and 46), which is consistent with the statements reported above that the defendant arrived in Zorzor with PEPPER AND SALT after the town was captured.

3. Applicable e Law

3.1 Violations of the laws of war

Until December 31, 2010, violations of humanitarian law were punishable solely under Articles 108 and 109 of the Swiss Military Penal Code (aCPM). A legislative amendment took effect on January1, 2011, with the introduction into the Swiss Criminal Code of Titles 12bis(genocide and crimes against humanity) and 12ter(war crimes).

3.1.1 Application of the Previous Law

According to Article 2, paragraph 2, of the Swiss Penal Code (CP), a criminal provision is applicable only if the defendant is brought to trial after the date of its entry into force and if it is more favorable to the defendant than the law in force at the time of the offense (principle of non-retroactivity and the *lex mitior* exception). In this case, the acts with which the defendant is charged are punishable under both the old law and the new law, although the latter is more severe with regard to sentencing. Indeed, the new provisions that entered into force on January 1er January 2011, unlike the old law, impose a minimum custodial sentence and allow for the imposition of a life sentence. The old law must therefore be applied, as the lower courts did, noting that neither party challenged this conclusion on appeal. Furthermore, the Court endorses the reasoning of the trial court on this matter, since it is not open to criticism, and refers to it pursuant to Art. 82(4) of the Criminal Procedure Code (judgment SK.2019.17, para. 4.3).

The Court notes at the outset that the elements constituting the various offenses were set forth in detail in the contested judgment and were not challenged by the parties. They will therefore be reiterated—in essence—in this decision (*infra*, para. II.3.1.3 et seq.).

3.1.2 Art. 108 and 109a of the Military Criminal Code (aCPM), Art. 3 common to the General Provisions (CG), and Art. 4 of Part II of the Military Criminal Procedure Code (PA II)

3.1.2.1 Art. 108(1) aCPM, in the version in force at the time of the alleged acts (i.e., between 1993 and 1995), provides that the provisions of Chapter 6 are applicable in the event 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. The violation of international agreements is also punishable if the agreements provide for a broader scope of application (para. 2).

3.1.2.2 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. 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 Penal Code (aCPM) in effect 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.

3.1.2.3 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 3461, 3527), and in particular to Article 3 common to the Additional Protocols. According to this provision, in the event of an armed conflict that is not international in nature and arises on the territory of one of the High Contracting Parties, each party to the conflict shall be required to apply the following provisions.

3.1.2.4 According to the terms of Art. 3(1) common to the GC, persons who do not take a direct part 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 and inhuman punishment (subparagraph a); the taking of hostages (subparagraph b); attacks on human dignity, including humiliating and degrading treatment (subparagraph c); convictions pronounced 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). According to paragraph 2, the wounded and the sick shall be collected and cared for.

3.1.2.5 Additional Protocol II to the Geneva Conventions of August 12, 1949 (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 shall 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.

3.1.2.6 Before addressing in detail the applicable law regarding the offenses set forth in the indictment, the Court notes that the trial judges correctly held that the acts attributed to Alieu KOSIAH fell within the scope of application of Art. 3 common to the Geneva Conventions and Article 4 of Additional Protocol II. Moreover, this conclusion was not challenged by the parties during the appeal proceedings. The four Geneva Conventions of August 12, 1949, and Additional Protocol II had entered into force for Switzerland and Liberia at the time of the events underlying this case, which took place in the context of Liberia's first civil war—a conflict which, given the intensity of the violence that characterized it and the organization of the factions, particularly the ULIMO group to which the defendant belonged, must be classified as a non-international armed conflict. According to the indictment, the acts in question were further committed against persons protected by Article 3 common to the Geneva Conventions and Article 4 of Additional Protocol II, namely civilians not directly participating in hostilities, captured soldiers, and a child. Furthermore, the Court adopts the reasoning of the trial court, as it is not open to criticism, and refers to it pursuant to Article 82(4) of the Code of Criminal Procedure (judgment SK.2019.17, para. 4.4).

3.1.2.7 The Court further notes that the criminal action is not barred by the statute of limitations. Indeed, war crimes were not subject to a statute of limitations under Art. 56bis aCPM in the version in force at the time of the alleged acts, and it should be noted that the current

Article 59(1)(c) of the Military Criminal Code (MCP) also provides that this category of offenses is not subject to a statute of limitations.

3.1.3 Use of a Child Soldier

3.1.3.1 According to the terms of Article 4, paragraph 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.

3.1.3.2 Children are particularly vulnerable. They require special treatment compared to the rest of the civilian population, which 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, n. 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 15 and 18, approximately. With regard to the recruitment and use of children in the military, the Protocol has set the minimum age at 15 (ICRC, *op. cit.*, n. 4549). The prohibition on using children in military operations is a fundamental safeguard for their protection. Since this practice is unfortunately common and children are often willing to follow adults without fully grasping the consequences of their actions, the principle of non-recruitment also includes a prohibition on accepting voluntary enlistment (ICRC, *op. cit.*, n. 4556). Not only may a child not be recruited or enlist, but he or she also will not be "authorized to take part in hostilities." Voluntary enlistment and forced enlistment thus represent two forms of the offense of recruitment as defined in the Second Additional Protocol, the latter being an aggravated form of the offense (SPSC, Fofana v. Kondewa ["CDF"], judgment of the 1[1st]Trial Chamber of August 2, 2007, SCSL-04-14-T [TSSL, "CDF," CPrI 2007], n. 191 et seq.; TSSL, Taylor, judgment of the[2nd]Chamber of of May 18, 2012, SCSL-03-01-T [TSSL, Taylor, CPrI 2012], no. 442).

3.1.3.3 The prohibition on the recruitment and use of child soldiers aims to protect the physical and psychological well-being of children from the risks of armed conflict, to protect everyone from acts committed by child soldiers in armed conflicts, and, like all offenses related to war crimes, to protect peace (ICRC, *op. cit.*, n. 3183; KESHELAVA/ZEHNDER, Basler Kommentar,[4th]ed., 2019, n. 2 ad Art. *264f* CP; GRAF/KABORÉ, Commentaire romand, n. 3 ad Art. *264f* CP and the references cited). The protection of children from the risks of armed conflict is intended not only to protect them

from violence and injuries sustained in combat, but also from potential trauma, particularly that resulting from separation from their families, disruption of their education, or exposure to an atmosphere of violence and fear (ICC, Lubanga Case, Judgment of the 1st[st] Trial Chamber of March 14, 2012, ICC-01/04-01/06-2870 [ICC, Lubanga, ICCR 2012], n. 605 and
619; SCHAUER/ELBERT, The Psychological Impact of Child Soldiering, p. 7 ff., in Martz (ed.), Trauma Rehabilitation After War and Conflict, 2010).

3.1.3.4 Conscription, enlistment, and the use of children under the age of fifteen constitute three distinct criminal acts (ICC, Katanga/Ngudjolo Chui, Judgment of the 2nd[e] Trial Chamber of March 7, 2014, ICC-01/04-01/07 [ICC, Katanga, ICCR 2014], n. 1041; ICC, Lubanga, ICCR 2012, n. 609 and 620).
Each of these acts, taken alone, constitutes the offense (ICC, Lubanga, ICC-01/04-01/07, para. 609; SCSL, Brima, Kamara, and Kanu ["AFRC"], Judgment of the [Second]Trial Chamber of June 20, 2007, SCSL-04-16-T [SCSL,
"AFRC," CPrI 2007], n. 733; SCSL, "CDF," Appeal Chamber judgment of May 28, 2008, SCSL-04-14-A [SCSL, "AFRC," Appeal 2008], n. 139). Although
theoretically distinct, conscription and enlistment are generally referred to as "recruitment" and may be examined 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 (GRAF/KABORÉ, *op. cit.*, n. 4 ad art. *264f* CP; ICC, Lubanga, ICC Report 2012, n. 618).

3.1.3.5 The use of a child soldier is a separate 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 "conscription" or "enlistment" into the armed force or group in question (ICC, Lubanga, ICC Report 2012, n. 619 et seq.). The prohibition on the use of child soldiers also aims to protect children from the risks associated with armed conflict. Additional 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 a broad interpretation (ICC, Lubanga, ICC Report 2012, para. 627 and para. 1801). This provision was drafted with the aim of allowing for a broad interpretation of "taking part in hostilities," with acts such as gathering intelligence, transmitting orders, transporting ammunition and supplies, and acts of sabotage also falling under this concept (ICRC, *op. cit.*, n. 4557). Article 8 of the Statute of the International Criminal Court (StCPI), for its part, refers to the act of "causing children under the age of fifteen to participate actively 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 ICC Statute thus overlaps with that contained in Article 4 of Protocol II, the fundamental criterion being that the child must, at the very least, constitute a potential target during hostilities. It is therefore crucial to determine whether the support that

the child provides to combatants exposes him or her to real danger, making him or her a potential target (ICC, Lubanga, ICC Report 2012, para. 628; ICC, Katanga, ICC Report 2014,
n. 1045; see also SCSL, “AFRC,” SCSL 2007, n. 736 et seq.; SCSL, Taylor,
ICJ 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 targets 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 targets (ICC, Katanga, ICR 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, as well as carrying loads for combatants and finding and/or acquiring food or equipment for them. By contrast, delivering food to an airbase or employing domestic staff in officers’ quarters does not constitute active participation in hostilities (ICC, Lubanga, ICC Judgment 2012, paras. 621–626; ICC, Katanga, ICC Judgment 2014, paras. 1043 and 1045). The Special Tribunal for Sierra Leone (TSSL) 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, carrying out diversionary tactics, delivering messages, building roads or access routes, managing *checkpoints*, or acting as human shields are examples of active participation (SLC, “AFRC,” CPrI 2007, n. 737; SCSL, Taylor, CPrI 2012, n. 444). On this basis, and in the context of the armed conflict in Sierra Leone, the SCSL thus held that the crimes committed against civilians (SCSL, Sesay/Kallon/Gbao [“RUF”], judgment of the 1st[1st] Trial Chamber of March 2, 2009, SCSL-04-15-T [SCSL, “RUF,” CPrI 2009],
n. 1724), the protection of military targets (n. 1725), espionage (n. 1729), and the role of bodyguard to commanders (which makes children potential targets because a commander himself is a target; n. 1731) are activities that fall within the concept of active participation in hostilities. By contrast, the use of children for domestic work (n. 1730) and missions to supply soldiers with food (n. 1743) do not constitute activities related to hostilities.

3.1.4 Murder

3.1.4.1 Pursuant to Art. 3, para. 1, subpara. 1, letter a, common to the General Provisions, the following are and remain prohibited at all times and in all places with respect to persons who do not participate

directly in hostilities, attacks on life and physical integrity, including murder in all its forms, mutilation, cruel treatment, torture, and cruel 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.

3.1.4.2 In order to establish that 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 not participating in combat—whether civilians or members of medical or religious personnel not actively taking part 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, ICC Report 2014, No. 767), with the intent to kill or the awareness that death would occur as a natural consequence of the events (ICC, Katanga/Ngudjolo Chui, decision of the 1stPreliminary Chamber of September 30, 2008, ICC-01/04-01/07 [ICC, Katanga, September 30, 2008], para. 423). Furthermore, there must be a causal link between the perpetrator's action and the victim's death; the prosecution must establish the existence of a causal link between the murder and the victim's death (ICC, Bemba Gombo, decision of the 2nd[e] Pre-Trial Chamber of June 15, 2009, ICC-01/05-01/08 [ICC, Bemba Gombo, June 15, 2009], 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, June 15, 2009, para. 133).

3.1.4.3 Civilians may be defined as persons who are not members of armed forces, whether state or non-state (ICC, Katanga, ICC Case No. 2014, para. 784 et seq.).

3.1.5 Cruel Treatment

3.1.5.1 Pursuant to Art. 3(1)(1)(a) common to the General Provisions, the following are and remain prohibited at all times and in all places with respect to persons who do not directly participate in hostilities: attacks on life and physical integrity, 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.

3.1.5.2 The Geneva Conventions contain no definition or explanation of the offenses of torture and cruel treatment. The International Criminal Tribunal for the Former Yugoslavia (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, Delalić et al., Judgment of the Second Trial Chamber of November 16, 1998, IT-96-21-T [ICTY, Delalić, CPrI 1998], n. 552).

3.1.5.3 With regard to torture, the ICTY 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 physical or mental pain or suffering; 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. Under customary law, the prohibited purposes are as follows: 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, for any reason whatsoever. It is sufficient that the prohibited purpose constituted 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 et al., Judgment of the 2nde Trial Chamber of February 22, 2001, IT-96-23-T and IT-96-23/1-T [ICTY, Kunarac, CPrI 2001], para. 465 et seq.).

3.1.5.4 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, on one or more persons." Severity implies a significant degree of pain and suffering and may result from a single act or from multiple 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 body 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 do not take an active part in hostilities, including members of armed forces who have laid down their arms and have been rendered incapable of combat (ICC, Ongwen, Judgment of February 9e Trial Chamber of February 4, 2021, ICC-02/04-01/15 [ICC, Ongwen, ICCR 2021], n. 2700 et seq.).

3.1.5.5 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 pain or suffering, whether physical or mental, 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 3461, 3521).

3.1.5.6 From a subjective perspective, the crime of torture as a war crime 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 motive 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 that establish the victim's status (ICC, Ongwen, Judgment of the9thTrial Chamber of February 4, 2021, ICC-02/04-01/15 [ICC, Ongwen, ICC 2021], para. 2705 et seq.).

3.1.6 Humiliating and Degrading Treatment

3.1.6.1 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—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)).

Pursuant to Art. 4, para. 2 of Additional 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 life, health, and physical or mental well-being, in particular murder, as well as cruel treatment such as torture,

mutilations, 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).

3.1.6.2 Article 3 of the Statute generally prohibits inhuman treatment (ICTY, Aleksovski, Judgment of Trial Chamber *I*, June 25, 1999, IT-95-14/1-T [ICTY, Aleksovski, CPrI 1999], para. 51). Among all forms of inhuman treatment, acts that violate human dignity constitute a particularly abhorrent category of acts, causing suffering more severe than that caused by most acts prohibited in this context. It is indisputable that the prohibition of acts constituting a violation of 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 rest 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 UN General Assembly on December 10, 1984 (Convention Against Torture; RS 0.105). Furthermore, the constitutions and legal systems of most states contain provisions aimed at protecting individuals against torture and other cruel or inhuman treatment (ICTY, Aleksovski, CPrI 1999, nos. 51 and 54). Violations of human dignity involve acts which, without directly infringing upon the physical and mental integrity and well-being of individuals, are intended to humiliate and ridicule them (ICRC, *op. cit.*, n. 3074). An affront to human dignity is an act 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 consists of inflicting upon the victim real and lasting suffering resulting from humiliation or ridicule. The degree of suffering a victim may endure naturally depends on their temperament. Sensitive individuals are more likely to view 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, 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 distress to

those who are more resilient. This difference in outcome stems from subjective factors. In 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, CPrI 1999, n. 56).

3.1.6.3 With regard to the subjective element, the defendant 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 they were aware of the foreseeable and logical consequences of their actions (ICRC, *op. cit.*, 1986, n. 3074; ICTY, Aleksovski, CPrI 1999, n. 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 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, CPrI 1999, n. 57).

3.1.6.4 Slavery consists of the exercise of powers arising from the right 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; financial 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, ICRC 2001, para. 539 et seq.; ICTY, "RUF," ICTY 2009, para. 197). Not all civilian labor 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 (ICTY, "RUF," CPrI 2009, n. 202). The mere fact that the person felt compelled is insufficient; concrete evidence of coercion is required (TSSL, Taylor, CPrI 2012, n. 448). Slavery can exist even without mistreatment, and involuntary servitude—even when accompanied by decent treatment—remains slavery (TSSL, "RUF," CPrI 2009, No. 203). In the "AFRC" and "RUF," the TSSL 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 (TSSL, “AFRC,” CPrI 2007, n. 1369 et seq.; TSSL, “RUF,” CPrI 2009, n. 1215 ff.). It has already been held that the use of civilians for forced labor may meet the criteria for slavery (TSSL, “AFRC,” CPrI 2007, n. 1374; TSSL, “RUF,” CPrI 2009, para. 1323). The TSSL, 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, “AFRC,” CPrI 2007, No. 1392).

3.1.6.5 The victim of the offense of outrages against human dignity may be a person who has already died (see, in particular, ICC, Elements of Crimes, 2013, p. 24, footnote 57; International Criminal Tribunal for Rwanda [ICTR], Bagosora et al., Judgment of the First Trial Chamber of December 18, 2008, ICTR-98-41-T [ICTR, Bagosora, CPrI 2008], n. 2224; ICTR, Bagosora et al., judgment of the Appeals Chamber dated December 14, 2011, ICTR-98-41-A [ICTR, Bagosora, Appeal 2011], n. 729).

3.1.7 Looting

3.1.7.1 Pursuant to Art. 4(2)(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.

3.1.7.2 The prohibition on looting applies to both organized looting and 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, *op. cit.*, n. 4541).

3.1.7.3 The offense of looting consists of the deliberate and unlawful appropriation of property (ICTY, Naletilić/Martinović, Judgment of the First Trial Chamber of March 31, 2003, TI-98-34-T [ICTY, Naletilić, CPrI 2003], n. 612). The prohibition against looting is considered an integral part of customary international law (ICC, Bemba Gombo, Judgment of the Third Trial Chamber of March 21, 2016, ICC-01/05-01/08 [ICC, Bemba Gombo, CPrI 2016], n. 114). Under international law, it is not necessary for the appropriation to occur on a large scale, nor for it to have significant economic value. Plunder, a common means for individual soldiers to acquire spoils, is considered one of the most traditional war crimes. For looting to constitute a war crime, a person must appropriate certain property. The act of “appropriating” property implies that the property

have come under the control of the perpetrator (ICC, Bemba Gombo, ICC Report 2016, para. 114).

3.1.8 Rape

3.1.8.1 Pursuant to Article 3 common to the Geneva Conventions, 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 not directly participating in hostilities (subparagraph c).

Article 4, paragraph 2, subparagraph e of Additional 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, forced prostitution, and any indecent assault.

3.1.8.2 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 Criminal Code (CP) or whether, rather, one should refer to an international definition of rape as a war crime, namely that of the ICC or the 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, judgment of the 1[1st] Trial Chamber of September 2, 1998, ICTR-96-4-T [ICTR, Akayesu, CPrI 1998], n. 597 and 688; ICTY,
Furundžija, judgment of the[2nd]Trial Chamber of December 10, 1998, IT-95-17/1-T [ICTY, Furundžija, CPrI 1998], n. 175 et seq. and 185; ICC, Katanga, CPrI 2014, n. 964 et seq.). By contrast, pursuant to Art. 190 of the Swiss Penal Code, 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 union of a man's genital organs with those of a woman. As for other sexual acts, and in particular other forms of penetration, they fall under the category of sexual coercion within the meaning of Art. 189 of the Swiss Criminal Code (Message on the Implementation of the Rome Statute, FF 2008 3461, 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 Rome Statute may, however, remain open in the present case, since, as will be seen, the facts described by Carol ALEXANDER meet the definition of rape under both international law and Swiss law (*infra*, consid. II.4.17.3.1).

3.1.9 Order from a Superior (Art. 18a MCP)

3.1.9.1 Pursuant to Art. 18(1) aCPM, if the execution of an order constitutes a punishable act, the commander or superior who gave the order is punishable as the perpetrator of the offense.

3.1.9.2 The objective elements of Art. 18 aCPM are as follows: a commander or superior (1) must give a subordinate or a person subordinate to him or her (2) a service order (3) whose execution constitutes an offense (4) and which thereby causes the subordinate or subordinate person to decide to act with the intent to commit the offense (5) (FLACHSMANN/FLURI/ISENRING/WEHREN-BERG, Tables of Military Criminal Law,[2nd]ed., 2010, p. 63).

3.1.9.3 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 inducing a decision to act (1); the perpetrator must be aware of the objective and subjective characteristics of the offense that he or she is causing the subordinate or the 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) (FLACHSMANN/FLURI/ISENRING/WEHRENBERG, *op. cit*., p. 63).

3.1.9.4 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 any penalty (FLACHSMANN/FLURI/ISENRING/WEHRENBERG, *op. cit*., p. 63, n. 8).

3.1.9.5 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 on the grounds of attempted commission (HAURI, Militärstrafgesetz: Kommentar, 1983, n. 12 ad 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 (FLACHSMANN/FLURI/ISENRING/WEHRENBERG, *op. cit*., p. 63, n. 6).

3.1.10 Aiding and Abetting

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

3.1.10.2 According to case law, an accomplice is a secondary participant who provides assistance in the commission of a felony or misdemeanor (Art. 25 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 assistance 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, consid. 1.1). The accomplice's contribution may take the form of material assistance and support (physical complicity) (121 IV 109, para. 3). Complicity may also be psychological in nature, in the form of intellectual or moral support (FORSTER, Basler Kommentar, 4e 2018 ed., n. 23 et seq. ad Art. 25 Swiss Criminal Code and the references cited). However, mere approval of an act committed by a third party does not constitute psychological complicity (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).

3.1.10.3 Unlike an accomplice, who intentionally assists the perpetrator in committing a crime or misdemeanor through a secondary role, a co-perpetrator is someone who intentionally and decisively collaborates with others 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 conditional 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, 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).

3.1.11 Attempt

According to the terms of Art. 19(1) aCPM, the sentence may be mitigated (Art. 46 aCPM) for a person who has begun to commit a felony or misdemeanor but has not carried out the criminal act to its conclusion. The text of Art. 19 aCPM is identical to that of Art. 21 aCP, which was in force until December 31, 2007; for this reason, reference should be made to the case law concerning that provision (HAURI, Militärstrafgesetz: Kommentar, 1983, n. 2 ad Art. 19 CPM). An attempt within the meaning of Article 21(1) of the former Swiss Criminal Code (simple or incomplete attempt) occurs when the perpetrator has begun to carry out a felony or misdemeanor but has not carried out the criminal act to its conclusion. According to case law, the perpetrator must have fulfilled all the subjective elements of the offense and must have demonstrated a decision to commit it, even if not all the objective elements have been fulfilled (ATF 122 IV 246, para. 3a; 120 IV 199, para. 3e; Federal Supreme Court decision 6S.123/2003 of May 28, 2003, para. 2.1). The intent must extend to all the objective elements of the offense. An attempted offense (or completed attempt) occurs when the perpetrator has completed the criminal act but has not achieved the result necessary for the offense to be consummated (127 IV 97, para. 1b).

3.2 Crimes Against Humanity

The Swiss Criminal Code has criminalized crimes against humanity since January[1], 2011, the date on which Art. *264a* of the Swiss Criminal Code entered into force. However, they were already defined and punishable under international law at the time of the events underlying this case (*supra*, para. I.1.1.5.3). It is now for the Court to determine whether the acts attributed to Alieu KOSIAH as crimes against humanity were barred by the statute of limitations and, if so, whether the law in force at the time of the events or the new Article *264a* of the Swiss Criminal Code should be applied in examining these offenses.

3.2.1 Arguments of the Parties

3.2.1.1 The Office of the Attorney General of Switzerland (MPC) declines to make formal submissions regarding the crimes against humanity and defers to the court's discretion. It argues, based on an analysis of the preparatory works relating to the implementation of the Rome Statute, that the Federal Council and the legislature would explicitly reject retroactive application of Articles 264 et seq. of the Swiss Criminal Code (CP) and that Article *264a* of the Swiss Criminal Code would therefore not apply to the events that occurred in Liberia in the 1990s. It does, however, argue that Alieu KOSIAH could be prosecuted and convicted for common-law offenses that are no longer subject to the statute of limitations (CAR 5.200.751 et seq. and 1024 et seq.).

3.2.1.2 According to Attorney JAKOB, since crimes against humanity were already punishable under international law at the time of the events and since Alieu

KOSIAH's acts already constituted a punishable offense under Swiss law—namely, war crimes—the application of Art. *264a* of the Swiss Criminal Code (CP) to events that occurred before January 1, 2011, would not violate the principle of non-retroactivity of criminal law. This would constitute a change in legal classification rather than an expansion of criminal liability. Consequently, Art. *264a* of the Swiss Criminal Code (CP) should apply to the acts attributed to Alieu KOSIAH (CAR 5.200.766 et seq.; CAR 5.100.054 et seq.; CAR 1.400.017 et seq.). The other plaintiffs concur with Mr. JAKOB's arguments.

3.2.1.3 As for the defense, it does not comment on the charges of crimes against humanity.

3.2.2 Statute of Limitations

3.2.2.1 Principle of non-retroactivity and the absence of a statute of limitations (Art. 101 of the Swiss Penal Code)

Prior to the introduction of Article 101 of the Swiss Criminal Code (SCC) on January 1, 2007, the provision that certain crimes of exceptional gravity are not subject to a statute of limitations was introduced into the Swiss Criminal Code (Article 75*bis*aSCC) and the Military Criminal Code (Article 56*bis*aCP) upon the adoption of the Federal Act on International Mutual Legal Assistance in Criminal Matters of March 20, 1981 (Act on International Mutual Legal Assistance in Criminal Matters, EIMP; RS 351.1; FF 1981 807), to address the difficulties raised—particularly in the context of international mutual legal assistance in criminal matters—by the application to such crimes of the provisions of Swiss domestic law regarding the statute of limitations (ZIEGLER/WEHRENBERG, Commentaire romand, 2nd ed., 2021, n. 7 ad Art. 101 CP). Crimes of genocide and war crimes were henceforth not subject to a statute of limitations, provided that criminal prosecution or sentencing had not become time-barred as of the effective date of Art. 75*bis* of the Swiss Penal Code, January 1, 1983. However, this provision did not mention crimes against humanity, as they were not codified in Swiss law at the time. With the entry into force on January 1, 2011, of the Federal Act Amending the Federal Act Implementing the Rome Statute of the International Criminal Court of June 18, 2010, new or revised provisions on crimes against humanity, genocide, and war crimes were introduced. Consequently, Art. 101 of the Swiss Criminal Code (CP) was also revised such that the statute of limitations was extended to crimes against humanity, and the description of the crimes listed in Art. 101 CP, as well as its structure, were adapted (ZIEGLER/WEHRENBERG, *op. cit.*, n. 16 ad Art. 101 CP). Specifically, Article *264a*(1)(b) of the Swiss Criminal Code provides that crimes against humanity are not subject to a statute of limitations, and Article 101(3) of the Swiss Criminal Code (CP), second sentence, that such offenses are not subject to a statute of limitations if criminal prosecution or the sentence had not become time-barred by the time the amendment to the Swiss Criminal Code of June 18, 2010, came into force—namely January 1, 2011—under the law applicable on that date.

The principle of the non-retroactivity of criminal law is enshrined in Art. 2, para. 1, of the Swiss Criminal Code (CP). Pursuant to Art. 2, para. 2, of the Swiss Criminal Code, a new criminal provision is applicable only if it is more favorable to the offender than the law in force at the time of the offense (exception of the *lex mitior*). Articles 388 through 390 of the Swiss Criminal Code (CP) supplement Article 2 of the CP and govern, in accordance with the same principles (non-retroactivity and the *lex mitior* exception), the enforcement of judgments, sentences, and measures, as well as the statute of limitations and criminal complaints (DONGOIS/LUBISHTANI, *op. cit.*, n. 19 ad Art. 2 CP). With regard specifically to the provisions of the new law concerning the statute of limitations for criminal prosecution and sentences (Art. 389(1) of the Swiss Criminal Code), they are also applicable to perpetrators of acts committed or adjudicated prior to the entry into force of the new law if they are more favorable to them than the old law (ATF 134 IV 29, para. 4.1; DONGOIS/LUBISHTANI, *op. cit.*, n. 21 ad Art. 2 CP). However, any contrary provision of law is expressly reserved (Art. 389(1) Swiss Criminal Code). The Complaints Court, in a decision published as TPF 2018 96, held that such a reservation stemmed precisely from Art. 101(3) of the Swiss Criminal Code (CP) with regard to the statute of limitations for crimes of genocide and crimes against humanity, and that crimes against humanity were therefore not subject to a statute of limitations if they had not yet become time-barred as of January[1,] 2011 (para. 7.2.2; see also TPF 2021 210, para. 2.1.3, and the references cited). The Complaints Chamber clarified that in such cases, the provisions regarding the absence of a statute of limitations also applied to acts committed before the entry into force of the criminal provisions, regardless of any statute of limitations provisions more favorable to the perpetrator (*ibid.*). It follows that Art. 101(3) of the Swiss Criminal Code (CP) establishes limited retroactivity for the rules on the non-statute-barred nature of offenses that are not already statute-barred when the new provision referring to them enters into force (TPF 2021 210, para. 2.1.3; see also 132 III 661, para. 4.3 et seq.). This limited retroactivity in time makes it possible to reconcile the principle of non-retroactivity of criminal laws within the meaning of Art. 2 of the Swiss Penal Code and the policy considerations favoring the absence of a statute of limitations for crimes with a historical dimension, such as genocide and crimes against humanity (TPF 2021 210, para. 2.1.3 and cited references).

The reasons set forth by the Complaints Court in support of its interpretation of Art. 101(3) of the Swiss Criminal Code and the conclusion reached by that court ("limited retroactivity") are convincing and deserve to be followed in this case. In addition to the reasoning provided by the Complaints Court, the following points should be noted, as they confirm this approach. Treaty law does not preclude the retroactive application of the rule regarding the non-applicability of statutes of limitations to crimes against humanity. In accordance with the case law of the European Court of Human Rights (ECHR), the interpretation of strictly procedural issues has no bearing on the foreseeability of the offense and therefore raises no issues under Article 7 of the European Convention on Human Rights (principle of non-retroactivity). This is particularly the case with the immediate application of a procedural law that extends the statute of limitations for acts that were never subject to a statute of limitations (ECHR judgment in Khodorkovskiy and Lebedev v. Russia of July 25, 2013, nos. 11082/06 and 13772/05,

para. 789 et seq.; ECHR judgment in Coëme and Others v. Belgium, June 22, 2000, No. 32492/96 and 4 others, para. 149). Furthermore, according to the ECHR, the question of the applicable statute of limitations for crimes punishable under international law must be decided in light of the relevant international law in force at the time (ECHR [GC] judgment in Kononov v. Latvia [GC] of May 17, 2010, No. 36376/04,
nos. 229–233), it being noted that Article 7 of the ECHR expressly provides that this provision does not prejudice the trial and punishment of a person for acts or omissions that, at the time they were committed, were criminal under the general principles of law recognized by civilized nations (para. 2). The ECHR has also noted that this applies to crimes against humanity, for which the rule of non-statutory limitation was established by the Nuremberg Charter (ECHR decision in Penart v. Estonia of January 24, 2006, No. 14685/04, and the references cited therein). Furthermore, if the limited retroactivity provided for in Art. 101, para. 3, of the Swiss Criminal Code were not to apply to crimes against humanity, this would lead Switzerland to violate its obligations under the Rome Statute, since it would be unable to prosecute crimes against humanity committed between July 1July 2002, the date the Rome Statute entered into force, and January[1,] 2011, the date Article *264a* of the Swiss Criminal Code (CP) entered into force (see also *supra*, consid. I.1.1.5.5). Moreover, it is difficult to see what the purpose of Article 101(3) of the Swiss Criminal Code would be if it excluded from the outset the prosecution of all crimes against humanity committed before the introduction of Article *264a* into the Swiss Criminal Code on January[1], 2011.

In light of the foregoing, offenses that are not already barred by the statute of limitations as [of]January[1,] 2011, and that can be reclassified as crimes against humanity within the meaning of Art. *264a* of the Swiss Criminal Code, become not subject to the statute of limitations. *Conversely*, this also means that offenses already barred by the statute of limitations as [of]January[1,] 2011, remain barred (ATF 132 III 661, para. 4.3; TPF 2018 96, para. 7.2; TPF 2021 210, para.
para. 2.1; ZURBRÜGG, Basler Kommentar,[4th]ed. 2019, n. 23 ad Art. 101 Swiss Criminal Code; ZIE-GLER/WEHRENBERG, *op. cit.*, n. 44 ad Art. 101 CP), which is also evident from the parliamentary proceedings (Federal Councilor Widmer-Schlumpf, BO 2010 CE 340).

3.2.2.2 Relevant offenses for determining whether criminal prosecution is barred by the statute of limitations as of January[1,] 2011 (Art. 101, para. 1, subpar. b, and para. 3 of the Swiss Criminal Code)

Since it is necessary to refer to the law in force prior to January 1January[1], 2011, to determine whether the statute of limitations has expired, and given that crimes against humanity had not yet been incorporated into the Swiss Criminal Code at the time of the events, it is necessary to identify the relevant offenses for determining whether criminal prosecution is barred by the statute of limitations as [of]January[1,] 2011. In this case, the acts alleged against Alieu KOSIAH could, at the time of the events, have constituted both war crimes and ordinary criminal offenses.

War Crimes

War crimes within the meaning of Articles 108 and 109 of the former Military Criminal Code (aCPM) are not subject to a statute of limitations under Article 56*bis* of the aCPM (as well as under the new Article 59(1)(c) of the Military Criminal Code (CPM)). This provision applies when criminal prosecution or the sentence was not barred by the statute of limitations as of January 1, 1983. Consequently, no war crimes committed after January 1, 1983 (as well as earlier offenses not barred by the statute of limitations as of that date) are barred by the statute of limitations as of January 1, 2011 (ATF 132 III 661, para. 4.3). The acts alleged in the present case, which occurred between 1993 and 1995, would therefore be not subject to the statute of limitations under Art. 101 of the Swiss Criminal Code (CP) if they were to be reclassified as crimes against humanity within the meaning of Art. *264a* of the Swiss Criminal Code (CP).

However, it must be determined whether it is the intent of the legislature to extend the lack of statute of limitations for crimes against humanity established by Art. 101(1)(b) of the Swiss Criminal Code to acts committed as of January 1, 1983 (or that were not time-barred as of that date) through the application of Art. 101(3) of the Swiss Criminal Code. To do so, it is necessary to examine the parliamentary proceedings regarding the implementation of the Rome Statute. In this case, although the Federal Council's proposal was ultimately adopted, the proposed amendment to Article 101 of the Swiss Criminal Code was the subject of debate. While the National Council adopted the Federal Council's bill without comment and subsequently maintained its position (BO 2009 CN 73 ff.; BO 2010 CN 850 and 891), the Council of States voted on several occasions to accept the amendment to Art. 101, para. 1, of the Swiss Criminal Code while leaving Art. 101(3) of the former Swiss Penal Code (aCP) unchanged, which would have extended the non-statute-of-limitations status of crimes against humanity to all acts not subject to a statute of limitations in 1983 (BO 2010 CE 339 ff.; BO 2010 CE 568 ff.). The Federal Councilor in charge of the matter commented on several occasions on the Council of States' proposal to leave Art. 101, para. 3 of the former Swiss Penal Code (aCP) unchanged and firmly opposed it (Federal Councilor Widmer-Schlumpf, BO 2010 CE 339 ff. and 569). The Council of States ultimately concurred with the position of the National Council (BO 2010 CE 623). It is therefore clear, in light of these considerations, that the legislature did not intend for the lack of a statute of limitations for crimes against humanity to be retroactive to January 1,er January 1983 (regarding the parliamentary proceedings, see also *infra*, consid. II.3.2.3.2 *in fine*). War crimes must therefore be excluded as the reference offense for calculating the statute of limitations, since this would run counter to the legislature's intent.

Offenses under ordinary law

It follows, however, from various statements by the Federal Councilor that one must refer to common law offenses when calculating the statute of limitations to determine the retroactive effect of the lack of a statute of limitations (Federal Councilor Widmer-Schlumpf, BO 2009 CN 73, *a contrario*, and BO 2010 CE 340). It is now up to the Court to determine whether, according to the general law in force at the time of the events, the acts attributed to Alieu KOSIAH as crimes against

humanity were barred by the statute of limitations as of January[1,] 2011. To do so, it is necessary,

first, identify the ordinary law offenses relevant to this case.

In its amended indictment of September 2, 2022, the Office of the Prosecutor brought 20 counts of crimes against humanity (*supra*, C.14; see also *supra*, para. I.1.1.5.1, for a detailed list of these counts). The facts to which they relate correspond to the following offenses under ordinary law, as they were in force at the time of the events:

- murder (Art. 112 of the Swiss Criminal Code), for eight counts (sections 1.3.2, 1.3.3, 1.3.5, 1.3.6, 1.3.8, 1.3.15, 1.3.17, and 1.3.18), with the clarification that while the Office of the Attorney General refers to “murder,” the facts described in the indictment, for each of the charges brought against the defendant, describe the act of killing with a particular lack of scruples—a constitutive element that distinguishes the crime of murder from that of manslaughter;
- serious bodily injury (Art. 122 Swiss Criminal Code), for one count (section 1.3.4);
- coercion (Art. 181 of the Swiss Criminal Code), for nine counts (sections 1.3.7, 1.3.10, 1.3.12, 1.3.14, 1.3.16, 1.3.19, 1.3.20, 1.3.23, and 1.3.25);
- rape (Art. 190 of the Swiss Criminal Code) for one count (section 1.3.24);
- desecration of the dead (Art. 262 Swiss Criminal Code) for one count (section 1.3.9).

3.2.2.3 Calculation of the Statute of Limitations

The question now is whether, among the acts alleged against Alieu KOSIAH—and to the extent that they are analyzed in light of the aforementioned provisions of general law—there are any acts for which the statute of limitations has not expired as of January 1January 2011, the date on which offenses constituting crimes against humanity became not subject to the statute of limitations pursuant to Art. 101, para. 3, of the Swiss Penal Code (CP). To do so, we must refer to the provisions governing the statute of limitations prior to the amendment of October 5, 2001, which entered into force on October 1er October 2002 (Art. 70 et seq. aCP), and to the law in force since then (Art. 70 aCP et seq. [FF 2000 2769], then—as of 1er January 2007—Arts. 97 et seq. CP [FF 1999 1787]).

Under Art. 70 aCP, in the version in force until September 30, 2002, the statute of limitations for criminal prosecution is twenty years if the offense is punishable by life imprisonment; ten years if it is punishable by imprisonment for more than three years or by imprisonment with hard labor; and five years if it is punishable by any other penalty. The statute of limitations begins to run on the day the person committed the criminal act; if the act was committed on multiple occasions, on the day of the last act; if the criminal conduct was ongoing, on the day it ceased (Article 71 aCP). Pursuant to Art. 72 aCP, the statute of limitations is interrupted by any investigative act by a prosecuting authority or by any decision of the

judge directed against the perpetrator, in particular by summonses and interrogations, arrest warrants or search warrants, orders for expert examinations, as well as by any appeal against a decision (section 2). With each interruption, a new statute of limitations period begins to run. Nevertheless, criminal prosecution is in any case barred once half of the ordinary limitation period has elapsed, or, for offenses against honor and for misdemeanors, upon the expiration of a period equal to twice the normal duration (section 2, second paragraph).

In accordance with the law in effect as of October[1,] 2002 (Art. 70 et seq. aCP until January[1,] 2007, corresponding to Art. 97 et seq. CP since January 1January[1,] 2007, to the present), criminal prosecution is barred by the statute of limitations: after 30 years if the offense is punishable by life imprisonment; after 15 years if it is punishable by imprisonment for more than three years or by a term of imprisonment; after seven years if it is punishable by any other penalty. According to the terms of Art. 71a of the former Swiss Penal Code (aCP), which corresponds to the current Art. 98 of the Swiss Penal Code (CP), the statute of limitations begins to run on the day the perpetrator committed the criminal act; on the day the last act was committed, if the criminal conduct occurred on multiple occasions; or on the day the criminal conduct ceased, if it continued for a certain period of time.

Transitional law is governed by Art. 389 of the Swiss Criminal Code (CP), which substantively corresponds to Art. 337 of the former Swiss Criminal Code (aCP), effective as of October[1,] 2002. To date, these two fundamentally different regimes remain applicable in parallel (ROTH/KOLLY, Commentaire romand,[2nd]ed. 2021, n. 27 ad Art. 97 of the Swiss Criminal Code). The new law applies to all offenses committed after its entry into force, pursuant to Art. 389 of the Swiss Criminal Code (CP), as well as to prior offenses when it is more favorable to the offender, since the principle of *lex mitior* (Art. 2, para. 2, CP) also applies with respect to the statute of limitations (ATF 133 IV 112, para. 9.2, and the references cited).

3.2.2.4 Statute of Limitations in the Present Case

The statute of limitations is calculated in the table below. The starting point is that no suspension of the statute of limitations within the meaning of Art. 72 aCP has occurred. Consequently, the new law cannot be more favorable to the defendant, and the old law must be applied. Thus, the change in legislation has no impact on the statute of limitations in this case. The Court, noting that the acts alleged against Alieu KOSIAH are said to have occurred between 1993 and 1995, emphasizes from the outset that it is not necessary, in this case and at this stage, to precisely determine the date on which the alleged offense was committed, as evidenced by the unequivocal results of the statute of limitations calculations reflected in the table below:

Offenses	**Statute of limitations expires on October 1, 2002 (Art. 70 et seq. aCP)**	**Statute of limitations until January 1, 2011 (Art. 70 et seq. aCP)**	**Status of the statute of limitations as of January 1, 2011, for acts committed between 1993 and 1995**
Murder (Art. 112 Swiss Penal Code)	20 years	20 years	Not subject to the statute of limitations. The statute of limitations would not expire until 2013 at the earliest.
Serious bodily injury (Art. 122 Swiss Penal Code)	10 years	10 years	Statute of limitations has expired. The statute of limitations would expire no later than 2005.
Coercion (Art. 181 Swiss Penal Code)	5 years	-	Statute of limitations has expired. The statute of limitations would expire no later than 2000.
Rape (Art. 190 Swiss Penal Code)	10 years	10 years	Statute of limitations has expired. The statute of limitations would expire no later than 2005.
Disturbance of the peace of the dead (Art. 262 Swiss Criminal Code)	5 years	-	Statute of limitations has expired. The statute of limitations would expire no later than 2000.

It appears from the table above that only the acts considered as murder (sections 1.3.2, 1.3.3, 1.3.5, 1.3.6, 1.3.8, 1.3.15, 1.3.17, and 1.3.18 of the indictment)—all of which allegedly occurred between February 1993 and December 1995—would not be barred by the statute of limitations as of January 1,er January 2011, and would therefore become not subject to the statute of limitations pursuant to Art. 101, para. 3, of the Swiss Criminal Code. The Court notes that the degree of completion and the manner of participation have no bearing, in this case, on the calculation of the statute of limitations. In this case, this concerns the examination of the acts alleged

against Alieu KOSIAH from the perspective of attempted offenses (section 1.3.6 of the indictment; *infra*, consid. II.5.4.5), incitement (sections 1.3.2 and 1.3.5; *see below*, paras. II.5.4.2 and II.5.4.4), and as an accomplice (sections 1.3.6 and 1.3.8; *see below*, paras. II.5.4.5 and II.5.4.6).

3.2.2.5 Conclusion

It follows from the foregoing that the statute of limitations does not apply to charges of murder, as crimes against humanity within the meaning of Art. *264a*, para. 1, subpar. a of the Swiss Criminal Code, as described in sections 1.3.2, 1.3.3, 1.3.5, 1.3.6, 1.3.8, 1.3.15,
1.3.17, and 1.3.18 of the indictment. By contrast, all other charges of crimes against humanity contained in the indictment are time-barred. The proceedings against Alieu KOSIAH, with respect to the offense of crimes against humanity, are therefore dismissed regarding the following charges:

- torture under Art. *264a*, para. 1, let. f of the Swiss Criminal Code (section 1.3.4 of the indictment);
- enslavement under Art. *264a*(1)(c) of the Swiss Criminal Code (sections 1.3.7, 1.3.10, 1.3.12, 1.3.14, 1.3.16, 1.3.19, 1.3.20, 1.3.23, and 1.3.25 of the indictment
  );
- other inhumane acts under Art. *264a*, para. 1, subpar. j of the Swiss Criminal Code (Sec. 1.3.9 of the indictment);
- violation of the right to sexual self-determination under Art. *264a,* para. 1, subpar. g of the Swiss Criminal Code (section 1.3.24 of the indictment).

3.2.3 Applicable Substantive Law

3.2.3.1 Article *264a* of the Swiss Criminal Code (SCC), which criminalizes crimes against humanity, was introduced into the Swiss Criminal Code on January[1,] 2011. The issue now is whether this provision applies to crimes against humanity that have become not subject to the statute of limitations pursuant to Article 101, paragraphs 1 and 3, of the SCC.

3.2.3.2 It should be noted that, in the absence of any provision under Swiss law criminalizing crimes against humanity at the time of the events, the new Art. *264a* of the Swiss Criminal Code is the only applicable law, and that the Court, since Switzerland has jurisdiction in this case (*supra*, para. I.1.1.5), has no choice but to apply the new law to punish crimes against humanity (see the judgment of the European Court of Human Rights in Maktouf and Damjanović v. Bosnia and Herzegovina [GC] of July 18, 2013,
No. 34179/08, para. 55). While legal scholarship is divided on this issue—with some scholars arguing that the principle of legality (Art. 1 of the Swiss Criminal Code) and the principle of non-retroactivity (Art. 2 of the Swiss Criminal Code) preclude the application of Art. *264a* of the Swiss Criminal Code to acts committed before January[1,] January 2011 (MEYLAN, “The Statute of Limitations for Genocide, Crimes Against Humanity, and War Crimes” in The Fight Against Impunity in Swiss Law,[2nd]ed., 2015, p. 31 ff.; ZIEGLER/WEHRENBERG, *op. cit.*, n. 17 ad Art. 101 of the Swiss Criminal Code),
whereas other authors argue that the application of Art. *264a* of the Swiss Criminal Code to crimes committed before 2011 that were not time-barred in 2011 does not

violate the principles of legality and non-retroactivity (JAKOB/MALEH, *op. cit.*, n. 38 ad intro. to Arts. 264–264n of the Swiss Criminal Code; THALMANN, *op. cit.*, pp. 261 and 287 ff.; ZURBRÜGG, *op. cit.*,
nos. 10–24 on Art. 101 of the Swiss Criminal Code)—it is clear from the parliamentary proceedings that the intent

of the legislature was to allow for the legal reclassification of offenses not barred by the statute of limitations as ofJanuary1, 2011, as crimes against humanity under Art. *264a* of the Swiss Criminal Code. The various statements on this subject by the Federal Councilor in charge of the matter are clear (see in particular, Federal Councilor Widmer-Schlumpf, BO 2010 CE 340: *"If a crime against humanity—such as multiple homicides or rape—has not yet become time-barred at the time this bill takes effect, we now have the option to reclassify this offense as a violation of Article 264a of the Swiss Criminal Code and thereby consider it not subject to the statute of limitations. All acts for which the statute of limitations has not yet expired will fall under Article 264a*.")

3.2.3.3 The Court therefore holds that offenses not subject to the statute of limitations as ofJanuary1, 2011, must be reclassified as crimes against humanity within the meaning of Art. *264a* of the Swiss Criminal Code. To do so, however, it is necessary to establish certain conditions (THALMANN, *op. cit.*, p. 314 ff.; JAKOB/MALEH, *op. cit.*, n. 38 in the introduction to Articles *264–264n* of the Swiss Criminal Code). The Court thus adopted the following criteria for reclassifying an offense as a crime against humanity within the meaning of Article *264a* of the Swiss Criminal Code:

- at the time of the acts, crimes against humanity were punishable under international law;
- at the time of the acts, the elements of the offense were defined under international law in a manner that was sufficiently predictable and accessible to the defendant;
- at the time of the events, the elements of the offense constituted a crime under Swiss law;
- the corresponding offense under ordinary law was not barred by the statute of limitations as of January1, 2011, within the meaning of Art. 101, para. 3, of the Swiss Criminal Code (see *supra,* para. 2.3.);
- Switzerland is obligated to prosecute the crime in question under customary international law or a treaty it has ratified;
- Switzerland had jurisdiction under the domestic law applicable at the time of the acts (*see above*, para. I.1.1.5);
- Article *264a* of the Swiss Criminal Code (CP) sets forth the elements of the corresponding common-law offenses in force at the time of the acts;
- in the event of a conviction, the court shall determine the sentence so that it is no more severe than that which would have been imposed for the corresponding common-law offense in force at the time of the acts.

Compliance with these conditions makes it possible to reconcile the application of Art. *264a* of the Swiss Criminal Code with the principles of legality and non-retroactivity, as well as with the *lex mitior* exception. All of these conditions are met in the present case.

3.2.3.4 It should also be noted that treaty law does not preclude either the retroactive application of the rule on the non-applicability of statutes of limitations to crimes against humanity (*supra*, para. II.3.2.2.1 and the cited case law) nor the application of the new law to punish such crimes when they were not previously punishable under domestic law (*supra*, para. I.1.1.5.3 and the cited case law).

3.2.3.5 It should be noted, for good measure, that the alternative to applying Art. *264a* of the Swiss Criminal Code would be to apply the provisions of ordinary law, and consequently to conclude that such crimes are not subject to a statute of limitations pursuant to Art. 101 of the Swiss Criminal Code. However, an analysis of the parliamentary proceedings does not support the conclusion that the legislature accepted—let alone desired—this solution. The Court also notes that this would be contrary to the *lex mitior* exception. The crime of murder is, in fact, punishable—both today and at the time of the events—by life imprisonment or a prison term of at least ten years. The minimum and maximum penalties are therefore higher than those provided for in Art. *264a*(1) of the Swiss Criminal Code (CP)—the provision relied upon by the Office of the Attorney General of Switzerland (MPC) in its indictment—such that the defendant would be treated less favorably if the general rules of law were applied.

3.2.3.6 It follows from these considerations that Article *264a* of the Swiss Criminal Code applies to the prosecution of crimes against humanity committed before January 1, 2011, when the aforementioned conditions (*supra*, consid. II.3.2.3.3) are met.

3.2.4 Art. *264a,* para. 1, subpar. a, Swiss Criminal Code (murder)

The introduction of Article *264a* of the Swiss Criminal Code (CP) on January 1, 2011, as part of the implementation of the Rome Statute, codified crimes against humanity into Swiss law. According to paragraph 1(a) of this provision, anyone who, as part of a widespread or systematic attack directed against the civilian population, intentionally kills a person shall be punished by a term of imprisonment of at least five years.

Article *264a* of the Swiss Criminal Code (CP) includes both contextual elements (paragraph 1) and specific elements (paragraph 1, subparagraphs a through j) (GARIBIAN, *op. cit.*, n. 5 ff. and 23 ff. on Art. *264a* CP). The definitions in the Rome Statute may be applied by analogy, since the legislature has reproduced the text of the Rome Statute almost verbatim (WEHRENBERG/EHLERT, Basler Kommentar, 4e ed. 2019, n. 22 ad Art. *264a* of the Swiss Criminal Code; Message on the Implementation of the Rome Statute, FF 2008 3461, 3515 et seq.).

3.2.5 Contextual Elements

The contextual elements of Art. *264a* of the Swiss Criminal Code are a widespread or systematic attack directed against the civilian population and knowledge of such an attack (Art. *264a*(1) of the Swiss Criminal Code). The *link* to an armed conflict, which is specific to the

ICTY (Art. 5 of the ICTY Statute), has been set aside, since it is not required by customary international law (ICTY, Kunarac et al., Appeal Chamber judgment of June 12, 2002, IT-96-23 & IT-96-23/1-A [ICTY, Kunarac, Appeal 2002], n. 85 ff.; METTRAUX,
International Crimes, Law and Practice, vol. II: Crimes Against Humanity, 2020,
p. 195 and the references cited). It is therefore necessary to examine only the contextual requirement of a widespread or systematic attack.

3.2.5.1 The attack

The attack should not be equated with an attack within the meaning of international humanitarian law (ICTY, Kunarac, Appeal 2002, para. 85 et seq.; ICC, Bemba Gombo, June 15, 2009, para. 75; ICC, Elements of Crimes, 2013, Art. 7, Introduction, n. 3; MET-TRAUX, *op. cit.*, p. 220) and does not presuppose either the use of violence or a military attack (Message on the Implementation of the Rome Statute, FF 2008 3461, 3516). It must result from the commission of multiple individual acts (Elements of Crimes, 2013, Art. 7, introduction, n. 3). This multiple commission may be the act of one or more perpetrators, occurring either simultaneously or at different times, and may result from a single act or multiple acts (VEST *in* Vest et al., Die völkerstrafrechtlichen Bestimmungen des StGB: Kommentar, 2014,
n. 38 ad Art. *264a* CP; METTRAUX, *op. cit.*, p. 207). It "also includes all acts of mistreatment inflicted upon the civilian population" (ICTY, Tadić, Judgment of the Appeals Chamber of July 15, 1999, IT-94-1-A [ICTY, Tadić, Appeal 1999],
n. 251; ICTY, Kunarac, Appeal 2002, n. 86; ICTY, Vasiljević, Judgment of the 2nd Trial Chamber of November 29, 2002, IT-98-32-T [ICTY, Vasiljević, CPrI 2002], n. 30; ICTY, Naletilić, ICTY 2003, para. 233; see also ICC, Katanga, ICC 2014, para. 1101). Such an attack facilitates the commission of the individual act and makes it more difficult for the victim to resist (Message on the Implementation of the Rome Statute, FF 2008 3461, 3516). Furthermore, the attack most often results from the policy or strategy of a State or an organization. Intentional inaction may be considered an attack against the population when it fails to prevent acts constituting crimes against humanity (Message on the Implementation of the Rome Statute, FF 2008 3461, 3516). Thus, it need not necessarily be state-sponsored. Indeed, it may be the act of "forces which, although not those of a legitimate government, exercise *de facto* control over a particular territory or are able to operate freely there" (ICTY, Tadić, Judgment of May 7, 1997, para. 654; GARIBIAN, *op. cit.,* n. 8 ad. Art. *264a* of the Swiss Penal Code; WEHRENBERG/EHLERT, *op. cit.*, n. 28, Art. *264a* of the Swiss Penal Code). However, the existence of a policy or strategy is not required under customary international law. While this may serve as an indicator for determining the systematic nature of an attack, the political element is

part of the legal definition of crimes against humanity under customary international law (METTRAUX, *op. cit.,* p. 285 ff. and the references cited).

The individual act must be committed "within the context" of the attack (Art. *264a,* para. 1, Swiss Penal Code). It is essential that the individual act have a material connection to the attack in order to be considered a crime against humanity (Message regarding the implementation of the Rome Statute, FF 2008 3461, 3516; ICTY, Tadić, Appeal 1999, para. 271; ICTY, Kupreškić et al., Judgment of the SecondTrial Chamber of January 14, 2000, IT-95-16-T [ICTY, Kupreškić et al., CPrI 2000],
n. 550; WEHRENBERG/EHLERT, *op. cit.,* n. 33 ad Art. *264a* CP). For the material link to exist, two elements are necessary: the individual act must, in light of the context and circumstances, objectively appear to be part of the attack (ICTY, Kunarac, CPrI 2001, n. 418; ICTY, Tadić, Appeal 1999, n. 248, 251, and 271; ICTY, Kupreškić et al., CPrI 2000, n. 550; METTRAUX,
op. cit., p. 328 and the references cited), and that the perpetrator be aware of this *nexus*; that is, that he knew at the time of the acts that his action was part of the attack against the civilian population (ICTY, Kunarac, ICTY Report 2001, para. 418; METTRAUX, *op. cit.,* p. 333 and the references cited). This serves to exclude isolated acts that cannot reasonably be linked to the attack (ICTY, Kunarac, Appeal 2002, n. 100; METTRAUX, *op. cit.,* p. 332). In order to assess the material link between individual acts and the widespread or systematic attack, the Court must consider all the circumstances, such as the characteristics, the objectives pursued, the nature, and the consequences of the accused's acts. In practice, the judge assesses whether the acts committed fit within the pattern of the attack. In particular, the judge will examine the common characteristics between the individual act and the attack, such as the *modus operandi*, the purpose, and the motivation (ICTR, Kajelijeli, Judgment of December 2e Trial Chamber of December1, 2003, ICTR-98-44a-T [ICTR, Kajelijeli, CPrI 2003], n. 866; ICC, Katanga, CPrI
2014, n. 1163 et seq.; ICC, Bemba Gombo, ICC-C 2016, n. 165; METTRAUX, *op. cit.,* p. 335 and the references cited).

3.2.5.2 Widespread or Systematic Attack

A widespread or systematic attack is characterized either by its scale (a large number of victims) or by its degree of organization, although the two often coincide. This distinction, grounded in customary international law, is confirmed by the case law of the Nuremberg Tribunal and the *ad hoc* tribunals for the former Yugoslavia and Rwanda (ICTR, Akayesu, CPrI 1998,
no. 579; ICTY, Tadić, Appeal 1999, no. 248; ICTY, Kunarac, Appeal 2002, n. 93; ICTY, Tolimir, Judgment of the2nd Trial Chamber of December 12, 2012, IT-05-88/2-T [ICTY, Tolimir, CPrI 2012], n. 698). For an act to be punishable under Art. *264a*(1) of the Swiss Criminal Code, it is sufficient that the perpetrator 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

The criterion of a “large number of victims” applies, in fact, to the general context and not to individual cases (Message on the Implementation of the Rome Statute, FF 2008 3461, 3517). The ICC further emphasizes that, should it conclude that the attack was widespread, it is not required to examine whether the attack was also systematic (ICC, Bemba Gombo, June 15, 2009, para. 82; ICC, Katanga, ICC 2014, para. 1162). Satisfaction of just one of the two criteria is sufficient, even though, in most cases, both are established (WEHRENBERG/EHLERT, *op. cit.,*
n. 32 ad Art. *264a* CP; GARIBIAN, *op. cit.,* n. 11 ad Art. *264a* CP and the cited reference).

Two elements 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 violations and the large number of victims, thereby excluding a priori any isolated act; on the other hand, its systematic nature (which is interpreted qualitatively) implies a minimum level of planning, thereby excluding any fortuitous act (GARIBIAN, *op. cit.*, n. 12 regarding Art. 264a of the Swiss Criminal Code). According to ICC case law, the adjective “widespread” refers to the fact that the attack was carried out on a large scale and to the number of victims it caused, while the adjective “systematic” denotes the organized nature of the acts of violence and the improbability that they were random, the existence of a policy by a State or an organization constituting an element allowing for the conclusion that an attack was systematic (ICC, Harun/Kushayb, decision of the 1stPreliminary Chamber of April 27, 2007, ICC-02/05-01/07 [ICC, Harun, April 27, 2007], para. 62; ICC, Katanga, ICC-Prelim. 2014, para. 1123; ICC,
Bemba Gombo, ICC-02/11-01/11 [ICC, Bemba Gombo, 2016], para. 163.). The criterion of generality does not necessarily imply that the geographical area of the attack must be extensive if it causes a significant number of victims (ICC, Katanga, September 30, 2008, para. 395; ICC, Gbagbo, decision of Pre-Trial Chamber Iof June 12, 2014, ICC-02/11-01/11 [ICC, Gbagbo, June 12, 2014], para. 224). A widespread attack may also consist of a single attack if it results in a large number of civilian casualties (ICTY, Blaškić, Judgment of the FirstTrial Chamber of March 3, 2000, IT-95-14/1-T [ICTY, Blaškić, CPrI 2000], para. 206). As for the criterion of systematicity, it presupposes a “crime pattern,” that is, “a deliberate and regular repetition of similar criminal conduct” (ICC, Katanga, September 30, 2008, para. 397; ICC, Katanga, ICC Report 2014, para. 1123; ICC, Gbagbo, June 12, 2014, para. 223). Finally, although the existence of a plan or policy is most often analyzed as a means of proving the systematic (and thus organized, methodical) nature of the attack, it is possible to conclude that it generally underlies both criteria (generality or systematicity) (GA-RIBIAN, *op. cit.*, n. 13 ad Art. *264a* CP and cited references) and that it should not be considered an additional constituent element (WEHREN-BERG/EHLERT, *op. cit.*, n. 31 ad Art. *264a* CP and cited references).

3.2.5.3 Attack directed against the civilian population

The attack must be directed against the civilian population. This means that the civilian population is the primary target of the violence and is not merely a collateral victim (ICTY, Kunarac, Appeal 2002, paras. 90–92; ICTY, Naletilić, CPrI 2003, para. 235; ICTY, Kunarac, ICTY 2001, para. 421; METTRAUX, *op. cit.,* p. 232 ff.
and the references cited). The concept of the civilian population is broader here than that applied to the crime of war and than the group targeted by the crime of genocide (GARIBIAN, *op. cit.,* n. 14 ad art. *264a* CP; VEST, *op. cit.,* n. 65 ad art. *264a* CP; METTRAUX, *op. cit.,* p. 253 ff.). Indeed, it is not necessary for the individual victim of the attack to be a civilian. The victim may, in particular, be a member of the armed forces or even a combatant who is out of action (METTRAUX, *op. cit.,* pp. 259–265 and the references cited; ICTY, Martić, Judgment of the Appeals Chamber of October 8, 2008, IT-95-11-A [ICTY, Martić, Appeal 2008], paras. 272–321). Victims may be of any nationality, ethnicity, religion, political affiliation, or have any other distinguishing characteristic. It is sufficient to demonstrate that the person suffered the harm in the context of an attack against the civilian population (ICC, Katanga, September 30, 2008, para. 399; ICC, Bemba Gombo, June 15, 2009, para. 76; ICC, Katanga, ICC 2014, para. 1103; ICC, Bemba Gombo, ICC 2016, para. 155; GARIBIAN, *op. cit.,* para. 17 ad art. *264a* CP; METTRAUX, *op. cit.,*
p. 265 ff.).

3.2.5.4 Knowledge of the attack

The final contextual requirement is subjective: the perpetrator must be aware of the attack and of his or her participation in it (METTRAUX, *op. cit.*, p. 342 ff.). While this element does not appear expressly in the text of Art. *264a* of the Swiss Criminal Code, it is, however, set forth in Art. 7(1) of the Statute of the International Criminal Court (WEHREN-BERG/EHLERT, *op. cit.*, n. 78 ad Art. *264a* of the Swiss Criminal Code; GARIBIAN, *op. cit.,* n. 18 ad Art. *264a* of the Swiss Criminal Code). According to the Federal Council, knowledge of the attack does not require the perpetrator to have been "aware of all its details, but only that he must have been aware of committing his crime within the general context of an attack launched against the civilian population," and 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 3461, 3517; ICC, Elements of Crimes, Art. 7, Introduction, para. 2; ICTY, Tadić, Judgment of the 2nd Trial Chamber of May 7, 1997, IT-94-1-T [ICTY, Tadić, CPrI 1997], para. 656 et seq.; ICTY, Tadić, Appeal 1999, para. 271; ICTY, Kunarac, Appeal 2002, n. 102; ICC, Katanga, September 30, 2008, n. 401 et seq.; ICC, Ka-
tanga, Trial Chamber 2014, para. 782 and 1125; ICC, Bemba Gombo, Trial Chamber 2016, para. 167).
evidence of knowledge of the attack may be inferred from: the historical or political circumstances in which the acts of violence took place; the accused's position at the time the crimes were committed; his or her responsibilities within the political or military hierarchy; the scope and gravity

of the acts committed, or even from the nature of the crimes committed (ICTY, Blaškić, Judgment of the FirstTrial Chamber of March 3, 2000, IT-95-14-T [ICTY, Blaškić, CPrI 2000], para. 258 et seq.; ICC, Katanga, September 30, 2008, para. 402; GARIBIAN, *op. cit.,* para. 20 regarding Art. *264a* of the Penal Code). It is sufficient that the accused was aware of the general context in which his act was committed (ICTY, Kordić, Judgment of the 3rde Trial Chamber of February 26, 2001, IT-95-14/2-T [ICTY, Kordić, CPrI 2001], n. 185; ICC, Gbagbo, June 12, 2014, para. 214). Furthermore, the defendant's motives (i.e., the reasons for his conscious participation) or any regrets regarding the results of the act are irrelevant (ICTY, Tadić, Appeal 1999, para. 270 et seq.; ICTY, Kordić, CPrI 2001, para. 187; ICTY, Kunarac, Appeal 2002, para. 103; ICTR, Akayesu, ICTR 1998, para. 539). However, there must be a connection between the perpetrator's action and that context: the accused must know that his act forms part of the attack (ICTR, Kayishema/Ruzindana, Judgment of the 2nde Trial Chamber of May 21, 1999, ICTR-95-1-T [ICTR, Kayishema, CPrI 1999], n. 133; ICC, Katanga, CPrI 2014, n. 971 and 1125). The threshold of required knowledge is low. It is sufficient that the accused "knowingly took the risk of participating in the execution" of the attack, regardless of whether or not he or she subscribed to the underlying policy or ideology, or of his or her involvement in all the details of the attack (GARIBIAN, *op. cit.,* n. 20 ad. Art. *264a* of the Swiss Criminal Code; ICC, Katanga, ICC Report 2014, n. 1125). Knowledge may be partial, implicit, established, or presumed, "actual or virtual" (ICTY, Tadić, ICTY Report 1997, n. 659). It is irrelevant whether the accused intended, through his act, to target the civilian population in question or only the individual victim, since only the attack (and not the accused's act) must be directed against the civilian population (ICTY, Kunarac, Appeal 2002, n. 103). The perpetrator's subjective motivations leading to a crime against humanity are thus irrelevant (WEHREN-BERG/EHLERT, *op. cit.*, n. 79 ad Art. *264a* of the Swiss Penal Code). Finally, it is now generally accepted that a crime against humanity does not require the existence of discriminatory intent (ICTY, Tadić, Appeal 1999, para. 305), except in the case of the specific inhumane acts of persecution and apartheid (GARIBIAN, *op. cit.,*

n. 20 on Art. *264a* of the Swiss Criminal Code and the references cited; AMBOS, Rome Statute of the International Criminal Court,4thed., 2022, n. 25 on Art. 7 of the Statute of the International Criminal Court).

3.2.6 Specific Constituent Elements

Murder is included in the list of offenses constituting a crime against humanity under Article *264a*(1)(a) of the Swiss Criminal Code. The crime of murder has been considered a crime against humanity since the Charters of the International Military Tribunals at Nuremberg and Tokyo, adopted in 1945 and 1946, respectively, and forms part of customary international law (METTRAUX, *op. cit.,* p. 369 and cited references). In its Message on the Implementation of the Rome Statute (FF 2008 3461, 3517), the Federal Council explains that, as in Art. 111 of the Swiss Criminal Code, murder within the meaning of Art. *264a*(1)(a) of the Swiss Criminal Code presupposes "that the perpetrator caused the death of a person intentionally" and that

"The presence of a particularly heinous element, as provided for, for example, in the provisions of Art. 112 of the Swiss Penal Code on murder, is not, however, necessary," since murder may be directed against multiple persons (regarding the relationship between murder and assassination, see the Court's analysis in the present case, *infra*, para. II.5.4). Unlike genocide, however, the victims need not necessarily belong to a specific group. It is therefore not necessary for the perpetrator's intent to be directed toward the destruction of the group to which they belong. Swiss law adopts a conception consistent with the clarifications set forth in the ICC Elements of Crimes (2013, Art. 7(1)(a); GARIBIAN, *op. cit.,* n. 23 ad Art. *264a* of the Swiss Criminal Code). The elements of the offense are identical under customary international law (METTRAUX, *op. cit.,* pp. 370–372). Murder consists of an act or omission by the accused (ICC, Katanga, September 30, 2008, n. 287; ICC, Bemba Gombo, June 15, 2009, para. 132), causing the death of the victim(s) (ICC, Katanga, September 30, 2008, para. 421; ICC, Bemba Gombo, June 15, 2009, para. 132), with the intent to kill (ICC, Katanga, September 30, 2008, para. 423; ICC, Bemba Gombo, June 15, 2009, para. 138; ICC, Katanga, ICC Report 2014, No. 781) or "the knowledge, according to the standard of a reasonable person, that the attack will normally cause death […] (*recklessness*)" (ICTR, Akayesu, ICTR Report 1998, No. 589; ICTY, Blaškić, ICTY 2000, para. 217; ICC, Bemba Gombo, June 15, 2009, paras. 138 and 362; ICC, Lubanga, Judgment of the Appeals Chamber of December[1,] 2014, ICC-01/04-01/06 [ICC, Lubanga, Appeal 2014], para. 447). The decisive factor is therefore whether death was reasonably foreseeable in light of the treatment inflicted on the victim. Proof of intent may thus be derived "from the factual circumstances surrounding the commission against the victim of acts of torture, beatings, or other violations of the victim's physical integrity that resulted in death […], or from the exertion of pressure such that the victim was driven to suicide" (GARIBIAN, *op. cit.,* n. 24 ad. Art. *264a* of the Swiss Criminal Code and the references cited). What matters is the existence of a causal link between the perpetrator's action and the victim's death (ICC, Bemba Gombo, June 15, 2009, n. 132). It is murder, not assassination, that must be the underlying offense for the crime against humanity (ICTY, Blaškić, CPrI 2000, n. 216). In other words, and in accordance with customary international law, the specific subjective element of murder—unlike that of assassination—does not require premeditation (GARIBIAN, *op. cit.,* n. 25 ad Art. *264a* of the Swiss Penal Code; STAHN, Rome Statute of the International Criminal Court, 4[e] 2022 ed., n. 35 ad Art. 7 StCPI). Finally, it is not necessary to locate and/or identify the body (ICC, Bemba Gombo, June 15, 2009, n. 133; ICC, Bemba Gombo, CPrI 2016, n. 88). It is nevertheless necessary,

"provided that the victim's death is the only conclusion that can reasonably be drawn," be able to provide circumstantial evidence of the death—that is, "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, June 15,

2009, para. 133; ICC, Katanga, ICC Report 2014, para. 768; ICC, Bemba Gombo, ICC Report 2016, para. 88).

3.2.7 Concurrence between war crimes and crimes against humanity

The ideal concurrence of offenses under international law (war crimes, crimes against humanity, genocide) is recognized by international courts provided that each provision contains a clearly distinct element that is absent from the other. This is particularly the case when the offense requires proof of a fact that the other provisions do not require. Thus, it is not sufficient for the distinct constituent element to provide clarification with respect to another offense, as this would risk constituting a *lex specialis* (ICTY, Delalić et al., Appeal Chamber judgment of February 20, 2001, IT-96-21-A [ICTY, Delalić, Appeal 2001],
n. 468; ICTY, Kupreškić et al., CPrI 2000, n. 700 ff.; JAKOB/MALEH, *op. cit.*, n. 36 ad intro. to arts. 264–264n CP).

Crimes against humanity differ from war crimes primarily in four respects: the absence of a requirement for a *nexus* with an armed conflict (1), the scope of protection afforded by the prohibition on crimes against humanity (2), the contextual criterion of a systematic or widespread attack against the civilian population (3), and the nature and scope of the punishable act (4) (METTRAUX, *op. cit*., p. 802). A large portion of the crimes that can be classified as crimes against humanity may also be considered war crimes, provided that the conditions are met. Conversely, the reverse is not necessarily true. Thus, these two offenses are substantively distinct, and concurrence is possible with respect to the same set of facts (ICTY, Kunarac, CPrI 2001, n. 550; METTRAUX, *op. cit*., p. 810 and the references cited). With regard to the concurrence of various crimes against humanity, these are not variants of the same crime and may therefore constitute perfect ideal concurrence (GARIBIAN, *op. cit.,* n. 84 ff. ad Art. *264a* Swiss Penal Code and the references cited).

3.2.8 Individual Criminal Liability

Under international law, participation in the offense is provided for in the various statutes of the international criminal tribunals (Art. 7 of the ICTY Statute, Art. 6 of the ICTR Statute, Art. 25(3) of the ICC Statute). An individual's criminal liability in connection with crimes against humanity is determined by the court prosecuting the offense, as international law does not impose a specific type of individual criminal liability on States. Thus, States are in principle free to choose whether to apply the types of participation provided for under international law or those provided for under their national law. In cases where it is necessary to rely on customary international law, the latter provides for a variety of forms of participation, including instigation and complicity (METTRAUX, *op. cit.*, p. 61).

The general provisions of the Criminal Code and the Military Criminal Code apply to crimes against humanity and war crimes. Furthermore, Swiss law regarding complicity contains no gaps with respect to the provisions of the Rome Statute. Indeed, there are no significant discrepancies between domestic law and the provisions of the Rome Statute regarding participation, noting that Art. 25(3) of the Statute of the International Criminal Court (StCPI) specifically addresses instigation and complicity (Message on the Implementation of the Rome Statute, FF 2008 3461, 3481; VEST, *op. cit.,* n. 189 ff. ad Systematische Einleitung). Where necessary, the legislature has established special rules on criminal liability (Message on the Implementation of the Rome Statute, FF 2008 3461, 3481). This is the case with Art. *264k* of the Swiss Criminal Code (CP), a provision addressing the criminal liability of a superior who, given the position held by Alieu KOSIAH within ULIMO, could have been relevant to the case at hand. However, this provision was not invoked in the amended indictment, and the parties did not request that the Court depart from the Office of the Attorney General's legal assessment pursuant to Art. 344 of the Code of Criminal Procedure; consequently, it is not necessary to examine it in further detail.

3.2.9 Inciting

Instigation is the act of intentionally inducing another person to commit an intentional offense. If the offense has been committed, the instigator is liable to the penalty applicable to the perpetrator of that offense (Art. 24(1) of the Swiss Penal Code). Instigation presupposes a causal relationship between the instigator's act of incitement and the instigated person's decision to commit the act. The instigator must exert a direct psychological influence on the formation of the other person's will. It is not necessary for the instigator to have had to overcome the instigated person's resistance. Conversely, incitement is no longer possible if the perpetrator had already decided to commit the punishable act (ATF 124 IV 34, para. 2c; 127 IV 122, para. 2b/aa; 128 IV 11, para. 2a; Federal Supreme Court decision 6B_721/2020 of February 11, 2021, para. 5.1). A person who merely creates a situation in which another person might eventually decide to commit a crime is not an instigator. Instigation rather implies a direct psychological or intellectual influence on the formation of another person's will (128 IV 11, para. 2a; Federal Supreme Court decision 6B_721/2020 of February 11, 2021, para. 5.1). Any conduct capable of prompting another person to decide to act—even a simple request, suggestion, or persuasive invitation—may constitute a means of instigation (127 IV 122, para. 2b/aa; 128 IV 11, para. 2a; Federal Supreme Court decision 6B_721/2020 of February 11, 2021, para. 5.1). For incitement to be established, it must be intentional. The intent must relate, on the one hand, to provoking the decision to carry out the act and, on the other hand, to the commission of the act by the instigated party (127 IV 122, para. 4a; Federal Supreme Court decision 6B_721/2020 of February 11, 2021, para. 5.1). Conditional intent is sufficient. The instigator must have known and intended, or at the very least, envisaged and accepted, that his or her intervention was of such a nature as to cause the instigated person

to commit the offense (128 IV 11, para. 2a; Federal Supreme Court decision 6B_721/2020 of February 11, 2021, para. 5.1).

3.2.10 Aiding and Abetting

The penalty is mitigated for anyone who intentionally assists the perpetrator in committing a felony or a misdemeanor (Art. 25 Swiss Criminal Code). In particular, an accomplice is anyone who intentionally assists the perpetrator in committing a felony. Objectively, the accomplice must make 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 act of aiding and abetting (ATF 132 IV 49, para. 1.1 and the references cited; Federal Supreme Court decision 6B_592/2020 of November 5, 2020, para. 2.1); however, it is not necessary for the accomplice's assistance to be a *sine qua non* condition for the commission of the offense (121 IV 109, para. 3a; 119 IV 289, para. 2c). The assistance provided by the accomplice may, in particular, be intellectual in nature, which is the case when the accomplice encourages the perpetrator or sustains or reinforces the perpetrator's decision to commit the offense (79 IV 145, p. 147; Federal Supreme Court decision 6B_203/2020 of May 8, 2020, para. 2.3). It may, in particular, consist of approval of the act—even tacit approval—expressed to the perpetrator, which reinforces the perpetrator's decision to carry out the act or their determination to proceed (Federal Supreme Court decisions 6B_894/2009 of January 19, 2010, para. 1.5.3; 6P.40/2005 of September[1,] 2005, para. 2.1). Subjectively, the accomplice must know or realize that he or she is assisting in a specific criminal act and must want or accept it. In this regard, it is sufficient that the accomplice be aware of the main features of the criminal activity to be carried out by the principal offender. To act intentionally, the accomplice must be aware of the principal offender's intent, which means the principal offender must have already decided to commit the act (132 IV 49, para. 1.1; 121 IV 109, para. 3a; Federal Supreme Court decision 6B_592/2020 of November 5, 2020, para. 2.1). Aiding and abetting is established as soon as the principal offender begins to carry out the offense in question. If the offense remains at the stage of an attempt, aiding and abetting of that attempt will still apply. Sentence mitigation under Art. 22 of the Swiss Criminal Code (CP) will then also apply to the accomplice (STRAÜLI, Commentaire romand,[2nd]ed., 2021, n. 44 ad Art. 25 CP).

3.2.11 Attempt

3.2.12 Under Art. 22(1) of the Swiss Criminal Code (CP), the judge may reduce the sentence if the commission of a felony or misdemeanor is not carried through to completion or if the result necessary for the offense to be completed does not occur or could not have occurred. While the former law treated the various forms of attempt separately, they are now consolidated in Art. 22 of the Swiss Criminal Code (HURTADO POZO/ILLÁNEZ, Commentaire romand, 2[e] ed. 2021, n. 8 ad Art. 22 of the Swiss Criminal Code; DUPUIS ET AL., Petit commentaire CP,[2nd]ed., 2017, n. 1 et seq. on Art. 22 CP). A simple attempt (or

uncompleted attempt) when the perpetrator has begun to commit a felony or misdemeanor without having carried out the criminal act to its conclusion (Federal Supreme Court decisions 6B_162/2018 of March 27, 2018, para. 2.3.1; 6B_506/2019 of August 27, 2019, para. 2.2). The perpetrator must have fulfilled all the subjective elements of the offense and demonstrated a decision to commit it, while the objective elements are wholly or partially lacking (ATF 140 IV 150, para. 3.4). The intent must relate to all of the objective elements of the offense. An attempted offense (or completed attempt) occurs when the perpetrator has completed the criminal act but the criminal result does not occur (Federal Supreme Court decisions 6B_38/2011 of April 2, 2011, para. 2.3.1; 6B_157/2017 of October 25, 2017, para. 3.1).

4. Examination of the charges from the perspective of violations of the laws of war

4.1 Use of a child as a soldier

The Court notes at the outset that only the allegation of the use of a child soldier is the subject of the present appeal proceedings, since the acquittal of Alieu KOSIAH regarding the charge of recruiting a child soldier under section 1.3.1 of the indictment has become final (*supra*, para. I.3.2).

Pursuant to that section 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, authorized the child Walter VARGAS (alias PAPA or PABLO), born on […]1980, to take part in hostilities in the Lofa region from June or July 1993 to […] 1995, the date of Walter VARGAS's fifteenth birthday. It should be noted in this regard that, according to the first paragraph of section 1.3.1 of the indictment, the acts alleged against the defendant actually began in January 1993. However, this first period relates solely to the offense of recruiting a child soldier, which is not the subject of the present proceedings, whereas the period concerning the offense of using a child soldier is alleged to have begun in June or July 1993, at the time when, again according to the same section of the indictment, Alieu KOSIAH is alleged to have taken Walter VARGAS under his care.

4.1.1 Arguments of the Parties

4.1.1.1 The Office of the Public Prosecutor notes that Alieu KOSIAH has admitted to most of the facts and argues that the conditions for establishing a mistake regarding the unlawfulness of the act are not met—an argument already raised by the defense at the trial court level. It argues that the defendant lied to the AFL by saying he was sixteen years old, that he knew he would not have been able to join the army if he had given his true age, and that he was aware that Walter VARGAS was twelve years old at the time of the events, not fifteen or sixteen years old, having, moreover, described him as being thin and small (CAR 5.200.699 et seq.). The Office of the Attorney General also provided further details on

of Walter VARGAS during its closing argument at the trial (TPF 40.721.048). It also refers to the contested judgment regarding the other legal issues (CAR 5.200.749).

4.1.1.2 The defense challenges the conviction at the trial court level and primarily argues that there was an error regarding the unlawfulness of the act. It argues, on the one hand, that Alieu KOSIAH cannot be held responsible for the context of a war in which child soldiers were used by all armed factions, and, on the other hand, that he himself enlisted in the regular army while he was a minor (CAR 5.200.648 et seq.). In doing so, the defense essentially reiterated the arguments it had presented at the trial court (TPF 40.721.753 et seq.).

4.1.2 Authorization to Take Part in Hostilities

4.1.2.1 The Court notes that Walter VARGAS's statements regarding the role he played under the command of Alieu KOSIAH have been consistent throughout the proceedings and have been partially confirmed by the latter. It follows that the defendant recruited Walter VARGAS as *a child soldier* and that he was his commander (MPC 12-16-0010, lines 24–26). Having been assigned to Alieu KOSIAH, Walter VARGAS accompanied him wherever he went (MPC 12-16-0010, lines 28–30). He served as his *bodyguard*, which meant that he stood guard at the door—armed with an AK-47—while Alieu KOSIAH slept, that he went first to the front lines to check for danger, that he tasted his food, etc. (MPC 12-16-0022, lines 31 ff., and 0023, lines 33–35; TPF 40.761.015 ff.). Walter VARGAS also stated that the defendant had taken him to the front lines on numerous occasions and had given him instructions while they were there (MPC 12-16-0021, 0041, line 26, and 0054, lines 27 ff. and 37; TPF 40.61.017,
line 13). He explained that he had been wounded twice, both times in the presence of Alieu KOSIAH. He stated that he had been shot in the neck during an ambush set by the NPFL or the LDF in 1993 (MPC 12-16-0011, lines 35 ff.; TPF 40.761.023, Q&A nos. 99 ff.), and then that he had driven over a landmine in 1994 or early 1995 (MPC 12-16-0012, lines 26 ff.; TPF 40.761.024, Q&A no.os 109 ff.). As for Alieu KOSIAH, as noted above, his statements partly align with those of Walter VARGAS. The defendant admitted that Walter VARGAS had been his child soldier, specifying, however, that he had had only one (MPC 13-01-0157, lines 35 ff.). He stated that he had taken him to the front lines, while specifying that "most of the time, [he] didn't let PAPA come with [him] to the front lines" and that "if he went [to a front line], he went there of his own free will," without the defendant having sent him there (MPC 13-01-0440; TPF 40.731.041; see also MPC 13-01-0245, lines 5 ff.).
Alieu KOSIAH admitted that he had given him a weapon (MPC 13-01-0440, line 24)

and explained that, in his capacity as a "*boy*," Walter VARGAS carried the defendant's AK-47 (MPC 13-01-0091, lines 39 ff.; see also MPC 13-01-0157, lines 38–41). Finally, he referred to Walter VARGAS as his bodyguard (MPC 13-01-0429, lines 36 ff., and 0431, line 26; TPF 40.731.032, Q&A No. 129). In light of the foregoing, it must be noted that Alieu KOSIAH, by using Walter VARGAS as a bodyguard, providing him with a weapon, and taking him to the front lines, turned him into a target and exposed him to real and concrete danger. It suffices here to recall that Walter VARGAS was wounded on two occasions.

4.1.2.2 The facts described above are further corroborated by numerous sources in the case file. The use of child soldiers—who, according to the TRC report, accounted for 10 to 20 percent of the armed groups' ranks—was indeed a common occurrence during Liberia's first civil war, particularly within ULIMO (see, for example, TRC, *op. cit.*, pp. 274 ff. and 315 ff. [MPC 14-01-0150 ff. and 0171 ff.], MSF, *op. cit.*, pp. 29, 49, and 54 [MPC B15-02-
0169–0110, 0130, and 0135], the documentary film about a child soldier directed by Christophe Naigeon [CAR 4.200.191 ff.], and the statements of witness BFR to the Dutch National Police, who testified that numerous boys under the age of fifteen had been recruited as child soldiers:
"I saw all the commanders in Foya in the presence of 15-year-old children […] They were at least 12 or 13 years old, up to about 15. They were carrying weapons such as AKs […]" [TPF 40.261.3.1056]).

4.1.3 Child under the age of fifteen

Walter VARGAS was born on […] 1980 and therefore turned 15 on […] 1995. He stated that he had accompanied Alieu KOSIAH as early as 1992 (MPC 12-16-0010; TPF 40.761.006 et seq. and 015)—though he admitted he might have been mistaken about the year (TPF 40.761.030)—until the latter left Liberia in 1998 (TPF 40.761.015, line 11). He subsequently stated that he had decided to be assigned to the defendant five to six months after being recruited (MPC 12-16-0021, lines 37–39), noting that he places his recruitment at the time of the capture of Todi (also known as Todee or Todee Barracks; MPC 12-16-0010, lines 21–23, and 0027, line 16; TPF 40.761.006, lines 35 ff., and 007, line 38). While Walter VAR-GAS places this event in 1992, the Liberian press reported on it beginning in late January 1993 (MPC 10-01-0265 and 0357; MPC 15-03-0108 ff. and 0110 ff.). It must therefore be concluded that Walter VARGAS joined ULIMO no later than January 1993 and, consequently, that he joined Alieu KOSIAH within that armed group no later than July 1993, which is also consistent with one of the accounts provided by the defendant (MPC 13-01-0233, lines 13–23). The Court notes in this regard that it 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, and emphasizes that, in accordance with the principle of

in dubio pro reo, the version most favorable to the defendant is accepted, namely the period between July 1993 and […] 1995, the day of Walter VARGAS's fifteenth birthday.

4.1.4 Subjective Elements

4.1.4.1 Alieu KOSIAH knew that Walter VARGAS was under 15 years of age when he used him as a child soldier. The defendant thus stated that Walter VARGAS was probably thirteen or fourteen years old when he took him to the front lines (MPC 13-01-0440, lines 30 ff.; see also MPC 13-01-0198, lines 9 ff.) and described him as "skinny and small" (MPC 13-01-0158, Q/A No. 39). As for their first meeting, Alieu KOSIAH stated that Walter VARGAS was between twelve and thirteen years old the first time he saw him in Todi (TPF 40.731.032, line 33; see also TPF 40.731.176, line 16). It follows from the foregoing that the defendant acted intentionally.

4.1.4.2 Furthermore, the alleged acts occurred in the context of a non-international armed conflict, namely the First Liberian Civil War, a fact of which Alieu KOSIAH was aware.

4.1.5 Error Regarding Unlawfulness

4.1.5.1 If the offense of using a child soldier is established, it is still necessary to examine the defense's argument that Alieu KOSIAH, at the time of the events, was not aware that the use of a child soldier constituted a criminal offense. The defendant, in fact, made statements to that effect on appeal, asserting that it had not crossed his mind that taking someone under a certain age to the front lines could be a crime (CAR 5.301.098, lines 9–11). He also asked the Court to take into account the environment in which they lived during the war: "If the AFL was able to recruit someone under the age of fifteen—and even fourteen—how could the AFL tell me that I didn't have the right to go to the front lines with someone under the age of fifteen? " (CAR 5.301.097 et seq., lines 46 ff.).

4.1.5.2 Pursuant to Art. 17 of the aCPM, the judge may, at his or her discretion, reduce the sentence (Art. 47 of the aCPM) for a person who committed a felony or misdemeanor while having sufficient grounds to believe they were acting lawfully. The judge may also exempt the defendant from any penalty. Error regarding the unlawfulness of the act refers to a situation in which the perpetrator acts with knowledge of all the elements constituting the offense—and thus with intent—but mistakenly believes that the act is lawful (ATF 129 IV 238, para. 3.1; Federal Supreme Court Decision 6B_1396/2022 of June 7, 2023, para. 3.1).

4.1.5.3 The fact that the use of child soldiers was commonplace in Liberia at the time of the events does not absolve Alieu KOSIAH of his responsibility for using the child Walter VARGAS. Indeed, it appears from the record that the defendant underwent and completed approximately six months of military training within the AFL (MPC 13-01-0570, line 8; TPF 40.731.142, lines 17–21), which is why he could not have been unaware that the use of child soldiers was prohibited. Moreover, he himself lied about his age in order to join the AFL before turning sixteen (MPC 13-01-0009, lines 35–37), and it should be noted that he confirmed during the appellate proceedings that he had lied about his age in order to be recruited (CAR 5.301.098, lines 11–13 and 23 ff.). This demonstrates that he knew there was an age limit for admission into the army. The contradictory statements made by Alieu KOSIAH, which he made for the first time during the appellate proceedings, are not persuasive. The Court therefore rules out the possibility that the defendant could have mistakenly believed he was acting lawfully. Furthermore, the use of child soldiers under the age of fifteen was and remains an offense under customary international law (Judgment SK.2019.17, paras. 7.1.4.3 and 7.1.4.4; TSSL, Norman, decision of the Appeals Chamber of May 31, 2004, SCSL-2004-14-AR72(E) [TSSL, Norman, decision of May 31, 2004], n. 53; TSSL, "AFRC," CPrI 2007,
No. 731), a fact that was not contested by the defense. However, international law—cannot be called into question by a State's practice that creates the appearance of legality; this means that the AFL's use of children under the age of fifteen cannot serve as a defense in the event of a violation of rules of international law (TSSL, "AFRC," CPrI 2007, n. 732).

4.1.6 Conclusion

In light of the foregoing, Alieu KOSIAH is found guilty of using a child soldier pursuant to Art. 109, para. 1, and Art. 108, para. 2, of the Military Criminal Code (aCPM), *in conjunction with* Art. 3 common to the General Provisions and Art. 4, para. 3, subpar. c, of Protocol II (section 1.3.1 of the indictment).

4.2 Ordering the murder of seven civilians in , Zorzor

According to section 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 Ernest CAMDEN, between February and April 1993.

4.2.1 Arguments of the Parties

4.2.1.1 The Office of the Prosecutor maintains that James CAMDEN has been consistent in his statements throughout the proceedings (CAR 5.200.700 et seq.). It emphasizes that the executions of civilians, such as those described by the complainant, were common during Liberia's first civil war and often occurred immediately after the capture of a town, as in the present case, since Alieu KOSIAH reportedly arrived

in Zorzor shortly after the town fell to ULIMO in February or even early March 1993. The OCP further argues that the photographs annotated by James CAMDEN on appeal depict, in mirror image, the same location and the same individuals as in the sketch he had drawn during the pretrial proceedings. The MPC also presented additional arguments at the trial level regarding the complainant's credibility (TPF 40.721.061 et seq.). As for the law, the MPC refers to the contested judgment (CAR 5.200.749).

4.2.1.2 Attorney WERNER argues that the testimonies of former ULIMO members Kwamex FOFANA and Kunti KAMARA clearly establish Alieu KOSIAH's presence in Zorzor very shortly after the city's final capture. He argues that James CAMDEN was certain that the defendant had ordered the murders in question because the ULIMO soldiers named Donald BERRY and WAR BOSS, referring to him as *"Chief* KOSIAH," had spoken his name during the gathering at the gas station. He adds that there are public sources regarding similar events in Zorzor and that this method of executing people—without any trial or interrogation—is a hallmark of ULIMO and is evident throughout these proceedings (CAR 5.200.937 et seq.). Mr. WERNER further argues that two events that occurred during the proceedings demonstrate the credibility of James CAMDEN, namely, first, during the May 30, 2017, hearing before the MPC, when he twice identified Alieu KOSIAH as the man who had ordered his brother's murder, and this provoked in him a strong, spontaneous, unrestrained, and sincere emotional reaction; and, second, during the trial hearing on February 15, 2021, when he became frightened in response to a heated outburst by the defendant that reminded him of the way the defendant used to shout during the war (CAR 5.200.943 et seq.). These arguments essentially reflect what had been argued at the trial court (TPF 40.721.289 et seq.).

4.2.1.3 The defense challenges the conviction handed down by the Criminal Court (CAR 5.200.425 and 430 et seq.), essentially reiterating the arguments presented at the trial court (TPF 40.721.505 and 509 et seq.). Regarding James CAMDEN's identification of Alieu KOSIAH, the defense argues that CAMDEN, after having identified the defendant in a photograph showing him in his youth, was unable to positively identify him when shown recent photographs. The defense further contends that James CAMDEN's account is inconsistent and riddled with implausibilities and contradictions, for which reasons it cannot be considered credible. It allegedly serves as an example demonstrating that testimonies are "coached" and manipulated to reconcile differing versions. The defense argues that there are numerous contradictions within James CAMDEN's account and with the statements of other participants in the proceedings. More specifically, regarding the charge of ordering the murder of seven civilians in Zorzor, the defense

argues that Alieu KOSIAH first came to Lofa County with PEPPER AND SALT—who himself allegedly arrived in Lofa County after the capture of Zorzor to replace Steven DORLEY—and that he therefore could not have been in ZORZOR at the time of its capture. The defense asserts that James CAM-DEN contradicted himself by stating, during the preliminary investigation, that his older brother had been killed, and then, during the trial, that it was his younger brother. Finally, regarding the two diagrams he drew during his hearing before the Public Prosecutor's Office (MPC), they do not correspond to the photographs annotated during the trial, and the description of the individuals' positions changed between the preliminary investigation and the trial proceedings.

4.2.2 Assessment of the Evidence

4.2.2.1 The present indictment stems from the criminal complaint filed by James CAM-DEN on July 3, 2014 (*supra*, A.1). In this regard, the Court notes at the outset that a criminal complaint does not constitute evidence (*supra*, consid. II.1.2.2.3). It also notes that it analyzes testimony—specifically, the credibility of the statements—and not the credibility of the complainant (*supra*, consid. II.1.2.6.1). Finally, the Court notes that the theory of a conspiracy organized by CIVITAS MAXIMA and the GJRP—which the defense accused of fabricating testimony in exchange for material benefits—has been rejected (*supra*, para. II.1.1.3) and that the identifications—from a photo lineup and in person—conducted during the proceedings cannot be used, whether as evidence for or against the defendant (*supra*, consid. II.1.3.3.2 and II.1.3.3.3).

4.2.2.2 Regarding the identification of Alieu KOSIAH by James CAMDEN, the latter provided details that were frequently mentioned during the proceedings to describe the defendant's physical appearance at the time of the events: slim, with skin darker than that of the complainant and large eyes (MPC 12-28-0018; TPF 40.757.009, lines 29–31 and 37 ff.). He was also familiar with the name "KO-SIAH," which he said he had heard frequently, and was struck by the defendant's status as his superior (MPC 12-28-0017, lines 11–14; TPF 40.757.05, lines 4–7; CAR 5.303.011, lines 3–6). The complainant explained that the soldiers shouted their names to draw attention to themselves and to let everyone know that they were combatants (MPC 12-28-0023, lines 3 ff.; TPF 40.757.05, lines 4–7, and 009, lines 1–3; CAR 5.303.011, lines 3–6). His lack of knowledge regarding the defendant's exact rank can be explained, as the complainant recounted, by the fact that having this information was not a priority during wartime (CAR 5.303.011, lines 3–6) and by his limited knowledge of the English language at the time of the events (TPF 40.757.031, Q&A No. 169). Finally, added to these factors was the intense emotional distress felt by the complainant when he was confronted with Alieu KOSIAH for the first time during the proceedings, at the

investigative phase (MPC 12-28-0020, lines 5–17), as well as during the trial proceedings, when the defendant lost his temper, which frightened the complainant and plunged him back into his memories of the time of the first civil war (TPF 40.757.038, lines 26–35). These elements are sufficient for the Court to conclude that James CAMDEN was confronted by Alieu KOSIAH at the time of the events.

4.2.2.3 As for the alleged facts, James CAMDEN's statements regarding the execution of the seven civilians remained consistent throughout the proceedings and were consistent on the essential points. Despite being in a state of shock (MPC 12-28-0022, lines 22–25, and 0044, line 20), the complainant was able to provide precise details. He thus stated that Alieu KOSIAH was the on-site commander, the *"boss man*," and that his orders were carried out (MPC 12-28-0019, lines 14–21; TPF 40.757.005, Q&A No. 15). In particular, he stated that he had seen and heard him give the order to the soldiers to execute the seven civilians, including his brother (MPC 12-28-0020, line 33, and 0021 et seq., lines 20 ff.; TPF 40.757.015,
Q/R No. 70). Regarding the manner in which the civilians were executed, the complainant explained that the defendant had not given any specific orders in this regard (MPC 12-22-0021 et seq., lines 23 ff.; TPF 40.757.015 et seq., Q/R No.os 73 et seq.) and that they were beaten to death with rifle butts, sledgehammers, or hammers (MPC 12-28-0021, lines 11 et seq.; TPF 40.757.016, Q&A No. 74; CAR 5.303.012,
Q&A No. 52). More generally, James CAMDEN's description of the defendant surrounded by his *"armed* boys" (MPC 12-22-0019, lines 19–21) corresponds to the description Alieu KOSIAH gave of him as *a "floating officer*," with his "boys," upon his arrival in Lofa (MPC 13-01-0224, line 1, and 0225, line 15; TPF 40.731.073, Q&A No. 373). As for the assertion contained in James CAMDEN's complaint, according to which the ULIMO faction, under the command of Alieu KOSIAH, allegedly invaded Zorzor (MPC 05-01-0012)—which the defense considers to have been "improvised " (CAR 5.200.432), it is clear that this is the complainant's account of how he perceived the events, noting that the first leader he encountered was *"Chief* KOSIAH," during the gathering at the gas station that led to the execution of the seven civilians, and that the complainant did not rule out the possibility that the defendant may have had a superior officer present at the scene (MPC 12-28-0023, lines 1–4; TPF 40.757.014, Q&A No. 61 et seq.). This leads the Court to consider the question of Alieu KOSIAH's presence in Zorzor during the events alleged by James CAMDEN, noting that the defendant maintains that he did not capture Zorzor (CAR 5.301.016, lines 13–17). In this regard, the Court recalls that it previously found that the defendant had arrived in Lofa County with PEPPER AND SALT shortly after the capture of Zorzor, in early 1993 (*supra*, para. II.2.2.1.3). The Court further emphasizes that Kunti KAMARA made the following statement during the trial: "I am aware of only one capture of Zorzor. When we arrived there, we were then joined by Pepper and Salt and his group, which included Alieu Kosiah, and then, from there, we

left for Voinjama. Pepper and Salt took us to Voinjama, along with Alieu Kosiah, and the rest of his group stayed in Zorzor" (TPF 40.771.017, Q&A No. 108), which confirms, to the Court's satisfaction, the defendant's presence in Zorzor. Indeed, it does not follow from James CAMDEN's account that the alleged events occurred at the very moment the town was taken by ULIMO. Finally, the defendant's presence is partially corroborated by his own statements at the outset of the proceedings regarding his arrival in Lofa County in the company of PEPPER AND SALT (*supra*, para. 2.2.1.3).

4.2.2.4 The Court further considers that many of the defense's arguments relate to ancillary issues and are aimed not at calling into question the credibility of the testimony regarding the facts, but rather the credibility of the witness (*supra*, para. II.1.2.6.1). As for the arguments concerning points relevant to the assessment of the statements regarding the alleged facts, they do not stand up to an analysis of the case file, and several of them, on the contrary, tend to reinforce the credibility of the account. The Court will now examine them in detail to the extent that they have not already been addressed and appear relevant to the assessment of James CAMDEN's testimony regarding the facts he reported.

4.2.2.5 The defense takes issue with James CAMDEN's use of the word "dingo" in his testimony to refer to the Mandingos, arguing that this term could constitute an insult (CAR 5.200.352). Before the MPC, Alieu KOSIAH had explained that this word was derogatory and referred to a wild dog in Australia (MPC 12-28-0085, lines 30–32). That said, it is clear from the complainant's statements that he acknowledged having used this term, that he used it as an abbreviation—as he would for other ethnic groups—that he did not intend to use a derogatory term, and that he was unaware of the wild dog to which the defendant had referred (MPC 12-28-0120, lines 29–32). It is therefore by no means established that James CAMDEN intended to be insulting toward the Mandingos, especially since the word was used in a neutral context, while he was essentially explaining that he did not know what had become of the Mandingos in Zorzor upon the arrival of the NPFL, and it was not alleged that the complainant spoke with animosity (MPC 12-28-0085).

4.2.2.6 Regarding the charges against the defendant, the defense notes that the complainant placed the capture of Zorzor during the rainy season (MPC 12-28-0015, lines 32 ff., and 0100, lines 15–17), whereas James CAMDEN placed it between April and October (MPC 12-28-0080, lines 8 ff.; TPF 40.757.039, Q/A No. 213), whereas the Liberian press reported the siege and subsequent capture of the town of Zorzor by ULIMO between January 11 and February 9, 1993 (CAR 5.200.441 ff.). However, it is clear from James CAMDEN's testimony that he has no idea of the date on which Zorzor was captured. He was, however, struck by the heavy downpour that

preceded his brother's execution (TPF 40.757.039, Q&A nos. 214–216; see also TPF 40.757.013, Q&A no. 54), a detail that serves as an indicator of credibility. The complainant also provided an explanation outside the context of the events he reported in Zorzor, stating that there had been heavy rains in Monrovia in February 2021 and that people thought it was the rainy season (TPF 40.757.032, Q/A No. 173). It should also be noted that the ULIMO facilities were permanent and that the complainant's memories may have become confused.

4.2.2.7 The defense then argued that James CAMDEN contradicted himself regarding which family member died during the events at the gas station in Zorzor, since he referred to his older brother during the preliminary investigation but then to his younger brother during the trial proceedings (CAR 5.200.444 et seq.). However, James CAMDEN spoke only of the death of his older brother near the gas station. Although during the trial proceedings, when asked whether he knew any civilians who were present that day, he replied that there was "Justin, my late younger brother" (also known as "Jules"; TPF 40.757.013 et seq., Q/A No. 59), he did not in any way state or imply that his younger brother was one of the seven civilians executed. One searches in vain for a contradiction, since James CAMDEN does not claim that he lost his younger brother during that event. Furthermore, during the same hearing, in response to the question of whether other family members were present on the day of his brother's death, the complainant stated that his mother and younger brother were present (TPF 40.757.017, Q/A No. 82).

4.2.2.8 The defense also criticizes James CAMDEN for having added names to the list of people who were present at the gas station between the preliminary investigation and the first-instance trial—namely, those of his mother,
"Ma Kitty," Justin, and his late younger brother, and expresses surprise that his mother is not a complainant in the present proceedings (CAR 5.200.444 et seq.). It should be clarified from the outset that Justin and the complainant's younger brother are in fact the same person, as evidenced by the transcript of the hearing before the Criminal Court (TPF 40.757.013 et seq., Q&A No. 59). As for the presence of "Ma Kitty" during the execution of the seven civilians, it must be noted that her son did not mention her during his hearing before the Office of the Attorney General (MPC). James CAMDEN did, however, state that he was living with his mother in Zorzor, particularly when the ULIMO arrived on the scene (MPC 12-28-0044, lines 28 ff., and 0084, lines 7–12). It must have seemed obvious to him that the people with whom he was living—his younger brother and his mother—had also been brought to the gas station square (MPC 12-28-0018, lines 8 and 17; TPF 40.757.009, line 23; CAR 5.303.010,
lines 37 ff.)—all the more so since he consistently stated that they had
all—or "everyone"—had been gathered in front of the gas station. It should also be noted that James CAMDEN's mother, like Albert, another

other civilian present that day, did not wish to testify for fear of reprisals, and that she would be of the opinion that one should “let God render justice” (MPC 12-28-0023, lines 27–29; TPF 40.757.017, Q/A No. 85), which explains why she is not participating in these proceedings as a complainant.

4.2.2.9 Turning now to the ULIMO soldiers who were present at the scene during the execution of the seven civilians, the defense objects to James CAMDEN’s statement that Donald BERRY had never been a bodyguard for Alieu KOSIAH, even though he had previously asserted the contrary (CAR 5.200.437 et seq.). However, in his initial statement—made in response to a question about how he had heard the name Alieu KOSIAH—the complainant described a visual memory, namely the proximity of the individuals—Donald BERRY and WAR BOSS—who were calling the defendant *“Chief* KOSIAH ” (MPC 12-18-0018, lines 6–9; see also MPC 12-28-0023, lines 6–8). When asked about an apparent contradiction between his statements and the fact that Donald BERRY was reportedly not a bodyguard but a ULIMO commander, James CAMDEN stated the following: “I didn’t say he was one of his *bodyguards*. I said he was one of the two men active around Alieu KOSIAH. As for whether or not they were together, I am not here to explain someone else’s story but to say what I saw” (MPC 12-28-0106, lines 11–18). It thus appears clear that he is describing what he saw and the impression it made on him. He had, in fact, previously provided a similar description of the roles of Donald BERRY and WAR BOSS in relation to the defendant, explaining that they were the two men actively working alongside him and that they reacted very quickly when he gave an order (MPC 12-18-0057, lines 27 ff.). It should also be noted that Alieu KOSIAH was the on-site leader and that he was unarmed.

4.2.2.10 The defense also accuses James CAMDEN of having expanded his testimony during the trial by adding SMALL DONZO and BIG DONZO to the list of soldiers involved in the events at the gas station, a list that had included only Donald BERRY and WAR BOSS during the preliminary investigation (CAR 5.200.443). It should be noted, however, that the two questions posed to the complainant were different, since, during the preliminary investigation, he was asked whether he had heard the names of soldiers who were present at the scene with Alieu KOSIAH (MPC 12-28-0023, lines 6–8), whereas during the trial proceedings, the question was whether he knew the names of the soldiers who executed the seven men (TPF 40.757.016, Q&A No. 75). It is therefore not surprising that the two answers differ. It is also worth noting that the two answers are complementary, since mentioning SMALL DONZO and BIG DONZO does not preclude the possibility that Donald BERRY and WAR BOSS were the most active. James CAMDEN had, moreover, stated during the preliminary hearing, two questions later, that all the soldiers present had beaten the civilians (MPC 12-28-0023, line 16), which implies

that there were more than two soldiers. He also clarified during the trial that he did not know the names of all the soldiers present (TPF 40.757.016, line 12). The Court interprets the mention of these two additional names—SMALL DONZO and BIG DONZO—as a further indicator of credibility, noting that the proceedings, by bringing up other events, individuals, or details, are likely to stimulate the memory of those participating in them.

4.2.2.11 The defense further argues that James CAMDEN was unable, during the trial proceedings, to establish a connection between a person named ALEXANDER and his own account, even though he had previously included that name on the list of people living with him in Zorzor. It contends that this is an indication that the plaintiff fabricated, at the request of his counsel, the list of names of those with whom he claims to have lived in Zorzor (CAR 5.200.444). The Court first notes that the theory of a conspiracy and fabricated testimony by CIVITAS MAXIMA and the GJRP has already been dismissed. Reference should be made to the relevant discussions in this regard (*supra*, consid. II.1.1). As for James CAMDEN's response, during his first-instance hearing, to Mr. GIANOLI's question as to whether the name ALEXANDER meant anything to him, it does not support the conclusion that he was unable to make the connection between that name and his own story. Indeed, it is clear from the length of the response and the fact that Mr. GIANOLI had to clarify his question several times that the complainant had not initially understood what was being asked of him. Once he did, James CAMDEN stated that he had experienced the events in question with a man named Dennis ALEXANDER, noting, moreover, that he also indicated that ALEXANDER was a common name among the Lorma and Kpelle peoples (TPF 40.757.041 et seq., Q&A No. 226). Thus, contrary to the defense's allegations, the complainant did indeed establish a connection between his own account and the name ALEXANDER, drawing on his memories to do so.

4.2.2.12 James CAMDEN is also accused of the fact that the two diagrams drawn during his hearing before the MPC (MPC 12-28-0033 and 0049) do not correspond to the photographs annotated during the trial, and that the description of the positions of the individuals changed between the preliminary investigation and the trial proceedings (CAR 5.200.445 et seq.). It is evident from the various diagrams drawn by the complainant and the photographs he annotated—two diagrams during the preliminary investigation, two photographs at the trial, and two photographs on appeal (MPC 12-28-0033, 0034, and 0049 [Appendices 4, 5, and 7]; TPF 40.757.044
and 045; CAR 5.200.023 and 024)—as well as from the explanations provided (MPC 12-28-0024 and 0043; TPF 40.757.028 et seq.; CAR 5.303.022–025)—that there is some confusion regarding the location of the various protagonists, namely, the soldiers, Alieu KOSIAH, the victims, and the group of civilians.

The soldiers are sometimes placed next to the old gas station, while at other times it is the civilians who are indicated to be at that location. The Court notes, however, that the context and linguistic and cultural barriers must be taken into account (*supra*, consid. II.1.2.6.1). In this case, the following should also be taken into account: the complainant's hearings before the Office of the Attorney General in 2017, the Criminal Court in 2021, and the Court of Appeals in 2023 took place more than twenty years after the alleged events, and on each occasion, it was only after several hours of questioning that he was asked to draw a map or annotate photographs; the locations, as they appear in the photographs presented to the complainant—which were taken in January 2019—have changed since the time of the events; there is some confusion regarding the angle from which the photographs were taken, noting that two different angles were presented to the complainant at the trial; and the complainant expressed reservations about his ability to draw a map depicting the events in Zorzor (MPC 12-28-0024, lines 1–4). That said, the directions provided are correct and consistent, and the Court has no doubt that he is familiar with the locations. If the account were fictitious, James CAMDEN could have drawn a map; however, this cannot be accepted in this case, especially given the confusion created by the multiple illustrations in the record, which present different perspectives on the events at the gas station. For this reason, and taking into account the testimony as a whole, the Court does not consider that the discrepancies noted above are sufficient to call into question the complainant's account.

4.2.2.13 Furthermore, several elements of James CAMDEN's account serve as indicators of credibility. It should thus be emphasized that he does not seek to incriminate the defendant, as illustrated by the fact that he stated he did not know whether anyone was the defendant's superior (MPC 12-28-0023, lines 2–4; TPF 40.757.005, Q&A No. 15; CAR 5.303.011, Q&A No. 45). The complainant's statements also contain indicators of firsthand experience. One example mentioned here is his reference to the fear and his desire to "disappear" triggered by the execution of the seven civilians (MPC 12-28-0022, lines 22–25; TPF 40.757.013, Q&A No. 53). James CAMDEN also stated that he did not have certain information when that was the case, notably when he explained, regarding the gathering at the gas station, that he did not know what its purpose was and that it was only once he arrived on the scene that he learned the defendant was in charge (CAR 5.303.011, Q&A Nos.^{os} 46 and 48). It should also be noted that he described in detail certain aspects related to the execution. This is particularly true of the manner in which Alieu KOSIAH's orders were carried out (MPC 12-28-0057, lines 27 ff.; TPF 40.757.014, Q&A No. 61) and the way in which the defendant and the soldiers celebrated the deaths of the seven civilians, jumping, shouting, and firing shots into the air (MPC 12-28-0022, lines 10–19).

4.2.2.14 The Court, in addition to finding James CAM-DEN's testimony regarding the execution of seven civilians in Zorzor to be credible, notes that the alleged facts bear similarities to other facts that are the subject of these proceedings, and in particular those that occurred in Foya, namely the cruel treatment of seven civilians accused of belonging to the NPFL, and the murder of six of them, on the orders of Alieu KOSIAH. These events were described by the complainant Georges ROSADO and the witness Gina FARRELL. Reference should be made here to the Court's analysis regarding these events (*infra*, para. II.4.5). The execution of individuals considered by ULIMO to be members of the NPFL or sympathizers of that faction was also mentioned on numerous occasions during the proceedings (see, among others, the statements of Levi FARRELL [MPC 12-07-0028, lines 14–15], Robbie CARY [MPC 12-27-0050, lines 11
to 14], Gerald PETERSON [MPC 12-01-0031, lines 17 ff.], and Walter VARGAS [MPC 12-16-0037, lines 9 to 18]).

4.2.2.15 The events in Zorzor are also reflected in other sources in the file. This is the case with an AFP dispatch dated March 24, 1993, which reports that fourteen young men accused of belonging to the NPFL were killed in Zorzor by ULIMO (MPC 15-02-0464). This report was cited by Amnesty International in its 1994 annual report (MPC 13-01-0371). As for the TRC, it mentions the summary execution of 114 people in Zorzor in March 1993 (TRC, *op. cit.*, p. 227 [MPC 14-01-0127]).

4.2.2.16 In light of the foregoing, the Court considers it a matter of established fact that Alieu KOSIAH ordered the ULIMO soldiers present in Zorzor to execute seven people, including Ernest CAMDEN, the brother of James CAMDEN, and that the soldiers carried out this order by killing these individuals with rifle butts and clubs.

4.2.3 Objective Evidence

The seven people killed on the orders of Alieu KOSIAH—chosen at random from the population with the clear aim of establishing ULIMO's authority in the newly conquered town of Zorzor—were indisputably civilians; their alleged membership in the NPFL was merely a pretext for their execution. Alieu KOSIAH also held a position of authority, as evidenced by the fact that the soldiers called him *"Chief* KOSIAH" and carried out the orders he gave, it being noted that it is not necessary to establish specifically what the defendant's hierarchical position was at the time of the events. The presence in Zorzor of a superior to Alieu KOSIAH is also irrelevant, insofar as what matters is who gave the order to kill the seven civilians at a specific location. Consequently, from an objective standpoint, the defendant's liability for the execution of seven civilians under Article 18 of the Military Criminal Code (order from a superior) is established.

4.2.4 Subjective Elements

Alieu KOSIAH knew that by ordering the soldiers to execute the seven civilians, they would carry out his order. Since the victims were chosen at random and there was no evidence that they belonged to the NPFL, the defendant could not have been unaware of their status as civilians. It follows from the foregoing that he acted intentionally.

Furthermore, the alleged acts occurred in the context of a non-international armed conflict—namely, the First Liberian Civil War—a fact of which Alieu KOSIAH was aware.

4.2.5 Conclusion

In light of the foregoing, Alieu KOSIAH is found guilty of ordering the killing of seven civilians pursuant to Art. 109(1) and Art. 108(2)(a) of the Military Criminal Code (aCPM) *in conjunction with* Art. 18 of the aCPM, Art. 3(1)(1)(a) common to the General Provisions, and Art. 4, paragraph 2, subparagraph a of PA II (section 1.3.2 of the indictment).

4.3 Ordering and directing a forced transport of goods by civilians from Zorzor to Salayae

Pursuant to section 1.3.25 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 and directed a forced transport of goods—including ammunition and weapons—from Zorzor to Salayae (also spelled Salayé, Salayeh, or Salayie), by civilians, between March and December 1993 or between March 1994 and the end of 1995.

4.3.1 Arguments of the Parties

4.3.1.1 The Office of the Prosecutor maintains that James CAMDEN has been consistent in his statements throughout the proceedings (CAR 5.200.700 et seq.). It emphasizes the logical nature of the transport, which consisted of moving weapons and ammunition toward the front line, noting that Alieu KOSIAH himself explained, during Carol ALEXANDER's hearing, that there was a front line extending toward Gbarnga and that said front line, at that time, was just behind Salayae. The MPC also presented additional arguments at the trial regarding the complainant's credibility (TPF 40.721.149 et seq.). As for the law, the MPC refers to the contested judgment (CAR 5.200.749).

4.3.1.2 Attorney WERNER argues that the existence of an ammunition transport between Zorzor and Salayae, as described by James CAMDEN, makes sense and is corroborated by a ULIMO soldier, namely Walter VARGAS, who stated, on the one hand, that he had attacked Salayae from Zorzor, and, on the other hand, that civilians were put to

to carry ammunition to the front. Counsel WERNER adds that his client's statements regarding the ULIMO's conscription of civilians to transport ammunition are widely corroborated in the proceedings, since eight witnesses—including four called by the defense—allegedly corroborated his statements on this point (CAR 5.200.941 et seq. and the references cited). Mr. WERNER further argues that two events that occurred during the proceedings demonstrate the complainant's credibility (for more details, see *supra*, consid. II.4.2.1.2). In addition, Counsel WERNER presented further arguments at the trial court regarding the complainant's credibility (TPF 40.721.294 et seq.).

4.3.1.3 The defense challenges the conviction at the trial court (CAR 5.200.425 and 430 et seq.). Reiterating the arguments presented before the trial court (TPF 40.721.505 and 509 et seq.), the defense challenges James CAMDEN's identification of Alieu KOSIAH as well as the credibility of CAMDEN's statements (for further details, see *supra*, consid. II.4.2.1.3). With regard to the forced transport, the defense emphasizes that James CAMDEN reportedly stated—in his complaint, during the preliminary investigation, and at the first-instance trial—that he had transported ammunition, only to declare during the appellate proceedings that he no longer knew what he had transported and that he had not opened the wooden crate he was carrying. It further argues that the ULIMO had no reason to organize a transport behind their lines in early 1993.

4.3.2 Assessment of the Evidence

4.3.2.1 This indictment stems from the criminal complaint filed by James CAM-DEN on July 3, 2014 (*supra*, A.1). In this regard, the Court notes at the outset that a criminal complaint does not constitute evidence (*supra*, consid. II.1.2.2.3). It also notes that it analyzes testimony—specifically, the credibility of the statements—and not the credibility of the complainant (*supra*, consid. II.1.2.6.1). Finally, it notes that the theory of a conspiracy organized by CIVITAS MAXIMA and the GJRP—which the defense accused of fabricating testimony in exchange for material benefits—has been rejected (*supra*, consid. II.1.1.3) and that the identifications—from a photo lineup and in person—conducted during the proceedings cannot be used, whether as evidence for or against the defendant (*supra*, para. II.1.3.3.2 and II.1.3.3.3).

4.3.2.2 With regard to the identification of Alieu KOSIAH by James CAMDEN, the Court notes that the transport from Zorzor to Salayae took place shortly after the murder of seven civilians in Zorzor, which the complainant had witnessed (*supra*, para. II.4.2), such that he already knew the defendant at the time of the transport. Moreover, the Court has already found that James CAMDEN validly identified the defendant during the proceedings as the person in question, and it is therefore appropriate to refer to its reasoning on this matter (*supra*, para. II.4.2.2.2).

4.3.2.3 As for the alleged facts, James CAMDEN's statements regarding the forced transport from Zorzor to Salayae remained consistent throughout the proceedings, whether concerning the manner in which the civilians were conscripted, the actions of Alieu KOSIAH, the goods transported, the conditions of transport, its duration, or the treatment of the civilians during the journey. He explained that child soldiers had gone from house to house to round up people and gather them at the gas station (MPC 12-28-0037, lines 5–7; TPF 40.757.018, lines 24 ff.) and that Alieu KOSIAH had told them to take the cargo and transport it to Salayae (MPC 12-28-0037, line 8; TPF 40.757.018, lines 25 ff.). The defendant, who traveled to Salayae with the civilians, was at the front of the group, directed the transport, and gave orders (MPC 12-28-0037, lines 23–27, 0038, line 17, and 0039, line 22; TPF 40.757.020, Q&A nos. 102–104, 021, Q&A no. 107). The convoy left Zorzor in the morning, and it took them nearly a day to reach Salayae; after that, the civilians were able to return and arrived in Zorzor the next day around 4:00 a.m. (MPC 12-28-0037, lines 16–18; TPF 40.757.022 et seq., Q/R nos. 110 et seq.). As for the treatment of the civilians during the journey, the complainant explained that they were regarded merely as a means of transportation (MPC 12-28-0040, lines 12–15: "*transport* material") and that they had been threatened with death and beaten by the soldiers (MPC 12-28-0037, lines 12–16, 0038, lines 24 ff.; TPF 40.757.023, Q&A nos. 121–126). He also specified that women and children were among the civilians and that they, too, had carried loads (MPC 12-28-0037, lines 9 ff.; TPF 40.757.019, Q&A No. 97).

4.3.2.4 The Court further considers that many of the defense's arguments concern ancillary issues and are aimed not at calling into question the credibility of the testimony regarding the facts, but rather the credibility of the witness (*supra*, para. II.1.2.6.1). As for the arguments concerning points relevant to the assessment of the statements regarding the alleged facts, they do not stand up to an analysis of the case file, and several of them, on the contrary, tend to reinforce the credibility of the account. The Court will now examine them in detail to the extent that they have not already been addressed and appear relevant to the assessment of James CAMDEN's testimony regarding the facts he reported.

4.3.2.5 With regard to the goods being transported, the defense accuses James CAM-DEN of contradicting himself by stating throughout the proceedings—whether in his complaint, during the preliminary investigation, or during the trial—that he had transported ammunition, whereas, during the appellate proceedings, he claimed he no longer knew what he was transporting and stated that he had not opened the wooden crate he was responsible for (CAR 5.200.446 et seq.). However, it must be noted that the complainant's statements on this point as well are consistent. He thus referred to transporting ammunition in his complaint (MPC 05-01-0012), then stated before the MPC that he knew there was ammunition in the crate

because of the noise it made (MPC 12-28-0065, lines 3 et seq.), and, before the Criminal Court, that he could hear the sound of the ammunition inside the crate (TPF 40.757.021, Q&A No. 108). He then explained, during the appellate proceedings, that he could not say what he was carrying because he had not opened the crate and that it made a noise similar to objects rolling over one another (CAR 5.303.026 et seq., Q&A Nos. 141–144). James CAMDEN was not certain what the box he was carrying contained, but inferred from the noise that it must have been ammunition. The defendant's explanations on appeal—that the cartridges would not move inside their box (CAR 5.301.020, Q/A No. 50), and therefore could not make any noise, are not sufficient to call into question the credibility of the complainant's account, insofar as he was clear that he was speculating about the contents of the crate he was carrying. Furthermore, admitting a lack of certainty is itself a sign of credibility (see *below*, para. II.4.3.2.7).

4.3.2.6 As for the route taken, the defense argues that the ULIMO had no reason to organize a transport to the rear of their lines in early 1993 (CAR 5.200.447). However, it is difficult to understand on what grounds this assertion is based. While Alieu KOSIAH mentioned that the ULIMO had captured Gbarnga (CAR 5.301.020, Q/A No. 50), this does not preclude the possibility of fighting in the Salayae area, which is several dozen kilometers away. This is all the more so given that the defendant himself indicated that Zorzor had always been a "hot" region during the war—that is, close to the front line (MPC 13-01-0010, line 40; 0276, lines 11 ff.; and 0475, lines 11–13;
TPF 40.731.133, line 32, and 284, Q/R No. 625; CAR 5.301.011, lines 29 ff., and
018, lines 9 et seq.), and that Walter VARGAS, a former child soldier of Alieu KOSIAH, stated that he had attacked Salayae from Zorzor (MPC 12-16-0037, lines 17 et seq.).

4.3.2.7 Furthermore, several elements of James CAMDEN's account serve as indicators of credibility. It should thus be emphasized that he does not seek to incriminate the defendant, as illustrated by the fact that he stated that no one had been killed during the transport (MPC 12-28-0038, line 32) or that the civilians were able to stop for a drink during said transport (TPF 40.757.022, Q&A No. 112). The complainant's statements also contain indicators of firsthand experience. Mentioned here, by way of example, are the repeated references both to the noise made by the crate he was transporting (*supra*, consid. II.4.3.2.4) and to the fear aroused by the circumstances of the transport (MPC 12-28-0038, lines 2 ff., 0039, lines 23 ff., and
0057, line 21; TPF 40.757.022, Q&A No. 117; CAR 5.303.025, Q&A No. 133).
James CAMDEN also indicated when he could not recall a detail, notably when he explained that he could not say whether they had placed the explosives inside the Lutheran school or right in front of it (TPF 40.757.025, Q&A No. 136). It should also be noted that he described in detail certain aspects related to transportation. This is particularly true of the way in which orders,

traveling down the chain of command, reached the civilians (TPF 40.757.023, Q/A No. 126), the fact that the civilians would speed up when they were at the back of the group to avoid being beaten (TPF 40.757.024, Q/A No. 134), and the way they were humiliated because vehicles were not used to transport the loads (TPF 40.757.026, Q/A No. 143).

4.3.2.8 The transport described by James CAMDEN took place against the backdrop of Liberia's first civil war and was, moreover, part of a military strategy. Forced marches, whether for the transport of weapons and ammunition or looted goods, were part of ULIMO's *modus operandi*, as the Court has already noted above (*supra*, para. II.2.1.2.6). This is also evident from several other sets of facts concerning various locations in Lofa County, which will be analyzed in this judgment (*infra*, paras. II.4.8, II.4.9, II.4.10, II.4.11, II.4.13, II.4.14, and II.4.16). In addition, the route

route taken by the convoy led by Alieu KOSIAH—namely, from Zorzor to Salayae—makes geographical sense, as illustrated by the map included in the case file (MPC 15-01-0578). The complainant was also able to name the localities he passed through—Sukolomu and Gbangoi (MPC 12-28-0109, line 19)—and the location where he unloaded his cargo, namely the *Lutheran Training Institute* (MPC 12-28-0055, lines 12 ff.; TPF 40.757.025, Q/A No. 25)—the existence of which is confirmed (TPF 40.721.030). He also provided plausible information by stating, in response to a question from the defense, that the journey between Zorzor and Salayae was longer than that between Zorzor and Koyamah (MPC 12-28-0109 et seq., lines 21 ff.), which is also corroborated (MPC 15-01-0578 ff.). Moreover, ULIMO's use of forced transport of goods by civilians was also confirmed by Walter VARGAS, who specifically stated that they made civilians carry their weapons and ammunition all the way to the front lines, and that the transports took place at gunpoint (MPC 12-16-0032, lines 5 ff.).

4.3.2.9 In light of the foregoing, the Court finds that Alieu KOSIAH ordered the forced transport of goods by civilians—including James CAMDEN—from Zorzor to Salayae between March and December 1993, and participated in it himself. With regard specifically to the date on which this event took place, the Court considers that the complainant's explanation—that the transport occurred shortly after the execution of the seven civilians near the gas station—is credible (TPF 40.757.018, Q&A No. 87). However, in the absence of any other precise indication to date the transport, the first period mentioned in the indictment—that is, from March to December 1993, with the latter date corresponding to Zorzor's capture by the LDF (MPC 15-02-0342 et seq.)—must be accepted.

4.3.3 Objective Evidence

4.3.3.1 The facts set forth above may be characterized both as an assault on physical and mental integrity, in the form of cruel treatment, and as an assault on human dignity, in the form of humiliating and degrading treatment. Forcing heavily laden civilians to march for hours while threatening them with death by weapons or beating them if they do not comply or do not move fast enough is likely to cause great suffering. This suffering is primarily physical, due to the long march the civilians were forced to undertake while carrying heavy loads and the beatings they endured along the way. The suffering is also psychological, due to the terror that gripped the civilians throughout the journey, as they were subjected to verbal intimidation, death threats, and blows with rifle butts from the soldiers accompanying them. This treatment must also be characterized as humiliating and degrading. Forcing heavily laden civilians to march while threatening them with death, striking them to make them move at the imposed pace, and treating them as mere means of transportation amounts to a violation of their humanity and constitutes a very serious form of humiliation.

4.3.3.2 The Court further specifies that there is no basis for finding additional offenses regarding the beatings inflicted on the civilians and the death threats made against them, since these acts fall under the offenses of cruel, humiliating, and degrading treatment. As for the offense of slavery, it has not been committed. The duration of the transport was not, in fact, sufficient to conclude that powers of ownership were exercised over the civilians who were forced to participate in said transport.

4.3.3.3 Alieu KOSIAH ordered the transport and was the only one to give orders to the soldiers during it. The soldiers obeyed his orders and relayed them to the civilians. This attests to the defendant's status as a superior. His liability under Article 18 of the Military Penal Code (aCPM) is therefore established.

4.3.4 Subjective Elements

Alieu KOSIAH knew that by ordering the soldiers to carry out the transport, they would carry it out. Since the ULIMO selected the individuals to participate in the transport at random, going from house to house, the defendant could not have been unaware of their status as civilians. It follows from the foregoing that he acted intentionally.

Furthermore, the alleged acts occurred in the context of a non-international armed conflict, namely the First Liberian Civil War, a fact of which Alieu KOSIAH was aware.

4.3.5 Conclusion

In light of the foregoing, Alieu KOSIAH is found guilty of ordering and of inflicting, respectively, cruel, humiliating, and degrading treatment on several civilians in the form of forced transport, pursuant to Art. 109, para. 1, and Art. 108, para. 2, aCPM, *in conjunction with* Art. 18 of the aCPM, Article 3(1)(1)(a) and (c) common to the General Provisions, and Article 4(2)(a) and (e) of PA II (Section 1.3.25 of the indictment).

4.4 Murder of civilian Jeff JORDAN in Babahun

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 the civilian Jeff JORDAN in Babahun (or Mbabahun) between March and May 1993.

4.4.1 Arguments of the Parties

4.4.1.1 The MPC maintains that Philip JORDAN witnessed the scene and that his testimony was consistent, measured, and detailed (CAR 5.200.702 et seq.). It argues that the witness knew nothing about the war or the factions and that he was not from Lofa. In response to the objections raised by the defense at the trial, it contends that it is possible this incident occurred while ULIMO was advancing to take Foya and that it would not necessarily have been the first time ULIMO had passed through Babahun. As for the argument regarding the NPFL *checkpoints*, the MPC argues that ULIMO was not yet in Lofa when the witness arrived there, which is why he might have thought he was still in NPFL territory when he left for Monrovia. It is also conceivable that the NPFL was still present in certain parts of Lofa in the spring of 1993. As for *the "Report on Findings and Pictorials"* dated January 9, 2023 (*supra*, C.25), submitted by the defense, which suggests that there was no Jeff JORDAN in or around the village of Babahun, the MPC reiterates the reservations already expressed regarding its reliability and notes that the individuals cited—the imam and the "town chief" of Babahun—were not in office at the time. The MPC also presented further arguments at the trial regarding the complainant's credibility (TPF 40.721.071 et seq.). As for the law, the MPC refers to the contested judgment (CAR 5.200.749).

4.4.1.2 The defense challenges the conviction at the trial court level. It disputes Philip JORDAN's identification of Alieu KOSIAH (CAR 5.200.424) based on the same arguments as those presented at the trial court level (TPF 40.721.505). Although the defense did not raise the issue of the credibility of Philip JORDAN's testimony on appeal, it had done so before the trial court, arguing that Philip JORDAN's statements were neither clear nor coherent nor consistent with reality

(TPF 40.721.667 et seq.; see also the defense's appellate brief regarding the "Context Inherent in CIVITAS MAXIMA" [CAR 5.200.369]). She argued that there are numerous contradictions between Philip JORDAN's complaint and the content of his hearing before the MPC, both within the statements he made during the preliminary investigation and in relation to the statements of other participants in the proceedings. In particular, he reportedly contradicted himself regarding the number of gunshots he claimed to have heard. He also allegedly claimed that the ULIMO group had arrived from Foya, whereas it is well known that the ULIMO forces arrived from Kolahun to reach Foya. Furthermore, Philip JORDAN allegedly incorrectly stated that the ULIMO forces who attacked his village were wearing red ribbons, a distinctive mark that is in fact associated with the NPFL.

4.4.2 Assessment of the Evidence

4.4.2.1 This indictment stems from the criminal complaint filed by Philip JORDAN on July 3, 2014 (*supra*, A.1), it being noted that his status as a complainant was revoked during the preliminary investigation, as he could not claim the status of a relative of the victim (*supra*, A.13). With regard to the criminal complaint, the Court notes at the outset that it does not constitute a form of evidence (*supra*, consid., II.1.2.2.3). The Court also notes that it is analyzing testimony—namely, the credibility of the statements—and not the credibility of Philip JORDAN (*supra*, consid. II.1.2.6.1), and that the theory of a conspiracy organized by CIVITAS MAXIMA and the GJRP—which the defense accused of fabricating testimony in exchange for material benefits—has been dismissed (*supra*, para. II.1.1.3). In this regard, it notes that the accusations made by the defendant against Philip JORDAN (MPC 13-01-0494 et seq.), alleging that he was participating in the proceedings for financial reasons, are unfounded. It emphasizes, on the one hand, that he no longer has the status of a complainant (*supra*, A.13) and yet he once again traveled to Switzerland to testify before the trial judges, and, second, that he works for an organization that promotes peace and reconciliation—values to which he demonstrated a commitment during his hearings (MPC 12-022-0065, lines 29–32; TPF 40.762.009, Q/A 70 ff.). Finally, the Court reiterates that identifications—whether from a photo lineup or in person—conducted during the proceedings may not be used, either as evidence for the prosecution or for the defense (*supra*, paras. II.1.3.3.2 and II.1.3.3.3).

4.4.2.2 Regarding the identification of Alieu KOSIAH by Philip JORDAN, the latter provided details that were frequently mentioned during the proceedings to describe the defendant's physical appearance at the time of the events: dark skin, *"bulging eyes*," his build, and the fact that he had gained weight since the time of the events (MPC 12-22-0006, lines 3–15; TPF 40.762.003, Question and Answer No. 7). He was also familiar with the name "KOSIAH" and the defendant's

defendant. He thus stated that the soldiers called him *"Chief* KOSIAH" and that he led their group (MPC 12-22-0008, lines 30 ff., and 0012, lines 26 ff.; TPF 40.762.006, Q&A nos. 35 ff.). This evidence is sufficient for the Court to conclude that Philip JORDAN was confronted by Alieu KOSIAH at the time of the events.

4.4.2.3 As for the events that took place in Babahun, Philip JORDAN's statements regarding his uncle's execution were consistent throughout the proceedings and consistent on the essential points. He thus stated that the events took place during the ULIMO takeover of Babahun (MPC 12-22-0008, lines 26–31; TPF 40.762.005, Q&A Nos. 27 et seq.), that Alieu KOSIAH had killed his uncle with a pistol (MPC 12-22-0009, lines 4 et seq., 0016, lines 17–21, and 0084, lines 30 ff.; TPF 40.762.010, Q/R No. 69), by shooting him in the torso (MPC 12-22-0016, lines 31–33; TPF 40.762.008, Q&A No. 56), in a location away from the village associated with *the "Poro* Society" (MPC 12-22-0015, line 25, and 0016, lines 1–3; TPF 40.762.007, Q&A Nos. 47 and 50), and that he had seen his uncle fall (MPC 12-22-0018, line 7; TPF 40.762.008, Q&A No. 53). The witness provided details, particularly regarding the execution site, specifically mentioning a straw fence—which was not closed—marking the entrance to *the* "bush" (MPC 12-22-0016, lines 1–7, 0018, lines 3 ff., and 0084, line 30 ff.; TPF 40.762.008, lines 28 ff.), as well as the gestures made by Alieu KOSIAH after firing, when he holstered his weapon (MPC 12-22-0009, line 5, and 0016, line 18), which the witness also demonstrated with gestures (MPC 12-22-0009, line 7, and 0016, line 21). In his account, Philip JORDAN described the conversation between the ULIMO soldiers and his uncle. The witness explained that the soldiers knew Jeff JORDAN owned plantations, but that he had told them he had no money, after which the soldiers took him away from the village (MPC 12-22-0009, lines 1–5, and 0011, lines 2–4; TPF 40.762.007, Q&A nos. 45 and 47 et seq.). The witness clarified that Alieu KOSIAH was the one who had inquired about the property belonging to Jeff JORDAN (MPC 12-22-0015, lines 15–21; TPF 40.762.007, lines 11 ff.). At that
, Philip JORDAN also shared his thoughts on the fact that the soldiers
had obtained information before coming to his village (TPF 40.762.007, Q/A No. 45) as well as regarding their motives, hypothesizing that they had acted out of greed to finance their movement (TPF 40.762.009, Q/A No. 67).

4.4.2.4 Philip JORDAN's account certainly contains inconsistencies, but they are not sufficient to call into question the credibility of his testimony. For example, as the defense noted, the number of shots fired to kill his uncle varied between his initial statement and his hearing before the MPC (TPF 40.721.667 et seq.), with the witness initially mentioning two shots (MPC 05-01-0014) and later a single shot (MPC 12-22-0016, lines 17 ff. and 25). He reiterated during the trial that he had heard a single shot, and when questioned about a contradiction

between his initial report and his subsequent statements, he confirmed that he had heard only one (TPF 40.762.008, Q&A nos. 54 and 57). However, such a discrepancy cannot undermine the witness's credibility, as the essential point is that the witness asserts having seen the defendant lead his uncle aside and that the latter had fallen after a firearm was discharged. Such a discrepancy in the witness's accounts is, moreover, understandable more than twenty years after the events, bearing in mind that a criminal complaint must be treated with the utmost caution. The fact that the witness corrected the content of the complaint, rather than smoothing over his account—as the defense accuses him of doing—is, in fact, an indicator of credibility. Furthermore, one cannot rule out confusion in the witness's recollections due to a possible echo of the gunshot. As for the question raised by the defense as to whether the witness saw Alieu KOSIAH shoot his uncle (TPF 40.721.669 and cited references), it is not clear that he contradicted himself on this point. Philip JORDAN did, in fact, state on several occasions that he had seen the defendant shoot his uncle (MPC 12-22-0016, line 28; TPF 40.762.008, line 2). Furthermore, when questioned by the defense about a possible contradiction in his account, the witness explained how he had been able to see the defendant at the time of the incident because there was a fence on only one side (MPC 12-22-0084, lines 25–31). This also explains why he was able to indicate the area of his uncle's body that the defendant had targeted (*supra*, consid. II.4.4.2.3).

4.4.2.5 The Court further considers that many of the defense's arguments concern ancillary issues and are aimed not at calling into question the credibility of the testimony regarding the facts, but rather the credibility of the witness as a person (*supra*, para. II.1.2.6.1). This is particularly the case when the defense criticizes him for stating that the NPFL held the *checkpoint* he passed through after leaving Babahun, whereas it was the ULIMO that allegedly controlled the region at the time of the events (TPF 40.721.671 et seq.; see also the statements of Alieu KOSIAH on appeal: CAR 5.301.100 et seq.). However, it cannot be ruled out that a teenager with no military experience might have been mistaken about the identity of the faction in question. One might even doubt that this was a genuine concern for him. As for the arguments concerning points relevant to the assessment of the statements regarding the alleged facts, they do not hold up to an analysis of the case file, and several of them, on the contrary, tend to reinforce the credibility of the account. The Court will now examine them in detail to the extent that they have not already been addressed and appear relevant to the assessment of Philip JORDAN's testimony regarding the events he reported.

4.4.2.6 The defense accuses Philip JORDAN of disdain for the Mandingos (TPF 40.721.669), criticizing him for having stated the following regarding a daily newspaper published in Monrovia: "Most people say that this newspaper is owned by Mandingos and Liberians" (MPC 12-22-0047, line 31). These remarks

are said to demonstrate his contempt for the Mandingos and for Alieu KOSIAH, since the witness allegedly draws a distinction between a Mandingo and a Liberian. However, such conclusions cannot be drawn from an isolated statement such as this one. Phi-lip JORDAN, moreover, expanded on his remarks in the same response, stating that he was "not a tribalist" and that: "Among the Mandingos, as elsewhere, there are good people and bad people. The Mandingos are one of the 16 tribes of Liberia. I had a Mandingo girlfriend; even my cousin was born to a Mandingo father. I harbor no hatred in my heart toward the Mandingos. We—all the tribes—are still united (*"we are one, we are still* one")" (MPC 12-22-0048, lines 4–8). Moreover, the defendant himself stated that he did not get the impression that Philip JORDAN harbored any hatred toward the Mandingos (MPC 13-01-0494 et seq.). This argument must therefore be dismissed.

4.4.2.7 The defense further argues that the proceedings established that the ULIMO forces reached Foya from Kolahun, which would contradict Philip JORDAN's statements that the ULIMO group was coming from the direction of Foya (TPF 40.721.671 and cited references). However, it is not necessary to have captured Foya—which is located more than ten kilometers from Baba-hun—to approach Jeff JORDAN's village from that direction. It should also be noted that the indictment places the events between March 1993—the date of the ULIMO capture of Voinjama (*supra*, para. II.2.2.1.3)—and May of the same year, with the clarification that Foya was captured in July 1993 (*supra*, para. II.2.2.1.3). It is therefore likely that ULIMO reached Kola-hun and the village of Babahun during that time period.

4.4.2.8 Regarding the contradiction that the defense claims to have identified between the witness's statement that his uncle had been targeted and his subsequent statement that *"*Chief KOSIAH" had surrounded the village and was demanding money from the various plantations (TPF 40.721.670), it is difficult to follow the defense's reasoning, since targeting a specific person in the village in no way precludes the possibility of seeking other sources of income—especially in another location, namely the plantations. Moreover, such a course of action does not contradict what has already been established regarding ULIMO's modus operandi (*supra*, consid. II.2.1.2.6).

4.4.2.9 The defense also criticizes Philip JORDAN—who stated that certain ULIMO soldiers wore a red ribbon (MPC 12-22-0051, lines 12–19)—for not knowing what he was talking about, since this distinctive mark is notoriously that of the NPFL faction, whereas the color associated with ULIMO is white (TPF 40.721.672 s.). However, the case file contains photographs of ULIMO combatants wearing red (MPC 10-01-0553 and 0555), and several participants in the proceedings—including Nicolas COOK, Carol ALEXANDER, and Michael-DALE—have

stated that ULIMO members wore red insignia (MPC 12-09-0018, lines 32–34; MPC 12-21-0014, lines 1–5; MPC 12-23-0094, line 21), with former soldiers Alieu KOSIAH, Eugene CORBIN, and Walter VARGAS even asserting that the defendant wore a red beret (MPC 12-19-0068, line 39; MPC 12-16-0018, lines 9 ff.). It must therefore be noted that ULIMO soldiers could wear red distinctive insignia; however, this does not mean that they were the only faction to do so (see also the conclusions of the PJF report of October[1,] 2018, on this subject [MPC 10-01-0552 et seq.]).

4.4.2.10 The Court further notes that the *"Report on Findings and Pictorials"* dated January 9, 2023 (*supra*, C.25), submitted by the defense—which suggests that there was no Jeff JORDAN in or around the village of Babahun—in no way calls into question the witness's account. The conclusion contained in said report—the methodology on which it is based is unknown—is based on the statements of individuals who were not stationed in the village of Babahun at the time.

4.4.2.11 The Court further notes that several elements of Philip JORDAN's account constitute indicators of credibility. It should thus be emphasized that he does not seek to incriminate the defendant, as illustrated by the fact that he stated he did not know whether other people had been captured by the ULIMO (TPF 40.762.005, Q/A No. 27), having himself gone into hiding and then fled (MPC 12-22-0009; TPF 40.762.006, Q&A No. 37)—which also serves as an indication of credibility, insofar as it does not cast him in a favorable light—or that his uncle had simply been tied up, without mentioning additional forms of abuse such as "tabé " (TPF 40.762.007, Q/A No. 42). Furthermore, Philip JORDAN, in his statements, distinguishes between what he saw and what he heard, for example during his uncle's arrest (MPC 12-22-0011, lines 2–4; TPF 40.762.007, Q&A No. 46), or what was reported to him, such as the looting of the sugarcane press (MPC 12-22-0009, lines 29 ff.; TPF 40.762.007, Q&A No. 68).

4.4.2.12 Finally, the Court emphasizes that Philip JORDAN's account is corroborated by other evidence in the record. This is particularly true of a map of Lofa County, to which the Prosecutor's Office referred during its closing argument at the trial, which locates the village of Babahun near Kolahun, on the road connecting Kolahun to the town of Foya (TPF 40.721.193). Similarly, the sketch the witness drew during the preliminary investigation (MPC 12-22-0077) corresponds to the satellite images of Babahun contained in the case file (MPC 10-01-0474 et seq.). ULIMO's interest in Jeff JORDAN's property also fits into a broader context—that of the looting carried out by this faction, particularly to finance the war effort—which was part of ULIMO's *modus operandi*

ULIMO, as the Court has already noted above (*supra*, consid. II.2.1.2.6).

4.4.2.13 In light of the foregoing, the Court finds that Alieu KOSIAH executed Jeff JORDAN with a pistol. He aimed at the torso from close range and fired at least once

4.4.3 Objective Elements

The act of executing a civilian (Jeff JORDAN's status as a civilian having never been questioned and being, moreover, evident) under the circumstances described above objectively constitutes murder.

4.4.4 Subjective elements

Alieu KOSIAH knew that by firing a pistol at Jeff JORDAN and aiming at his torso at close range, he would take his life. Furthermore, the defendant could not have been unaware of his victim's civilian status, given that the victim had been targeted because he owned plantations. It follows from the foregoing that he acted intentionally.

Furthermore, the alleged acts took place in the context of a non-international armed conflict—namely, the First Liberian Civil War—a fact of which Alieu KOSIAH was aware.

4.4.5 Conclusion

In light of the foregoing, Alieu KOSIAH is found guilty of the murder of a civilian 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 and Art. 4, subparagraph 2, letter a of PA II (section 1.3.3 of the indictment).

4.5 Ordering the cruel treatment of seven civilians and the murder of six of them, as well as stabbing the civilian Georges ROSADO in Foya

According to 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 Georges ROSADO, in Foya in July 1993 (section 1.3.4 of the indictment). He is also charged with subsequently ordering the murder of six of the seven civilians, including Roger RODASI and Frank ROSADO (section 1.3.5 of the indictment), and with stabbing the civilian Georges ROSADO, thereby attempting to kill him (section 1.3.6 of the indictment).

4.5.1 Arguments of the Parties

4.5.1.1 The Office of the Attorney General (MPC) seeks confirmation of the conviction handed down by the Criminal Court regarding sections 1.3.4 and 1.3.5 of the indictment and challenges the acquittal handed down regarding section 1.3.6 of the indictment. It emphasizes the credibility of Georges ROSADO's account (CAR 5.200.703 et seq.), noting that it is corroborated by the testimony of Gina FARRELL, regarding whom there is no evidence to suggest she was affiliated with the GJRP. The Office of the Public Prosecutor maintains that the terms "cousin" and "brother" are used interchangeably in Liberia and that this does not call into question the credibility of Georges ROSADO's statements, noting that the *"Report on Findings and Pictorials"* dated January 9, 2023 (*supra*, C.25), produced by the defense, mentioned
"Brother Tyron BAKER" and "Brother Alieu KOSIAH" even though no such family relationship exists. The MPC also presented other arguments at the trial stage regarding the credibility of Georges ROSADO's statements (TPF 40.721.075 et seq.). As for the law, the MPC refers to the contested judgment (CAR 5.200.749).

Regarding the stabbing, the MPC argues that Alieu KOSIAH must be convicted, as the principal perpetrator or even an accomplice, for the attempted murder related to the stab wound sustained by Georges ROSADO (CAR 5.200.732 et seq.). It argues that the identification of Kunti KAMARA as the perpetrator of the stabbing in the transcript of Georges ROSADO's interrogation on January 7, 2020, before French authorities in Monrovia, was the result of a misunderstanding attributable to the circumstances under which the interrogation took place. The Office of the Public Prosecutor (MPC) further maintains that Gary THOMAS, alias FAN BOY, did indeed tell Georges ROSADO that the perpetrator of the stabbing was Alieu KOSIAH, and adds that if any doubt were to remain regarding the identity of the actual perpetrator of the stabbing, joint criminal liability should be upheld.

4.5.1.2 Attorney JAKOB concludes that the first-instance conviction should be upheld with respect to counts 1.3.4 and 1.3.5 of the indictment and challenges the acquittal handed down with respect to count 1.3.6 of the indictment. He argues that Georges ROSADO's statements are credible and consistent with other evidence in the case file (CAR 5.200.981 et seq.), and refers, for the remainder, to his closing argument at the trial court (TPF 40.721.360 et seq.). He adds, regarding the report that Tyron BAKER allegedly made in Tubmanburg, that Kwamex FOFANA did indeed receive reports on the abuses committed in Lofa. Attorney JAKOB argues that it would be impossible to fabricate the accounts provided by Georges ROSADO, Christopher GREENE, and Gina FARRELL, and further expresses surprise that his client is not mentioned in the *"Report on Findings and Pictorials"* dated January 9, 2023, submitted by the defense (*supra*, C.25). He further explains that Georges ROSADO is a traumatized man who has suffered both physically and psychologically and who

still suffers today from the physical aftereffects of the abuse he endured.

Regarding the stabbing, Attorney JAKOB argues that Georges ROSADO explained, from the very first hearing, that he did not know who had carried out the stabbing. It would therefore be appropriate to find him guilty of complicity rather than direct participation.

4.5.1.3 The defense challenges the conviction at the trial court level with respect to counts 1.3.4 and 1.3.5 of the indictment and moves to affirm the acquittal rendered with respect to count 1.3.6 of the indictment (CAR 5.200.422 et seq. and 448 et seq.). Reiterating the arguments presented before the trial court (TPF 40.721.503 and 524 et seq.), the defense asserts that Georges ROSADO did not recognize Alieu KOSIAH and calls into question the credibility of his testimony. Regarding the intimidating gestures that the defendant allegedly made during Georges ROSADO's hearing before the MPC, the defense maintains that these are baseless and false accusations that do not hold up upon viewing the video recordings. The defense accuses Georges ROSADO of contradicting himself on multiple occasions between his initial complaint and his hearing before the MPC, as well as in relation to the statements of other participants in the proceedings—particularly regarding the location where he allegedly took refuge before his capture, the circumstances of his arrest, and the manner in which he allegedly sustained the stab wound. It accuses Georges ROSADO of lying and criticizes the trial court—which acquitted Alieu KOSIAH in connection with the stabbing incident—for failing to draw the necessary conclusions, namely that credibility could only be established holistically, which would have resulted in the rejection of Georges ROSADO's testimony in its entirety. The defense also questions the credibility of Gina FARRELL's testimony (CAR 5.200.615 et seq.), arguing that she "literally fell out of the blue" in the French proceedings and that her description of the well corresponds to what Georges ROSADO had initially stated.

4.5.2 Application of Art. 344 of the Code of Criminal Procedure and Amendment of the Indictment

4.5.2.1 Under the terms of Art. 344 of the Code of Criminal Procedure, when the court intends to depart from the public prosecutor's legal assessment of the facts set forth in the indictment, it shall inform the parties present and invite them to comment. The possibility of amending the indictment is provided for in Article 333 of the Code of Criminal Procedure (*see above*, para. I.1.4.1.3).

4.5.2.2 In this case, the Court granted Mr. JAKOB's motion seeking the application of Article 344 of the CPP in connection with section 1.3.6 of the indictment (stabbing the civilian Georges ROSADO in Foya) and indicated that it was

willing to reserve judgment on the legal classification of joint action, incitement, or complicity (*supra*, C.27).

4.5.2.3 The Court subsequently granted a motion by the OCPP to amend counts 1.3.5 (ordering the murders of six civilians in Foya) and 1.3.6 of the indictment (*supra*, C.27) as follows (amendments in bold):

- Count 1.3.5 of the indictment: "[…] Alieu KOSIAH **or KUNDI** then stabbed Georges ROSADO in the back (see infra 1.3.6), and he was taken to the S-2 office before one of his cousins came to pick him up to care for him at home. […]" (CAR 5.200.073);
- Section 1.3.6 of the indictment: "[…] While Georges ROSADO was lying on the ground near the road to the Foya market and Alieu KOSIAH and KUNDI were standing near him (see supra 1.3.4 and 1.3.5), Alieu KOSIAH and KUNDI were discussing whether to kill him. They were pulling him in opposite directions, each on one side. While the S-2 known as FANBOY was trying to get him out of there, **Georges ROSADO was stabbed in the back by Alieu KOSIAH or KUNDI.** […]" (CAR 5.200.074).

4.5.2.4 Reference is made here to the transcript of the appellate proceedings for details of the grounds that led the Court to approve this request to amend the indictment (CAR 5.100.026 et seq.). It should be emphasized, however, that the amendments are not substantial and therefore do not significantly impact the rights of the defense, especially since the defense has argued that the defendant was absent at the time of the events and this strategy does not entail a change in the defense strategy (CAR 5.200.082 et seq.).

4.5.3 Assessment of the Evidence

4.5.3.1 The present indictment stems from the criminal complaint filed by Georges ROSADO on August 21, 2014 (*supra*, A.2). In this regard, the Court notes at the outset that a criminal complaint does not constitute a form of evidence (*supra*, para. II.1.2.2.3). It also notes that it is analyzing testimony—specifically, the credibility of the statements—and not the credibility of Georges ROSADO (*supra*, para. II.1.2.6.1). Finally, it notes that the theory of a conspiracy organized by CIVI-TAS MAXIMA and the GJRP—which the defense accused of fabricating testimony in exchange for material benefits—has been rejected (*supra*, para. II.1.1.3) and that the identifications—both from a photo lineup and in person—conducted during the proceedings cannot be used, whether as evidence for or against the defendant (*supra*, para. II.1.3.3.2 and II.1.3.3.3).

4.5.3.2 Regarding the identification of Alieu KOSIAH by Georges ROSADO, the latter provided details that were frequently cited during the proceedings to describe the defendant's physical appearance at the time of the events (*supra*, consid. II.1.3.3.6): thin, "the same height as me," skin "black like mine,"
"not light-skinned," with "pop eyes" (MPC 12-08-0010, Q&A No. 16). He explained to the MPC that he recognized the defendant by his eyes, describing them as large, which is why he used the term "pop eyes " (MPC 12-08-0012, Q&A No. 24). He also knew the defendant by the names CASH and C.O. KOSIAH (MPC 12-08-0011, Q&A No. 23, and 0012,
lines 19 ff.; TPF 40.755.008, Q&A No. 31). This evidence has convinced the Court. The Court therefore finds that Georges ROSADO was confronted by Alieu KOSIAH at the time of the events.

4.5.3.3 On the fourth day of his hearing before the MPC, which took place from January 28 to 31, 2015, Georges ROSADO complained of intimidating gestures by Alieu KOSIAH, noting that the latter was in another room and that a screen allowed him to see what was happening in the room where he was located. Georges ROSADO stated the following: "When I see him like that, I feel intimidated. The way he looked at me scared me. He made the gesture of placing his fingers on his temple. When he was a commander, I recognized that gesture. First, he put two fingers over his eyes. That means I have to look at him. His index and middle fingers over his eyes were meant to distract me. These gestures took place during my previous two days of testimony." The defendant then stated that he had never made such gestures (MPC 12-08-0030, lines 15–37). In its closing argument, the defense contended, based on the video recording, that Georges ROSADO's statements regarding the gestures Alieu KOSIAH allegedly made were baseless and false accusations (CAR 5.200.448). In this case, a review of the video recordings from the two days of hearings in question reveals no gestures that correspond to what Georges ROSADO described, although it should be noted that about twenty gestures made by the defendant could be similar. This means that a misunderstanding cannot be ruled out in this case. The Court therefore limits itself to noting that Georges ROSADO was clearly intimidated by the defendant and that this feeling was exacerbated by the fact that he could see how the defendant was behaving during the hearing via a screen.

4.5.3.4 As for the alleged facts, Georges ROSADO's statements have been consistent throughout the proceedings and consistent on the essential points. They are further characterized by numerous indications of credibility. He thus provided details on the key elements of his account. He stated that he had gone to his aunt's *farm*—a rice plantation—to look for food when the ULIMO entered Foya (MPC 12-08-0015, lines 3 ff., and 0017, lines 36–39; TPF 40.755.011, Q&A No. 49;

CAR 5.305.005, Q&A No. 12)—that he and others had stayed at that farm for two weeks because they were afraid to go to Foya, where gunfire was taking place (MPC 12-08-0015, lines 4–6, and 0018, lines 8–10; see also CAR 5.305.005, Q&A No. 12), but that the ULIMO had arrived at the farm through the bush (MPC 12-08-0015, line 6; TPF 40.755.011, Q&A nos. 49 ff.; CAR 5.305.009, Q&A No. 35; CAR 5.305.005, Q/R No. 12) and that they had taken them away and, upon arriving in Foya, divided them into three columns, comprising women, children, and men, respectively (MPC 12-08-0015, lines 7 ff., and 0018, lines 22 ff.; CAR 5.305.005, Q/R No. 12), on the orders of S-2 Gary THOMAS, alias FAN BOY (CAR 5.305.009. Q/R No. 37), and that this was the first time he had heard the name C.O. KOSIAH (MPC 12-08-0015, line 8, and 0018, lines 34 ff.). On this subject, Georges ROSADO clarified that he had heard the soldiers chanting the defendant's name, which is an unusual detail: "[…] when the soldiers chanted the name Alieu KOSIAH, it signaled that it was time for the killings to begin. I still remember that song. We could hear it from the bush when they brought us back from the bush. The soldiers would chant his name, Alieu KOSIAH, or the names of other commanding officers. The chant went, in Mandingo: 'Kele Kele' […] When you heard that chant, you knew they were coming to kill. I don't know the meaning of that chant, but I remember it because I heard it. The names of Alieu KOSIAH, PEPPER AND SALT, and other high-ranking commanders were mentioned in that chant" (MPC 12-08-0018, lines 38–45; see also CAR 5.305.016 ff., Q/A No. 84). Georges ROSADO explained that the ULIMO soldiers had rounded up the civilians in the bush because there weren't many civilians left in the town of Foya and they wanted some to work for them (MPC 12-08-0018, lines 28–31). He explained that among these gathered civilians were seven men, including his cousin Roger ROSADI and his younger brother Frank ROSADO (MPC 12-08-0015, lines 8 ff.; CAR 5.305.006, Q/A No. 15), and that ULIMO and Alieu KOSIAH had identified them as rebels belonging to the NPFL and that they had been tied up using the "tabé" method, on the orders of Alieu KOSIAH, at the S-2 office (MPC 12-08-0015, lines 9–12, and 0020 et seq., Q&A nos. 28 et seq.; TPF 40.755.012, Q&A No. 57; CAR 5.305.009 et seq., Q&A Nos. 39 and 46 et seq.). Georges ROSADO provided a precise description of this method on several occasions during the proceedings, notably during his appeal hearing: "*(The defendant accompanied his response with gestures using his hands and arms, mimicking the 'tabé'.)"* The "tabé" involves pulling the elbows backward and clasping them behind the back, which stretches the rib cage to such an extent that it feels as if it is about to burst. The rib cage becomes so taut that if someone presses on it, their hand will "go right through it" (CAR 5.305.004, Q&A No. 8; see also MPC 12-08-0020, Q&A No. 29; TPF 40.755.012, Q&A No. 57). Georges ROSADO reported on interactions he had with ULIMO forces. He stated that he had confronted the soldiers, explaining that he and the other civilians were not rebels, and that Alieu KOSIAH had then given orders to put them in

on the ground and that he had been dragged by his legs and across his buttocks across the market square and toward the well, which caused injuries to his buttocks and hands (MPC 12-08-0015, lines 12–15, and 0021, Q&A No. 31; TPF 40.261.3.766 [D555/3]; TPF 40.755.014 et seq., Q&A Nos. 71–77; CAR 5.305.010, Q&A No. 49). He
explained that Alieu KOSIAH and KUNDI had given the order to drag him along the ground (TPF 40.755.014, Q&A No. 71; CAR 5.305.010, Q&A No. 48) and that Alieu KOSIAH
had then given the order to kill the seven civilians (MPC 12-08-0015, line 16; TPF 40.755.015, Q&A No. 79; CAR 5.305.012, Q&A No. 58), that they were all tightly bound with ropes, that one of the soldiers had picked up a large rock and smashed it over the head of one of the civilians (MPC 12-08-0015, line 17 ff., and 0021, lines 32 ff.; TPF 40.755.015 ff., Q/R nos. 79 and 81), which had exploded (CAR 5.305.011 ff., Q/R nos. 52 ff. and 59), with the precise and consistent description of the method used to kill the first victim constituting another extraordinary detail of the account. He then added the following: “At that moment, I thought we were all dead; no one was moving on the ground. I closed my eyes and could hear people screaming and crying, as well as gunshots” (MPC 12-08-0015, lines 18–20). He described his state of shock and the fear he felt at that moment and did not portray himself in a favorable light, despite the resilience he demonstrated, stating that he had simply closed his eyes (see also MPC 12-08-0021, lines 36 ff.; TPF 40.755.015 ff., Q&A nos. 79 and 81; CAR 5.305.011 et seq., Q&A nos. 52 et seq. and 59). Georges ROSADO reported that he no longer saw the six other civilians when he opened his eyes again, but that the soldiers were still in the same place (MPC 12-08-0015, lines 20 ff.; see also CAR 5.305.025, Q/R No. 127). He stated that he had learned that the bodies of the six deceased civilians had been thrown into the well (TPF 40.755.016, Q/R No. 83; CAR 5.305.011 ff., Q&A Nos. 54 and 60), which was why it had been sealed (MPC 12-08-0023, lines 5–8; TPF 40.755.016, Q&A No. 83, and 042, Q&A Nos. 266 and 268), with earth (CAR 5.305.015, Q&A No. 73 ff.), noting the presence of swarms of flies above the well due to the decomposition of the bodies (TPF 40.755.016, Q&A nos. 83 ff.; CAR 5.305.014, Q&A nos. 69 and 72), which is an unusual detail that apparently made an impression on Georges ROSADO. He also clearly distinguished between what he saw—the flies near the well—and what he inferred and was also told, namely that the bodies of the six civilians had been thrown into the well. Georges ROSADO also acknowledged gaps in his testimony regarding how the other five civilians were shot: “As I explained to you, after seeing that person’s head crushed, I closed my eyes. After that, I did indeed hear gunshots, but it was common to hear gunfire, especially because of the fighting that might be taking place. And as I explained to you, I never saw the victims’ bodies. When I opened my eyes again, there were no bodies left; there were only the bloody remains from the

of the first man's killing" (CAR 5.305.025, Q/A No. 127). Finally, he was able to provide explanations regarding the context of the alleged events, as evidenced by his description of the role of the S-2 within ULIMO: "The S-2 is the person who acts as a liaison between civilians and soldiers. He is the one who issues travel passes. The S-2 is a soldier" (MPC 12-08-0021, lines 45 ff.).

4.5.3.5 Georges ROSADO's account of the stab wound he sustained is also credible. It must be emphasized from the outset that Georges ROSADO was in a state of shock, having been mistreated and wounded, having witnessed the particularly brutal execution of one of his companions, and having closed his eyes as the other five were also killed. With regard to his testimony, however, Georges ROSADO was able to provide details on the key elements of his account during these proceedings. He explained that after the events mentioned above, Kunti KAMARA, alias KUNDI, came from the well and lifted him up (MPC 12-08-0015, lines 21 ff.). Before the MPC, he described the subsequent events as follows:

"I heard the S-2, nicknamed 'FANBOY,' say that they had no right to kill us, even though we were rebels. The 'ground commander' of Foya, whose name is C.O. DEKOU, came toward us after hearing what was happening. They were speaking to each other in Mandingo. They were pulling me back and forth. I saw KUNDI and Alieu KOSIAH, each with a knife in his hand. I felt a stab in my back" (MPC 12-08-0015, lines 22–27, and 0022, lines 12–18). He clarified that it was after they had cut his bonds that they stabbed him (TPF 40.755.044, Q/A No. 280), with Kunti KAMARA—or, alternatively, Kunti KAMARA or Alieu KOSIAH—having cut the rope with which he was tied before he felt the stab (MPC 12-15-0008, lines 36 ff.; TPF 40.755.044, Q/A No. 281). He stated that Kunti KAMARA and Alieu KOSIAH were fighting over him just before the stabbing and that Alieu KOSIAH was angry because Georges ROSADO could eventually pose a threat to his life (TPF 40.755.034, Q&A No. 211), specifying that he did not know who had stabbed him (MPC 12-08-0016, lines 3 ff.; TPF 40.755.016 ff., Q&A nos. 82, 85, 87, 88, 90, 93, and 94; CAR 5.305.019, Q&A no. 97, and 021 ff., Q&A Nos. 110, 111, and 115) and that Kunti KAMARA and Alieu KOSIAH both "see him dead" (TPF 40.755.018, Q&A No. 93; see also CAR 5.305.018, Q&A No. 94). He also stated that the defendant was holding a bayonet ("benknife")—which could be attached to an AK—in his hand and that this was the first time he had seen him with a knife (MPC 12-08-0022, lines 16–18). He stated that after being stabbed in the back, he heard C.O. DEKOU say—just as Gary THOMAS, alias FAN BOY, had—that civilians like him should not be killed (MPC 12-08-0022, lines 18–20; see also TPF 40.755.016, Q&A No. 82). Georges ROSADO stated on this point, during the appeal, that C.O. DEKOU had been decisive, whereas Gary THOMAS's voice

did not matter (CAR 5.305.018, Q&A No. 93, and 020, Q&A Nos. 102 ff.). As for the subsequent events, Georges ROSADO stated that after being injured, Gary THOMAS had taken him to the S-2 office and that he had had to recover for about two months, with the help of his cousin, a nurse (MPC 12-08-0015, lines 27–30, and 0022, lines 27–31; see also TPF 40.755.018, Q&A No. 93). He stated that he learned a few days later from Gary THOMAS—who was his cousin's boyfriend at the time—that the person who stabbed him was allegedly Alieu KOSIAH, though it should be noted that Georges ROSADO gave conflicting accounts regarding where the incident allegedly took place—mentioning both his cousin's house and the S-2's house—as well as how he learned of this information, namely whether Georges ROSADO merely overheard these remarks or actually spoke with Gary THOMAS about the matter (MPC 12-15-0008, lines 5 through 8, and 0028, lines 32 through 42;
TPF 40.755.016 et seq., Q&A No. 88; CAR 5.305.021, Q&A Nos. 109–111), these uncertainties—which do not concern what he witnessed but rather something that was reported to him—are not such as to call into question the credibility of his account. Finally, Gary THOMAS believed that Georges ROSADO had to join the ULIMO to be safe, after which Georges ROSADO became a ULIMO soldier (MPC 12-15-0008, lines 5–8, and 0028, lines 40–45). It should be noted that he did not seek to portray himself in a favorable light by highlighting his resistance to the ULIMO; on the contrary, he repeatedly emphasized the role played by DEKOU in saving his life and the fact that "God did not yet want to call [him] back to Him " (TPF 40.755.015, Q/A No. 77; CAR 5.305.026, lines 8 ff. and 25 ff.). His account is also characterized by a large number of details regarding the ranks of the various ULIMO fighters and their hierarchy, which can be explained by the fact that Georges ROSADO himself joined the ranks of ULIMO after the events in question here. He thus explained that Alieu KOSIAH was the second-in-command of the *"Strike* Force" battalion led by PEPPER AND SALT and that he was the leader—the boss, C.O. KOSIAH—wherever he went (TPF 40.755.009, Q&A Nos. 37 and 39). Regarding C.O. DEKOU, he stated that assignment took precedence over rank (TPF 40.755.042 et seq., Q/A No. 269:
"*assignment is greater than* rank") and that he was a *ground commander*, which meant that he was in command at Foya (CAR 5.305.018, Q/A No. 93). The defendant essentially confirmed these statements, insofar as he declared that DEKOU was the commander of Foya when he first went there and that, although he and DEKOU held the same rank at the time, DEKOU had the final say regarding matters pertaining to Foya (CAR 5.301.044 et seq., Q/R No.os 108 et seq.; see also CAR 5.301.031, Q/A No. 87). Regarding Kunti KAMARA, he stated that while he was a C.O., like the defendant, the defendant was nevertheless the more important one because his orders were carried out and he had men under his command (TPF 40.755.013, Q/R nos. 60 and 62 et seq.). The Court notes, however, that the statements made by Georges ROSADO in the proceedings conducted

in France against Kunti KAMARA differ on a key element of the account, namely that, contrary to what he asserted in the proceedings in Switzerland, he stated that Gary THOMAS, during the trip to Bomi undertaken so that Georges ROSADO could join the ranks of ULIMO, had told him that it was Kunti KAMARA, and not Alieu KOSIAH, who had carried out the stabbing (TPF 40.261.3.767). However, what appears to be decisive is the fact that Georges ROSADO consistently stated—whether in the Swiss proceedings, as noted above, or in the French proceedings (TPF 40.261.3.767)—that he did not know whether Alieu KOSIAH or Kunti KAMARA had inflicted the stab wound. He also consistently reported the information he had on this matter as hearsay. In addition, Georges ROSADO denied, both at the trial level (TPF 40.755.017, Q&A No. 89, and 045 ff., Q&A Nos. 286–290) and on appeal (CAR 5.305.023 ff., Q&A Nos.116–125), that he had made the statements recorded by the French authorities during his hearing on January 7, 2020, in Monrovia regarding the perpetrator of the stabbing, citing a lack of sleep due to his night shift, miscommunication, and translation issues, as well as the fact that the statement was not reviewed before he signed it. In light of the foregoing, this discrepancy—which certainly concerns an important aspect of the account—is not sufficient to call into question the credibility of Georges ROSADO's testimony, especially since it pertains to details that were reported to him.

4.5.3.6 Georges ROSADO's statements are partly corroborated by the testimony of witness Gina FARRELL. She, who had testified in the proceedings against Kunti KAMARA in France, appeared for the first time in the present proceedings at the appellate stage. The Court notes, as a preliminary matter, that it was able to observe the witness's low level of education—she is illiterate (TPF 40.261.3.778)—and to appreciate the significant cultural difference separating Gina FARRELL, who grew up in Lofa, in the village of […] (CAR 5.309.004, Q/A No. 6), and who had never left her region before testifying before this Court—for which she had the courage to travel to Switzerland and fly on an airplane for the first time (CAR 4.602.127)— from the setting in which her hearing took place, namely before a court in a Western country, where she knew no one except for the escort appointed by the Court. It is then appropriate to address the question of the origin of this testimony. The defense argues that it "came out of nowhere," since the witness was heard in Monrovia, on the very same day she was first mentioned by Georges ROSADO during his hearing before the French authorities, even though she lives in Lofa, alleging that this was evidence of the recruitment and preparation of a witness (CAR 5.200.615 et seq.). However, Georges ROSADO himself mentioned the existence of this witness (TPF 40.261.3.768) and made no attempt to conceal the fact that he

knew Gina FARRELL and of the telephone contact he had, one week before his own hearing, with Gina FARRELL's husband (TPF 40.261.3.808; see also TPF 40.261.3.768). Turning now to the content of this testimony, the Court finds that Gina FARRELL's account of her experiences is credible, but that her testimony must be approached with caution. For example, Gina FARRELL, who, during her hearing, had answered in the negative when asked whether Kunti KAMARA had stabbed the person who was rescued (TPF 40.261.3.777), stated during her confrontation with Georges ROSADO—when asked what she thought of his claims that she had told him it was Kunti KAMARA who had stabbed him (TPF 40.261.3.807 et seq.)—that what Georges ROSADO had said was true, thereby retracting her earlier statement. Consequently, these statements cannot be relied upon to determine who stabbed Georges ROSADO. The same applies to the manner in which the civilians were executed—that is, the question of whether weapons were used to do so, and if so, which ones—since Gina FARRELL's statements differ between what she told French authorities—namely, that they were shot at (TPF 40.261.3.776), and what she stated on appeal—namely, that some had been killed with a knife and others with a firearm (CAR 5.309.007, Q/A No. 37). That said, the Court has no doubt that Gina FARRELL undeniably witnessed the deaths of several civilians near the well in Foya's market square, that the bodies were thrown into that well (TPF 40.261.3.774; CAR 5.309.006, Q/A Nos.^{os} 24, 29, and 31), and that Georges ROSADO survived these events (TPF 40.261.3.807; CAR 5.309.010, Q&A No. 54), noting that the witness's statements regarding these key elements are consistent and detailed. Gina FARRELL also testified, thereby corroborating Georges ROSADO's statements, that Kunti KAMARA and the defendant were together at the time of the events. She even specified: "We always saw KUNDI and him together. When we saw one, we saw the other " (CAR 5.309.005, Q/A No. 19). Her account is further characterized by the presence of numerous indicators of credibility. She stated the following regarding the events at the market square: "I had just come back from the restroom when I heard what was happening and went to my bedroom window. We each had our own room. I leaned out the window to see what was happening. I saw everything from the window. I could show you where it all happened" (CAR 5.309.008, Q/A No. 43). In recounting these details—some of which are out of the ordinary—she does not seek to draw attention to herself, admitting in particular that she was being curious. She also accompanied her remarks with gestures to supplement her description. This was notably the case when she leaned her elbows on the table while explaining that she was peering through the window (CAR 5.309.005, Q/A No. 18). Gina FARRELL also described her

psychological experience, as illustrated by her statement regarding the moments following the civilians' deaths: "[…] I cried inside. I told myself that it could have been me and that I wasn't safe" (CAR 5.309.009, Q/A No. 45). Finally, she reported abuses committed by ULIMO in Foya, which are documented in the case file. These include acts of cannibalism (CAR 5.309.012, Q&A No. 70, and 015, Q&A No. 88), rapes—including one committed against her (see the analysis of Gina FARRELL's statements on this subject in connection with the rape allegation against civilian Carol ALEXANDER, *below*, paras. II.4.17.2.4 and II.4.17.2.12)—and acts of looting (CAR 5.309.027, Q&A nos. 187–195).

4.5.3.7 Furthermore, photographs of Georges ROSADO's left forearm and the scar on his back, taken during his hearing before the MPC held from January 28 to 31, 2015, are included in the case file (MPC 12-08-0051 et seq.).

4.5.3.8 The Court further considers that many of the defense's arguments relate to ancillary issues and are aimed not at calling into question the credibility of the testimony regarding the facts, but rather the credibility of Georges ROSADO (*supra*, consid. II.1.2.6.1). As for the arguments concerning points relevant to the assessment of the statements regarding the alleged facts, they do not stand up to an analysis of the case file, and several of them, on the contrary, tend to reinforce the credibility of the account. The Court will now examine them in detail to the extent that they have not already been addressed and appear relevant to the assessment of Georges ROSADO's testimony regarding the facts he reported.

4.5.3.9 The defendant has contested the facts throughout the proceedings and has asserted that he was not in Foya when the town was captured (MPC 13-01-0639, 0182) and that he was likely between Todi and Bomi in July 1993 (TPF 40.731.0047, Q/A No.os 213 s.). However, the Court has already had occasion to note that the defendant was present in Lofa County as early as March 1993 and that he had participated in the ULIMO's capture of Foya in July 1993 (*supra*, consid. II.2.2.1.3). It also found that he was mobile and frequently traveled within Lofa (*supra*, para. II.2.2.1.2). It therefore concludes that he was present in Foya at the time of the events. The testimonies of Richard WALDROP, alias ADVISOR, and Gary THOMAS, alias FAN BOY, who both asserted that the defendant was not in Foya in 1993 (TPF 40.767.009, Q&A Nos. 45–48; TPF 40.769.010, Q&A No. 65), must therefore be disregarded. Furthermore, the reliability of their statements is severely undermined by the way they depict the atmosphere that prevailed in Foya at the time, as their descriptions are far removed from the atrocities committed there—which, based on reliable sources, have been addressed in the context of these proceedings (*supra*, consid. II.2, and *infra*, consid. II.4.7 to II.4.9). Richard WALDROP thus described life in Foya as normal between 1993 and 1995, adding that everything was going well (TPF 40.767.006, Q/A No. 25) and that the civilians, who were allegedly not mistreated, were paid for

the freight transport operations they carried out (TPF 40.767.006 et seq., Q&A Nos 29–33). As for Gary THOMAS, he stated that there was a good atmosphere between the ULIMO soldiers and the civilians at the time he was appointed S-2 and that everything was under control (TPF 40.769.004, Q/A No. 19), acknowledging at most that some soldiers exhibited “inappropriate behavior ” (TPF 40.769.005, Q/A No. 22).

4.5.3.10 As for Alieu KOSIAH, he made remarks mocking the accusations leveled by Georges ROSADO, and the flippant manner in which he referred to the death of a civilian served as evidence of the scant regard he had for human life. He thus stated that if he had tried to kill Georges ROSADO, he would have asked his bodyguard to “do what was necessary ” (MPC 13-01-105, lines 19 ff.). He also raised the following objection: “What I don’t understand is, if six people were killed, why should it be so hard to kill the seventh? ” (CAR 5.301.039, lines 33 ff.). He added that this was “not logical,” just as it was not logical that the person who was acting arrogantly and talking the most would have been spared or that it would have been harder to kill him (CAR 5.301.039, lines 34–36). However, even if there were any logic to this scene regarding the order in which the civilians were shot, it is not implausible that Alieu KOSIAH and the ULIMO soldiers under his command would have wished to subject the most defiant of the civilians to a more cruel treatment—in this case, by forcing him to witness the deaths of his six companions.

4.5.3.11 The defense takes issue with Georges ROSADO for having stated, in his criminal complaint, that he had taken refuge in a forest at the time of Foya’s capture by the ULIMO, before referring to a farm and, respectively, a plantation (CAR 5.200.452 et seq.). However, it is evident that “the forest around Foya” mentioned in the criminal complaint (MPC 05-02-0002) refers to the same location as the farm or plantation mentioned in the hearings, particularly since he consistently stated that it was located in the bush (MPC 12-08-0015 and 0017; TPF 40.755.004, Q&A No. 12; CAR 5.305.005,
Q&A No. 12).

4.5.3.12 The defense criticizes Georges ROSADO for having initially stated that the plantation was about a three-hour walk from Foya (MPC 12-08-0017, line 46), and then having claimed that it took 2 hours and 30 minutes to walk from Bolahun to his aunt’s plantation through the bush and that it was about 1 hour and 30 minutes from the farm to Foya (MPC 12-08-0023, lines 42 ff.), arguing that, logically, he would never have made the journey in question and that he would not be familiar with the region—a claim corroborated by the fact that he lived with his mother in Bolahun (MPC 12-08-0017, line 40) and that he would not have needed to pass through Foya to get there, making his statements incomprehensible—namely, that they were afraid to go into

town after hearing gunfire in Foya (CAR 5.200.473 et seq.). However, such a discrepancy regarding the duration of the journey between the plantation and Foya is by no means implausible, especially since he specified each time that these were approximate estimates. It is also perfectly understandable that hearing gunfire coming from Foya could have caused fear among those who had taken refuge on the plantation, even though Georges ROSADO was living in another town at the time, bearing in mind that the context was that of a civil war that had already been raging for several years. Furthermore, one cannot rule out from the outset that Georges ROSADO and the others with whom he had taken refuge might have needed, for whatever reason, to go to Foya, which, as the case file has shown, was an important commercial center for the region.

4.5.3.13 The defense is surprised that Kunti KAMARA and C.O. DEKOU were not mentioned in the criminal complaint, despite their significant role in the events alleged by Georges ROSADO, but were only mentioned during the hearing before the Public Prosecutor's Office, at a time when those names had already appeared in the proceedings—which would illustrate that the complaint was drafted "blindly" before Georges ROSADO was briefed so he could supplement it during his hearing in order to "align" it with the case file by adding elements likely to substantiate his accusations.(CAR 5.200.454 et seq.). However, it should be emphasized that Georges ROSADO's criminal complaint was directed against Alieu KO-SIAH. It is therefore logical that the focus was placed on the defendant's actions rather than on those of other ULIMO members. It should also be noted that such discrepancies can be explained by the manner in which the complaints were drafted, as well as by the course of the criminal investigation, which by definition entails a number of additions and clarifications, particularly given the passage of time, which is significant in this case (*supra*, consid. II.1.2.6.1). Furthermore, the theory of a conspiracy has already been rejected by the Court (*supra*, para. I.1.1.3).

4.5.3.14 The defense criticizes Georges ROSADO for making statements lacking credibility regarding the number of people who were dragged along the ground, their origin, and the direction in which they were dragged. It argues that there are obvious contradictions rendering the account implausible, illogical, and, consequently, entirely fabricated (CAR 5.200.475 et seq.). The Court has, however, already noted that certain discrepancies could be explained by the progress of the criminal investigation, which, by definition, leads to additional information and clarifications (*supra*, consid. II.1.2.6.1 and II.4.5.12). The statements by Georges ROSADO highlighted by the defense illustrate this point. Moreover, they are characterized by the presence of markers of credibility. This is the case, first and foremost, with the round trip—an element indicating a lived experience—mentioned by Georges ROSADO, who, referring to a building outside the room where the hearing was taking place, stated that he had

been dragged “about 60 meters there and 60 meters back” (MPC 12-08-0021, lines 16–20). This is also the case for the details regarding the route and the fact that he was the only one to have been dragged along the ground, which he added to his account at the very moment he was speaking on the subject, as the defense also noted: “In fact, the seven of us walked to the market, and it was once we were at the market that I was dragged by my legs toward the well by KUNDI. The other soldiers were there watching. I was the only one dragged toward the well. Alieu KOSIAH was a little way back on the road to the market when I was dragged toward the well. The other six were not dragged; they were standing in front of the well. Alieu KOSIAH and his soldiers came from the S-2 office. In fact, we [sic] were the seven civilians in front, and the ULIMO group was following us” (MPC 12-08-0021, lines 20–26; see also TPF 40.755.013 et seq., Q&A nos. 66 and 74–77).

4.5.3.15 Regarding the identity of the six people apprehended along with Georges ROSADO, the defense finds it surprising that he referred to his younger brother, Frank ROSADO, as his cousin, and that he reversed their names—the “Frank ROSADO and Roger ROSADI” mentioned before the MPC having become “Frank ROSADI and Roger ROSADO” during the trial proceedings (CAR 5.200.496). However, the case file revealed that the terms “cousin” and “brother” could be used interchangeably in Liberia. As for the discrepancy regarding the names, it should be noted that while Georges ROSADO did indeed switch the surnames of his cousin and his brother during his hearing at the trial court (TPF 40.755.014, Q/A No. 68), such an error can easily occur, especially given the similarity between the two surnames. In this regard, it should be noted, on the one hand, that Georges ROSADO did not have the opportunity to review his statements at the trial court, in accordance with the applicable procedural rules (Art. 78, para. 5bisof the Criminal Procedure Code, as in effect from May 1, May 2013 to December 31, 2023), since his statements were recorded (TPF 40.720.003), and, second, that he clearly and repeatedly explained during his appeal hearing that Roger ROSADI was his cousin and Frank ROSADO his brother (CAR 5.305.013, Q&A nos. 61–65).

4.5.3.16 Regarding the manner in which Georges ROSADO was dragged, the defense accuses him of making statements inconsistent with the injuries he described, arguing that it would be obvious that if Georges ROSADO, sitting on his buttocks, had been dragged by his legs, his legs could not have touched the ground and it would therefore have been impossible for him to have bled from his legs. (CAR 5.200.477 et seq.). However, even if he was seated at the start, the pulling could clearly have altered his position. Moreover, it is not specified at what height Kunti KA-MARA was holding Georges ROSADO’s legs. It must be noted, however, that the statements regarding the injuries sustained as a result of this act—namely

the fact that he was injured on his hands and legs, all the way down to his buttocks—are consistent (MPC 12-08-0015, lines 15 and 28; TPF 40.755.036, Q/A No. 221;
CAR 5.305.004, Q&A No. 3, and 012, Q&A No. 60).

4.5.3.17 Furthermore, contrary to what the defense argues (CAR 5.200.478), there is nothing implausible about Georges ROSADO having been lifted by Kunti KA-MARA, as the latter's small stature does not alter this finding, especially since it is clear from Georges ROSADO's statements that Kunti KA-MARA actually helped him up while he was on the ground (MPC 12-08-0021, line 44).

4.5.3.18 Regarding the stabbing—or bayonet wound, as the case may be—the defense highlights what it considers to be a very significant inconsistency concerning the moment when Georges ROSADO was freed from the rope that was restraining him (CAR 5.200.478 et seq.). According to the defense, it is evident from Georges ROSADO's initial statements that the entire incident unfolded in rapid succession and with a certain degree of haste, which would logically mean that Georges ROSADO could only have still been tied up, in the
"tabé," at the moment he was stabbed (MPC 12-08-0015, lines 20 et seq.). However, the defense argues that it would have been impossible for him to have sustained a back injury at the indicated location while he was tied up in that manner. It therefore accuses Georges ROSADO of subsequently altering his account after a photograph of the scar on his back was taken during the hearing (MPC 12-08-0022, lines 33 ff.), stating that he had been untied before feeling the stab wound (MPC 12-08-0022, lines 36 ff.). However, the location of this scar was, by definition, already known to Georges ROSADO, so that a photograph of it was not necessary to establish the inconsistency alleged by the defense. Clearly, the additional information provided by Georges ROSADO stems from the reactivation of his memories that occurred during his hearing. This attests to his reflection on an important detail that he had previously omitted to mention, regardless of whether it occurred on the second day of his hearing before the MPC. Moreover, given the location of the scar (MPC 12-08-0051 et seq.), it cannot be ruled out with certainty that the stab wound occurred while Georges ROSADO was still bound. Nor can it be ruled out that the stab wound severed the rope, noting that it would be comunderstandable that Georges ROSADO does not recall exactly the circumstances under which he was freed from his restraints, given the passage of time and the state of shock he was in after being mistreated and witnessing the brutal and violent treatment meted out to one of the civilians accompanying him.

4.5.3.19 With regard to the statements of Kunti KAMARA, who denied any involvement in the acts alleged by Georges ROSADO, whether in the proceedings

against him in France (TPF 40.261.3.752 [D471/10]) or in the proceedings against Alieu KOSIAH in Switzerland (TPF 40.771.009, Q/A nos. 52–59), they cannot be considered credible. It should be emphasized in particular that his statements regarding the abuses committed by ULIMO during the first Liberian civil war are, like those of Alieu KOSIAH, at odds with the Court's findings (*supra*, paras. II.2.1 and II.2.1.2.7). He thus stated that he had seen neither crimes committed against civilians nor looting nor forced labor carried out by civilians nor rapes nor "tabé" nor acts of cannibalism (TPF 40.771.006 et seq., Q&A nos.os 29–34), while also attributing responsibility for the rapes and the practice of "tabé" to Charles TAYLOR and the NPFL (TPF 40.771.006 et seq., Q&A nos. 32 et seq.). As for the accusations leveled against him by Georges ROSADO, Kunti KAMARA emphasized that Georges ROSADO belonged to the Kissi ethnic group, stating that "these people […] can make up anything among themselves" (TPF 40.771.010, Q&A No. 59).

4.5.3.20 The Court, in addition to finding Georges ROSADO's testimony regarding the events in Foya credible, notes that the alleged events bear similarities to other events that are the subject of these proceedings, and in particular those that occurred in Zorzor, namely the murder of seven civilians accused of belonging to the NPFL, as described by James CAMDEN. Reference should be made here to the Court's analysis regarding these events (*supra*, para. II.4.2). The execution of individuals considered by ULIMO to be members of the NPFL or sympathizers of that faction was also mentioned on numerous occasions during the proceedings (see, among others, the statements of Levi FARRELL [MPC 12-07-0028, lines 14 ff.], Robbie CARY [MPC 12-27-0050, lines 11–14], Gerald PETERSON [MPC 12-01-0031, lines 17 ff.], and Walter VARGAS [MPC 12-16-0037, lines 9–18]).

4.5.3.21 In light of the foregoing, the Court finds that Alieu KOSIAH ordered the ULIMO soldiers present in Foya to tie up the seven civilians using the "tabé," to drag Georges ROSADO along the ground, and then to execute the six civilians, including Roger ROSADI and Frank ROSADO, and that the soldiers carried out these orders. After the six civilians had been shot, Kunti KAMARA lifted Georges ROSADO to his feet; then, while he was arguing with Alieu KOSIAH over who would kill Georges ROSADO—with the two ULIMO soldiers pulling him this way and that and the defendant becoming angry— a knife wound was inflicted on Georges ROSADO's back; it is impossible to determine whether Kunti KAMARA or Alieu KOSIAH was responsible, although it should be noted that both were carrying a knife and a bayonet, respectively, at the time of the incident.

4.5.4 Ordering the cruel treatment of seven civilians

4.5.4.1 Objective Evidence

The seven individuals apprehended by the ULIMO on the orders of Alieu KOSIAH were clearly civilians, as they were selected at random and with the clear aim of establishing the ULIMO's authority in the newly conquered Foya area. Their alleged membership in the NPFL was therefore merely a pretext for subjecting them to cruel treatment by tying them up using the "tabé" method and dragging the civilian Georges ROSADO along the ground. Alieu KOSIAH also held a position of authority, as evidenced by the fact that he was referred to as "C.O. KOSIAH" and that the soldiers carried out the orders he gave, although it should be noted that it is not necessary to establish specifically what the defendant's position in the chain of command was at the time of the events. In this regard, it should be noted that the *ground commander* of Foya, C.O. DEKOU, who could have opposed the orders given by the defendant, was not yet present at the scene when the defendant ordered the cruel treatment of the seven civilians. Consequently, the defendant's liability under Article 18 of the Military Criminal Code is established.

4.5.4.2 Subjective Elements

Alieu KOSIAH knew that by ordering the soldiers to treat the seven civilians cruelly, said soldiers would carry out that order. Since the victims were chosen at random and there was no evidence that they belonged to the NPFL, the defendant could not have been unaware of their status as civilians. It follows from the foregoing that he acted intentionally.

Furthermore, the alleged acts occurred in the context of a non-international armed conflict, namely the First Liberian Civil War, a fact of which Alieu KOSIAH was aware.

4.5.5 Ordering the murder of six civilians

4.5.5.1 Objective Elements

The seven individuals apprehended by ULIMO on the orders of Alieu KOSIAH were clearly civilians (*supra*, para. II.4.5.4.1). Their alleged membership in the NPFL was therefore merely a pretext for ordering the killing of six of them. Alieu KOSIAH also held a position of authority, as evidenced by the fact that he was referred to as "C.O. KOSIAH" and that the soldiers carried out the orders he gave, noting that it is not necessary to establish specifically what the defendant's position in the chain of command was at the time of the events. In this regard, it should be noted that the *ground commander* of Foya, C.O. DEKOU, who could have opposed the orders given by the defendant, was not yet present at the scene when the defendant ordered the killing of the six

civilians. Consequently, the defendant's liability under Article 18 of the Military Criminal Code (aCPM) is established.

4.5.5.2 Subjective Elements

Alieu KOSIAH knew that by ordering the soldiers to kill the six civilians, they would carry out that order. Since the victims were chosen at random and there was no evidence that they belonged to the NPFL, the defendant could not have been unaware of their status as civilians. It follows from the foregoing that he acted intentionally.

Furthermore, the alleged acts occurred in the context of a non-international armed conflict, namely the First Liberian Civil War, a fact of which Alieu KOSIAH was aware.

4.5.6 Stabbing the civilian Georges ROSADO

4.5.6.1 Objective Elements

The Court finds that this was an attempted crime, since the perpetrator of the stabbing—who, it should be noted, could not be identified—completed the criminal act but failed to kill Georges ROSADO.

With regard to the nature of Alieu KOSIAH's involvement in this attempted murder, the Court finds that there can be no question in this case of intentional collaboration with Kunti KAMARA in the decision to kill Georges ROSADO. In fact, the two men agreed to kill Georges ROSADO but were arguing over who would take his life. A joint decision on how to kill Georges ROSADO is therefore ruled out. It must be noted, however, that the defendant, while arguing with Kunti KAMARA, assisted him—and *vice versa*—such that he contributed to the commission of the crime by creating a climate conducive to it, thereby making himself an accomplice to the crime. Clearly, the insistence of both men on wanting to kill Georges ROSADO with their own hands increased the likelihood that he would be killed.

4.5.6.2 Subjective Elements

Alieu KOSIAH knew that by arguing with Kunti KAMARA over which of the two men would execute Georges ROSADO, he would increase the likelihood that Georges ROSADO's life would be taken, bearing in mind that this event occurred after Georges ROSADO—who was among the seven civilians arbitrarily designated by Alieu KOSIAH as members of the NPFL—had been subjected to cruel treatment on the defendant's orders and the other six civilians had been executed, also on the defendant's orders. In light of the foregoing, Alieu

KOSIAH could not have been unaware of Georges ROSADO's civilian status. He therefore acted intentionally.

Furthermore, the alleged acts occurred in the context of a non-international armed conflict, namely the First Liberian Civil War, a fact of which Alieu KOSIAH was aware.

4.5.7 Conclusion

In light of the foregoing, Alieu KOSIAH is found guilty of the following offenses:

- ordering the cruel treatment of seven civilians 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)(a) common to the General Provisions, and Art. 4(2)(a) of Part II of the Penal Code (PA II) (count 1.3.4 of the indictment);
- ordering the killing of six civilians pursuant to Art. 109(1) and Art. 108(2) of the former Swiss Military Penal Code (aCPM) *in conjunction with* Art. 18 of the former aCPM, Art. 3(1)(1)(a) common to the General Provisions, and Art. 4(2)(a) of PA II (section 1.3.5 of the indictment);
- aiding and abetting the attempted murder of a civilian pursuant to Art. 109(1) and Art. 108(2) aCPM *in conjunction with* Art. 19(1) and Art. 23 aCPM, Art. 3(1)(1)(a) common to the General Provisions, and Art. 4, section 2, subparagraph a of PA II (section 1.3.6 of the indictment).

4.6 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

According to section 1.3.7 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 and directed the forced transport of coffee, cocoa, and palm oil by civilians from Foya to Solomba, between July and August 1993.

4.6.1 Arguments of the Parties

4.6.1.1 In its closing argument (CAR 5.200.706 et seq.), the Office of the Prosecutor notes that the border near Solomba is unanimously described as a major crossing point between Guinea and Liberia. It explains that Georges ROSADO is reportedly a difficult person to question, that he speaks at length and not always clearly, but that despite certain contradictions—which he himself acknowledged before the Court—the MPC has always been convinced by his account. The course of Georges ROSADO's hearing on appeal further convinced the MPC, since he was "tossed back and forth in time" by both the Court and the defense, yet at no point did he make a mistake or confuse the facts—which is a true marker of authenticity. The MPC also presented other arguments at the trial court regarding the credibility of Georges ROSADO's statements

(TPF 40.721.082 et seq.). As for the law, the MPC refers to the contested judgment (CAR 5.200.749).

4.6.1.2 Attorney JAKOB maintains that everything in Georges ROSADO's account is consistent (CAR 5.200.981 et seq.) and refers to his arguments at the trial court (TPF 40.721.365). In particular, he emphasizes the systematic nature of forced marches during the war.

4.6.1.3 The defense challenges the conviction at the trial court (CAR 5.200.422 et seq. and 448 et seq.). Reiterating the arguments presented before the trial court (TPF 40.721.503 and 524 et seq.), the defense challenges Georges ROSADO's identification of Alieu KOSIAH as well as the credibility of ROSADO's statements (for further details, see *supra*, consid. II.4.5.1.3). With regard to the forced transport from Foya to Solomba in which Georges ROSADO allegedly participated as a civilian, the defense criticizes him in particular for failing to mention this in his complaint (CAR 5.200.460).

4.6.2 Assessment of the Evidence

4.6.2.1 The Court reiterates that it is analyzing a testimony—namely, the credibility of the statements—and not the credibility of Georges ROSADO (*supra*, para. II.1.2.6.1). It also notes that the theory of a conspiracy organized by CIVITAS MAXIMA and the GJRP—which the defense accused of fabricating testimony in exchange for material benefits—has been dismissed (*supra*, para. II.1.1.3) and that the identifications—both from a photo lineup and in person—conducted during the proceedings cannot be used, whether as evidence for or against the defendant (*supra*, para. II.1.3.3.2 and II.1.3.3.3).

4.6.2.2 With regard to the identification of Alieu KOSIAH by Georges ROSADO, the Court notes that the transfer from Foya to Solomba allegedly took place shortly after the events in Foya during which Georges ROSADO was stabbed (*supra*, para. II.4.5), such that he already knew the defendant at the time the transfer allegedly occurred. Moreover, the Court has already held that Georges ROSADO validly identified the defendant in the proceedings as the person he had accused, and it is therefore appropriate to refer to its reasoning on this matter (*supra*, para. II.4.5.3.2).

4.6.2.3 The transport alleged by Georges ROSADO took place in the context of Liberia's first civil war, since forced marches—whether for the transport of weapons and ammunition or of looted goods—were part of ULIMO's *modus operandi*, a fact the Court has already noted above (*supra*, para. II.2.1.2.6). This is also evident from several other sets of facts concerning various locations in Lofa County, analyzed in the context of the

this judgment (*supra*, para. II.4.3, and *infra*, paras. II.4.8, II.4.9, II.4.10, II.4.11, II.4.13, II.4.14, and II.4.16). The transport in question—which Alieu KOSIAH allegedly left upon arriving in Guinea—is also consistent with the duties performed by the defendant within ULIMO, as he was in charge of the organization's logistical and financial matters and was required to travel frequently (*supra*, para. II.2.2.1.2). In addition, the route taken by the convoy—namely, from Foya to Solomba, on the border with Guinea—follows a practical logic consistent with the layout of the area, as illustrated by the map included in the case file (MPC 10-01-0565), and the information provided by Georges ROSADO regarding the duration of the journey, namely approximately eight to nine hours (MPC 12-08-0028, line 4), are consistent with the distance traveled, namely approximately 22 kilometers according to the indictment. The case file further illustrates that the ULIMO resorted to forced marches to have civilians transport looted goods along the route from Foya to Solomba. Reference should be made here to the Court's examination of the forced transports along the same route that were reported by Christopher GREENE (transport of goods, section 1.3.10 of the indictment [*infra*, consid. II.4.8]; transport of the engine from the Foya power plant, section 1.3.12 of the indictment [*infra*, consid. II.4.9]), noting that Georges ROSADO participated in the latter as a ULIMO soldier.

4.6.2.4 It should further be noted that the absence of any mention of this forced transport in Georges ROSADO's criminal complaint does not call into question the credibility of his account, contrary to what the defense suggests. Indeed, it must be acknowledged that this forced transport is far less serious than the events in Foya that were the subject of his complaint of July 30, 2014 (MPC 05-02-0002 et seq.), during which he was the victim of an attempted murder and was seriously injured (*supra*, consid. II.4.5), which explains why he did not initially file a complaint regarding the forced transport at issue here.

4.6.2.5 As for the blanket denials by Alieu KOSIAH, who, when questioned about the frequency of forced transports of civilians between Foya and Solomba, claimed never to have seen this, never to have participated in it, and never to have heard that, under ULIMO, civilians were beaten to transport anything, do not convince the Court, given what it has noted above regarding ULIMO's *modus operandi* in connection with their resource needs, as well as the defendant's liability—established in the present proceedings—in connection with several similar forced transports (*supra*, consid. II.4.6.2.3).

4.6.2.6 Furthermore, several elements of Georges ROSADO's account constitute evidence of credibility. It should thus be emphasized that he does not seek to incriminate

the defendant, as illustrated by the fact that he stated he had not seen anyone die during the transport (MPC 12-28-0028, line 11) or that the civilians were able to drink during said transport when they passed near a river (TPF 40.755.022, Q/A No. 124). Georges ROSADO's statements also contain details regarding the transport. For example, he explained in his unscripted testimony that the civilians were marching in a column, specifying that they had been organized into a single column by the soldiers (MPC 12-08-0015, lines 37 ff.).

4.6.2.7 The Court notes, however, that Georges ROSADO's statements regarding this transport contain inconsistencies. He stated before the MPC that this was the first time he had participated in such a transport, but that other civilians had already had to make this journey (MPC 12-08-0015, lines 37 ff.). However, when questioned about Kunti KAMARA as part of the French proceedings, Georges ROSADO stated the following: "I saw him three times. Once I was with him when I was transporting stolen goods that had been loaded into a truck that had no gas, and we had to push the vehicle—it didn't even have an engine. We pushed it from Foya to Solomba. We were transporting coffee. " (TPF 40.261.3.769 [D555/6]). It follows from these statements and the subsequent description he provides of other occasions on which he claims to have seen Kunti KAMARA that this transport took place before the attempted murder of which he was the victim during the events in Foya. This does not align with what he stated during the Swiss proceedings, given that the transport in question in Switzerland is said to have taken place after the attempted murder in Foya (MPC 12-08-0015, lines 35 ff.). Added to this are conflicting statements regarding the return journey. According to the indictment, once they arrived at the border, the civilians allegedly waited by the river under the supervision of a few soldiers, before being forced to carry ammunition on the return trip to Foya, where they reportedly arrived late at night. While the civilians were waiting, Alieu KOSIAH, DEKOU, and Gary THOMAS allegedly crossed the river to sell the goods. Georges ROSADO testified as follows before the MPC: "When they came back and crossed the river again, they had ammunition. At that time, I did not see Alieu KOSIAH; he was not with those who were returning. We carried the ammunition back to Foya" (MPC 12-08-0015, lines 41–43). However, Georges ROSADO made no mention of this ammunition during his trial testimony. On the contrary, he explains that on the way back, "you walk fast because you want to get home," and that there were no checks by the soldiers escorting them (TPF 40.755.046, Q&A nos. 292 ff.). When asked, he clarifies that
"On the way back, we didn't have anything." (TPF 40.755.047, Q/A No. 294 et seq.).
Georges ROSADO's statements are also unclear regarding the precise role that Alieu KOSIAH allegedly played during this transport. It is therefore not clear who gave the order to carry out the transport. Georges ROSADO explained that the orders had been given by Gary THOMAS

(MPC 12-08-0027, lines 40 ff.; TPF 40.755.019, lines 30 ff.), adding that "Alieu Kosiah was one of *the 'big men'* of the Strike Force, so once he was on the scene, he was the commander and the one giving the orders" and that he had never seen him give the order to involve civilians (TPF 40.755.019, lines 37–43). Georges ROSADO finally provided various details regarding the timing of this transport. It emerges from his statements to the MPC that this occurred two weeks after the attempted murder (MPC 12-08-0015, lines 35 ff.), noting that this is also the timeframe cited by the MPC in its indictment, whereas Georges ROSADO spoke of one month on appeal, explaining that his injuries, sustained during the attempted murder, did not heal in a day or even two weeks (CAR5.305.032, Q&A No.^{os} 162 ff.).

4.6.2.8 In light of these discrepancies—which may be explained, in particular, by the passage of time—and especially those related to the possible transport of ammunition during the return from Solomba to Foya, as well as to the chronology of the transports in which Georges ROSADO allegedly participated—two discrepancies that were not raised by the defense— the Court finds that there is manifest confusion between several events experienced by Georges ROSADO, such that reasonable doubt cannot be excluded in this case regarding a punishable act by Alieu KOSIAH in connection with the transport referred to in section 1.3.7 of the indictment (ATF 144 IV 345, para. 2.2.3.3). It cannot therefore be established that Alieu KOSIAH ordered and directed a forced transport by civilians from Foya to Solomba two weeks after the attempted murder of Georges ROSADO.

4.6.3 Conclusion

In light of the foregoing, Alieu KOSIAH is acquitted, pursuant to the principle *of in dubio pro reo*, of the offenses of ordering and inflicting cruel, humiliating, and degrading treatment on several civilians in the form of forced transport, pursuant to Art. 109(1) and Art. 108(2) of the former Military Criminal Code (aCPM) *in conjunction* with Art. 18 of the aCPM, Art. 3(1)(1)(a) and (c) common to the General Provisions (CG), and Art. 4(2)(a) and (e) of PA II (Section 1.3.7 of the indictment).

4.7 Participation in the murder of the civilian Martin McCREIGHT and desecration of his corpse in Foya

According to 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, participated as an accomplice in the murder of the civilian Martin McCREIGHT in Foya, between July and October 4, 1993 (Section 1.3.8 of the indictment). He is also charged with desecrating the victim's corpse by eating his heart (Section 1.3.9 of the indictment).

4.7.1 Arguments of the Parties

4.7.1.1 The MPC challenges the acquittal handed down by the Criminal Court regarding involvement in the murder of civilian Martin McCREIGHT and seeks to have the conviction upheld regarding the desecration of his corpse. It highlights the consistency and coherence of Christopher GREENE's account (CAR 5.200.708 et seq.), emphasizing that it is corroborated by the *"Report on Findings and Pictorials"* dated January 9, 2023 (*supra*, C.25), submitted by the defense, which lists the names of ULIMO victims that Christopher GREENE had mentioned during the preliminary investigation. The MPC also refers to the excerpt from the documentary film that was shown during the appellate proceedings, in which the protagonist, a child soldier, explains that his commander would sometimes ask him to rip out his victim's heart and bring it to the leader so that he could eat it with the other commanders. The MPC further notes that the defendant did not deny, on appeal, that the phrase *"Anyone try ULIMO, we eat your heart!*" may have been used by other members of that group. As for the statements made by Regina McCREIGHT, the victim's widow, and Jamie HENNINGS in the French proceedings, the MPC emphasizes that Christopher GREENE is, among them, the only direct witness to the execution of Martin McCREIGHT. The MPC also presented further arguments at the trial regarding the credibility of their statements (TPF 40.721.089 et seq.). As for the law, the MPC refers to the contested judgment (CAR 5.200.749).

With regard to involvement in the murder of the civilian Martin McCREIGHT, the MPC argues that Alieu KOSIAH should be convicted of complicity in connection with this murder (CAR 5.200.737 et seq.). The MPC criticizes the trial judges for having interpreted the indictment incompletely and too narrowly, thereby failing to take into account the context of the scene, which is also apparent from the indictment. The fact that Alieu KOSIAH subsequently gloated and, above all, ate the deceased's heart is merely confirmation of his clear intent to have Martin McCREIGHT killed. The MPC maintains that UGLY BOY was merely the executor of a joint plan.

4.7.1.2 Attorney WERNER (CAR 5.200.948 et seq.), speaking on behalf of Christopher GREENE, endorses the MPC's remarks and conclusions regarding the death of Martin McCREIGHT. He emphasizes that his client has been consistent in his accusations and has been measured in his statements, refraining from incriminating the defendant. He has always distinguished between the behavior of the various commanders and has never stated that the defendant was the worst among them. Attorney WERNER argues that the looting was the direct cause of Martin McCREIGHT's execution, as McCREIGHT had told a humanitarian organization that the ULIMO group was responsible for looting the power plant at the *Borma Mission* Hospital, which subsequently provoked the fury of the ULIMO. He further contends that Gina FARRELL's testimony implicates the defendant in

the looting of the *Borma Mission*, noting that the witness is not a member of the GJRP.

4.7.1.3 The defense moves to affirm the acquittal regarding participation in the murder of Martin McCREIGHT and challenges the conviction at first instance regarding the desecration of his corpse (CAR 5.200.423 and 499 et seq.). Reiterating the arguments presented before the trial court (TPF 40.721.504 and 567 et seq.), the defense argues that Christopher GREENE did not recognize Alieu KO-SIAH and calls into question the credibility of his testimony. Noting that Christopher GREENE was reportedly more specific in his statements on appeal than during his hearing in the preliminary investigation, the defense argues that this can only be explained by the fact that he was coached in order to lend credibility to his account and those of other witnesses. Regarding the events around Foya, the defense argues that he knows far too little about the subject for someone who claims to have been in Foya when the ULIMO entered Lofa County. With particular regard to the facts surrounding the murder of Martin McCREIGHT, the defense highlights contradictions between Christopher GREENE's account and certain testimonies, notably that of Regina McCREIGHT. The defense notes that the victim's widow never mentioned that the heart had been eaten. Furthermore, she reportedly stated that her husband had spent two days in prison and that Martin McCREIGHT was released on the third day only to be killed, whereas Christopher GREENE reportedly stated that the victim was killed on the day of his arrest. Finally, Christopher GREENE reportedly told French authorities that UGLY BOY had exclaimed, *"Anyone try ULIMO, we eat your heart! "* after Martin McCREIGHT's death, whereas in the present proceedings before the MPC, he reportedly stated that it was Alieu KOSIAH who uttered that phrase. The defense concludes that these statements confirm that Christopher GREENE likely did not witness the events surrounding Martin McCREIGHT's death.

4.7.2 Assessment of the Evidence

4.7.2.1 This indictment stems from the criminal complaint filed by Christopher GREENE on June 23, 2016 (*supra*, A.8). In this regard, the Court notes at the outset that a criminal complaint does not constitute evidence (*supra*, para. II.1.2.2.3). It also notes that it is analyzing testimony—specifically, the credibility of the statements—and not the credibility of Christopher GREENE (*supra*, para. II.1.2.6.1). Finally, it notes that the theory of a conspiracy organized by CIVITAS MAXIMA and the GJRP—which the defense accused of fabricating testimony in exchange for material benefits—has been rejected (*supra*,

II.1.1.3) and that the identifications—both from a photo lineup and in person—conducted during the proceedings cannot be used, whether as evidence for or against the defendant (*supra*, paras. II.1.3.3.2 and II.1.3.3.3).

4.7.2.2 Regarding the identification of Alieu KOSIAH by Christopher GREENE, the latter provided details that were frequently cited during the proceedings to describe the defendant's physical appearance at the time of the events (*supra*, con-sid. II.1.3.3.6): dark complexion, "not very big" but "of a certain stature," and *"bulb* eyes" that stand out (MPC 12-20-0021; TPF 40.751.010, Q&A No. 40). He also knew the defendant by the names C.O. KOSIAH, PHYSICAL CASH, and BLUFF BOY (MPC 12-20-0021, lines 12 ff.;
TPF 40.751.009, line 14, and 010, lines 35 ff.). He also stated that he could identify the defendant by his behavior during the trial proceedings, describing him as "tough" and adding that he "roars like a lion seeking to subdue its prey " (TPF 40.751.010, Q&A No. 40). These elements have convinced the Court. The Court therefore finds that Christopher GREENE was confronted by Alieu KOSIAH at the time of the events.

4.7.2.3 As for the alleged facts, Christopher GREENE's statements regarding Alieu KOSIAH's involvement in the murder of Martin McCREIGHT and the desecration of the latter's corpse were consistent throughout the proceedings, coherent on the essential points, and supported by numerous indicators of credibility.

4.7.2.4 Regarding involvement in the murder, he provided details on key elements of his account, stating that he was "near Danny's store" when Martin McCREIGHT got out of the car (TPF 40.751.013, Q/A No. 51) and that "CO Kosiah, CO Dekou, CO Ugly Boy, CO Fanboy, CO Donald BERRY, and Kundi" (TPF 40.751.013, Q/A No. 52; see also CAR 5.304.009, Q/A No. 37). His account includes actions and reactions that illustrate the interactions within his narrative. This is particularly the case when Christopher GREENE explains that the commanders asked Martin McCREIGHT what he had done with the aid workers and that they surrounded him (TPF 40.751.013, Q/A No. 51), or when he recounts that "we began to hear very loud shouts coming from behind Martin McCREIGHT, calling him a *konapo*, a spy, a traitor" (CAR 5.304.009, lines 2 ff.), or when he stated the following: "[…] we saw [certain commanders] take him to the 'airstrip' amid shouts of 'tabe, tabe'! That was the only word we could hear" (MPC 12-20-0066, lines 32 ff.). Christopher GREENE also recounted the content of the discussion that took place before Martin McCREIGHT was taken to the Foya airfield, on the defendant's orders (CAR 5.304.009, Q&A No. 37; see also TPF 40.751.014). His account is further characterized by the presence of extraordinary details, notably

the victim's heart placed on a plate (MPC 12-20-0029, lines 12 ff., and 0067, lines 2 ff.; TPF 40.261.3.406 [D245/3]; CAR 5.304.009,
Q/A No. 37), and details that were irrelevant to the key elements of the alleged facts, such as the fact that the victim had "a lot of hair" (TPF 40.751.011, Q/A No. 44). Christopher GREENE also testified about his psychological state as he recounted how the victim was executed (CAR 5.304.009, Q&A No. 37: "*[The witness is emotional]* Every time I think back on that particular moment, it affects me deeply. […] It was simply inhuman to witness that."; TPF 40.751.013, Q&A No. 54: "Then they started kicking him, hitting him—it was truly horrific"; MPC 12-20-0066, lines 43 ff.: "[…] it was the first time I had witnessed a scene of such ferocity *[the complainant is emotional]*." He did not incriminate the defendant, as evidenced by the fact that he admitted, when questioned by the defense, that he had not heard the defendant say "Kill this man!", but had only heard him order that the victim be taken to the airfield (CAR 5.304.016, Q&A No. 89). He also spontaneously admitted that he did not recall the date of the alleged events (TPF 40.751.011, lines 15 ff.: "The date is unclear; I don't remember it very well.") or details such as the name of the humanitarian organization that was in Foya before the victim was taken away by the ULIMO (MPC 12-20-0028, line 32).

4.7.2.5 Regarding the desecration of the corpse, the Court further notes the following. Christopher GREENE stated from the outset, and consistently, that Alieu KO-SIAH had eaten a piece of the heart (MPC 12-20-0029, 0067 and 0069 et seq.; TPF 40.751.016, Q&A No. 68) and provided details on this matter, such as the fact that the heart was cut into pieces, placed on a platter, and eaten at UGLY BOY (MPC 12-20-0069; TPF 40.261.3.406 [D245/3]; TPF 40.751.015, Q&A No. 62;
CAR 5.304.009, Q&A Nos. 37 and 42). He also described an extraordinary circumstance, namely the very act of eating a human heart raw (MPC 12-20-0029, 0067, and 0070). Christopher GREENE described the interactions among the participants, noting that they shouted the phrase *"If anyone tries ULIMO, your heart!*" in their jubilation (MPC 12-20-0069; TPF 40.261.3.791 [D560/4]; CAR 5.304.009, Q/A No. 37). Finally, he reflected on the possibility that the defendant, as commander, could have prevented the murder of Martin McCREIGHT and the removal and consumption of his heart (MPC 12-20-0069; TPF 40.751.018, Q/A No. 83; CAR 5.304.009, Q&A No. 37). Christopher
GREENE also described his psychological state, stating that it was "simply inhuman to witness that" (CAR 5.304.009, line 36).

4.7.2.6 The Court further considers that many of the defense's arguments concern ancillary issues and are aimed not at calling into question the credibility of the testimony regarding the facts, but rather the credibility of Christopher GREENE (*supra*, consid. II.1.2.6.1). As for the arguments concerning points relevant to

assessing the statements regarding the alleged facts, they do not stand up to scrutiny of the record, and several of them, on the contrary, tend to reinforce the credibility of the account. The Court will now examine them in detail to the extent that they have not already been addressed and appear relevant to assessing Christopher GREENE's testimony regarding the facts he alleged.

4.7.2.7 During the appellate proceedings, Alieu KOSIAH asked the Court to take into consideration ethnic factors in Liberia, emphasizing that Christopher GREENE was Kissi and that he himself was Mandingo (CAR 5.301.021 et seq., Q&A No. 54; see also CAR 5.301.032, Q&A No. 89). When asked about his willingness to appeal to former ULIMO members to ask them to forgive him, in the event that he himself were to grant forgiveness to his accusers, the defendant made the following remarks: "It may be different in Mr. GREENE's case, because he is a Kissi. It's clear that he harbors a certain amount of hatred toward me" (CAR 5.301.175, Q/A No. 497). However, when the defendant was questioned during his appellate hearing about the relevance of ethnicity to Christopher GREENE's statements, he was unable to provide a single example and merely stated that it was just a "general point I wanted to make " (CAR 5.301.022, Q/A No. 55). It must also be noted that nothing in Christopher GREENE's statements supports the conclusion that his accusations were based on the defendant's ethnicity or on hatred toward him. He also stated on appeal, in response to Alieu KOSIAH's allegations, that many Mandingos were present in the Foya region and that his son-in-law's wife was herself of Mandingo ethnicity and lived with him (CAR 5.304.030, Q/A No. 162). When asked, Christopher GREENE confirmed that he would have testified even if the accused had been of Kissi ethnicity (CAR 5.304.031, Q/A No. 163). It cannot therefore be concluded that the issue of ethnicity is relevant in this case.

4.7.2.8 When questioned about the *"Report on Findings and Pictorials"* dated January 9, 2023, submitted by the defense—which states, among other things, that Martin McCREIGHT was executed at the Foya airfield (CAR 5.200.006 et seq.)—Alieu KOSIAH denied having been present at the scene at the time of the events (CAR 5.301.022, Q&A No.^{os} 56 s.). However, the Court has already had occasion to note that the defendant was present in Lofa County as early as March 1993 and that he had participated in the ULIMO's capture of Foya in July 1993 (*supra*, para. II.2.2.1.3). It also found that he was mobile and frequently traveled within Lofa (*supra*, para. II.2.2.1.2). It therefore concludes that he was present in Foya at the time of the events.

4.7.2.9 Furthermore, the defense disputes Christopher GREENE's presence in Foya when ULIMO arrived in that town, arguing that it would be incomprehensible for him not to know "which town between Foya and Kolahun was captured first

captured," "who was the commander when Voinjama was captured," or who was "the commander of Kolahun" (CAR 5.200.511). This can, however, be explained by the context, given that Christopher GREENE was a civilian; it should be noted that the concerns of the population in times of war do not focus on the details of an armed group's advance, but rather on the complications it causes in daily life. Moreover, the hierarchy within ULIMO was far from clear and well-defined—as the defendant himself argued—but rather corresponded to a shifting system of allegiances that the central authority struggled to control (PJF report of October 1October 2018, p. 115 ff. and cited references [MPC 10-01-0550 ff.]). Christopher GREENE's statements cannot be called into question for this reason.

4.7.2.10 Turning now to the question of who uttered the phrase *"If anyone tries ULIMO, we'll eat your heart!*", the existence of a contradiction in Christopher GREENE's statements must be ruled out. According to his testimony before the French authorities, this was a phrase that Christopher GREENE heard "many times " (TPF 40.261.3.407 [D245/4]), which does not contradict the fact that he may have heard it from both Alieu KOSIAH and UGLY BOY. Moreover, while he indicated that Kunti KAMARA had used those words, it should be noted that he began his response by describing the phrase in question as a "popular saying," adding, "I've heard it said many times, not just there but outside as well—they said it a lot" (TPF 40.261.3.407 [D245/4]). Later, during the same hearing, he stated: "Dekou, Gary THOMAS, and Alieu KOSIAH were all present. They were gloating, saying, 'If anyone tries ULIMO, your heart'" (TPF 40.261.3.791 [D560/4]). Christopher GREENE also explained the following during these proceedings before the MPC: "I clearly heard this phrase spoken by ULIMO soldiers as well as by commanders […] It was a common phrase, frequently used. I heard it from Mr. KOSIAH, from KUNDI, from Donald BERRY, from DEKU, and from many commanders" (MPC 12-20-0071, lines 30 ff. and 37–39). He also made similar remarks during his appeal hearing: "That's when, in their jubilation, they said: *'If anyone* provokes ULIMO, your *heart!*'" It's a phrase they repeated afterward throughout the Foya district; it became one of their chants aimed at instilling terror in us and reminding everyone that no one was to say anything about the ULIMO" (CAR 5.304.009, lines 42–47).

4.7.2.11 As for the question raised by the defense regarding whether Martin McCREIGHT was killed on the day of his arrest by the ULIMO or a few days later, as suggested by certain testimonies from the French proceedings, the following points should be noted. First, Christopher GREENE has always maintained that the victim was executed on the day of his arrest

(MPC 12-20-0069; TPF 40.751.013–015; CAR 5.304.009, Q&A No. 37). He re-
However, Regina McCREIGHT's testimony indicates that she was not present at the scene when her husband was executed. She also admitted that she had not visited her husband in prison and, moreover, did not rule out the possibility that he might have been killed on the day of his arrest (TPF 40.261.3.790 [D560/3], notably: "If he was killed that same day, I was not informed of it"). This testimony must therefore be viewed with caution, especially since it contains other inconsistencies. Regina McCREIGHT thus stated that an elderly woman wanted to intercede on behalf of her husband with the ULIMO before confirming, in response to the next question, that it was impossible to negotiate with that armed group (TPF 40.261.3.790 [D560/3]). She also claimed that Kunti KAMARA was tall and middle-aged (TPF 40.261.3.593 [D428/5]), whereas it is undisputed that he was short and very young at the time of the events, since he was born in December 1974. As for Jamie HENNINGS, the victim's brother-in-law, it is clear from his statements that he did not witness the murder and that he did not clearly state that Martin McCREIGHT had spent three days in prison (TPF 40.261.3.793 et seq. [D561/2 et seq.]). The Court notes that there may have been some confusion on the part of Jamie HENNINGS and Regina McCREIGHT regarding the day of her husband's death, given that Jamie HENNINGS stated that UGLY BOY, on the evening of the third day, had sent his guards to take the body and bury it (TPF 40.261.3.793 et seq. [D561/2 et seq.]). It should also be noted that another testimony supports Christopher GREENE's account. Mark CONNOR states that he believes Martin McCREIGHT was killed on the day of the arrest, adding immediately afterward that he did not witness the murder (TPF 40.261.3.787 [D559/3]). Before this Court, Gina FARRELL stated that she had heard about the murder of a civilian that had taken place near the airfield (CAR 5.309.025).

4.7.2.12 The murder of Martin McCREIGHT is also mentioned in other documents in the case file. For example, this event was reported by the Liberian press (The Inquirer, October 4, 1993 [MPC 12-20-0106 et seq.]). The *"Report on Findings and Pictorials"* dated January 9, 2023, submitted by the defense, also mentions this, locating the events at the Foya airfield (CAR 5.200.006 et seq.). Furthermore, the events in question stem from the looting of the *Borma Mission* by ULIMO. In this regard, while witness Gina FARRELL reported the looting of a large generator "near the hospital" in Foya (CAR 5.309.027, Q/A No.^{os} 190 sec.), her statements are not sufficiently precise to conclude that she was referring to the looting of the *Borma Mission* that gave rise to Christopher GREENE's accusations. The Court has, however, already found that ULIMO, at times without the central government's approval, carried out a widespread campaign of looting, particularly at the expense of humanitarian organizations (*supra*, consid. II.2.1.2.6).

4.7.2.13 With regard to the desecration of the corpse, the case file contains numerous references to acts of cannibalism among ULIMO members. This is the case in the documentary film directed by Christophe NAIGEON about a child soldier, in which the protagonist and his superior report that hearts are torn from the corpses of the people they kill in order to eat them (CAR 4.200.191; CAR 5.301.023). Such accounts also appear in testimonies given during the proceedings against Mohammed JABBATEH (alias JUNGLE JABBAH), a former ULIMO commander, in the United States, reporting that ULIMO soldiers and commanders ate human hearts (TPF 40.261.1.011-0141: *"They killed the man […] took the heart. They cooked it. They cut it into pieces and shared it, and all the soldiers ate it that* day"; see also TPF 40.261.011–0194 et seq.). The Court has also previously noted that acts of cannibalism were widespread among ULIMO members and, more generally, during the First Liberian Civil War (*supra*, para. II.2.1.2.5).

4.7.2.14 In light of the foregoing, the Court finds that Martin McCREIGHT was "arrested" by the ULIMO after meeting with humanitarian workers. He was interrogated, mistreated, and "beaten." Martin McCREIGHT was then taken to the Foya airfield, near where UGLY BOY (TPF 40.751.014) lived and where ULIMO had already committed murders (CAR 5.304.016, Q/A No. 89). He was taken by an angry group of ULIMO members (TPF 40.751.014), which included UGLY BOY (TPF 40.751.013, Q/R No.^{os} 51 ff. and 54), accusing the victim, among other things, of being a traitor (MPC 12-20-0066, line 25; TPF 40.751.046, Q/R No. 274; CAR 5.304.009, lines 1–4). The order to take the victim to the airfield was given by Alieu KOSIAH, noting that he was one of the commanders on site that day and that his orders were carried out (CAR, 5.304.010, Q/A No. 41). The defendant, along with other ULIMO fighters, kicked Martin McCREIGHT (TPF 40.751.015 and 047; CAR 5.304.010, Q&A $^{nos.}$ 39 et seq.). At the airfield, UGLY BOY, who was known for "killing human beings" (TPF 40.751.015, line 8) and whose name—… (name in the Kissi language)—meant "firstborn with an axe" in the Kissi language (TPF 40.751.015, lines 3–6; CAR 5.304.017, Q/A No. 94), killed Martin McCREIGHT with an axe and cut his heart out of his body. Alieu KOSIAH did not intervene to stop UGLY BOY, but neither did he give the order to kill Martin McCREIGHT or to strike him with an axe (TPF 40.751.015; CAR 5.304.016, Q/A No. 89). The defendant was "proud of what was happening" (MPC 12-20-0068), "happy" (MPC 12-20-0069), and raised his hands in the air in a gesture of jubilation (MPC 12-20-0069). After the murder of Martin McCREIGHT, Alieu KOSIAH went to UGLY BOY's house, where he ate a piece of the victim's heart raw.

4.7.3 Participation in the murder of civilian Martin McCREIGHT

4.7.3.1 Objective Evidence

It should be noted from the outset that the indictment does not mention complicity. Since the MPC raised this issue in response to the arguments of the initial judges, and insofar as this allows the Court to clarify the scope of its review, the Court will also examine this form of participation.

In this case, joint criminal liability must be ruled out in the absence of any essential contribution by Alieu KOSIAH to the commission of the murder of Martin McCREIGHT by UGLY BOY. Nor was there any explicit joint decision regarding the murder, since Christopher GREENE did not report any discussion to that effect, any joint decision to kill him, or any order to that effect. Generally speaking, apart from the order to take Martin McCREIGHT to the airfield, the defendant did not play a specific role alongside UGLY BOY, since he was among the other ULIMO members. The murder appears to have been a decision made by UGLY BOY—admittedly incited by the crowd—but it cannot be concluded that, by ordering the victim to be taken to the airfield, the defendant implicitly ordered his killing. The fate of Martin McCREIGHT—who, it should be noted, was first “beaten up” and severely beaten—was placed in the hands of UGLY BOY. The latter thus had the opportunity to refrain from taking his life.

Complicity, however, must be established. While the defendant certainly did not provide material support to UGLY BOY—for example, by giving him the axe—nor intellectual support, in the sense that he did not offer advice or instructions on how to commit the act, the defendant’s presence at the scene warrants a more detailed examination. Although mere presence at the scene, even while approving of the act, is not sufficient to establish complicity, the situation is different if, by his presence, the accomplice signals his approval to the other participants and reinforces their willingness to commit the act (Federal Supreme Court decision 6P.40/2005 of September 1September 2005, para. 2.2). In this case, Alieu KOSIAH gave the order to bring Martin McCREIGHT to the airfield, where UGLY BOY resided and where other murders committed by the ULIMO had already taken place. Once there, the victim was left in the hands of UGLY BOY, who was known not only for “killing people” but also for doing so in a violent manner, hence the name … (name in the Kissi language). The defendant, who was one of the commanders present, witnessed the execution of Martin McCREIGHT by UGLY BOY, expressing his approval and rejoicing with the others. By acting in this manner—through his presence at the scene and his participation in the “procession” that transported Martin McCREIGHT to the airfield— his pride and jubilation, publicly demonstrated—as a member of the group and bearing in mind that he was one of the commanders present—his consent to the act and thereby motivated and reinforced UGLY BOY’s determination to carry it out. His behavior thus contributed to the dynamics of

group dynamics at the airfield, which manifested as a crowd that witnessed the murder of Martin McCREIGHT, thereby inciting and goading UGLY BOY to commit it. His conduct following Martin McCREIGHT's death (see *below*, para. II.4.7.4 regarding the desecration of the corpse) further confirms the Court's certainty regarding his intent that, under the circumstances described here, this civilian be put to death.

4.7.3.2 Subjective Elements

Alieu KOSIAH knew that by ordering Martin McCREIGHT to be brought to the Foya airfield, near UGLY BOY's residence—a location where executions of civilians had previously taken place—and then by witnessing the victim's execution by UGLY BOY while encouraging the perpetrator, he reinforced the perpetrator's determination to carry out the act. Furthermore, there was no evidence to lead the defendant to believe that the victim—who was apprehended by ULIMO as he was getting out of the humanitarian workers' car—was not a civilian. It follows from the foregoing that the defendant acted intentionally.

Furthermore, the alleged acts took place in the context of a non-international armed conflict—namely, the First Liberian Civil War—a fact of which Alieu KOSIAH was aware.

4.7.4 Desecration of the Body of Civilian Martin McCREIGHT

4.7.4.1 Objective Facts

Eating part of the heart of the deceased Martin McCREIGHT constitutes an act that seriously undermines human dignity, expresses contempt for it, and is intended to humiliate.

4.7.4.2 Subjective Elements

Alieu KOSIAH knew that he was violating the dignity of the deceased Martin McCREIGHT by eating a piece of his heart. There was no evidence to lead the defendant to believe that the victim was not a civilian (*supra*, consid. II.4.7.3.2). It follows from the foregoing that he acted intentionally.

Furthermore, the acts in question occurred in the context of a non-international armed conflict, namely the First Liberian Civil War, a fact of which Alieu KOSIAH was aware.

4.7.5 Conclusion

In light of the foregoing, Alieu KOSIAH is found guilty of the following offenses:

- aiding and abetting the murder of a civilian under Art. 109(1) and Art. 108(2) of the Military Criminal Code (aCPM) *in conjunction with* Art. 23 of the aCPM, 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) (count 1.3.8 of the indictment);
- desecration of the remains of a deceased civilian pursuant to Art. 109(1) and Art. 108(2) of the former 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) (section 1.3.9 of the indictment).

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

According to section 1.3.10 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 and directed a 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.

4.8.1 Arguments of the Parties

4.8.1.1 In its closing argument (CAR 5.200.709), the Office of the Prosecutor asserts that the defendant confirmed during the appellate proceedings that he had previously heard the expression *"if any bush shake, you* die" and further refers to his arguments at the trial level (TPF 40.721.096 et seq.), namely, that Christopher GREENE's account was credible and rich in consistent details, that the complainant's descriptions correspond to the *modus operandi* and the route taken during other forced transports from Foya, and that the Guinean town of Guékédou, located just across the border from Solomba, was an ideal location for trading in looted goods. As for the law, the MPC refers to the contested judgment (CAR 5.200.749).

4.8.1.2 Attorney WERNER (CAR 5.200.948 et seq.) argues that the key role played by the defendant in the acts of looting committed by ULIMO is evident from the case file as a whole. He notes that Christopher GREENE has reportedly always been deeply affected by the looting of major public and private facilities in Lofa County, as he is said to have a keen awareness of the consequences of such looting for the region. During his closing argument at the trial, Attorney WERNER emphasized that the complainant's account was rich in detail and was corroborated by the *modus operandi* described in detail by all the complainants who were forced to participate in forced labor (TPF 40.721.307 et seq.).

4.8.1.3 The defense challenges the conviction at first instance (CAR 5.200.423 and 499 et seq.). Reiterating the arguments presented before the trial court (TPF 40.721.504 and 567 et seq.), the defense asserts that Christopher GREENE did not recognize Alieu KOSIAH and calls into question the credibility of his testimony. With regard specifically to the transport of goods by civilians, the defense objects to the complainant's statements, which are contradicted by Georges ROSADO. Christopher GREENE reportedly stated that during the two forced marches in which he participated, the bodies he saw were already there and were not people participating in his convoy, whereas Georges ROSADO reportedly indicated that Dave OGREN had killed someone specifically during the convoy.

4.8.2 Assessment of the Evidence

4.8.2.1 This indictment stems from the criminal complaint filed by Christopher GREENE on June 23, 2016 (*supra*, A.8). In this regard, the Court notes at the outset that a criminal complaint does not constitute evidence (*supra*, consid. II.1.2.2.3). It also notes that it is analyzing testimony—namely, the credibility of the statements—and not the credibility of Christopher GREENE (*supra*, consid. II.1.2.6.1). Finally, the Court notes that the theory of a conspiracy organized by CIVITAS MAXIMA and the GJRP—which the defense accused of fabricating testimony in exchange for material benefits—has been rejected (*supra*, para. II.1.1.3) and that the identifications—both from a photo lineup and in person—conducted during the proceedings cannot be used, whether as evidence for or against the defendant (*supra*, para. II.1.3.3.2 and II.1.3.3.3).

4.8.2.2 With regard to the identification of Alieu KOSIAH by Christopher GREENE, the Court recalls that it has already found that he validly identified Alieu KOSIAH during the proceedings as the accused and refers to its analysis of the matter in connection with the murder of the civilian Martin McCREIGHT and the desecration of his corpse (*supra*, para. II.4.7.2.2).

4.8.2.3 As for the alleged facts, Christopher GREENE's statements regarding forced labor remained consistent throughout the proceedings, were consistent on the essential points, and are characterized by numerous indicators of credibility. His statements regarding the key elements of his accusation were coherent. The forced transport—of coffee in the complainant's case—took place from Foya to the Solomba border, toward the end of 1993, under the orders of Alieu KOSIAH and with his "group," under threat of execution if he could not carry his load (MPC 12-20-0032 et seq. and 0057 et seq.; TPF 40.751.018 et seq.; see also TPF 40.261.3.1053 [D198/12]) or of being beaten if he failed to keep up with the required pace (TPF 40.751.022). The complainant provided details, particularly regarding the origin of the coffee, explaining the following:

"It came from Foya. There were a lot of goods in the 'warehouses' and private homes ('personal houses'). There was Company No. 1, which purchased a large number of products such as cocoa, coffee, cola nuts, palm hearts, rice, etc. It was these goods that were looted and kept for personal use by the commanders. They were then transported using forced labor" (MPC 12-20-0062, lines 10–14). He described the location of the goods to be carried (TPF 40.751.020, Q/A No. 96) and specified that "the load was very heavy" (MPC 12-20-0032, line 29; TPF 40.751.022, Q&A No. 116) and that he had not been given any food during the transport (MPC 12-20-0058, line 18). The complainant also provided extraordinary details, such as his mention of corpses on the road (MPC 12-20-0033, lines 17–19). He further described the threats made by Alieu KOSIAH during the transport in these terms: "The threat came while we were on the move; he told us that everyone had to line up, while pointing a gun at us. Using a local expression often heard, he told us that if anything happened, we would die—'if any bush shake, you die' " (MPC 12-20-0060, lines 16–18; see also CAR 5.304.006 and 019 ff. Q/A nos. 25, 107, and 109). This description illustrates the interactions and substantiates the complainant's account. The same is true of his account of his psychological experience during the transport: "It was a terrible experience for me. It could have killed me; forcing someone to carry heavy loads over a long distance really traumatized me" (MPC 12-20-0032, lines 33 ff.). Finally, the complainant spontaneously admitted that he did not recall certain details, such as the date of the transport (MPC 12-20-0057, lines 27 ff.; TPF 40.751.019, line 2) or the number of soldiers (TPF 40.751.021, Q/A No. 103), and did not incriminate the defendant, as illustrated by the fact that, when questioned, he stated that he had not seen the defendant beat civilians, explaining that he himself was focused on moving forward while carrying his load" (TPF 40.751.023, lines 5).

4.8.2.4 The Court further finds that many of the defense's arguments concern ancillary issues and are intended not to call into question the credibility of the testimony regarding the facts, but rather the credibility of Christopher GREENE (*supra*, para. II.1.2.6.1). As for the arguments concerning points relevant to the assessment of the statements regarding the alleged facts, they do not stand up to scrutiny of the record, and several of them, on the contrary, tend to reinforce the credibility of the account. The Court will now examine them in detail to the extent that they have not already been addressed and appear relevant to the assessment of Christopher GREENE's testimony regarding the facts he reported.

4.8.2.5 The defendant has consistently denied the charges against him, stating during the trial proceedings that, to the best of his recollection, he had not been to Foya between July and December 1993 (TPF 40.731.054, Q&A No. 253). In this regard, the Court recalls that it has already had occasion to note that the defendant was present in Lofa County as early as March 1993 and that he had participated in the capture of Foya

by ULIMO in July 1993 (*supra*, para. II.2.2.1.3). It also found that he was mobile and frequently traveled within Lofa (*supra*, para. II.2.2.1.2). The Court therefore finds, based also on the testimony of Christopher GREENE, that the defendant was present in Foya at the time of the events.

4.8.2.6 As for the alleged contradiction between the statements of Christopher GREENE and those of Georges ROSADO regarding the bodies seen during transport, it must be noted—contrary to the defense's assertion—that no such contradiction exists. It must be clarified from the outset that the remarks by Georges ROSADO to which the defense refers—and from which it derives an argument regarding all the transports in which Christopher GREENE claims to have participated—concern the transport of the engine from the Foya power plant (section 1.3.12 of the indictment; *see below*, consideration II.4.9). That said, even if Georges ROSADO reports that Dave OGREN allegedly killed a man who claimed to be tired (MPC 12-08-0016, lines 26 ff.), the fact that Christopher GREENE did not witness this event in no way implies that he did not participate in the transport in question. It is important to bear in mind the context of the forced march, during which the complainant was focused on his task, which he had to carry out while under threat of death. It would therefore be understandable if certain details related to the transport might have escaped his notice. Furthermore, Georges ROSADO's statements do not contradict those of Christopher GREENE, who stated that, during the two marches in which he participated, he saw the bodies of people who were already there before he arrived (MPC 12-20-0074, lines 36–39); the two statements are not mutually exclusive.

4.8.2.7 The transport alleged by the complainant also took place in the context of Liberia's first civil war, since forced marches—whether for the transport of weapons and ammunition or looted goods—were part of ULIMO's *modus operandi*, as the Court has already noted above (*supra*, para. 2.1.2.6). This is further evidenced by several other factual accounts concerning various locations in Lofa County, which were analyzed in this judgment (*supra*, paras. II.4.3 and II.4.9, and *infra*, paras. II.4.10, II.4.11, II.4.13, II.4.14, and II.4.16). The alleged transport also aligns with the roles performed by the defendant within ULIMO, as he was in charge of the organization's logistical and financial matters and was required to travel frequently (*supra*, para. II.2.2.1.2). Christopher GREENE further explained that the nickname "PHYSICAL CASH" had been given to the defendant because he was involved in business dealings and his "sole objective was money" (TPF 40.751.037, Q&A No. 215). In addition, the route taken by the convoy—namely, from Foya to Solomba, on the border with Guinea—makes geographical sense, as illustrated by the map included in the case file (MPC 10-01-0565), and the information provided by

Christopher GREENE regarding the duration of the march—namely, that it could take up to six or seven hours to reach Solomba (TPF 40.751.022, Q/R No. 111)—are consistent with the distance traveled, which is approximately 22 kilometers according to the indictment. Before the MPC, Walter VARGAS also confirmed that the ULIMO relied on civilians to transport goods from Foya to Solomba, which allowed the soldiers to obtain food, noting that the civilians were not paid (MPC 12-16-0033, Q&A nos. 27 et seq.). During the appellate proceedings, witness Gina FARRELL stated, in response to a question from the defense, that ULIMO used the route from Foya to Solomba to transport looted goods to Guinea (CAR 5.309.027, Q&A nos. 187 et seq.). The case file further illustrates that ULIMO resorted to forced marches to transport the looted goods along the route from Foya to Solomba. Reference should be made here to the Court's examination of the forced transport of the Foya power plant's engine by civilians along the same route, which was also reported by Christopher GREENE (section 1.3.12 of the indictment [*infra*, para. II.4.9]).

4.8.2.8 In light of the foregoing, the Court finds that Alieu KOSIAH ordered, organized, and led the forced transport of goods by civilians—including Christopher GREENE—from Foya to the border with Guinea near Solomba during the second half of 1993. Participation in this forced transport constituted a traumatic experience for the complainant. During said transport, he was forced to carry a heavy load for several hours, under threat of being killed or beaten if he did not comply.

4.8.3 Objective Evidence

4.8.3.1 In light of the foregoing, 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. Forcing heavily laden civilians to march for hours while threatening them with death by weapons or beating them if they do not comply or do not move fast enough is likely to cause great suffering. This suffering is primarily physical, due to the long march the civilians were forced to undertake while carrying heavy loads and the beatings they endured along the way. The suffering is also psychological, due to the terror that gripped the civilians throughout the journey, as they were subjected to verbal intimidation and death threats from the soldiers accompanying them. This treatment must also be characterized as humiliating and degrading. Forcing heavily laden civilians to march while threatening them with death, striking them to make them keep pace

and treating them as mere means of transportation amounts to a flagrant violation of their dignity as human beings and constitutes a very serious form of humiliation.

4.8.3.2 The Court further specifies that there is no basis for finding additional offenses regarding the beatings inflicted on the civilians and the death threats made against them, since these fall under the offenses of cruel, humiliating, and degrading treatment. As for the offense of slavery, it has not been committed. The duration of the transport was not, in fact, sufficient to conclude that powers of ownership were exercised over the civilians who were forced to participate in said transport.

4.8.3.3 Alieu KOSIAH ordered the transport. He was the highest-ranking officer present, since there were only he and his "group" (MPC 12-20-0059, line 18; see also TPF 40.751.019 et seq., Q&A No. 95; CAR 5.304.019 et seq., Q&A No. 107), and the soldiers
followed his orders. This attests to the defendant's status as a superior. His liability under Art. 18 aCPM is therefore established.

4.8.4 Subjective Elements

Alieu KOSIAH knew that by ordering the soldiers to carry out the transport, they would carry it out. The defendant could not have been unaware of the civilian status of the conscripted persons. It follows from the foregoing that he acted intentionally.

Furthermore, the alleged acts occurred in the context of a non-international armed conflict, namely the First Liberian Civil War, a fact of which Alieu KOSIAH was aware.

4.8.5 Conclusion

In light of the foregoing, Alieu KOSIAH is found guilty of ordering and of inflicting, respectively, cruel, humiliating, and degrading treatment on several civilians in the form of forced transport, pursuant to Art. 109, para. 1, and Art. 108, para. 2, aCPM, *in conjunction with* Art. 18 of the Military Penal Code (aCPM), Article 3(1)(1)(a) and (c) common to the General Provisions (CG), and Article 4(2)(a) and (e) of Part II of the Penal Code (PA II) (Section 1.3.10 of the indictment).

4.9 Ordering the looting of the Foya power plant, as well as ordering and directing the forced transport of the power plant's generator by civilians from Foya to Solomba, and from there to the border with Guinea

According to 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 looting of the Foya power plant between July and December 1993 or between March 1994 and December 1995 (section 1.3.11 of the indictment). He is also charged

subsequently having ordered and directed the forced transport of the power plant's generator by civilians from Foya to Solomba, and from there to the border with Guinea (section 1.3.12 of the indictment).

4.9.1 Arguments of the Parties

4.9.1.1 The Office of the Public Prosecutor (MPC) seeks confirmation of the first-instance conviction with respect to section 1.3.12 of the indictment and challenges the acquittal handed down with respect to section 1.3.11 of the indictment. Regarding the looting (CAR 5.200.743 et seq.), the MPC notes that it allegedly involved the participation of many people, including Guineans who came to help with the dismantling. In this context, it would not have been sufficient merely to order the looting; it was also necessary to organize and coordinate it. The MPC thus argues that the defendant was on site and was coordinating the operations, noting that it is irrelevant that Christopher GREENE could not say whether the defendant was present during the dismantling, since he confirmed the defendant's intense activity at the time when the civilians had to remove the parts from the power plant and load them onto the *truck* to transport them to Guinea. The MPC therefore argues that there is sufficient evidence to convict the defendant both as the instigator and as the direct perpetrator, or co-perpetrator.

Regarding forced labor (CAR 5.200.709 et seq.), the MPC argues that the defendant confirmed during the appellate proceedings that he had previously heard the expression *"if any bush shake, you* die" and further refers to his arguments in the first instance (TPF 40.721.100 et seq.). As for the law, the MPC refers to the contested judgment (CAR 5.200.749).

4.9.1.2 Attorney WERNER (CAR 5.200.048 et seq.), speaking on behalf of Christopher GREENE, endorses the OAG's remarks and conclusions regarding the looting of the generator from the Foya power plant. For the remainder, reference should be made to the presentation of his arguments regarding section 1.3.10 of the indictment (*supra*, consid. II.4.8.1.2).

4.9.1.3 The defense moves for confirmation of the acquittal regarding the looting of the Foya power plant and challenges the conviction handed down by the Criminal Division regarding the forcible transport of the power plant's engine (CAR 5.200.423 and 499 et seq.). Reiterating the arguments presented before the trial judges (TPF 40.721.504 and 567 et seq.), the defense asserts that Christopher GREENE did not recognize Alieu KOSIAH and calls into question the credibility of his testimony. Regarding the looting, she criticizes Christopher GREENE for having stated during the first-instance proceedings that he had not heard the defendant give orders related to the looting, even though he had reportedly stated the opposite before the Office of the Attorney General (MPC). Concerning the forced transport, she criticizes him for having made

statements that contradicted those of Georges ROSADO, notably regarding the means of transportation used to cross the Makona River and the question of whether the *truck* had crossed the river. The defense argues that it would be impossible for a loaded truck to have been pushed along an unmaintained road. It further notes that Christopher GREENE contradicted himself regarding the time of day they arrived in Solomba.

4.9.2 Application of Art. 344 of the Code of Criminal Procedure

4.9.2.1 Under the terms of Art. 344 of the Code of Criminal Procedure, when the court intends to depart from the legal assessment made by the Public Prosecutor's Office regarding the facts set forth in the indictment, it shall inform the parties present and invite them to comment.

4.9.2.2 In this case, the Court granted the Public Prosecutor's Office's motion seeking the application of Art. 344 of the CPP in connection with section 1.3.11 of the indictment (ordering the looting of the Foya power plant) and indicated that it was prepared to reserve judgment regarding the conduct as a co-perpetrator or principal perpetrator (*supra*, C.27). After analyzing the indictment and noting that the facts cannot be supplemented, the Court held during the appellate proceedings that the legal characterization set forth in the indictment was broad enough to allow for an argument regarding the conduct as either a co-perpetrator or a principal. The Court had also taken note of the fact that the defense did not object to this (CAR 5.100.019).

4.9.3 Assessment of the Evidence

4.9.3.1 This indictment stems from the criminal complaint filed by Christopher GREENE on June 23, 2016 (*supra*, A.8). In this regard, the Court notes at the outset that a criminal complaint does not constitute evidence (*supra*, para. II.1.2.2.3). It also notes that it is analyzing testimony—specifically, the credibility of the statements—and not the credibility of Christopher GREENE (*supra*, para. II.1.2.6.1). Finally, the Court notes that the theory of a conspiracy organized by CIVITAS MAXIMA and the GJRP—which the defense accused of fabricating testimony in exchange for material benefits—has been rejected (*supra*, para. II.1.1.3) and that the identifications—both from a photo lineup and in person—conducted during the proceedings cannot be used, whether as evidence for or against the defendant (*supra*, para. II.1.3.3.2 and II.1.3.3.3).

4.9.3.2 With regard to the identification of Alieu KOSIAH by Christopher GREENE, the Court recalls that it has already found that he validly identified Alieu KOSIAH during the proceedings as the accused and refers to its analysis of the matter in connection with the murder of the civilian Martin McCREIGHT and the desecration of his corpse (*supra*, para. II.4.7.2.2).

4.9.3.3 As for the alleged acts, Christopher GREENE's statements regarding the looting of the Foya power plant and the transport of the plant's generator to the border with Guinea were consistent throughout the proceedings, coherent on the essential points, and supported by numerous indicators of credibility.

4.9.3.4 Regarding the looting, Christopher GREENE provided consistent details on the key elements of his testimony. He explained that the power plant was located on Kpormbu Road (also recorded as Bombu Road and Bambu Road), that the looting took place in the presence of the entire ULIMO *leadership*, that the looted goods were removed by civilians on the orders of Alieu KOSIAH, who was supervising the operations, and that the generator was loaded onto a *truck* (MPC 12-20-0031 et seq.; TPF 40.751.027 et seq.; CAR 5.304.021 et seq.). His account is further characterized by the inclusion of details, such as the mention that people had come from Guinea to dismantle the equipment (MPC 12-20-0049, lines 10–12; TPF 40.751.027, line 2), but also by his spontaneous admission that he is unaware of certain facts—such as when, in response to the question of whether he was present when the generator was dismantled, he answered in the negative, specifying that they had come only to remove the machine (TPF 40.751.027, Q&A No. 147; see also CAR 5.304.027, Q&A No. 143). Furthermore, Christopher GREENE did not incriminate the defendant, as illustrated by the fact that he implied he did not know whether the defendant was present during the dismantling (TPF 40.751.027, Q/A No. 148).

4.9.3.5 As for Christopher GREENE's statements regarding the forced transport of the generator from the Foya power plant, they are consistent on the key points: the transport of the generator from Foya to the border near Solomba in a *truck* that was not working, under the supervision of Alieu KOSIAH and his "group," under threat of being killed if he did not comply, in 1993 or 1994 (MPC 12-20-0049 et seq.; TPF 40.751.028 et seq.). He provided details, explaining in particular that he had been rounded up early that morning at his home (TPF 40.751.028, Q/A No.^{os} 153 et seq.) and that they had driven the machine over tree trunks or logs all the way to *the truck* (MPC 12-20-0049, lines 46–48; TPF 40.751.027, Q&A No. 147; CAR 5.304.022, Q&A No. 122; see also
TPF 40.261.3.1051 [D198/10]). He also provided a list of the towns through which they passed (MPC 12-20-0051, lines 5–7). His account also contains extraordinary details, as illustrated by the mention of corpses on the road (MPC 12-20-0033, lines 17–19) and the very act of loading the machine onto a non-functioning *truck* and pushing it all the way to the border (MPC 12-20-0049 ff.). Christopher GREENE further explained that the soldiers attacked people who refused to push the *truck* by whipping them, hitting them with rifles, or kicking them, which illustrates the interactions and brings the account to life (MPC 12-20-0053, lines 39–41;

CAR 5.304.028, Q/A nos. 151–153). He added that the soldiers ordered civilians who were not participating in the transport to keep moving, telling them "till go" (MPC 12-20-0054, lines 4 ff.). He also described his psychological experience, explaining: "There were also gunshots. As soon as we heard a gunshot, we were frightened. It was more than just terror; it was horrifying" (TPF 40.751.032, lines 2–4). Christopher GREENE's account contains certain gaps, which he readily admitted. When questioned about the presence of a second *truck*, he stated: "I never really knew what was in front of me, but as part of the group I was in, I pushed that truck all the way to Solomba" (TPF 40.751.030, lines 25 ff.). He also stated that he had not noticed whether anyone had been killed during the transport (TPF 40.751.032, Q/A No. 186). He therefore did not seek to incriminate the defendant. On this point as well, on the one hand, he admitted that he had not heard the defendant give the order to carry out the transport (TPF 40.751.028, Q/A No. 155), and, on the other hand, he explained—in response to the question of whether the defendant could see or hear if civilians were being threatened or beaten—that, given the large size of the convoy, the defendant could not see the entire convoy (TPF 40.751.032, Q/A No. 187).

4.9.3.6 The Court further considers that many of the defense's arguments concern ancillary issues and are aimed not at calling into question the credibility of the testimony regarding the facts, but rather the credibility of Christopher GREENE (*supra*, consid. II.1.2.6.1). As for the arguments concerning points relevant to the assessment of the statements regarding the alleged facts, they do not stand up to an analysis of the case file, and several of them, on the contrary, tend to reinforce the credibility of the account. The Court will now examine them in detail to the extent that they have not already been addressed and appear relevant to the assessment of Christopher GREENE's testimony regarding the facts he reported.

4.9.3.7 The Court recalls that it has already had occasion to note that the defendant was present in Lofa County as early as March 1993 and that he participated in the ULIMO's capture of Foya in July 1993 (*supra*, para. II.2.2.1.3). The Court therefore finds, based in part on the testimony of Christopher GREENE, that the defendant was present in Foya at the time of the events.

4.9.3.8 Regarding the looting, the Court notes that the case file contains several photographs of the Foya power plant taken after the alleged events, including a photograph of the interior of the building that was shown to Christopher GREENE during the appellate proceedings (CAR 5.200.026).

4.9.3.9 The question arises as to which engine—or generator—was looted by the ULIMO, and more specifically, whether it was the main or auxiliary engine. Indeed, during the appellate proceedings, the defendant stated that

the generator was intact and that it was only after photographs of the power plant were added to the case file—through the French proceedings—that Christopher GREENE was heard speaking for the first time about a backup generator (CAR 5.301.028 et seq., Q/A No. 76). In this case, Christopher GREENE made the following statement during the preliminary investigation: “The engine was dismantled first. It was a ‘Black Stone’ engine. Once the engine was dismantled, given its weight, a large number of civilians had to be employed to carry it […]” (MPC 12-20-0049, lines 22–24). He then mentioned the existence of a backup generator, located next to the main generator, during the trial proceedings: “There was a Black Stone generator that was set in cement, so it wasn’t possible to take it away. It was the main generator, which was as big as the largest Caterpillar machines. However, right next to it was a backup generator that was supposed to take over and supply electricity if that machine wasn’t working. It was possible to take that generator away. You are asking me if it was this backup generator that was looted. Part of the main generator—specifically, the parts that could be removed—were also looted. There are certain parts—those that could not be removed—that are still there ” (TPF 40.751.026, Q&A No. 145; see also TPF 40.751.030, Q&A No. 168). Christopher GREENE confirmed on appeal the statements he had made before the trial judges, explaining in essence that the “small” generator had been taken during the looting, and not the large generator —the Blackstone—from which only the parts that could be dismantled were looted (CAR 5.304.025 et seq., Q&A Nos. 137 et seq.). While there is indeed a discrepancy in this case between Christopher GREENE’s statements made during the preliminary investigation and his testimony at trial—whether at the trial court or on appeal—regarding the mention of a backup generator and the “small” generator, respectively, it should nevertheless be noted that this discrepancy is not sufficient to call into question the credibility of his testimony. It is indeed plausible that Christopher GREENE, who has consistently maintained that he did not participate in the dismantling, believed that the generator he helped remove and load onto the *truck* was the main generator. It should also be noted that he visited the site with French authorities as part of the proceedings against Kunti KAMARA (CAR 5.304.022, Q/A No. 121), which likely enabled him to recount his memories of certain aspects related to the looting of the power plant in clearer and more precise terms. The explanations he provided on this subject during the appeal, based on photographs of the power plant, are also convincing.

4.9.3.10 The question of whether Alieu KOSIAH gave orders related to the looting is also disputed. On this point, Christopher GREENE made the following statement before the MPC, in response to the question seeking to determine whether the defendant had given the order to dismantle anything at the power plant: “To his men, yes, including other people they used to unscrew those things” (MPC 12-20-0049, lines 17 ff.). He then testified at the trial that he

had not seen the defendant give the order to loot the power plant, but that the understanding was that, as the highest-ranking commander in the area, the defendant was aware of it because he had seen this equipment being taken and had even participated in the act (TPF 40.751.026, Q&A No. 144). Further details regarding the nature of the orders given by the defendant also emerge from his statements on appeal:

"When we were gathered together, it was he, Alieu KOSIAH, who ordered the civilians to go out and gather in the place where he wanted to organize the transport of all the parts that were there—some of which had already been dismantled. Other parts had not been dismantled. That is when he gave the order to gather all the parts in one place. We were supposed to go get them. We took out the parts that had already been disassembled. As for the parts of the 'Blackstone' generator that were still intact, we dragged them outside" (CAR 5.304.021, Q&A No. 118). While there is indeed a discrepancy between what Christopher GREENE stated during the preliminary investigation and what he claimed subsequently, the Court considers that this discrepancy must be viewed in context. On the one hand, the events took place some thirty years ago, and, on the other hand, the question put to him was not the same, as Christopher GREENE was asked about "the order to dismantle something" before the MPC and

"the order to loot the power plant" at the trial, which calls for

. Moreover, this discrepancy attests to Christopher GREENE's good faith and the credibility of his account, which—contrary to the defense's central argument—cannot be equated with a "lesson learned" (*supra*, consid. II.1.1). Moreover, the explanation provided on appeal is sufficient to resolve the point at issue, since Christopher GREENE explains that he heard the defendant give the order—not to dismantle, but to gather the parts that had already been dismantled in order to load and transport them.

4.9.3.11 With regard to forced transport, the Court recalls that it rejected the defense's argument that the statements of Christopher GREENE and those of Georges ROSADO contradicted one another concerning the bodies seen by the former during the transport (*supra*, para. II.4.8.2.6).

4.9.3.12 During the appellate proceedings, Alieu KOSIAH asserted that it was absolutely impossible for a truck to have been pushed from Foya to the border—particularly given the rugged terrain and the condition of the road—and that it had been transported across in a canoe (CAR 5.301.032 et seq., Q&A No. 89). However, with a large number of men—50 to 100 participated in the transport (MPC 12-20-0050, lines 18 ff.)—it is not impossible to push a *truck*, which is specified to have been described as a

"'*minisize* truck'—almost like a Toyota" (MPC 10-20-0053, line 17)—and therefore cannot be considered a truck. Christopher GREENE also stated that the road was in acceptable condition and passable (CAR 5.304.024, Q&A No. 134). Finally, it is plausible that the *truck* could have crossed

the river using a floating platform, although it should be noted that Christopher GREENE did not claim that the *truck* had crossed the river (MPC 12-20-0051). It must therefore be concluded that the transport as described by him is not implausible.

4.9.3.13 The defense points to other inconsistencies in Christopher GREENE's account. Regarding the means of transport used to cross the Makona River, the Court found no contradiction between his statements and those of Georges ROSADO. Christopher GREENE described transporting the engine on two very large canoes connected by planks (MPC 12-20-0051; see also CAR 5.304.029, Q/A No. 157), while mentioning shortly thereafter, in response to the question of whether he had seen other floating platforms on the river that day, the existence of "empty barrels ('big, big barrel') that were tied together with ropes and on which a platform was built ('built a platform over them') to make a floating platform for crossing" (MPC 12-20-0052; see also TPF 40.261.3.1051 [D198/10]). If
Georges ROSADO speaks of a "platform with several 55-gallon 'drums' as floats," these remarks refer to another transport, namely the one he carried out as a civilian (MPC 12-08-0038, line 17). He also mentioned canoes in connection with the transport of the engine during his appeal hearing (CAR 5.305.029, Q&A No. 148). As for whether the *truck* crossed the river, Christopher GREENE appears to have stated that it remained behind (MPC 12-20-0051, lines 17–21 and 0053, lines 32–34). During his trial hearing, he stated the following: "I didn't stay to see how the generator made it to the other side" (TPF 40.751.053, lines 43 ff.; see also TPF 40.751.033, Q&A No. 194). For his part, Georges ROSADO testified at the trial, in response to the question of what they had done with the vehicles after unloading the parts at the border, that "[o]nce they had crossed, I had nothing more to do with it, so I don't know. I was just a private" (TPF 40.755.032, Q/A No. 198). While he did not expressly state that the *truck* had crossed the border, he did clearly affirm during his appeal hearing that the vehicles had crossed the border (CAR 5.305.035, Q&A No. 182; see also CAR 5.305.031 et seq., Q&A No. 159). Since it cannot be concluded that Christopher GREENE clearly stated that the *truck* had not crossed the border—given that he likely did not witness the scene—there is no contradiction between his statements and those of Georges ROSADO. Indeed, Georges ROSADO's statements regarding the transport corroborate those of Christopher GREENE. Georges ROSADO did in fact state that the transport was carried out by pushing a *truck* that was not working, that Alieu KOSIAH was the highest-ranking officer on site and was in charge of the transport, that the convoy left in the morning and arrived in the evening, that it was a very large convoy, and that people had been whipped along the way (TPF 40.755.025 et seq.). Regarding the time of day when the transport

is said to have arrived in Solomba, it is difficult to see where the contradiction lies in Christopher GREENE's statements. Indeed, he said he arrived "almost toward evening" (MPC 12-20-0050), then clarified that once the machine had been unloaded onto the canoes, they headed toward Solomba because "it was already late" (MPC 12-20-0053). It is therefore clear that they arrived at the end of the day, which is entirely consistent with having arrived "almost at the end of the evening" (TPF 40.751.033) or "during the evening" (TPF 40.751.052).

4.9.3.14 The looting and transport alleged by Christopher GREENE also take place within the context of Liberia's first civil war, since the Court has already found, on the one hand, that ULIMO, sometimes without the central government's consent, carried out a widespread campaign of looting of property, particularly at the expense of humanitarian organizations, and, on the other hand, that forced marches—whether for the transport of weapons and ammunition or of looted property—were part of ULIMO's *modus operandi* (*supra*, para. 2.1.2.6), a fact further evidenced by several other sets of facts, regarding various locations in Lofa County, analyzed in this judgment (*supra*, paras. II.4.3 and II.4.8, and *infra*, paras. II.4.10, II.4.11, II.4.13, II.4.14, and II.4.16). The alleged transport also aligns with the roles performed by the defendant within ULIMO, as he was in charge of the organization's logistical and financial aspects and was required to travel frequently (*supra*, para. II.2.2.1.2). Christopher GREENE further explained that the nickname "PHYSICAL CASH" had been given to the defendant because he was involved in business dealings and his "sole objective was money" (TPF 40.751.037, Q&A No. 215). In addition, the route taken by the convoy—namely, from Foya to Solomba, on the border with Guinea—makes geographical sense, as illustrated by the map included in the case file (MPC 10-01-0565), and the information provided by Christopher GREENE regarding the duration of the journey, according to which it normally took six hours to reach Solomba, but that pushing the *truck* had taken them almost the entire day (MPC 12-20-0054, lines 34–41), are consistent with the distance traveled, which is approximately 22 kilometers according to the indictment. Before the MPC, Walter VARGAS further confirmed that ULIMO was transporting electric generators, specifying that they used vehicles because of their weight (MPC 12-16-0032, Q&A No. 26). Furthermore, he explained that the canoes used at the border in Solomba to cross the Makona River were "very large" and that two could be joined together to transport a car (MPC 12-16-0033, lines 6–13). Furthermore, witness Gina FARRELL stated during the appellate proceedings, in response to a question from the defense, that ULIMO used the route from Foya to Solomba to transport looted goods to destinations in Guinea (CAR 5.309.027, Q&A Nos. 187 et seq.). Finally, the case file illustrates that ULIMO resorted to forced marches to transport looted goods along the route from Foya to Solomba. Reference should be made here to

the Court's examination regarding the forced transport of goods, which was also denounced by Christopher GREENE (ch. 1.3.10 of the indictment [*supra*, consid. II.4.8]).

4.9.3.15 In light of the foregoing, the Court finds that the ULIMO looted the Foya power plant and that they seized, in particular, an engine and an entire generator—namely, the smaller of the two originally present at the plant—as well as parts from another engine or generator. Alieu KOSIAH, who was one of the commanders on site—though the question of whether he was the highest-ranking officer present may remain open—ordered and supervised the removal of the looted items from the power plant and their loading onto the *truck* (CAR 5.304.021, Q&A No. 118). He went back and forth to force the civilians to move as quickly as possible to load the items and leave (CAR 5.304.022, Q/A No. 124) and ensured that everything that had been gathered was properly loaded onto the *truck* (CAR 5.304.023, Q/A No. 128).

Regarding forced transportation, the Court finds that Alieu KOSIAH organized and led, as the highest-ranking commander (see the statements of Christopher GREENE [TPF 41.751.028, Q/R No. 155] and Georges ROSADO
[MPC 12-08-0035, line 22; TPF 40.755.026, Q/A No. 150), the forced transport—in particular—of the engine looted in Foya from that city to the border with Guinea near Solomba. Alieu KOSIAH issued the necessary orders for the equipment to be transported (CAR 5.304.028, Q/A No. 154). As for the engine, it was transported using a *truck* with a defective engine that civilians, including Christopher GREENE, were forced to push. The civilians were forced to carry out this transport under threat of force and in a state of terror.

4.9.4 Ordering the looting of the Foya power plant

4.9.4.1 Objective Evidence

Alieu KOSIAH played a key role in organizing and carrying out the looting, notably by ordering and coordinating the transport of the looted goods from the power plant to the *truck* and the loading of the truck. The fact that it could not be established that the defendant also ordered the dismantling of the engine or the generator does not appear relevant, insofar as the act of removing the property from the power plant and loading it onto the *truck* is sufficient to constitute looting. It is noted that these facts are set forth in the indictment. The indictment states that Alieu KOSIAH "ordered the looting of the power plant's engine," that he was on site, that he gave orders, and that he was involved in the looting (CAR 2.101.030). It must therefore be concluded that Alieu KOSIAH participated as a co-perpetrator in the looting and that he is liable under Art. 18 aCPM.

4.9.4.2 Subjective Elements

Alieu KOSIAH knew that by ordering and coordinating the transport of the looted goods from the power plant to the *truck* and the loading of the truck, the soldiers would carry out his orders and thereby deprive civilians of their property. It follows from the foregoing that he acted intentionally.

Furthermore, the alleged acts occurred in the context of a non-international armed conflict, namely the First Liberian Civil War, a fact of which Alieu KOSIAH was aware.

4.9.5 Ordering and directing the forced transport of the generator from the Foya power plant by civilians

4.9.5.1 Objective Elements

In light of the foregoing, the acts attributed to the defendant may 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. Forcing civilians pushing a heavy load to walk for hours while threatening them with death by means of weapons or beating them if they do not comply or do not move fast enough is likely to cause great suffering. This suffering is primarily physical, due to the long march the civilians were forced to undertake while pushing a heavy load and the beatings they endured along the way. The suffering is also psychological, due to the terror that gripped the civilians throughout the journey, as they were subjected to verbal intimidation, death threats, and beatings by the soldiers accompanying them. This treatment must also be characterized as humiliating and degrading. Forcing civilians to push a heavy load by threatening them with death, striking them to make them move at the imposed pace, and treating them as mere means of transportation amounts to a violation of their humanity and constitutes a very serious form of humiliation.

The Court further specifies that there is no basis for finding additional offenses regarding the beatings inflicted on the civilians and the death threats made against them, since these acts fall under the offenses of cruel, humiliating, and degrading treatment. As for the offense of slavery, it has not been committed. The duration of the transport was not, in fact, sufficient to conclude that powers of ownership were exercised over the civilians who were forced to participate in said transport.

Alieu KOSIAH ordered the transport. He was the highest-ranking officer present, since there was only him and his “group,” and the soldiers obeyed his orders. This attests to the defendant’s status as a superior. His liability under Article 18 of the Military Criminal Code (aCPM) is therefore established.

4.9.5.2 Subjective Elements

Alieu KOSIAH knew that by ordering the soldiers to carry out the transport, they would carry it out. Furthermore, the defendant could not have been unaware of the civilian status of the conscripted individuals. It follows from the foregoing that he acted intentionally.

Furthermore, the alleged acts occurred in the context of a non-international armed conflict, namely the First Liberian Civil War, a fact of which Alieu KOSIAH was aware.

4.9.6 Conclusion

In light of the foregoing, Alieu KOSIAH is found guilty of the following offenses:

- giving an order, as a co-perpetrator, to loot, pursuant to Art. 109(1) and Art. 108(2) of the former 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 Protocol II (Section 1.3.11 of the indictment);

- giving the order to inflict, and the actual infliction of, cruel, humiliating, and degrading treatment on several civilians in the form of forced transport, pursuant to Articles 109(1) and 108(2) of the former Swiss Military Penal Code (aCPM) *in conjunction with* Article 18 of the aCPM, Article 3(1)(1(a) and (c) common to the General Provisions and Art. 4, para. 2(a) and (e) of PA II (para. 1.3.12 of the indictment).

4.10 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 Russell HASTING near the Kehair River

According to 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 looting of the Pasolahun generator, between October and November 1993, and between March 1994 and the end of 1995, respectively (section 1.3.13 of the indictment). 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 killing the civilian Russell HASTING near the Kehair River (section 1.3.15 of the indictment).

4.10.1 Arguments of the Parties

4.10.1.1 The MPC maintains that the accounts of Levi FARRELL and Eddie COULTER are credible (CAR 5.200.710 et seq.). It highlights the song that Levi FARRELL hummed during the proceedings, arguing that the lyrics refer to the flight of the ULIMO and the Mandingos, respectively, from Liberia and their return, as if

lions that no one can stop from doing what they want. The MPC notes that the defendant allegedly admitted the existence of this song, essentially confirming the meaning of the lyrics. With regard to the witnesses John THOMAS, Russel, and Brian HASTING, who were heard at the trial, the MPC refers to the trial judgment, arguing that it adequately summarizes the reasons why the statements of these three individuals lack any credibility. The MPC adds that it has been proven that there was a generator in Pasolahun and that it was looted by ULIMO. The MPC also presented additional arguments at the trial regarding the credibility of the statements made by Levi FARRELL, Eddie COULTER, and the witness Kevin THOMAS (TPF 40.721.106 et seq.). As for the law, the MPC refers to the contested judgment (CAR 5.200.749).

4.10.1.2 Attorney WAVRE (CAR 5.200.903 et seq.) argues that the defendant sought to discredit the victims whenever he had the opportunity. According to Mr. WAVRE, Alieu KOSIAH highlighted what Westerners would consider, at the very least, an incongruity, whereas in Liberia these are common practices, citing as examples namesakes, the relatively fixed nature of a person's name, certain public facilities, and the geography of Liberia. He further notes that the defense no longer disputes the existence of a generator in Pasolahun. Attorney WAVRE emphasizes that despite some changes in the testimony, one consistent element remains: namely, that the defendant allegedly ordered the looting of the generator, ordered that it be taken to Kolahun, and executed Russell HASTING—a sequence of events that is clearly and consistently stated and corroborated by the testimony of Eddie COULTER, Levi FARRELL, and Kevin THOMAS.

4.10.1.3 The defense challenges the convictions handed down by the Criminal Court (CAR 5.200.422, 424, 527 et seq., 557 et seq., and 599 et seq.). Reiterating the arguments presented before the trial judges (TPF 40.721.502 et seq., 593 et seq., 620 et seq., and 660 et seq.), the defense argues that Levi FARRELL and Eddie COULTER did not recognize Alieu KOSIAH and calls into question the credibility of their testimony as well as that of the witness Kevin THOMAS. The defense specifically accuses Eddie COULTER of contradicting himself regarding the circumstances—and in particular, the existence or nonexistence of a village—surrounding the deaths of two people during the forced march. It argues that the manner in which Eddie COULTER allegedly learned the name of Kenneth FARELL, as well as the cause of Russell HASTING's death—whether he was shot or died of exhaustion—and the number of shots fired to kill Russell HASTING, among other examples, were the subject of conflicting statements among the plaintiffs.

4.10.2 Assessment of the Evidence

4.10.2.1 This indictment stems from the criminal complaints filed by Levi FAR-RELL and Eddie COULTER on July 3, 2014 (*supra*, A.1). In this regard, the Court notes at the outset that a criminal complaint does not constitute evidence (*supra*, para. II.1.2.2.3). It also notes that it is analyzing testimony—specifically, the credibility of the statements—and not the credibility of Levi FARRELL and Eddie COULTER (*supra*, para. II.1.2.6.1). Finally, it notes that the theory of a conspiracy organized by CIVITAS MAXIMA and the GJRP—which the defense accused of fabricating testimony in exchange for material benefits—has been dismissed (*supra*, para. II.1.1.3) and that the identifications—both from a photo lineup and in person—conducted during the proceedings cannot be used, whether as evidence for or against the defendant (*supra*, para. II.1.3.3.2 and II.1.3.3.3).

4.10.2.2 Regarding the identification of Alieu KOSIAH by Levi FARRELL and Eddie COULTER, the latter provided details that were frequently cited during the proceedings to describe the defendant's physical appearance at the time of the events (*supra*, consid. II.1.3.3.6). Levi FARRELL stated that Alieu KOSIAH was thin, "taller than me," "darker-skinned than me," and that he had "pop eyes" (MPC 12-07-0008, lines 22–24). He explained that he recognized him by his eyes: "It's him. The eyes I told you about, the 'pop eyes'" (MPC 12-07-0041, line 3; see also TPF 40.756.009 et seq., Q&A nos. 41 et seq.). He knew the defendant by the name of *Chief* KOSIAH as well as by his title of H&H (*Headquarters and Headquarters Commander*) (MPC 12-07-0009, Q&A No. 20; TPF 40.756.008, Q&A No. 31) and stated that he recognized his reactions during the trial in the court of first instance: "[…] we could see his reactions, and it was indeed a reaction unique to him—that when he gets angry, when he's upset, he starts shouting in that way. There's also his arrogance" (TPF 40.756.010 ff., Q/A No. 41). Eddie COULTER, for his part, stated that Alieu KOSIAH was thin, had "very dark" skin, and had "big, big eyes," specifying that they were the same as his own (MPC 12-26-0020, line 22; TPF 40.754.007, lines 1–4). He also explained that he had recognized the defendant's voice (TPF 40.754.007, lines 3 ff.). He knew him as *Chief* KOSIAH (MPC 12-26-0047, lines 41–43; TPF 40.754.005, Q&A No. 27) and
stated that he recognized the defendant's behavior during the trial in first instance:
"I was able to see and recognize his behavior when he loses his temper. He was the kind of person who, when he got angry, could have you killed" (TPF 40.754.007, Q&A No. 39; see also CAR 5.306.007, Q&A Nos. 36 et seq.; *supra*, para. II.1.3.3.7). This evidence has convinced the Court. The Court therefore finds that Levi FARRELL and Eddie COULTER were confronted by Alieu KOSIAH at the time of the events.

4.10.2.3 As for the alleged events, the statements of Levi FARRELL and Eddie COULTER, as well as those of the witness Kevin THOMAS, remained consistent throughout the proceedings and were consistent on the essential points. They are further characterized by numerous indications of credibility.

4.10.2.4 Regarding Levi FARRELL's testimony, the Court notes that he provided details regarding the key elements of his account. He explained that, prior to the war, there was a large machine in Pasolahun that generated electricity, and that ULIMO had sent people to retrieve it; they had dismantled the machine into individual parts and instructed them to carry it to Kolahun (MPC 12-07-0011; lines 25–28; TPF 40.756.012, Q/A nos. 55 et seq.). When questioned during the appeal proceedings about the machine, he described it as very large, noting that as a small child, he had to raise both arms to reach the top (CAR 5.307.015, Q/A No. 87). He explained how the machine was disassembled for transport: "What they did was take apart certain parts of the generator, but they couldn't disassemble the main part. So what they did was take three long poles and slide them under the main part of the generator that couldn't be disassembled. Then, a whole group of people carried it together—a large group of 30 to 40 people lifted it and carried it on their heads" (TPF 40.756.016, lines 1–5). The commander on site was SKY FACE KABBAR, who stated that Alieu KOSIAH had sent him to retrieve the generator (MPC 12.07-0011, lines 28–30; TPF 40.756.012, Q&A No. 55). He was also the commander during the transport (TPF 40.756.015, Q&A No. 78). Regarding the civilians conscripted for the transport, Levi FARRELL stated that there were many of them (MPC 12-07-0022, line 44; TPF 40.756.014, Q&A No. 68: "[…] there were perhaps around 50, 60, 70, or even more. There were many of us.") and that they were men, among whom were children aged fifteen or sixteen (TPF 40.756.014, Q&A No. 69). According to Levi FARRELL, forced marches generally took place while the soldiers beat the men with sticks, belts, or rifle butts (MPC 12-07-0023, lines 3–5, and 0029, lines 37–39; TPF 40.756.031, lines 1–3). During this particular transport, civilians were not allowed to take breaks, eat, or drink, and were subjected to threats (TPF 40.756.017). The fate of two boys participating in the journey, as reported by Levi FARRELL, illustrates these conditions: "On the way, there were two boys: Lu FARREL and Kenneth FARREL. They were tired and hungry. […] We were in front and they were behind. I heard that Sky Face Kabbar had told them that if they were tired and hungry, they would die right there. I heard gunshots behind me" (MPC 12-07-0011, lines 34–38; TPF 40.756.018, Q/A No. 96). Levi FARRELL also provided a detailed account of the arrival on the outskirts of Kolahun, the crossing of the Kehair River, and the execution

of his uncle Russell HASTING, Levi FARRELL also provided a detailed account. He first stated that SKY FACE KABBAR, after they had crossed the river, told them that the chief—Alieu KOSIAH—was waiting for them with the spare parts (MPC 12-07-0011, lines 40–42). He noted that Alieu KOSIAH was wearing a uniform (MPC 12-07-0023, line 7; TPF 40.756.028, Q/A No. 160) and that he was angry (TPF 40.756.021, Q/A No. 116; CAR 5.307.020, Q&A No. 118). In response to questions from the defense during the appellate proceedings, Levi FARRELL provided a detailed description of the Kehair River *checkpoint*, its surroundings, and the scene of his uncle's murder (CAR 5.307.022, Q&A No.[os] 127 ff., and 026, Q&A [nos.] 160 ff.), this description being supplemented by the annotations he made on a sketch during the same proceedings (CAR 5.200.071). Levi FARRELL explained that his uncle "was very tired and didn't want to go anywhere anymore" (MPC 12-07-0011, lines 42 ff.; TPF 40.756.019, Q&A No. 101), that the soldiers formed a circle around his uncle (CAR 5.307.024, Q&A No. 146), and that Alieu KOSIAH had killed his uncle using an AK-47 (MPC 12-07-0023, lines 20 ff.; TPF 40.756.011, Q&A No. 47) or, at the very least, with a firearm (CAR 5.307.027, Q&A No. 164). Levi FARRELL provided details that were out of the ordinary. In particular, he stated that immediately after his uncle's death, the soldiers had broken into a song in Mandingo. The song spoke of the return of the Mandingos—after having been driven out of Liberia by the NPFL in 1990—

"like lions" and with no one able to stop them from doing so

that they wanted (TPF 40.756.022, Q&A No. 120, pp. 047 ff., Q&A No. 291; CAR 5.307.028, Q&A [Nos.] 167–172). He also described how his uncle's body had been left at the scene and that, on the way back, he had noticed that it was beginning to decompose (MPC 12-07-0023, lines 24 ff.). His account is further characterized by his description of interactions and discussions, which lend it a sense of concreteness. He thus reported that they had no choice but to participate in the transport, as the village chief had told them to stay for the transport and that if they left, their parents would have to carry their load (TPF 40.756.013, Q/A No. 67), adding that a refusal to participate would put them at risk of losing their lives (TPF 40.756.014, Q/A No. 71). He also explained that they did not speak directly with the ULIMO soldiers: "As I said on the first day, all the information that the soldiers were supposed to give to civilians went through the S-2s" (MPC 12-07-0032, lines 39 ff., and 0038, lines 40 ff.; see also TPF 40.756.051, Q&A No. 316). When asked about the chain of command between SKY FACE KABBAR and Alieu KOSIAH, he mentioned the respect with which the former saluted the latter (TPF 40.756.023, Q&A No. 127; see also CAR 5.307.018, Q&A No. 101). He was also able to describe the interaction between his uncle and Alieu KOSIAH at the moment the latter shot him:

"Alieu KOSIAH told him that if he was too tired, he would die right there, that he would kill him.

Since my uncle kept saying he didn't want to go on, he shot him" (MPC 12-07-0011, lines 43–45). Levi FARRELL also spontaneously admitted to gaps in his account, as evidenced by his answers regarding the load

he was carrying or regarding a possible escape attempt by Lu FARRELL and Kenneth FARRELL during the transport. He explained that he did not know what was in the bag he was carrying (TPF 40.756.016, Q&A No. 82) and that he did not see any attempt to escape by the aforementioned individuals (MPC 12-07-0039, lines 16 ff.).

4.10.2.5 As for Eddie COULTER, his statements are consistent and align with those of Levi FARRELL regarding the key details. This is the case for the description of the arrival of the ULIMO soldiers in the village of Pasolahun, as Eddie COULTER reported that they had said their "Bossman" KOSIAH had sent them to retrieve the machine (MPC 12-26-0015, lines 20–23; TPF 40.754.008, Q/A No. 44), and the method of transport, with Eddie COULTER stating the following: "The largest part was the one in the center of the machine. It was so heavy that it took four people to carry it. We tied two sticks to it in the shape of a cross. It took four people to carry it—one in front, one behind, and one on each side. Then the other parts were divided among the rest of the men" (MPC 12-26-0017, lines 24–27). It should be noted here that while these statements regarding how the machine was lifted and carried and the number of people involved agree in principle, they diverge slightly between the accounts of the various participants in the forced transport—for example, regarding the number of poles that had to be used—this illustrates once again that the testimonies are not coordinated and, consequently, all the more credible. He also stated that the loads were carried by men, including youths aged thirteen or fourteen (TPF 40.754.010, Q/A No. 61), and that they were beaten, particularly if they slowed down (MPC 12-26-0017, lines 27 ff.; TPF 40.754.014, Q/A No. 89) and risked losing their lives if they refused (TPF 40.754.010, Q/A No. 62). By way of illustration, Eddie COULTER also mentioned the deaths of Kenneth FARRELL and Lu FARRELL during the journey (MPC 12-26-0018 ff.; TPF 40.754.014, Q&A No. 94). He further described the *checkpoint* near the Kehair River, at the entrance to Kolahun (MPC 12-26-0020; TPF 40.754.033, Q&A nos. 236 et seq.; CAR 5.306,012, Q&A No. 61). Regarding
the events surrounding the death of Russell HASTING, he stated that Alieu KOSIAH was at *the checkpoint*, wearing a uniform and camouflage fatigues, respectively, as well as carrying a weapon at his side (MPC 12-26-0020, lines 15–17; TPF 40.754.012, Q&A No. 74). He explained that he had seen a man from his village (*"one of the brothers from* Pasolahun") talking with Alieu KOSIAH and telling him that he was too tired, and that the defendant had replied that if he did not carry the load to the nearby village, the soldier would have to carry it instead, and that he would kill him. He added that he saw the defendant holding a .45-caliber pistol in his right hand and heard a gunshot, noting—regarding the number of shots fired—that the area was very noisy (MPC 12-26-0020 et seq., lines 30 ff.; TPF 40.754.016, Q/A nos. 104–106). He stated that he saw the three bodies again along the road on his way back

(MPC 12-26-0020, lines 20 ff.). His account is also characterized by extraordinary details. He explained, for example, that some child soldiers were so small that their weapons dragged on the ground and that these young soldiers were the worst (MPC 12-26-0040, lines 1–4). Regarding the soldiers escorting them, Eddie COULTER also stated the following: “What they said was that if we didn’t walk fast enough, then the flies would bring the message to our parents, which meant we’d be killed” (TPF 40.754.014, lines 21–23; see also CAR 5.306.010, Q/A No. 50). As for how the transport was carried out, he described his strategy for being able to continue carrying his load despite fatigue: “We carried them on our heads, and when we got tired, we could carry them on our shoulders” (TPF 40.754.012, Q/A No. 78). His account is further substantiated by the fact that it is contextualized. Eddie COULTER thus explained that the transport was to take place the day after the soldiers’ arrival in Pasolahun, in the morning after waking up and brushing his teeth (TPF 40.754.009 et seq., Q/A Nos. 56 et seq.). Finally, he described the helplessness with which the ULIMO were received and the dehumanization that took place under their occupation, as illustrated by these two quotes: “They were the ones who dismantled the machine, and our leader told them that he was powerless against them and that, since they had the power, they could do as they pleased ” (CAR 5.306.010, Q/A No. 49) and “[…] what they said about us was that we weren’t even human beings” (CAR 5.306.012, lines 35 ff.).

4.10.2.6 Regarding the testimony of Kevin THOMAS, the Court notes at the outset that he admitted that his initial motivation was to obtain a scholarship, as his friend—who had come to pick him up in his village—had told him (MPC 12-18-0006; TPF 40.763.033 ff., Q&A No. 237, and 036 ff., Q&A Nos. 254
to 256). Once he arrived in Monrovia, he discovered that the task was to recount what he knew about the war and Alieu KOSIAH, which, in his own words, posed no problem for him (MPC 12-18-0006; TPF 40.763.037, Q/A No. 256), adding the following: “For the sake of justice, it didn’t bother me to have put my work and activities on hold. If it’s for the sake of justice, it’s even better” (TPF 40.763.037, lines 10–12). His admission of his initial motive and the fact that he thereby cast himself in a negative light constitute an initial indication of the credibility of his account. The Court further notes that the witness provided details frequently cited during the proceedings to describe the defendant’s physical appearance at the time of the events (*supra*, consid. II.1.3.3.6), describing him as follows: “He is Black and had ‘pop-eyes’” and “[h]e wasn’t fat. But he wasn’t thin either. He was well-built” (MPC 12-18-0009). The Court therefore finds that Kevin THOMAS was confronted by Alieu KOSIAH at the time of the events. As for Kevin THOMAS’s statements, they are consistent and align with those of Levi FARRELL and Eddie COULTER regarding the key details. He explained that the ULIMO soldiers used to come at 5:00 a.m. and that one day they had taken everyone to the square because they wanted to

transport a generator on special orders from H&H Alieu KOSIAH (MPC 12-18-0006 et seq.; TPF 40.763.009 et seq., Q/R No.os 65–69), it being specified that he would learn, upon arriving at the bridge over the Kehair River, that the person holding that rank was Alieu KOSIAH (MPC 12-18-0007; see also TPF 40.763.008, Q/R No. 53, and 0019 et seq., Q/R No. 144) and that he knew the identities of those who had given orders to the ULIMO soldiers present, namely SENEGALEE, SKY FACE KABBAR, and ELEPHANT TAIL (TPF 40.763.010, Q/R No. 66; see also MPC 12-18-0007). Kevin THOMAS explained that Alieu KOSIAH had not participated in the transport and that he had seen him only upon arrival in Kolahun (TPF 40.763.013, Q/R No. 92), dressed in military uniform (TPF 40.763.013, Q/A No. 93), noting, moreover, that he was the highest-ranking soldier present based on his demeanor and the way he spoke and shouted in an authoritative voice (TPF 40.763.013 et seq., Q/A Nos. 95 and 99). He also stated that, during the transport, the soldiers showed respect toward their commander when they spoke of him (TPF 40.763.014, Q/A No. 100). Kevin THOMAS explained that the soldiers had asked the young men to carry the machine to Kolahun and that the men had picked up the machine by positioning themselves under a scaffold in order to carry it (MPC 12-18-0007; see also TPF 40.763.015 et seq., Q&A No. 114: “They were carried on their heads. There was a frame, and then they were placed on the head. You’re asking me what the frame, the structure, looked like. They were structures made of crisscrossed wood. There were pieces of wood running in one direction and then in the other.”). During the preliminary investigation and at the trial, he mentioned the deaths of the civilians who had participated in the transport—named Lu FARRELL and Kenneth FARRELL—after they complained of being hungry and tired (MPC 12-18-0007; TPF 40.763.017 et seq., Q&A No. 127 et seq.). Kevin THOMAS mentioned another person who, while they were on the hill overlooking the town of Kolahun, began complaining that he had not eaten that morning. This person was Russell HASTING. The witness added that the soldiers accompanying them had said, as another group of soldiers approached the bridge, “Boss-man H&H is approaching the river” (MPC 12-18-0007). Regarding the death of Russell HASTING, Kevin THOMAS described the scene as follows: “When he crossed the bridge, H&H said, ‘You’re tired; you’re wasting our time,’ so he pulled out his pistol, [*the witness mimics the motion of drawing* the gun] shot him, and killed him” (MPC 12-18-0008; see also TPF 40.763.019 et seq., Q&A nos. 143–151). He reportedly heard a gunshot (MPC 12-18-0032; TPF 40.763.020, Q&A no. 149). Kevin THOMAS’s account is

is further characterized by the presence of extraordinary details that are irrelevant to the key elements of his account, as evidenced by the fact that he explained that, on the way back toward Pasolahun, they had taken their time to “play soccer, talk among ourselves, try to live as before, and try to put aside what had happened ” (MPC 12-18-0008), which also constitutes an account of the psychological experience—in this case, that of the entire group of which he was a part. He admitted to having made a mistake

in his testimony and spontaneously corrected himself, as illustrated by his statements regarding the number of people who died during transport (TPF 40.763.022, Q&A No. 167). Kevin THOMAS also provided explanations regarding the context in which the events took place. For example, in connection with the death of Brian HASTING (*see below*, para. II.4.11), he stated that the commanders carried pistols because they avoided carrying heavy items (TPF 40.763.024, Q/A nos. 174 et seq.). Finally, the Court notes another indication of the concrete nature of his testimony, namely when he interpreted Alieu KOSIAH's statements, according to which the ULIMO had released the gbandis and the latter had been happy (MPC 13-01-0387). He then offered a well-articulated response to the defendant's remarks:

"[Alieu KOSIAH] says that all Muslims are friends. But your best friend is your greatest enemy […] The mother of Alhadji G. V. KROMAH [the *leader* of ULIMO-K] was from Kolahun. To prove that they were not our friends, during the 1997 elections, Charles Taylor, the leader of the NPFL, won in Kolahun, which shows that ULIMO were not our friends. "If you're good to me, I'm good to you. If ULIMO had been good, it wouldn't have been Charles Taylor, the leader of the NPFL, who would have won" (MPC 13-01-0388).

4.10.2.7 The Court further considers that many of the defense's arguments concern ancillary issues and are aimed not at calling into question the credibility of the testimony regarding the facts, but rather the credibility of Levi FARRELL, Eddie COUL-TER, and Kevin THOMAS (*supra*, para. II.1.2.6.1). As for the arguments concerning points relevant to the assessment of the statements regarding the alleged facts, they do not stand up to an analysis of the record, and several of them, on the contrary, tend to reinforce the credibility of the accounts given by Levi FARRELL, Eddie COULTER, and Kevin THOMAS. The Court will now examine them in detail to the extent that they have not already been addressed and appear relevant to the assessment of the testimony regarding the alleged facts.

4.10.2.8 The defendant has contested the facts throughout the proceedings. During the appellate proceedings, he stated that he had never been to Pasolahun, doubted that there was electricity in that village at the time of the events, and was 100% certain that Russell HASTING was alive (CAR 5.301.053, Q/A No. 129). At the trial, he had stated that the only Russell HASTING from Pasolahun was still alive and that it was impossible for two Russell HASTINGS—whose brothers were both named Brian HASTING—to have lived in the same village at the same time (TPF 40.731.058, Q/A Nos. 282 et seq.). The Court notes that it has already had occasion to establish that the defendant was present in Lofa County as early as March 1993 (*supra*, para. II.2.2.1.3). It has also established that he was mobile and frequently traveled within Lofa (*supra*, para. II.2.2.1.2). It is also possible that the defendant never went to Pasolahun, since

the charges against him are, on the one hand, that he ordered the looting and transport of the generator and, on the other hand, that he killed the civilian Russell HASTING. It is, moreover, surprising that the defendant could make such a claim, given that he stated he had never been there. The Court therefore finds that he was present in Kolahun at the time of the events. As for the argument seeking to cast doubt on the availability of electricity in Pasolahun, it is unfounded, since the testimonies of Levi FARRELL, Eddie COULTER, and Kevin THOMAS all agree on the existence of the generator that was looted on the orders of Alieu KOSIAH. It is not decisive whether this generator was operational at the time it was taken by the ULIMO. The Court further notes that the witness Russell HASTING identified Levi FARRELL as his brother, Brian HASTING, and then—after the presiding judge of the Criminal Court inquired about the witness's possible vision problems—as a certain Jasper O'CONNELL. These statements, made at the beginning of the hearing, constitute very strong evidence that his testimony had been memorized and that he attempted to recite it without realizing that the proceedings did not concern the subject he intended to address. The reliability of his statements is therefore seriously called into question. As for the testimony of John THOMAS, to whom the defendant also refers (CAR 5.301.053, Q/A No. 129), the same conclusion applies. The witness John THOMAS did, in fact, provide details regarding the dimensions of the looted generator, namely that it was approximately 60 cm tall and was placed on a cement slab measuring 80 cm by 80 cm (MPC 12-34-0019, lines 9–15), which do not in any way correspond to those provided by Levi FARRELL, Eddie COULTER, and Kevin THOMAS. He also claimed to have been the chief of the village of Pasolahun from 1992 to 2002 during his hearing before the MPC (MPC 12-34-0013, line 14), before stating before the Criminal Court that he had served in that capacity only from 2002 to 2003 (TPF 40.764.010, Q&A No. 33). Furthermore, John THOMAS's limited knowledge of the COULTER family of Pasolahun at the time of his hearing before the MPC changed so significantly by the time of the trial that he was able to trace the entire genealogy of that family (TPF 40.764.006 et seq., Q&A nos.[os] 8–15, and 20), which further undermines the authenticity of his statements. Finally, regarding the question of whether Russell HASTING is in fact deceased or whether he is in reality the person who testified at the trial, and more generally regarding the impossibility that two pairs of brothers with the same last names and first names could have lived at the same time in a small village like Pasolahun, the Court finds that the explanations provided by Levi FARRELL and Eddie COULTER on this matter are credible. Indeed, regarding the witnesses Russell and Brian HASTING, as soon as they were confronted with them during the trial proceedings, they stated that they knew them by the names Russell and Brian THOMAS (TPF 40.765.003 et seq., Q&A [nos.] 11 et seq. and 16 et seq.; TPF 40.766.003, Q&A nos. 11 et seq. and 16 et seq.; CAR 5.306.024, Q&A no. 133; CAR 5.307.005, Q&A nos. 10–12). There is no

Moreover, there is nothing implausible about two pairs of brothers having the same

names, even if they come from the same village, especially since the witnesses have multiple names. The record also contains other examples of homonyms or of individuals who may have changed their names during their lifetimes (see, in particular, *infra*, consid. II.4.10.2.10). The Court further notes that the document submitted by the defense at the trial level, purporting to establish the genealogy of the HASTING family (TPF 40.721.033), cannot call this finding into question, since it cannot be inferred from it that the Russell and Brian HASTING mentioned are the only ones to have lived in Pasolahun. It follows that the testimonies of Russell and Brian HASTING before the Criminal Court, to which the defendant refers (CAR 5.301.053, Q/A No. 129), are not sufficient to call into question the deaths of Russell and Brian HASTING during the First Civil War (see, regarding the murder of Brian HASTING, *below*, para. II.4.11) nor the content of the statements made by Levi FARRELL, Eddie COULTER, and Kevin THOMAS regarding the events at Pasolahun, and in particular the murder of Levi FARRELL's uncle, Russell HASTING. The Court notes, for good measure, that regardless of the victim's identity, the aforementioned testimonies concur that Alieu KOSIAH killed a person near the Kehair River.

4.10.2.9 The defense argues that the accounts of Levi FARRELL, Eddie COULTER, and Kevin THOMAS contain inconsistencies. It criticizes Eddie COULTER for initially stating that there was a village between the bodies of Kenneth FARRELL and Lu FARRELL, who had been killed along the route, then that the bodies were about ten meters apart and that there were no villages between them (CAR 5.200.528 s.), which would contradict his first account. However, Eddie COULTER's response indicating a distance of about ten meters was given in answer to the question of whether the two bodies were together during the return trip (MPC 12-26-0082, lines 26–29). Depending on what may have happened to the bodies between Eddie COULTER's two statements, it cannot be ruled out that he made an observation—or has a memory of one—that differs from what he described regarding the outward journey. Furthermore, it is not clear from Eddie COULTER's initial statements regarding a village that the second shot was fired after passing that village. For these reasons, the credibility of Eddie COULTER's statements cannot be called into question.

4.10.2.10 Regarding Eddie COULTER's knowledge of Kenneth FARRELL's name, the defense puts forward two arguments (CAR 5.200.538 et seq.). First, the defense alleges that Levi FARRELL could not have told Eddie COULTER this, contrary to what the latter claimed (MPC 12-26-0019), since Levi FARRELL stated that he had not discussed his complaint with Eddie COULTER (MPC 12-07-0035, lines 16–23), and that Levi FARRELL himself did not learn the victim's name until after returning from Kolahun (MPC 12-07-0022 et seq.,

Q/A No. 48). However, it is clear from the hearing cited by the defense that Eddie COULTER asked Levi FARRELL for this information at the time of the events, whereas Levi FARRELL was clearly referring to the time the complaint was filed. Furthermore, Levi FARRELL did not state that he was told the name of the person in question on the way back. In fact, he merely said that he had seen the bodies on the road on the way back and that the villagers had told him that SKY FACE KABBAR had killed them. Second, the defense argues that it would not have been possible for Eddie COULTER to have obtained the information from Kevin THOMAS, since the latter stated that he did not know Eddie COULTER (MPC 12-18-0039, lines 16 ff.). However, Eddie COULTER explained at the trial that the "Kevin THOMAS" with whom he had helped transport the generator from Pasolahun and ammunition from Gondolahun (see *below*, para. II.4.11) was the son of Joshua THOMAS (TPF 40.754.030, Q/A No. 213), it being noted that the identity of this other "Kevin THOMAS" was corroborated by the statements of Levi FARRELL (TPF 40.756.042, Q/A No. 260). Eddie COULTER had, in fact, already mentioned this Kevin Joshua THOMAS during his hearing with the MPC (spelled "Kevin THOMAS_1" [MPC 12-26-0041, line 24]). The Court further notes that it had summoned Kevin THOMAS (Joshua's son) to appear at the appellate hearing, but that he did not appear (*supra*, C.24).

4.10.2.11 The defense points out that Eddie COULTER stated that he heard one gunshot (MPC 12-26-0021, lines 2–5), whereas Levi FARRELL reportedly heard two (MPC 12-07-0023, lines 22 ff.) (CAR 5.200.540). However, it should be noted that Levi FARRELL spontaneously indicated that he no longer really remembered how many shots had been fired when he was questioned about this at the trial (TPF 40.756.021, Q&A No. 117), and that it was possible he had said "one bullet" on one occasion and "two bullets" on another, citing his anxiety and nervousness at the prospect of being questioned for the first time—before the MPC—and, moreover, in a country other than his own (TPF 40.756.053, Q/A No. 328). Furthermore, the French translation of *"gun* sound"—an expression used by the witnesses—raises difficulties regarding whether it should be interpreted as one or more gunshots. In any case, it should be noted that there may have been some confusion regarding the number of gunshots, but that this confusion is understandable given the length of time that has elapsed since the events, the stressful situation caused by the march and the murders that punctuated it, and the noise that, as Eddie COULTER indicated, prevailed at the scene (CAR 5.306.014, Q/A No. 72), with the caveat that it cannot be ruled out that the confusion stemmed from a possible echo of the gunshot.

4.10.2.12 The defense notes that Eddie COULTER stated that Alieu KOSIAH had killed Russell HASTING with a .45-caliber pistol (MPC 12-26-0021, lines 19–24), whereas Levi FARRELL, for his part, spoke of an AK-47 (MPC 12-07-0023, line 21),

and both of these accounts contradict Levi FARRELL's complaint, which cites exhaustion as the cause of death (MPC 05-01-0013). However, there is no doubt, in light of the statements not only of Levi FARRELL but also of Eddie COULTER and Kevin THOMAS, as analyzed above (*supra*, paras. II.4.10.2.4 through II.4.10.2.6), that it was the fatigue experienced by Russell HASTING that led to Alieu KOSIAH's intervention and the fact that he subsequently killed him. The testimonies also concur regarding the use of a firearm. As for the specific type of weapon involved, the discrepancies in the accounts of those who witnessed the scene are understandable given the confusion at the scene, the length of time that has elapsed since the events, the young age of the witnesses at the time of the events, and the state of shock in which they found themselves. Moreover, it cannot be ruled out that Alieu KOSIAH had both weapons at his disposal.

4.10.2.13 The transport alleged by the plaintiffs also took place in the context of Liberia's first civil war, since forced marches—whether for the transport of weapons and ammunition or of looted goods—were part of ULIMO's *modus operandi*, as the Court has already noted above (*supra*, para. 2.1.2.6). This is further evidenced by several other factual findings concerning various locations in Lofa County, analyzed in this judgment (*supra*, paras. II.4.3, II.4.8, and II.4.9, and *infra*, paras. II.4.11, II.4.13, II.4.14, and II.4.16). The transportation in question is also consistent with the defendant's role within ULIMO, as he was responsible for the organization's logistical and financial matters and was required to travel frequently (*supra*, para. II.2.2.1.2). In addition, the route taken by the convoy—namely, from Pasolahun to Kolahun—makes practical sense given the layout of the area, as illustrated by the maps in the case file (MPC 10-01-0565; CAR 5.200.926), since the generator was transported, in the words of Levi FARRELL, to the center of the "Gbandi district" in Kolahun, from where it could then be shipped onward, presumably to Guinea (TPF 40.756.015, Q/A No. 86). Furthermore, the accounts provided by the participants in this convoy regarding their perception of the duration of the march are consistent—namely, nine hours according to Kevin THOMAS (MPC 12-18-0012), a day's walk according to Levi FARRELL (MPC 12-07-0011), and twelve hours according to Eddie COULTER (MPC 12-26-0061)—and are consistent with the distance traveled, which is estimated at approximately 40 kilometers based on the maps in the case file. Walter VARGAS further confirmed that the ULIMO were looting electric generators (MPC 12-16-0032, Q/A No. 26, and 0035, Q/A No. 33), which is also illustrated by the looting of the generator at the Foya power plant (*supra*, para. II.4.9). Finally, the episode involving the song sung by the ULIMO after the murder of Russell HASTING, which referred to the ULIMO's return as lions and to the fact that no one could stop them from doing as they pleased after having been driven out by the NPFL

(TPF 40.756.022, Q&A No. 120, 047 ff., Q&A No. 291; CAR 5.307.028, Q&A Nos. 167 through 172), is echoed in the statements of various other participants in the proceedings (see, in particular, the statements of Georges ROSADO [MPC 12-08-0018] and Walter VARGAS [MPC 12-16-0038]; *supra*, para. II.2.2.1.1).

4.10.2.14 In light of the foregoing, the Court finds that Alieu KOSIAH ordered the looting of the generator in the village of Pasolahun and the forced transport of that generator by civilians—including Levi FARRELL and Eddie COULTER—from Pasolahun to Kolahun. Participating in this forced transport was a traumatic experience for Levi FARRELL and Eddie COULTER. During the transport, they were forced to carry a heavy load for several hours, under threat of being killed or beaten if they did not comply. Three civilians died during the transport, including Russell HASTING, Levi FARRELL's uncle. Upon reaching the bridge over the Kehair River, on the outskirts of Kolahun, and after stating that he was tired and could no longer continue, Russell HASTING was shot and killed by Alieu KOSIAH, who fired at least one shot.

4.10.3 Ordering the looting of the Pasolahun generator

4.10.3.1 Objective Facts

Taking the Pasolahun generator—property that benefits the entire village population—constitutes the offense of looting. Alieu KOSIAH ordered the looting. The soldiers who participated in the looting carried out his orders, which attests to the defendant's status as a superior. His liability under Article 18 of the Military Penal Code (aCPM) is therefore established.

4.10.3.2 Subjective Elements

Alieu KOSIAH knew that by ordering the looting, the soldiers would carry out his orders and thereby deprive the people of Pasolahun of the generator. It follows from the foregoing that he acted intentionally.

Furthermore, the alleged acts occurred in the context of a non-international armed conflict, namely the First Liberian Civil War, a fact of which Alieu KOSIAH was aware.

4.10.4 Ordering the forced transport of the Pasolahun generator by civilians

4.10.4.1 Objective Elements

In light of the foregoing, 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. Forcing heavily laden civilians to walk for hours

while threatening them with death by means of weapons or beating them if they do not comply or do not move fast enough is likely to cause great suffering. This suffering is primarily physical, due to the long march the civilians were forced to undertake while carrying heavy loads and the beatings they endured along the way. The suffering is also psychological, due to the terror that gripped the civilians throughout the journey, as they were subjected to verbal intimidation, death threats, and blows with rifle butts from the soldiers accompanying them. This treatment must also be characterized as humiliating and degrading. Forcing heavily laden civilians to march while threatening them with death, striking them to make them move at the imposed pace, and treating them as mere means of transportation amounts to a violation of their humanity and constitutes a very serious form of humiliation.

The Court further specifies that there is no basis for finding additional offenses regarding the blows inflicted on the civilians and the death threats made against them, since these fall under the offenses of cruel, humiliating, and degrading treatment. As for the offense of slavery, it has not been committed. The duration of the transport was not, in fact, sufficient to conclude that powers of ownership were exercised over the civilians who were forced to participate in said transport.

Alieu KOSIAH ordered the transport, and the soldiers obeyed his orders. This attests to the defendant's status as a superior. His liability under Article 18 of the Military Penal Code (aCPM) is therefore established.

4.10.4.2 Subjective Elements

Alieu KOSIAH knew that by ordering the soldiers to carry out the transport, they would carry it out. The defendant could not have been unaware of the civilian status of the conscripted persons or that, by acting in this manner, he was seriously violating their dignity. It follows from the foregoing that he acted intentionally.

Furthermore, the alleged acts occurred in the context of a non-international armed conflict, namely the First Liberian Civil War, a fact of which Alieu KOSIAH was aware.

4.10.5 Murder of the civilian Russell HASTING

4.10.5.1 Objective Elements

The execution of Russell HASTING—the civilian status of the executed victim having never been questioned and being, moreover, evident—under the circumstances described above objectively constitutes murder.

4.10.5.2 Subjective Elements

Alieu KOSIAH knew that by firing a firearm at Russell HASTING at close range, he would take his life. There was no evidence to lead the defendant to believe that the victim was not a civilian. It follows from the foregoing that he acted intentionally.

Furthermore, the acts in question occurred in the context of a non-international armed conflict, namely the First Liberian Civil War, a fact of which Alieu KOSIAH was aware.

4.10.6 Conclusion

In light of the foregoing, Alieu KOSIAH is found guilty of the following offenses:

- issuing an order to loot, 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 common to the General Provisions, and Art. 4(2)(g) of Protocol II (Section 1.3.13 of the indictment);
- ordering the cruel, humiliating, and degrading treatment of several civilians in the form of forced transport, pursuant to Art. 109(1) and Art. 108(2) of the former Military Criminal Code (aCPM) *in conjunction with* Art. 18 of the aCPM, Art. 3(1)(1)(a) and (c) common to the General Provisions (CG), and Art. 4, section 2, subparagraphs a and e of PA II (section 1.3.14 of the indictment);
- murder of a civilian pursuant to Articles 109(1) and 108(2) of the former Military Criminal Code (aCPM) *in conjunction with* Article 3(1)(1)(a) common to the General Provisions (CG) and Article 4(2)(a) of PA II (count 1.3.15 of the indictment).

4.11 Ordering and directing the forced transport of ammunition by civilians from Gondolahun to Fassama and the murder of the civilian Brian HASTING near the Lofa River

According to 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 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 (section 1.3.16 of the

indictment). He is also charged with having killed, during said transport, the civilian Brian HASTING near the Lofa River (section 1.3.17 of the indictment).

4.11.1 Arguments of the Parties

4.11.1.1 The MPC maintains that the accounts of Levi FARRELL and Eddie COULTER are credible (CAR 5.200.710 et seq. and 713 et seq.). With regard to the witnesses John THOMAS and Russell and Brian HASTING, who were heard at the trial, the MPC refers to the judgment of the Criminal Court, arguing that it adequately summarizes the reasons why the statements of these three individuals lack any credibility. The MPC also presented additional arguments at the trial regarding the credibility of the statements made by the various participants in the proceedings. It noted that there were numerous conflicting details in Brian HASTING's account and argued that the only consistent element came from the statements of Levi FARRELL and the witness Kevin THOMAS, according to which Brian HASTING was allegedly killed by the defendant, a fact that Eddie COULTER—who arrived a little later near the river—allegedly confirmed by stating that he had seen the victim's body. The MPC emphasized the military logic that would have governed this forced transport, heading south and thus away from Guinea. The MPC argued, in light of the evidence in the case file, that the fighting—*presumably* between March and June, in the context of the ULIMO split, or even against the LDF—must have taken place somewhere beyond Fassama (TPF 40.721.114 et seq.). As for the law, the MPC refers to the contested judgment (CAR 5.200.749).

4.11.1.2 Mr. WAVRE (CAR 5.200.903 et seq. and 919 et seq.) argues that the statements made by Levi FARRELL, Eddie COULTER, and Kevin THOMAS are consistent and credible with regard to both the forced transport and the murder of Brian HASTING. He argues that the ammunition was being transported to fight the LDF or ULIMO-J, noting in particular that the split within ULIMO in March 1994 had led to intense conflicts, as the MPC also maintains. He emphasizes that Gondolahun is the center of the Hembe clan and that ULIMO had established its regional headquarters there; for this reason, numerous shipments of looted goods were organized from the surrounding villages to Gondolahun to supply ULIMO soldiers with food, which would explain why the various ammunition shipments were organized from that town. According to Mr. WAVRE, the defendant's explanations—that such a transport would make no military sense—are not credible, particularly since there were battles against the ULIMO-J, and even the LDF, in the region, a fact of which the defendant would be aware. Finally, he argues that the defendant changed his account on appeal, now acknowledging the existence of a second locality named Fassama, in addition to the one near Zorzor.

4.11.1.3 The defense challenges the convictions handed down by the Criminal Court (CAR 5.200.422, 424, 527 et seq., 557 et seq., and 599 et seq.). Reiterating the arguments presented before the trial court (TPF 40.721.502 et seq., 593 et seq., 620 et seq., and 660 et seq.), the defense argues that Levi FARRELL and Eddie COULTER did not recognize Alieu KOSIAH and calls into question the credibility of their testimony as well as that of the witness Kevin THOMAS. The defense criticizes Levi FARRELL in particular for contradicting himself regarding the route he took during the forced transport and the nature of the load carried by Brian HASTING. It criticizes Eddie COULTER for making statements that contradict those of John THOMAS regarding the number of participants in the transport. The defense further argues that the testimonies of Levi FARRELL, Eddie COULTER, and Kevin THOMAS contain other contradictions, particularly regarding the person who allegedly organized the transport, the fact that Kevin THOMAS did not see the ammunition arrive in Gondolahun, the time of the convoy's departure, Alieu KOSIAH's presence during the transport, how the transport allegedly ended, the very fact that Kevin THOMAS and Eddie COULTER know each other, and the sequence of events surrounding Brian HASTING's alleged killing.

4.11.2 Assessment of the Evidence

4.11.2.1 This indictment stems from the criminal complaints filed by Levi FARRELL and Eddie COULTER on July 3, 2014 (*supra*, A.1). In this regard, the Court notes at the outset that a criminal complaint does not constitute a form of evidence (*supra*, para. II.1.2.2.3). It also notes that it is analyzing testimony—specifically, the credibility of the statements—and not the credibility of Levi FARRELL and Eddie COULTER (*supra*, para. II.1.2.6.1). Finally, it notes that the theory of a conspiracy organized by CIVITAS MAXIMA and the GJRP—which the defense accused of fabricating testimony in exchange for material benefits—has been dismissed (*supra*, para. II.1.1.3) and that the identifications—both from a photo lineup and in person—conducted during the proceedings cannot be used, whether as evidence for or against the defendant (*supra*, para. II.1.3.3.2 and II.1.3.3.3).

4.11.2.2 With regard to the identification of Alieu KOSIAH by Levi FARRELL and Eddie COUL-TER, the Court recalls that it has already found that they validly identified Alieu KOSIAH during the proceedings as the accused and refers to its analysis of the issue in connection with the events in Pasolahun (*supra*, para. II.4.10.2.2).

4.11.2.3 As for the alleged facts, the statements of Levi FARRELL and Eddie COUL-TER, as well as those of the witness Kevin THOMAS, were consistent throughout

the proceedings and consistent on the essential points. They are further characterized by the presence of numerous indicators of credibility.

4.11.2.4 Regarding Levi FARRELL's testimony, the Court notes that he provided details regarding the key elements of his account. He thus stated that after returning to Pasolahun—having been conscripted to transport the Pasolahun generator (*supra*, para. II.4.10)—he had heard that the ULIMO were fighting in Fassama (CAR 5.307.034, Q/A No. 213), reporting that they had allegedly asked civilians to carry ammunition from Gondolahun to Fassama (MPC 12-07-0012, lines 1–4). He indicated that he had participated in this transport as far as Sassahun (MPC 12-07-0024, lines 2 ff.; TPF 40,756,025, Q/R No. 140;
CAR 5.307.034, Q&A No. 211). He explained that a soldier had come from Gondolahun to relay the information to the village's *ground commander*, then to the S-2, who in turn went to see the village chief, who subsequently summoned the *"young boy chief*," whose responsibility was to call together all the young people in the village to find men for the transport (TPF 40.756.025 et seq., Q/R No. 144; see also CAR 5.307.032, Q/R No. 194). In doing so, he illustrated, through his statements, how the order traveled through the chain of command within ULIMO and the civilian hierarchy of the village of Pasolahun. He also stated that the civilians had been locked up in various houses in Gondolahun the day before their departure (TPF 40.756.027 et seq., Q/R No. 157), on the orders of Alieu KOSIAH (CAR 5.307.032,
Q/R Nos. 195 et seq.). He stated in detail that Alieu KOSIAH had given orders on the morning of the departure regarding the transport (TPF 40.756.028, Q/R No. 158) and that these were the usual orders, namely: *"Till go, any bush shake, you dead! "* (CAR 5.307.032, Q&A No. 201). In this regard, the Court notes that the defendant admitted that this expression was used, though he claimed that it originated with the AFL and was shouted at the enemy (CAR 5.301.026, Q&A No. 69). Levi FARRELL further explained that he had been forced to carry a military bag whose contents he did not know (MPC 12-07-0012, lines 4 ff.; TPF 40.756.029, Q&A nos. 170 ff.), as he was unable to carry ammunition like the others (TPF 40.756.029, Q&A No. 171). During the transport, he sometimes heard the name JUNGLE JABBAH (alias Mohammed JABBATEH) and sometimes that of Alieu KOSIAH, while specifying that he did not see the convoy commander with his own eyes during the transport, since he was surrounded by soldiers (MPC 12-07-0024, lines 7–11). On this point, he explained at the trial that he had not seen JUNGLE JABBAH, but had recognized the defendant (TPF 40.756.029, Q&A No. 169). Levi FARRELL provided details about the nature of the path taken, specifying that it was narrow, that cars could not travel on it, and—remarkably—that the grass had to be cut to allow passage (MPC 12-07-0027, lines 17–19; TPF 40.756.017, Q/R No. 89), as well as on the conditions of transport, explaining that the soldiers struck civilians with the butts of their rifles or—another extraordinary detail—that they cut "sticks" from the bush with which they beat them, to

make them move quickly (TPF 40.756.030 et seq., Q/A No. 183). As for the events that took place near the Lofa River, Levi FARRELL stated that there was no bridge and that the river had to be crossed by canoe (MPC 12-07-0012, line 13; TPF 40.756.033, Q&A No. 201; CAR 5.307.036, Q&A No. 227). He also described his uncle's death in the following terms before the MPC: "One of my uncles, Brian HASTING, was very tired and hungry. I saw that his shoulder was hurting. It hurt because he was carrying iron bars. He didn't want to go any further. A soldier then called his commander, Alieu KOSIAH, to tell him this. Alieu KOSIAH told him that if he could no longer carry this cargo, he had to stay there and that he would die there. Alieu KOSIAH then shot my uncle" (MPC 12-07-0012, lines 7–11; see also MPC 12-07-0024, lines 26–29; TPF 40.756.034 et seq., Q&A nos. 204 et seq.; CAR 5.307.036, Q&A no. 227). Levi FARRELL stated that he saw Alieu KOSIAH firing an AK that one of his child soldiers had handed to him (MPC 12-07-0024, lines 41 ff.; TPF 40.756.034, Q&A No. 208; CAR 5.307.036, Q&A No. 230), and that he did not recall the number of shots fired, which he said he had not counted (MPC 12-07-0024, lines 41 ff.; see also CAR 5.307.036 ff., Q&A Nos. 231 ff.). He also stated that the soldiers were calling out the defendant's name (MPC 12-07-024, lines 39 ff.) and that he had heard that day that the defendant was from Nimba County, specifically from Sagleipie (MPC 12-07-0012, lines 11 ff.; see also CAR 5.307.036, Q&A No. 227). He further added that his uncle's body had not been buried (MPC 12-07-0024, lines 37 ff.; TPF 40.756.047, Q&A No. 289). Finally, Levi FARRELL voluntarily acknowledged gaps in his account. He explained that he was not certain of the time at which he was conscripted, noting that this had happened frequently (TPF 40.756.026, Q/R No. 145), or that he did not know where Alieu KOSIAH was located within the convoy (TPF 40.756.030, Q/R No. 178).

4.11.2.5 As for Eddie COULTER, his statements are consistent and align with those of Levi FARRELL regarding the key details. He stated that five or six soldiers had arrived one evening in Pasolahun and had asked to speak with *the town chief* (MPC 12-26-0049, lines 6 ff.), whose name was Arthur THOMAS (MPC 12-26-0012, lines 12 ff.). 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 Hembe clan, comprising twelve localities (MPC 12-26-0049, lines 7–11; TPF 40.754.019, Q/A No. 130; CAR 5.306.019, Q/A No. 108). Eddie COULTER stated that the conscripted civilians, who came from all the villages of the Hembe clan—including Eddie COULTER—had then gone to Gondolahun, where they were to assemble, and that they had spent the night there (MPC 12-26-0049, lines 10–13; TPF 40.754.019, Q&A No. 130; CAR 5.306.019, Q&A No. 108), locked up to prevent them from escaping (TPF 40.754.022, Q&A No. 153; CAR 5.306.019, Q&A No. 110). He mentioned that fighting had taken place near Fassama (TPF 40.754.022, Q/R No. 150), clarifying on appeal that the fighting had occurred

between ULIMO-K and ULIMO-J (CAR 5.306.019, Q&A No. 108, and 021, Q&A No. 115).

Regarding the load he had to carry, Eddie COULTER explained that he was unable to lift a box of ammunition, which is why the soldiers tied together two long weapons, each about 80 cm long, and gave them to him to carry on his head (MPC 12-26-0049, lines 13–16). He provided further details on the equipment being transported: “There were very long crates for the RPGs,” “sixties,” “AKs,” and cartridges (MPC 12-26-0089 et seq., lines 29 ff.). As for the route taken, Eddie COULTER provided a detailed description, listing the localities they passed through and explaining that they were walking on *a* “bushroad” (MPC 12-26-0049, lines 16–21). Regarding the events near the Lofa River, Eddie COULTER, who was at the rear of the convoy (MPC 12-26-0049, line 27; CAR 5.306.023, Q/R No. 125), reported that Levi FARRELL had told him they had just killed a man from Pasolahun (MPC 12-26-0049, lines 27 ff.), namely Brian HASTING (CAR 5.306.023, Q/R No. 129), which neither Levi FARRELL nor Kevin THOMAS (son of Joshua) had told him (MPC 12-26-0049, lines 28–30). Eddie COUL-TER, who stated that he had continued the transport to Sassahun (MPC 12-26-0049, line 33), described crossing the Lofa River by canoe, noting that several round trips had been necessary to transport the ammunition and the civilians (MPC 12-26-0049, lines 23–33). He added that he had stayed with a woman, along with other porters, and that he had left the next day (MPC 12-26-0049, lines 36–39). Eddie COULTER also spontaneously admitted to gaps in his account, explaining, for example, that he did not know who had given the order to carry out the transport, noting in passing that “when a ULIMO soldier ordered me to carry something, I did it because he had a weapon, and they told me I had to transport the ammunition ” (TPF 40.754.020, Q/A No. 133). The same applies to his statements regarding the death of Brian HASTING. Specifically, when asked who had killed Brian HASTING and how, he clearly replied: “I wasn’t there when he was killed” (TPF 40.754.024, Q&A No. 170). Furthermore, when confronted with the fact that he had not mentioned Brian HASTING’s death during that transport at his hearing with the MPC, he explained that he was merely answering the questions asked of him and did not wish to interfere (MPC 12-20-0050, lines 3–9). Finally, Eddie COULTER’s account contains indications of his psychological state, as evidenced, on the one hand, by the fact that he stated he feared for his life during the transport—explaining that they were “under pressure” and that the soldiers were controlling them—and, on the other hand, by his remarks regarding the moment he arrived at the location where Brian HASTING was killed: “[…] at that moment, we were concerned for our own survival. When you see the body of a friend who has been killed as you walk past, it’s something that leaves a lasting impression” (CAR 5.306.023, Q/A No. 126).

4.11.2.6 Regarding the testimony of Kevin THOMAS, the Court first notes that it has already found that he validly identified Alieu KOSIAH during the proceedings as the accused (*supra*, para. II.4.10.2.6). The Court further notes that his statements are consistent and corroborate those of Levi FARRELL and Eddie COULTER regarding key details. He stated that he was in Pasolahun one morning around 5:00 a.m. when a group of soldiers entered the town and ordered the young people to go to Gondolahun. Kevin THOMAS and the other civilians therefore left with the soldiers for Gondolahun (MPC 12-18-0017, lines 23–25). He stated that, in Gondolahun, he saw a group of soldiers sitting on the porch of a house and a person sitting in the middle. According to the witness, this was H&H—namely, Alieu KOSIAH—whom he had previously seen at the Kehair River (MPC 12-18-0008 and 0014, lines 26–28). The witness explained that Alieu KOSIAH had ordered the soldiers, in English, to take the civilians into a room—like a cell—so they could wait there until the other civilians arrived (MPC 12-18-0017, lines 27–29, and 0019, lines 4 ff.). According to Kevin THOMAS, Alieu KOSIAH also gave the order to transport the ammunition (TPF 40.763.026, Q&A No. 189). He stated that the defendant had led the convoy and that he had not carried anything (TPF 40.763.026, Q/A No. 195). He provided details regarding the cargo itself, mentioning cartridges in metal boxes as well as military backpacks (MPC 12-18-0019, lines 7–12). The journey took place along a trail in the bush (MPC 12-18-0019, line 16), specifying that the trail could only be traveled on foot, that no vehicle could go there, and that trees were blocking the trail (MPC 12-18-0035, lines 42 ff.). He concluded that the trail “organized the convoy” (TPF 40.763.028, Q/A No. 213). When asked about Alieu KOSIAH’s position during the convoy, the witness stated that the defendant was not stationary, sometimes being at the front and sometimes at the rear (TPF 40.763.029, Q/A No. 214). Kevin THOMAS also explained that he did not carry his load—a metal crate—by himself, adding that a friend took turns with him, which is an extraordinary detail, and that there was no problem as long as they kept moving (TPF 40.763.028, Q/A No. 207). He also provided details about the conditions of this transport, namely that there were no real breaks, that the soldiers had not given them anything to eat or drink during the transport (TPF 40.763.028, Q/R No.os 211 ff.) and that the porters were threatened (TPF 40.763.029, Q/A Nos. 219 ff.). Regarding the events that took place near the river, the witness stated that everyone had set down their loads, but that Brian HASTING, who had complained of being hungry and tired, had dropped his load on the ground, which made a noise. Alieu KOSIAH, angered by this, reportedly asked who had dropped his load, and the soldiers pointed to Brian HASTING; then, “H&H pulled out his gun […] and killed him” (MPC 12-18-0019, lines 21–29; TPF 40.763.022, Q&A No. 166), with the witness stating that he heard a gunshot (MPC 12-18-0037, lines 8–10; TPF 40.763.023, Q&A No. 172). Regarding

the weapon used, Kevin THOMAS stated the following: “I didn’t see him with a weapon any bigger than that. Like I told you. The important people had a pistol” (TPF 40.763.024, Q&A No. 175). He also stated that “nothing happened with Brian HASTING’s body” (MPC 12-18-0020, lines 21 ff.). As for the end of the transport, regarding Kevin THOMAS, the witness stated that they had left the ammunition near the river and that the soldiers had told them to return to Pasolahun (MPC 12-18-0008 and 0020, lines 19 ff.). The ammunition was to be transported on to Fassama; Kevin THOMAS specified in this regard that there was a “canoe” that could be pulled from one side of the river to the other (MPC 12-18-0008). The Court further notes that Kevin THOMAS, in his account, described certain aspects of his psychological experience. This is particularly true of the emotions he felt when interacting with Alieu KOSIAH and the other soldiers, as the witness explained that he “did not want to make eye contact with these people because we were afraid and there were a lot of people around him, a lot of soldiers” (MPC 12-18-0009). On this subject, he also described how he felt after Brian HAS-TING’s death, saying: “Everyone was shocked—I, in particular, was shocked. I don’t know if the soldiers were shocked. There are many ways to show that you’re shocked—through gestures or otherwise—but there was no outward sign of that shock; we were just shocked deep down. The sound of the gunshot and someone dying made my heart beat faster, but I didn’t show it on the outside” (MPC 12-18-0020, lines 5–9). Kevin THOMAS provided insights into the mindset he attributed to the ULIMO members—insights that resonate with the rest of the case file—namely that “it was the property they were taking […] The lives of civilians mattered little to them in comparison” (TPF 40.763.022, lines 29–31). Finally, the Court notes that he did not seek to overwhelm the defendant, as illustrated by some of his statements: “The loads we were carrying were heavy, but not to the point of using our very last ounce of strength” (TPF 40.763.016, lines 41 ff.).

4.11.2.7 The Court further considers that many of the defense’s arguments concern ancillary points and are aimed not at calling into question the credibility of the testimony regarding the facts, but rather the credibility of Levi FARRELL, Eddie COULTER, and Kevin THOMAS (*supra*, consid. II.1.2.6.1). As for the arguments concerning points relevant to the assessment of the statements regarding the alleged facts, they do not stand up to scrutiny of the case file, and several of them, on the contrary, tend to reinforce the credibility of the accounts given by Levi FARRELL, Eddie COULTER, and Kevin THOMAS. The Court will now examine them in detail to the extent that they have not already been addressed and appear relevant to the assessment of the testimony regarding the alleged facts.

4.11.2.8 Throughout the proceedings, the defendant denied having participated in or directed the forced transport in question. At the trial, he had stated that the only

Brian HASTING of Pasolahun was still alive and that it was impossible for two Brian HASTINGS—whose brothers were both named Russell HAS-TING—to have lived in the same village at the same time (TPF 40.731.058, Q/A nos. 282 et seq.). In this case, it should first be noted that the Court has already had occasion to find that the defendant was present in Lofa County as early as March 1993 (*supra*, para. II.2.2.1.3). It also found that he was mobile and frequently traveled within Lofa (*supra*, para. II.2.2.1.2). The Court therefore finds, based also on the corroborating testimony examined above, that he was present in Gondolahun at the time of the events and that he directed the forced transport of ammunition by civilians toward Fassama. Furthermore, regarding the question of whether Brian HASTING is in fact deceased or whether he is in reality the person who testified at the trial court, and more generally regarding the impossibility that two pairs of brothers bearing the same first and last names could have lived contemporaneously in a small village such as Pasolahun, the Court recalls that it has already found that the testimonies of Russell and Brian HASTING before the Criminal Court are not such as to call into question the deaths of Russell and Brian HASTING during the First Civil War and refers to its reasoning on this matter in the context of the events related to the looting of the Paso-lahun generator (*supra*, para. II.4.10.2.8). The Court further notes that the witness Brian HASTING identified Levi FARRELL as a certain Mike O'CONNELL (TPF 40.766.002, Q/A No. 2), although it should be emphasized that this does not correspond to the statement made by witness Russell HASTING, namely—as a reminder—that Levi FARRELL was in fact his brother, Brian HASTING, and then, upon questioning, that he was a certain Jasper O'CONNELL (*supra*, para. II.4.10.2.8). The Court notes that the statements of Levi FARRELL and Eddie COULTER regarding the identification of the witness Brian HASTING are consistent, in that each of them identified the witness by giving his various names, including HASTING and THOMAS (TPF 40.765.003, Q&A No.os 10–12 and 15 s.). This further convinces the Court of the unreliability of this witness's statements. As for the testimony of John THOMAS, the same conclusion applies, as the Court has already noted in connection with the events surrounding the looting of the Pasolahun generator (*supra*, para. II.4.10.2.8). It should also be added in this regard that John THOMAS provided details regarding the transport of ammunition from Gondo-lahun to Fassama that clearly diverge from those of the participants in that transport. John THOMAS thus stated during the proceedings that, as he recalled, three or four civilians had left Pasolahun for the transport, which would make no sense (MPC 12-34-0035, line 15; TPF 40.764.017, Q&A No. 83; *see below*, para. II.4.11.2.12 *at the end*), whereas Kevin THOMAS and Eddie COULTER speak of a large group, numbering more than twenty people, respectively (*see below*, para. II.4.11.2.12). For good measure, the Court, as it has already noted in connection with the murder of Russell HASTING

near the Kehair River, notes that regardless of the victim's identity, the aforementioned testimonies agree that Alieu KOSIAH killed a person near the Lofa River (*supra*, para. II.4.10.2.8).

4.11.2.9 The defense argues that the accounts of Levi FARRELL, Eddie COULTER, and Kevin THOMAS contain inconsistencies. It thus criticizes Levi FARRELL for stating in his complaint that he was forced to carry ammunition from Kolahun to Fassama, whereas his statements to the MPC indicate that he had to carry ammunition from Gondolahun to Sassahun, which means he did not go as far as Fassama (CAR 5.200.569; MPC 16-01-0443). However, while it does indeed appear from Levi FARRELL's complaint that he was forced by ULIMO to carry ammunition from Kolahun to Fassama (MPC 05-01-0013), it should be noted that the event in question is described there only briefly, in three lines, and therefore contains no details regarding the forced transport itself. Levi FARRELL actually clarified the content of his complaint by confirming that the forced transport took place from Gondolahun to Fassama, but specifying that he himself had managed to stop at Sassahun (MPC 12-07-0012, lines 4 and 13, and 0021, lines 2–4; TPF 40.756.024, Q/A No. 140; CAR 5.307.032 et seq., Q/A Nos· 194 and 206). It is therefore obvious that the confusion arising from the content of the complaint actually stems to the manner in which it was drafted, bearing in mind that the complainants themselves acknowledged certain shortcomings in this regard (*supra*, consid. II.1.2.1.2). It must also be noted that Levi FARRELL was consistent in his description of the route of the forced transport.

4.11.2.10 The defense criticizes Levi FARRELL for having initially stated, during his interview with the MPC (MPC 12-07-0012, lines 7 ff., and 0024, lines 26 ff.), regarding his uncle Brian HASTING, that he was very tired and that his shoulder was hurting because he was carrying iron bars, and then to have stated that he was carrying ammunition and that his shoulder was hurting (CAR 5.200.569; MPC 16-01-0456). However, it is highly likely that Levi FARRELL, who stated on appeal that Brian HASTING was carrying a crate of ammunition (CAR 5.307.036, Q/A No. 227), confused—in his statements to the MPC—the transport of the generator from Pasolahun with the transport of ammunition from Gondolahun, especially since the mention of iron bars immediately follows his account of the transport of the generator from Pasolahun—which was reportedly carried using sticks (*supra*, consid. II.4.10)—given that he linked the two events in his free-form narrative. He thus likely sought to explain the pain his uncle felt in his shoulder, noting also that the porters alternated between carrying the generator on their heads and shoulders so they could continue walking despite their fatigue (see the statements on this subject by Eddie COULTER regarding the transport of the Pasolahun generator [TPF 40.754.012, Q/A No. 78]). That said, the decisive factor—which he has consistently reported

consistently, remains that Brian HASTING was fatigued due to the load he was carrying.

4.11.2.11 The defense criticizes Levi FARRELL for having mentioned the presence of JUNGLE JABBAH during the transport of ammunition in his testimony before the MPC and for not having seen him during his testimony at the trial (CAR 5.200.569; MPC 16-01-0456). In this instance, Levi FARRELL, in the passage highlighted by the defense, stated before the MPC that he had "sometimes heard," during the transport, the name JUNGLE JABBAH referred to as "the commander of the unit" (MPC 12-07-0024, lines 7–9). He subsequently stated, at the trial, that he had not seen JUNGLE JABBAH, while reiterating that he had heard his name (TPF 40.756.029, Q&A No. 169). It must therefore be concluded that there is no contradiction in Levi FARRELL's statements and that they have been consistent.

4.11.2.12 According to the defense, Eddie COULTER's statements regarding the number of people who carried out the transport from Pasolahun to Gondolahun are contradicted by the testimony of John THOMAS (MPC 12-34-0063 et seq.), the former having stated that 26 people carried out this transport, while the latter reportedly spoke of only three men (CAR 5.200.550 et seq.). However, it should be noted that Eddie COULTER did not provide a specific number (MPC 12-26-0086, lines 10–15), but that he provided a non-exhaustive list of individuals present on that occasion and further confirmed the large size of the group at the trial, stating that there were more than twenty of them (TPF 40.754.020, Q/A No. 135). These statements are also corroborated by those of witness Kevin THOMAS, who stated, regarding the group from Pasola-hun that was confined in Gondolahun while awaiting transport, that it was a "large group" and that there were many of them (MPC 12-18-0018, lines 27–31). The Court further recalls that it has already found that the statements of witness John THOMAS appeared to lack credibility, noting in particular that his claim that three to four porters were sent from Pasolahun is nonsensical given the purpose of the transport, the supply of ammunition, and, consequently, the large size of the shipment (*supra*, para. II.4.10.2.8).

4.11.2.13 The defense argues that Eddie COULTER's statements—that he knew Kevin THOMAS and came from the same village as him, namely Pasolahun—lack credibility since Kevin THOMAS stated that he did not know Eddie COULTER (CAR 5.200.601). However, the Court has already noted that Eddie COULTER explained at the trial that the "Kevin THO-MAS" with whom he participated in transporting the generator from Pasolahun as well as in transporting ammunition is the son of Joshua THOMAS, it being specified that the identity of this other "Kevin THOMAS" was corroborated by the statements

by Levi FARRELL, and that Eddie COULTER had, in fact, already mentioned this Kevin Joshua THOMAS during his hearing with the MPC (*see above*, para. II.4.10.2.10). The credibility of Eddie COULTER's statements cannot therefore be called into question, as he was referring to a different Kevin THOMAS.

4.11.2.14 The defense is surprised that Eddie COULTER, unlike Kevin THOMAS, does not confirm Alieu KOSIAH's presence during the transport, even though it was he who allegedly killed Brian HASTING (CAR 5.200.599 s.). The Court notes, first of all, that Levi FARRELL also stated that Alieu KOSIAH was present and that he allegedly killed his uncle, which, incidentally, forms the basis of his complaint (MPC 05-01-0013). It should also be noted that Eddie COULTER did not see Brian HASTING being killed, since he was at the rear of the convoy and thus arrived later. He added that he had not received an answer to his question about who had killed him (MPC 12-26-0049, lines 27–30). Furthermore, it does not seem implausible that Eddie COULTER did not see Alieu KOSIAH during this convoy, which included a large number of civilians, given that the defendant was its commander and was therefore not expected to interact frequently with the porters. Still on the subject of the defendant's involvement in this transport, the defense notes that Eddie COULTER reportedly did not know who the commander was who had organized the transport (MPC 12-26-0091, lines 9–13), whereas Kevin THOMAS stated that he saw a group of soldiers sitting under a porch in Gondolahun, among whom was the H&H they had previously seen at the Kehair River (MPC 12-18-0008; *supra*, consid. II.4.10) (CAR 5.200.599). However, it is not at all unusual for a civilian like Eddie COULTER not to know the identity of the person who gave the orders, given that his primary concern must surely have been, under the circumstances described above, to survive and suffer as little mistreatment as possible.

4.11.2.15 Regarding the crossing of the Lofa River, the defense cited the testimony of Kevin THOMAS, who stated that the civilians did not cross the river, that they left the ammunition there, and that the soldiers told them to go home (MPC 12-08-0008 and 0020), which would contradict Eddie COULTER's account (MPC 12-26-0049, lines 32–34), according to which the civilians crossed the river and then continued on foot to Sassahun (CAR 5.200.545 s.). The Court notes that Levi FARRELL, like Eddie COULTER, also stated that he went as far as Sassahun after crossing by canoe (MPC 12-07-0051, lines 12 ff.). That said, it cannot be ruled out that some of the porters did in fact leave the convoy—possibly on the soldiers' orders—given that the convoy consisted of a large number of people.

4.11.2.16 The defense argues that Kevin THOMAS contradicted himself in his description of how Brian HASTING was killed, particularly regarding whether the defendant had asked a soldier who had dropped the ammunition crate before shooting Brian HASTING (CAR 5.200.605). In this instance, the witness stated the following during the preliminary investigation: “Rather than placing the ammunition carefully, he dropped it on the ground. Alieu KOSIAH, also known as H&H, said that ammunition should not be handled that way. Alieu KOSIAH asked, ‘Who did that? Who threw the ammunition on the ground?’ A soldier pointed out the person who had thrown the ammunition on the ground. He pulled out a pistol *[the witness mimics the motion of drawing a gun]* and shot Brian HASTING, killing him” (MPC 12-18-0008). He then stated the following at the trial: “He just shouted, ‘Who dropped it? Who dropped it?’ because he hadn’t seen what happened. When he turned toward where the noise had come from, he saw Brian, who was still standing nearby” (TPF 40.763.041, Q/A No. 293). However, this discrepancy demonstrates that the witness relied on his memories and did not recite his testimony from memory. The rapid succession of events, as reflected in Kevin THOMAS’s statements, is also supported by his testimony, in the same context, which emphasize Alieu KOSIAH’s anger as a factor explaining why little time elapsed between the moment the ammunition box fell to the ground and the moment Brian HASTING was killed (TPF 40.763.041, Q/A No. 292).

4.11.2.17 Regarding how the ammunition arrived in Gondolahun, the defense argues that Kevin THOMAS made statements that contradicted those of Levi FARRELL (CAR 5.200.602 et seq.), since the former—who reportedly stated that he had transported the ammunition from Pasolahun to Gondolahun with Levi FARRELL (MPC 12-18-0034, lines 27–29)—declared that he was not present when the ammunition arrived (MPC 12-18-0035, lines 6–8), whereas Levi FARRELL reportedly stated that he was in Gondolahun when the ammunition arrived. The Court notes that Levi FARRELL stated the following: “I was in Gondolahun and saw civilians arrive carrying ammunition on their heads. They were coming from Kolahun. There were more than a hundred people. I knew they had traveled from Voinjama to Kolahun because [*sic*] the civilians who arrived in Gondolahun from Kolahun told me that they had seen civilians arriving in Kolahun from Voinjama carrying the ammunition” (MPC 12-07-0029, lines 6–9). However, the fact that they traveled together from Pasolahun to Gondolahun does not imply, on the one hand, that they remained together in Gondolahun, or, on the other hand, that they necessarily made the same observations while there. Levi FARRELL’s statements also suggest that he obtained information about the transport of ammunition to Gondolahun from people who had participated in that transport. It cannot be ruled out that Levi FARRELL may have confused what he observed with what was reported to him. However, since this possible discrepancy does not concern a central element of the alleged facts, it

call into question the credibility of the statements made by Kevin THOMAS and Levi FARRELL.

4.11.2.18 The defense criticizes Kevin THOMAS for having stated at the trial that he left Pasolahun on the very morning the soldiers arrived (TPF 40.763.026, Q/A Nos. 189 and 191), whereas during the preliminary investigation, he reportedly indicated that the departure had taken place the previous day (CAR 5.200.604). However, it cannot be ruled out that the witness may have confused this ammunition transport with the transport of the generator from Pasolahun, or even another transport in which he participated, given that his testimony indicates he likely participated in other transports. In fact, regarding the manner in which he was conscripted, he stated that he had been aware of numerous forced transports of goods carried out by civilians (TPF 40.763.006, Q&A No. 37) and that the soldiers usually arrived around 5:00 a.m., when people were asleep (TPF 12-18-0008; see also TPF 40.763.012, Q&A No. 84, and 026, Q&A No. 191). Levi FARRELL and Eddie COUL-
TER both stated that, due to their
large number, the transport operations in which they participated for ULIMO (CAR 5.307.009, Q&A nos. 44 et seq.). The possible confusion in Kevin THOMAS's statements seems all the more plausible given that he referred, in his statement highlighted by the defense, to his own remarks regarding the transport of the Pasolahun generator (TPF 40.763.012, Q&A No. 83). Nor can it be ruled out that Kevin THOMAS was indeed conscripted early in the morning—a version that aligns with his statements that he spent less than an hour in the cell where he was locked up in Gondolahun and where a group of young people from Pasolahun was already present (MPC 12-18-0018, lines 23–26), noting that while the other participants in the transport spent the night in Gondolahun, it is nevertheless possible that additional porters were conscripted at a later time.

4.11.2.19 Finally, the defense cannot explain why Levi FARRELL stated, at the trial in the court of first instance, that he had been "beaten," yet made no mention of this before the MPC (CAR 5.200.557). In this case, during his testimony at the trial court, Levi FARRELL discussed the ULIMO's behavior toward civilians and mentioned being conscripted to transport ammunition, the deaths of his two uncles, and being tied up using the "tabé" method " method (TPF 40.756.005, Q/A No. 19). However, it must be noted that before the MPC, Levi FARRELL did indeed mention having been subjected to such treatment, as evidenced by the following quote, taken from his response to the question of what had happened once the war reached the area where he lived: "We were arrested by those ULIMO soldiers. When we saw them, we tried to run away. I was afraid. But they stopped us and tied our hands behind our backs with ropes. They told us to lie down on the ground and look toward the

sun" (MPC 12-07-0010, lines 11–14). Levi FARRELL referred to this event once again during the same hearing, this time explicitly using the word "tabé" (MPC 12-07-0027, lines 31–36). This allegation must therefore be dismissed.

4.11.2.20 The Court further notes that the transport alleged by the complainants took place in the context of Liberia's first civil war, since forced marches—whether for the transport of weapons and ammunition or looted goods—were part of ULIMO's *modus operandi*, as the Court has already noted above (*supra*, para. 2.1.2.6). This is also evident from several other factual findings concerning various locations in Lofa County, analyzed in this judgment (*supra*, paras. II.4.3, II.4.8, II.4.9, and II.4.10, and *infra*, paras. II.4.13, II.4.14, and II.4.16). In addition, the route taken by the convoy—namely, from Gondolahun to Fassama—follows a practical logic consistent with the layout of the area, contrary to what the defendant asserted (TPF 40.731.060, Q/A No. 296; CAR 5.301.059 et seq., Q&A No. 129), which is illustrated by the maps included in the file (MPC 10-01-0565; CAR 40.721.196), since the weapons and ammunition were transported to Fassama from Gondolahun, the central hub of the Hembe clan that served as a regional center for ULIMO (MPC 12-07-0039, lines 25–27). However, fighting took place in Bomi in the spring of 1994 between ULIMO-J and ULIMO-K, who were vying for control of the headquarters (MPC 15-02.0544 and 0546). It is therefore not illogical, from a military standpoint, that at some point ammunition was transported southward. Furthermore, the information provided by the participants in this convoy regarding the localities they passed through is consistent with one another and is compatible with the route taken (MPC 12-26-0049, lines 16–34; MPC 12-18-0008; TPF 40.756.033, Q/A No. 201; CAR 5.306.022, Q/A No. 119; CAR 5.307.033, Q/A No. 205). Moreover, the ULIMO's practice of forcing civilians to transport goods was also confirmed by Walter VARGAS, who specifically stated that they made civilians carry their weapons and ammunition all the way to the front lines, and that the transports took place at gunpoint (MPC 12-16-0032, lines 5 ff.).

4.11.2.21 In light of the foregoing, the Court finds that Alieu KOSIAH gave the order to carry out the forced transport of ammunition by civilians—including Levi FARRELL and Eddie COULTER—from Gondolahun to Fassama. Participation in this forced transport constituted a traumatic experience for Levi FARRELL and Eddie COULTER. During said transport, they were forced to carry a heavy load for several hours, under threat of being killed or beaten if they did not comply. The civilian Brian HASTING, Levi FARRELL's uncle, died during this transport. Upon reaching the Lofa River, unable to continue moving forward and carrying his

load due to exhaustion, Brian HASTING was shot and killed by Alieu KOSIAH, who fired at least one shot.

4.11.3 Ordering and directing a forced transport of ammunition by civilians from Gondolahun to Fassama

4.11.3.1 Objective facts

In light of the foregoing, 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. Forcing heavily laden civilians to walk for hours while threatening them with death by weapons or beating them if they do not comply or do not move fast enough is likely to cause great suffering. This suffering is primarily physical, due to the long march the civilians were forced to undertake while carrying heavy loads and the beatings they endured along the way. The suffering is also psychological, due to the terror that gripped the civilians throughout the journey, as they were subjected to verbal intimidation, death threats, and blows with rifle butts from the soldiers accompanying them. This treatment must also be characterized as humiliating and degrading. Forcing heavily laden civilians to march while threatening them with death, striking them to make them move at the imposed pace, and treating them as mere means of transportation amounts to a violation of their humanity and constitutes a very serious form of humiliation.

The Court further specifies that there is no basis for finding additional offenses regarding the blows inflicted on the civilians and the death threats made against them, since these fall under the offenses of cruel, humiliating, and degrading treatment. As for the offense of slavery, it has not been committed. The duration of the transport was not, in fact, sufficient to conclude that powers of ownership were exercised over the civilians who were forced to participate in said transport.

Alieu KOSIAH ordered the transport, and the soldiers obeyed his orders. This attests to the defendant’s status as a superior. His liability under Article 18 of the Military Penal Code (aCPM) is therefore established.

4.11.3.2 Subjective Elements

Alieu KOSIAH knew that by ordering the soldiers to carry out the transport, they would carry it out. The defendant could not have been unaware of the civilian status of the conscripted persons or that, by acting in this manner, he was seriously violating their dignity. It follows from the foregoing that he acted intentionally.

Furthermore, the alleged acts occurred in the context of a non-international armed conflict, namely the First Liberian Civil War, a fact of which Alieu KOSIAH was aware.

4.11.4 Murder of civilian Brian HASTING near the Lofa River

4.11.4.1 Objective Elements

The execution of Brian HASTING—the civilian status of the executed victim having never been questioned and being, moreover, evident—under the circumstances described above objectively constitutes murder.

4.11.4.2 Subjective elements

Alieu KOSIAH knew that by firing a firearm at Brian HASTING at close range, he would take his life. There was no evidence to lead the defendant to believe that the victim was not a civilian. It follows from the foregoing that he acted intentionally.

Furthermore, the acts in question occurred in the context of a non-international armed conflict, namely the First Liberian Civil War, a fact of which Alieu KOSIAH was aware.

4.11.5 Conclusion

In light of the foregoing, Alieu KOSIAH is found guilty of the following offenses:

- ordering, and inflicting, cruel, humiliating, and degrading treatment on several civilians in the form of forced transportation, 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, subparagraphs a and c, common to the General Provisions, and Article 4, subparagraph 2, subparagraphs a and e, of PA II (section 1.3.16 of the indictment);
- murder of a civilian pursuant to Art. 109(1) and Art. 108(2) of the former Military Criminal Code (aCPM) *in conjunction with* Art. 3(1)(1)(a) common to the General Provisions (CG) and Art. 4(2)(a) of PA II (section 1.3.17 of the indictment).

4.12 Murder of a civilian in Voinjama

According 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.

4.12.1 Arguments of the Parties

4.12.1.1 The MPC maintains that Nicolas COOK's account is clear and reliable (CAR 5.200.714 et seq.). In particular, it highlights Nicolas COOK's memory, which it describes as exceptional, emphasizing that he counts and observes everything. The MPC emphasizes that the chronology of events attributed to the defendant by Nicolas COOK is clear and fits perfectly with what is known about the history of Liberia's first civil war. It argues in particular that the split between ULIMO-K and ULIMO-J occurred around March 1994—that is, before the arbitrary, mass executions of civilians from Voinjama belonging to the Lorma ethnic group, as illustrated by what allegedly happened to Nicolas COOK's young neighbor, presumably between April and May 1994. The MPC also presented additional arguments at the trial level regarding the credibility of Nicolas COOK's statements (TPF 40.721.122 et seq.). As for the law, the MPC refers to the contested judgment (CAR 5.200.749).

4.12.1.2 Attorney TOUTOU-MPONDO (CAR 5.200.953 et seq.) argues that Nicolas COOK's account is credible because it is consistent, precise, factual, and corroborated by converging sources. She further emphasizes that the information provided by her client covers both significant and trivial details, which lends authenticity to his account. With regard specifically to the murder of the young man in Voinjama, she maintains that the fact that Nicolas COOK does not know the victim's name does not call into question the credibility of his testimony.

4.12.1.3 The defense challenges the conviction handed down by the Criminal Court (CAR 5.200.423 and 562 et seq.). Reiterating the arguments presented before the trial judges (TPF 40.721.503 and 624 et seq.), the defense argues that Nicolas COOK did not identify Alieu KOSIAH and questions the credibility of his testimony. Regarding "Black Monday"—and given that ULIMO soldiers allegedly went from house to house to seize young men and force them into a *pickup truck* that would have taken them to the site of their execution—the defense argues that if these events had actually occurred, Nicolas COOK, a young man between the ages of fifteen and sixteen at the time of the events, would already be dead by now. In this regard, the defense emphasizes that ULIMO soldiers reportedly visited the house where Nicolas COOK lived regularly to eat and get food, so they would have known exactly where he lived.

4.12.2 Assessment of the Evidence

4.12.2.1 This indictment stems from the criminal complaint filed by Nicolas COOK on August 22, 2014 (*supra*, A.3). In this regard, the Court notes at the outset that a

criminal complaint does not constitute a form of evidence (*supra*, consid. II.1.2.2.3). It also notes that it is analyzing testimony—specifically, the credibility of the statements—and not the credibility of Nicolas COOK (*supra*, consid. II.1.2.6.1). Finally, the Court notes that the theory of a conspiracy organized by CIVITAS MAXIMA and the GJRP—which the defense accused of fabricating testimony in exchange for material benefits—has been rejected (*supra*, para. II.1.1.3) and that the identifications—from a photo lineup and in person—conducted during the proceedings cannot be used, whether as evidence for or against the defendant (*supra*, para. II.1.3.3.2 and II.1.3.3.3).

4.12.2.2 Regarding the identification of Alieu KOSIAH by Nicolas COOK, the latter provided details that were frequently cited during the proceedings to describe the defendant's physical appearance at the time of the events (*supra*, para. II.1.3.3.6): "darker-skinned than me," "not stocky," and "taller than me"—Nicolas COOK's height being estimated at 1.68 m—and "pop eyes" that give "the impression that he has large eyes" (MPC 12-09-0009, Q/A No. 14; TPF 40.753.009, Q&A No. 53). He knew the defendant by the names "General KOSIAH" and "Chief KOSIAH" (MPC 12-09-0010, Q&A No. 20;
TPF 40.753.005, lines 1 ff., and 008, Q&A No. 46). Nicolas COOK further stated, during the trial proceedings, that the defendant's voice reminded him of the ULIMO period, adding, in response to a question: "It reminded me of when he was upset, angry. He would give orders angrily; he would shout" (TPF 40.753.009, Q&A No. 53). These elements have convinced the Court. The Court therefore finds that Nicolas COOK was confronted by Alieu KOSIAH at the time of the events.

4.12.2.3 As for the alleged events, Nicolas COOK's statements regarding the execution of a civilian in Voinjama have been consistent throughout the proceedings and are supported by numerous indicators of credibility. His statements concerning the key elements of his testimony have been coherent, and he has provided numerous details, as illustrated by the following quotes:
"When I heard the sound of *the pickup truck*, they pulled up right in front of our house. And the room we were in had two windows—one on the porch side and the other on the side facing another house. " (CAR 5.308.012, lines 8–11), "General KOSIAH was wearing camouflage fatigues with a pistol on his hip" (MPC 12-09-0016, line 29), and "Some of the civilians were already tied up. There were soldiers sitting down. They were surrounding them. They were sitting on the edges of the pickup truck. They were facing the civilians who were in the middle. Imagine that the table is the pickup truck and that the front side facing you is the driver's seat. There were soldiers sitting on both sides and in the back with their legs hanging outside the pickup truck. At the front, against the pickup truck's cab, there were soldiers standing and facing the civilians" (TPF 40.753.011, lines 6–11). Nicolas COOK also provided details that were irrelevant to the key elements. For

example, he described the scene preceding the defendant's announcement of "Black Monday" as follows: "That day, he decided not to eat on the porch. He told them to bring him a chair so he could sit outside. The soldiers brought a small table and a chair. They took them from the porch and brought them to him" (TPF 40.753.015, lines 8–10). He also described the interactions between the people involved, explaining the consequences of their actions. For instance, regarding the moment when the young man was apprehended, he stated the following: "One of the soldiers walked over to the car. He said, 'Boss, he's refusing to come.' That's when Kosiah got out of the pickup truck and walked over there. He told him to get into the car. The boy still refused. Kosiah then asked him, 'So, you're not coming?' The boy said no, that he wasn't coming" (TPF 40.753.012, lines 3–6). Nicolas COOK also reported the content of discussions (see, for example, MPC 12-09-0015, lines 31–33: "General KOSIAH said aloud: 'Since the Lorma Defense Force wants to fight us, I will declare that next Monday will be Black Monday'; he added that he had lost one of his strongest men"; MPC 12-09-0016, lines 30 ff.: "He said to the young man: 'You, let's go'"). He also voluntarily indicated when he did not know the information being requested, such as the identity of the young man who was killed (TPF 40.753.011, Q/A No. 67), or when he could not recall it, as illustrated by the following quotes: "You're asking me again how many people were inside. I can't give you the exact number, but I can give you an estimate" (TPF 40.753.010, lines 37–39), or, when asked whether the defendant was wearing a cap, "I don't remember" (CAR 5.308.013, Q/A No. 71).

4.12.2.4 The Court notes that Nicolas COOK mentioned on several occasions that the defendant was carrying a pistol on his leg ("Every time I saw him, he was carrying a pistol on his right hip. " [MPC 12-09-0009, lines 20 ff.]), and in particular in his statements regarding the moment when the defendant drew his weapon and shot the young man (MPC 12-09-0016, lines 28–32). This detail is corroborated by the statements of numerous other participants in the proceedings (see, in particular, the statements of Georges ROSADO [MPC 12-08-0010, lines 40–42], Walter VARGAS [MPC 12-16-0018, lines 10–11], and Kevin THOMAS [MPC 12-18-0009]).

4.12.2.5 The Court further considers that many of the defense's arguments concern ancillary issues and are aimed not at calling into question the credibility of the testimony regarding the facts, but rather the credibility of Nicolas COOK (*supra*, consid. II.1.2.6.1). As for the arguments concerning points relevant to the assessment of the statements regarding the alleged facts, they do not stand up to scrutiny of the case file, and several of them, on the contrary, tend to reinforce the credibility of the account. The Court will now examine them in detail to the extent that they have not

already been addressed and appear relevant to the assessment of Nicolas COOK's testimony regarding the facts he has alleged.

4.12.2.6 Regarding the allegation that Nicolas COOK's account is illogical because he himself should have been executed during "Black Monday" given that he was a young man between the ages of fifteen and sixteen at the time of the events, the Court finds it difficult to follow the defense's logic. First and foremost, it should be noted that the existence of "Black Monday" is corroborated by the TRC report (TRC, *op. cit.*, p. 248 [MPC 14-01-0137]), which mentions a "Black Monday" in 1993 in Voinjama, during which approximately 750 people were reportedly killed by ULIMO-K. Two points should be clarified in this regard. First, this mention in the TRC report does not mean that such killings were limited to the year 1993. Second, an error in the TRC report—whether regarding the date or the identification of the armed group responsible—cannot be ruled out, given that the split within the ULIMO group had not yet occurred in 1993 (*supra*, para. II.2.1.2.6). Several participants in these proceedings have also indicated that they had heard about "Black Monday" in Voinjama (see the statements of James CAMDEN [TPF 40.756.006]; Georges ROSADO [TPF 40.755.006], Christopher GREENE [TPF 40.751.006 et seq.], Eddie COULTER [TPF 40.754.005], Levi FARRELL [TPF 40.756.006], and Kevin THOMAS [TPF 40.763.008]). The fact that one young man of Lorma ethnicity escaped these executions—in this case, Nicolas COOK (MPC 12-09-0006, lines 17)—in no way implies that "Black Monday" did not take place. Moreover, these events were not a mass killing of all the young men in a town, but only of some—probably many of them—with the aim of terrorizing the civilian population. Added to this is the fact that ULIMO soldiers frequently went to the house where Nicolas COOK lived to eat and look for food, as the defense pointed out, it therefore does not seem illogical that they would not have targeted the people living in that house, especially given the difficulties ULIMO faced in obtaining supplies, particularly food (see, for example, Walter VARGAS's statements on this subject [MPC 12-16-0023, lines 1–8]).

4.12.2.7 During the appellate proceedings, the defendant stated that it was impossible for Nicolas COOK to have lived in Voinjama and that he knew no one other than the defendant and WAR BOSS (alias WAR BOY), adding that he could not have been unaware of who PEPPER AND SALT was (CAR 5.301.075, Q&A No. 163). The defendant also criticized him for not knowing the name of the young man who was killed (CAR 5.301.076, line 36). However, with regard to the ULIMO, the Court notes that Nicolas COOK, when asked whether the name PEPPER AND SALT meant anything to him, stated the following: "I heard that name from some soldiers who

They used to come over for meals, but I never saw that person. Whenever I heard from the ULIMO soldiers that he was in the town of Voinjama, I would see a brand-new white pickup truck with four doors and tinted windows. It was always the same pickup truck. I don't know what PEPPER AND SALT's role was or whether he held a rank, such as general. I only ever heard him referred to as "PEPPER AND SALT." When asked, I know that he was in Voinjama from time to time. " (MPC 12-09-0024, lines 9–15). The name PEPPER AND SALT and his—important—status within ULIMO were therefore not unknown to him, but he admits to gaps in his knowledge of the details. However, it is understandable for a civilian not to know PEPPER AND SALT's exact rank or position, just as it is understandable not to know the names of many ULIMO soldiers or commanders. As for the name of the young man who was killed—who was his neighbor—it is entirely possible that Nicolas COOK did not know it. He also provided a relevant explanation on this point: "It was during the war. New people were arriving every day. People didn't live there, but every day people would come from the bush and occupy all the available houses. " (CAR 5.308.014, Q/A No. 81; see also TPF 40.753.036, Q/A No. 244). Furthermore, in response to a question from the defense, Nicolas COOK was able to name many of his closest neighbors at the time (CAR 5.308.014, Q/A No. 78), with the clarification that none of them lived in the house of the young man who was killed (CAR 5.308.014, Q/A No. 79).

4.12.2.8 In light of the foregoing, the Court finds that Alieu KOSIAH and the ULIMO soldiers stopped the *pickup truck*, which was carrying civilians who had been apprehended in connection with arbitrary killings perpetrated by the ULIMO—known as "Black Monday"—near the home of Nicolas COOK's neighbor. The ULIMO soldiers asked the young man to get into the *pickup truck*, which he refused to do. The soldiers then called Alieu KOSIAH, who ordered the young man to get into the *pickup truck*. When the young man refused, Alieu KOSIAH drew his pistol and shot him, killing him (MPC 12-09-0016, lines 31 ff.; TPF 40.753.012, lines 6 ff.).

4.12.3 Objective Facts

The act of executing a young boy—the civilian status of whom was never in question and was, moreover, evident—under the circumstances described above objectively constitutes murder.

4.12.4 Subjective elements

Alieu KOSIAH knew that by firing a pistol at this young boy at close range, he would take his life. There was no evidence to lead the defendant to presume that the victim, who had been apprehended by ULIMO in front of his home, was not a civilian. It follows from the foregoing that he acted intentionally.

Furthermore, the alleged acts occurred in the context of a non-international armed conflict, namely the First Liberian Civil War, a fact of which Alieu KOSIAH was aware.

4.12.5 Conclusion

In light of the foregoing, Alieu KOSIAH is found guilty of the murder of a civilian 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 and Art. 4, subparagraph 2, letter a of PA II (count 1.3.18 of the indictment).

4.13 Ordering the forced transport, by civilians, from Voinjama to Gbarlyeloh, in Guinea

According to section 1.3.19 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 a forced transport from Voinjama to Gbarlyeloh, in Guinea, by civilians, between September 1993 and December 1993, and between early 1994 and May 1994, respectively.

4.13.1 Arguments of the Parties

4.13.1.1 The MPC maintains that Nicolas COOK's account is clear and reliable (CAR 5.200.714 et seq.). In particular, it highlights Nicolas COOK's memory, which it describes as exceptional, emphasizing that he counts and observes everything. The MPC emphasizes that the chronology of events attributed to the defendant by Nicolas COOK is clear and fits perfectly with what is known about the history of Liberia's first civil war. Regarding the forced transport to Gbarlyeloh, Guinea, the MPC explains that it allegedly took place in the first quarter of 1994, at a time when the defendant was convalescing after being wounded at Bokassa Junction, which could explain why he did not accompany the convoy. The MPC further contends that Nicolas COOK, during his appeal hearing—in which the two forced transports he reported were considered together—was able to distinguish in each instance which transport was being referred to, which would be an indication that he is telling the truth. The MPC also presented additional arguments at the trial regarding the credibility of Nicolas COOK's statements (TPF 40.721.122 et seq.). As for the law, the MPC refers to the contested judgment (CAR 5.200.749).

4.13.1.2 Attorney TOUTOU-MPONDO (CAR 5.200.953 et seq.) argues that Nicolas COOK's account is credible because it is consistent, precise, factual, and corroborated by converging sources. She further emphasizes that the information provided by her client covers both significant and trivial details, which lends to the authenticity of his account. Regarding the transportation and, in particular, the escape of Ramon SAMPLES—and in connection with the allegation made against

her client for failing to indicate in his complaint that Ramon SAMPLES was his brother, Attorney TOUTOU-MPONDO maintains that Ramon SAMPLES's status as a civilian would have been more relevant, in her client's view, than the family ties binding them, adding that he would have voluntarily stated that Ramon SAMPLES was his brother when asked to recount his experience in his own words.

4.13.1.3 The defense challenges the conviction handed down by the Criminal Court (CAR 5.200.423 and 562 et seq.). Reiterating the arguments presented before the trial judges (TPF 40.721.503 and 624 et seq.), the defense contends that Nicolas COOK did not recognize Alieu KOSIAH and questions the credibility of his testimony. It notes that in his complaint, Nicolas COOK described Ramon SAMPLES as just one civilian among others, whereas during his interview with the Office of the Attorney General (MPC), he stated that Ramon SAMPLES was his brother. It adds that Ramon SAMPLES could not be Nicolas COOK's brother, since it would be impossible for the latter to bear the name of his maternal grandfather. The defense further argues that Ramon SAMPLES could not have been a civilian because Walter VARGAS reportedly stated that Ramon SAMPLES was a soldier in the military police whom he had met in Tubmanburg. Finally, Nicolas COOK should have known that ULIMO soldiers were not permitted to cross the border or carry their weapons with them on that occasion.

4.13.2 Assessment of the Evidence

4.13.2.1 This indictment stems from the criminal complaint filed by Nicolas COOK on August 22, 2014 (*supra*, A.3). In this regard, the Court notes at the outset that a criminal complaint does not constitute evidence (*supra*, consid. II.1.2.2.3). It also notes that it is analyzing testimony—specifically, the credibility of the statements—and not the credibility of Nicolas COOK (*supra*, consid. II.1.2.6.1). Finally, it notes that the theory of a conspiracy organized by CIVITAS MAXIMA and the GJRP—which the defense accused of fabricating testimony in exchange for material benefits—has been rejected (*supra*, para. II.1.1.3) and that the identifications—from a photo lineup and in person—conducted during the proceedings cannot be used, whether as evidence for or against the defendant (*supra*, para. II.1.3.3.2 and II.1.3.3.3).

4.13.2.2 With regard to the identification of Alieu KOSIAH by Nicolas COOK, the Court recalls that it has already found that he validly identified Alieu KOSIAH during the proceedings as the accused and refers to its analysis of the issue in connection with the murder of a civilian in Voinjama (*supra*, para. II.4.12.2.2).

4.13.2.3 As for the alleged facts, Nicolas COOK's statements regarding the forced transport from Voinjama to Gbarlyeloh, in Guinea, have been consistent throughout

Throughout the proceedings, his testimony was consistent and characterized by numerous indicators of credibility. His statements regarding the key elements of his accusation were consistent, and he provided numerous details. He explained that General KOSIAH was sitting under a porch (MPC 12-09-0013, lines 45 ff.; TPF 40.753.018, line 29) and that they had to walk past him to enter and retrieve the explosives (TPF 40.753.018, lines 29 ff.). He stated that there were eleven civilians and fifteen soldiers [MPC 12-09-0020, line 8; TPF 40.753.017, Q&A No. 114), and then that "[w]e unloaded the cargo, and three ULIMO soldiers remained with the cargo. Twelve ULIMO soldiers returned with us to Voinjama" (MPC 12-09-0014, lines 23–25). Regarding these figures, the Court notes that during the trial proceedings, Nicolas COOK, when asked, was able to immediately state the number of people in the courtroom on the day of his testimony, explaining as follows: "The first thing I did when I arrived was to count the number of chairs to find out how many of us there would be. If we also count the chair I'm sitting in now, if all the chairs had been occupied, we would have reached 28. I also counted the police officers because they were already seated when I arrived, and I counted the number of empty seats in front of the desks" (TPF 40.753.035). This approach helps us understand the complainant's unique way of thinking and how seriously we can take the value of the details that emerge regarding certain facts that occurred more than twenty years before he was heard in the context of these proceedings. Nicolas COOK also provided a detailed description of the Barzee neighborhood, where Alieu KOSIAH was located when he gave the order (TPF 40.753.016, line 42; TPF 40.753.018, line 11) for the transport: "There is a road leading to Kolahun and another road, which crosses that road, leading to the Voinjama market. And when you go up toward the Mandingo quarter, there is a road that goes directly to Lawalazu, and there is a marsh between the Barzee quarter and the market. But there is a path that people can take—though not vehicles—to get to the Barzee Quarter. And so, the Barzee Quarter is in the middle of all that" (CAR 5.308.018, Q/A No. 104). Nicolas COOK also provided details that appeared irrelevant to the key facts, such as the escape of his brother Ramon SAMPLES, who used the pretext of a bathroom break to break away from the convoy (MPC 12-09-0014). He also explained how the soldiers reacted after his escape: "Then they looked at the load he was carrying and checked to see who else was carrying the same thing. They opened the bag he was carrying. It was coffee. They distributed it among those carrying the same thing. Then we continued" (TPF 40.753.020, lines 33–36). Nicolas COOK's account is characterized by various details that make it concrete, such as the content of reported discussions or descriptions illustrating interactions. He thus stated the following: "[General KOSIAH] also told his soldiers that if anyone tried to escape, they should shoot him and report it to me" (MPC 12-09-

0014, lines 4 ff.), “He told his soldiers: ‘When you’re on the move, if anyone tries to escape, kill that person and report it to me’” (TPF 40.753.018, lines 30 ff.). He explained that once the cargo had been unloaded, the soldiers no longer paid any attention to them, emphasizing that the only thing they wanted was for “you to stay behind,” adding: “They walked in front. If they sped up, you had to run behind them to keep up” (TPF 40.753.023, lines 2 ff.). Nicolas COOK’s statements contain indications of his psychological experience of the forced transport in which he participated. When asked, he mentioned the moment when the soldiers fired into the bush after his brother fled, expressing his fear that his brother might already be dead (TPF 40.753.020, Q/A No. 136). He also spontaneously admitted to certain gaps in his account, stating that he did not know what had become of the cargo they had transported during the two forced marches (MPC 12-09-0021, Q&A No. 35), as well as the names of the two villages they passed through after Kuruka Junction (MPC 12-09-0025, lines 45 ff.) and the exact date of the transport (TPF 40.753.015 ff., Q&A No. 97). Finally, he did not seek to incriminate the defendant, as evidenced by the fact that he stated the defendant was not present during the transport (TPF 40.753.017, Q/R No. 115) and that, unlike other civilians (TPF 40.753.019, lines 31 et seq.), he was not beaten: “I was not beaten because I took care to follow the person in front of me very closely […] When asked, I was not threatened” (TPF 40.753.020, Q&A No. 133).

4.13.2.4 The Court further considers that many of the defense’s arguments concern ancillary issues and are aimed not at calling into question the credibility of the testimony regarding the facts, but rather the credibility of Nicolas COOK (*supra*, consid. II.1.2.6.1). As for the arguments concerning points relevant to the assessment of the statements regarding the alleged facts, they do not stand up to an analysis of the case file, and several of them, on the contrary, tend to reinforce the credibility of the account. The Court will now examine them in detail to the extent that they have not already been addressed and appear relevant to the assessment of Nicolas COOK’s testimony regarding the facts he reported.

4.13.2.5 The defense criticizes Nicolas COOK for making contradictory statements regarding the cargo being transported, alleging that he first stated that civilians could choose their cargo, and then the opposite (CAR 5.200.569). In this instance, Nicolas COOK first stated the following: “We were each told to take something. There was oil, coffee, and cocoa. Personally, I took a can of oil” (MPC 12-09-0014, lines 5 ff.). He then stated that “It was a soldier who ordered me to transport oil ” (MPC 12-09-0020, line 6). It must be noted, however, that contrary to the defense’s contention, these two statements are not contradictory; the fact that Nicolas COOK said he took oil in no way implies that it was his

free choice and is therefore in no way incompatible with the fact that he was ordered to transport oil.

4.13.2.6 With regard to the involvement of a civilian named Ramon SAMPLES—who was later found to be Nicolas COOK's brother— the Court does not view this as a factor that would call into question his credibility, particularly since he himself mentioned this circumstance (MPC 12-09-0014, lines 10 ff.). It is also plausible that Ramon SAMPLES has a different last name than his brother Nicolas COOK. The latter had already explained to the MPC that his last name had been passed down to him by his maternal grandfather (MPC 12-09-0020, lines 19 ff.; see also TPF 40.753.021, lines 1 ff.). He also provided a detailed explanation during the appellate proceedings, in response to the defendant's remarks: "There are nine of us on our father's side. Our father had two wives, and I am one of those who took my maternal grandfather's surname. That is why I use the surname COOK. And one of my older brothers on my father's side—from another mother—was also given the surname COOK. Among the nine of us from the same father, two of us bear the surname COOK. One of them is named Hugh COOK, and I am Nicolas COOK. All my other brothers and sisters are named SAMPLES. That is what I wanted to clarify" (CAR 5.308.023, lines 1–8). The Court further notes that it has already had occasion to observe that many participants in these proceedings have referred to individuals with a surname different from that of their brothers and sisters, for example because they changed it (*supra*, paras. II.4.10.2.8 and II.4.11.2.8). Finally, the defense relies on the statements of Walter VARGAS to assert that Ramon SAMPLES could not have been a civilian who stayed in Voinjama (CAR 5.200.573). In this case, Walter VARGAS, when questioned by the defense, stated before the MPC that he had met a soldier named SAMPLES, who was a member of the military police, in Tubmanburg (MPC 12-16-0051, lines 20–23). This echoes statements made by the defendant several months earlier, in which he also claimed to know a SAMPLES from the military police (MPC 13-01-0107, lines 1–7). However, there is no evidence in the record to support the claim that this SAMPLES might have been named Ramon or that he was the same person as the Ramon SAMPLES mentioned by Nicolas COOK, who, as a reminder, was a civilian.

4.13.2.7 Nicolas COOK made the following statement regarding the border crossing with Guinea: "At the checkpoint in Guinea, the Guinean soldiers asked the ULIMO soldiers to provide the serial numbers of their weapons. The Guinean soldiers asked whether the ULIMO soldiers wanted to leave their weapons behind or take them with them. [Three] minutes after passing the checkpoint, we were in Gbar-lyeloh" (MPC 12-09-0014, lines 20–23). However, the defense counters these statements with the testimony of several witnesses who were members of ULIMO, from which it

It appears that the soldiers were not authorized to take their weapons with them to Guinea, and the Court concludes that Nicolas COOK could not have participated in the transport he reported (CAR 5.200.575 s.). The Court recalls that the events at issue in these proceedings took place in the context of a civil war pitting various armed factions against one another—some of which had, moreover, split into sub-factions—and for some of which frequent crossings into Guinea to secure new resources were essential (*supra*, paras. II.2.1.2.6 and II.2.2.1.2.). Under these circumstances, and given the long shared border between Lofa and Guinea, it is more than likely that the rules governing entry into Guinea—as they pertained to ULIMO combatants' weapons—were neither strictly identical over time nor consistent across different border crossing points. It cannot therefore be ruled out that ULIMO soldiers, on this occasion or generally during the conflict, may have entered Guinean territory armed, at least after crossing natural borders and up to the first checkpoint—otherwise, they would have had to leave their weapons behind without any security—it should be noted that Nicolas COOK provided a plausible and detailed explanation of what happened during this transport: "When asked, the soldiers who crossed were those who provided the serial numbers of their weapons. You ask me if they kept their weapons on them. Those who had not provided a serial number had their weapons with them. You ask me if those who provided the serial number turned in their weapons. I answer that yes, that is correct. Upon questioning, some of the ULIMO rebels entered Guinean territory with their weapons on them. In any case, even those who provided the serial numbers of their weapons did so on the Guinean side. In response to a question, those who kept their weapons were not going for a stroll in Guinea but were waiting for us on the road. There was another *checkpoint* further on that we could not pass through with weapons. In response to a question, no ULIMO soldier entered Guinean territory with a weapon slung over his shoulder. At the border in Gbar-lyeloh, there is a marshy area nestled between two hills. To reach the border post, you must first walk for a good minute on Guinean soil. So they couldn't have gone far" (TPF 40.753.022, lines 18–30).

4.13.2.8 The transport alleged by the complainant also took place against the backdrop of Liberia's first civil war, since forced marches—whether for the transport of weapons and ammunition or looted goods—were part of ULIMO's *modus operandi*, as the Court has already noted above (*supra*, para. 2.1.2.6). This is further evidenced by several other factual findings concerning various locations in Lofa County, analyzed in this judgment (*supra*, paras. II.4.3, II.4.8, II.4.9, II.4.10, and II.4.11; *infra*, paras. II.4.14 and II.4.16). The transport in question is also consistent with the roles performed by the defendant within ULIMO, as he was in charge of the organization's logistical and financial aspects and was required to travel frequently (*supra*, para. II.2.2.1.2). In addition, the route taken by

the convoy—namely, from Voinjama to Gbarlyeloh, Guinea, via Kuruka Junction (MPC 12-09-0025, lines 44–46), makes geographical sense, as illustrated by the map in the case file (MPC 10-01-0565), and that the information provided by Nicolas COOK regarding the duration of the walk—namely, four or five hours (TPF 40.753.019, Q/A No. 125), are consistent with the route as he described it—namely, that the destination of the transport was a three-minute walk beyond the border (MPC 12-09-0014, line 23)—though it should be noted that the village of Gbarlyeloh could not be located on a map.

4.13.2.9 In light of the foregoing, the Court finds that Alieu KOSIAH ordered his soldiers to carry out a forced transport of property by civilians from Voinjama to Gbarlyeloh, in Guinea, between September 1993 and December 1993, and between early 1994 and May 1994, respectively, during which Nicolas COOK was forced, along with other civilians, to carry a heavy load—in his case, a can of oil. Alieu KOSIAH instructed his soldiers that if anyone tried to flee, they were to shoot him and report the incident. This experience proved to be traumatic for Nicolas COOK, due to the heavy load, the duration, and the conditions under which the transport took place, such as the lack of food and the fear of being beaten or even killed.

4.13.3 Objective Evidence

4.13.3.1 In light of the foregoing, the acts can be characterized both as an assault on physical and mental integrity, in the form of cruel treatment, and as an assault on human dignity, in the form of humiliating and degrading treatment. Forcing heavily laden civilians to march for hours while threatening them with death by weapons or beating them if they do not comply or do not move fast enough is likely to cause great suffering. This suffering is primarily physical, due to the long march the civilians were forced to undertake while carrying heavy loads and the beatings they endured along the way. The suffering is also psychological, due to the terror that gripped the civilians throughout the journey, as they were subjected to verbal intimidation, death threats, and blows with rifle butts from the soldiers accompanying them. This treatment must also be characterized as humiliating and degrading. Forcing heavily laden civilians to march while threatening them with death, striking them to make them move at the imposed pace, and treating them as mere means of transportation amounts to a violation of their humanity and constitutes a very serious form of humiliation.

4.13.3.2 The Court further specifies that there is no basis for finding additional offenses regarding the blows inflicted on the civilians and the death threats made against

them, since these acts fall under the offenses of cruel, humiliating, and degrading treatment. As for the offense of slavery, it has not been committed. The duration of the transport is not, in fact, sufficient to conclude that powers of ownership were exercised over the civilians who were forced to participate in said transport.

4.13.3.3 Alieu KOSIAH ordered the transport, and the soldiers obeyed his orders. This attests to the defendant's status as a superior. His liability under Article 18 of the Military Penal Code (aCPM) is therefore established.

4.13.4 Subjective Elements

Alieu KOSIAH knew that by ordering the soldiers to carry out the transport and instructing them to shoot any who attempted to flee, they would carry out his orders. The defendant could not have been unaware of the civilian status of the conscripted individuals, nor that by acting in this manner he was seriously violating their dignity. It follows from the foregoing that he acted intentionally.

Furthermore, the alleged acts occurred in the context of a non-international armed conflict—namely, the First Liberian Civil War—a fact of which Alieu KOSIAH was aware.

4.13.5 Conclusion

In light of the foregoing, Alieu KOSIAH is found guilty of ordering the cruel, humiliating, and degrading treatment of several civilians in the form of forced transport, 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(a) and (c) common to the General Provisions, and Article 4, subparagraph 2(a) and (e) of PA II (section 1.3.19 of the indictment).

4.14 Ordering forced transport, by civilians, from Voinjama to Solomba and from there to the Guinean border

According to item 1.3.20 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 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.

4.14.1 Arguments of the Parties

4.14.1.1 The MPC maintains that Nicolas COOK's account is clear and reliable (CAR 5.200.714 et seq.). In particular, it highlights Nicolas COOK's memory, which it describes as exceptional, noting that he counts and observes everything. Regarding the forced transport to Solomba, the MPC notes that it allegedly took place a few days after the one to Gbarlyeloh, in which Nicolas COOK

was also forced to participate in, which is said to have taken place in the first quarter of 1994, at a time when the defendant was convalescing after being wounded at Bo-kassa Junction—which could explain why he did not accompany the convoy. The MPC further contends that Nicolas COOK, during his appeal hearing—in which the two forced transports he reported were considered together—was able to distinguish in each instance which transport was being referred to, which would be an indication that he was telling the truth. The MPC also presented additional arguments at the trial regarding the credibility of Nicolas COOK's statements (TPF 40.721.122 et seq.). As for the law, the MPC refers to the contested judgment (CAR 5.200.749).

4.14.1.2 Ms. TOUTOU-MPONDO (CAR 5.200.953 et seq.) argues that Nicolas COOK's account is credible because it is consistent, precise, factual, and corroborated by converging sources. She further emphasizes that the information provided by her client covers both significant and trivial details, which lends further credibility to his account. Attorney TOUTOU-MPONDO maintains that the Voinjama-Kolahun-Solomba route described by Nicolas COOK involves traveling further inland while following the course of the Liberia-Guinea border to reach a border post, Solomba, which is farther from Voinjama and closer to Guéckédou, a Guinean commercial town. She adds that the lack of logic in this transport cannot be attributed to her client. Regarding her client's assertion that the soldiers crossed the Guinean border with their weapons—which, according to the defense, would invalidate his account— she emphasizes that this relates to the transport to Gbarlyeloh and refers to her client's statement on this matter, in which he explains that ULIMO soldiers crossing the border would surrender their weapons and provide the serial numbers of those weapons at the border post.

4.14.1.3 The defense challenges the conviction handed down by the Criminal Court (CAR 5.200.423 and 562 et seq.). Reiterating the arguments presented before the trial judges (TPF 40.721.503 and 624 et seq.), the defense argues that Nicolas COOK did not recognize Alieu KOSIAH and calls into question the credibility of his testimony. The defense argues in particular that the route taken by the civilians—from Voinjama to the border with Guinea near Solomba, via Kola-hun and Foya—makes no logical sense, emphasizing that the border with Guinea is also located near Voinjama. It describes Nicolas COOK's explanations—that an ambush took place at Kuruka Junction—as absurd, arguing that it would not have been possible for an ambush to occur near the town of Voinjama, since the town and its surroundings were controlled by ULIMO. Consequently, it is unlikely that the second shipment of goods reported by Nicolas COOK actually took place. Finally, he should have known that ULIMO soldiers could neither cross the border nor take their weapons with them on that occasion.

4.14.2 Assessment of the Evidence

4.14.2.1 This indictment stems from the criminal complaint filed by Nicolas COOK on August 22, 2014 (*supra*, A.3). In this regard, the Court notes at the outset that a criminal complaint does not constitute evidence (*supra*, consid. II.1.2.2.3). It also notes that it is analyzing testimony—namely, the credibility of the statements—and not the credibility of Nicolas COOK (*supra*, consid. II.1.2.6.1). Finally, it notes that the theory of a conspiracy organized by CIVITAS MAXIMA and the GJRP—which the defense accused of fabricating testimony in exchange for material benefits—has been rejected (*supra*, para. II.1.1.3) and that the identifications—from a photo lineup and in person—conducted during the proceedings cannot be used, whether as evidence for or against the defendant (*supra*, para. II.1.3.3.2 and II.1.3.3.3).

4.14.2.2 With regard to the identification of Alieu KOSIAH by Nicolas COOK, the Court recalls that it has already found that he had validly identified Alieu KOSIAH at the time of the events and refers to its analysis of the issue in connection with the murder of a civilian in Voinjama (*supra*, para. II.4.12.2.2).

4.14.2.3 As for the alleged facts, Nicolas COOK's statements regarding the forced transport from Voinjama to the border with Guinea near Solomba, via Kolahun and Foya, have been consistent throughout the proceedings and are characterized by numerous indicators of credibility. His statements regarding the key elements of his accusation were coherent, and he provided numerous details. He explained that General KOSIAH was once again sitting under a porch, just as he had been when he ordered the forced transport from Voinjama to Gbarlyeloh (MPC 12-09-0014, line 30; *supra*, para. II.4.13.2.3). He also highlighted what distinguished this transport from the previous one, as illustrated by his statements before the MPC: "The number of soldiers had increased: this time there were 17 […] There were 10 of us civilians on the second transport" (MPC 12-09-0021, lines 22 ff.; see also CAR 5.308.021, Q/A No. 135; *supra*, para. II.4.13.2.3). Regarding the journey itself, Nicolas COOK provided some details about what happened along the way (MPC 12-09-0014 ff.) and the soldiers' positions (MPC 12-09-0021, lines 26 ff.; TPF 40.753.026, Q/R No. 174), as well as a description of the route taken: "It was a road suitable for vehicles, which was wider in some places. At times, up to three people could walk side by side. But in some places, the road did not allow for that, and we had to walk in single file " (TPF 40.753.026, Q/A No. 174). He also provided details that appeared irrelevant to the key elements of his account, explaining, for example, that it was precisely five ULIMO soldiers who came to pick him up at his home for this second transport (MPC 12-09-0014, lines 27 ff.; TPF 40.753.023, Q/A No. 151). Regarding the figures provided by Nicolas COOK, the Court refers to its analysis from the perspective

the forced transport from Voinjama to Gbarlyeloh regarding the accuracy of certain details concerning events that took place more than twenty years before he was heard in the context of the present proceedings (*supra*, consid. II.4.13.2.3). Nicolas COOK's account is characterized by the presence of various elements that lend it concreteness, such as the content of reported discussions or descriptions illustrating interactions. He thus stated the following:
"General KOSIAH […] again asked his soldiers where the people were whom he had ordered them to fetch. One of the soldiers told him they were there. He ordered the cargo to be transported to Kolahun. He said that if the soldiers could not find anyone in Kolahun to carry the cargo, they were to continue with us to Solomba. He gave the same order as the first time, namely that if anyone tried to run away, they were to be shot. One of the civilians asked why we weren't going to Gbarlyeloh. One of the soldiers said that, shortly after leaving Voinjama, at Kuruka Junction, they had been ambushed during a previous transport a few days earlier" (MPC 12-09-0014, lines 30–38). He also spontaneously admitted to certain gaps in his account, stating that he did not know what had become of the cargoes they had transported during the two forced marches (MPC 12-09-0021, Q/A No. 35), but also that he did not know who the "Big Man" of Foya was—the person mentioned by a soldier during the journey—and that he never found out afterward (MPC 12-09-0021, lines 39–42; TPF 40.753.028, lines 4 ff.). Finally, he did not seek to incriminate the defendant. He thus stated that the defendant was not present during the transport, having remained in Barzee (TPF 40.753.025, Q&A No. 166), and that he himself, unlike other civilians (TPF 40.753.029, lines 18 ff.), been threatened or struck (TPF 40.753.029, Q/A No. 193).

4.14.2.4 The Court further considers that many of the defense's arguments concern ancillary issues and are aimed not at calling into question the credibility of the testimony regarding the facts, but rather the credibility of Nicolas COOK (*supra*, consid. II.1.2.6.1). As for the arguments concerning points relevant to the assessment of the statements regarding the alleged facts, they do not stand up to an analysis of the case file, and several of them, on the contrary, tend to reinforce the credibility of the account. The Court will now examine them in detail to the extent that they have not already been addressed and appear relevant to the assessment of Nicolas COOK's testimony regarding the facts he reported.

4.14.2.5 With regard to Nicolas COOK's statements suggesting that soldiers were crossing the border between Liberia and Guinea with their weapons, the Court refers to its analysis concerning the forced transport from Voinjama to Gbarlyeloh (*supra*, para. II.4.13.2.7).

4.14.2.6 The transport alleged by the complainant also took place against the backdrop of Liberia's first civil war, given that forced marches—whether for the transport of weapons and ammunition or looted goods—were part of ULIMO's *modus operandi*, as the Court has already noted above (*supra*, para. 2.1.2.6). This is further evidenced by several other factual findings concerning various locations in Lofa County, which were analyzed in this judgment (*supra,* paras. II.4.3, II.4.8, II.4.9, II.4.10, II.4.11, and II.4.13, and *infra*, para. II.4.16). The transport in question is also consistent with the duties performed by the defendant within ULIMO, as he was in charge of the organization's logistical and financial matters and was required to travel frequently (*supra*, para. II.2.2.1.2). In addition, the route taken by the convoy—namely, from Voinjama to the border with Guinea near Solomba, spending the night in Kolahun, and continuing via Foya (MPC 12-09-0014 et seq.)— follows a logical geographical route, as illustrated by the map included in the case file (MPC 10-01-0565); it should be noted that a ULIMO soldier participating in the transport stated that they had been ambushed a few days earlier on the road leading to Gbarlyeloh (*supra*, para. II.4.14.2.3), a locality closer to Voinjama than Solomba is. Such an ambush, even if it had occurred near a ULIMO stronghold—namely, Voinjama—remains plausible, particularly in light of the characteristics of Liberia's first civil war (see the statements by Alieu KOSIAH regarding military strategy in the context of guerrilla warfare [CAR 5.301.016, Q&A No. 38 and 120, Q&A No. 310]). The information provided by Nicolas COOK regarding the duration of the march—namely, eight to nine hours from Voinjama to Kolahun (MPC 12-09-0014, lines 38 ff.; TPF 40.753.025, Q&A No. 175), and between 16 and 18 hours for the round trip between Kolahun and the border near Solomba, are consistent with the route as he described it (MPC 12-09-0014 ff.; see also TPF 40.753.027 et seq., Q/A Nos. 183 and 188). The case file further illustrates that the ULIMO resorted to forced marches to have civilians transport looted goods along the route from Foya to Solomba, which constitutes a portion of the journey undertaken by Nicolas COOK. Reference should be made here to the Court's examination of the forced transports reported by Christopher GREENE (transport of goods, section 1.3.10 of the indictment [*infra*, para. II.4.8]; transport of the engine from the Foya power plant, section 1.3.12 of the indictment [*infra*, para. II.4.9]).

4.14.2.7 In light of the foregoing, the Court finds that Alieu KOSIAH ordered his soldiers to carry out a forced transport of goods by civilians from Voinjama to the border with Guinea near Solomba, a few days after the forced transport from Voinjama to Gbarlyeloh (*supra*, para. II.4.13), during which Nicolas COOK was forced, along with other civilians, to carry a heavy load—in his case, oil. Alieu KOSIAH instructed his soldiers that if anyone tried to flee, they were to shoot him and report the incident.

This experience was, understandably, grueling for Nicolas COOK, due to the heavy load, the fact that the journey lasted two days, and the conditions under which it took place—such as the lack of sufficient food and the fear of being beaten or even killed.

4.14.3 Objective Facts

4.14.3.1 In light of the foregoing, the acts can be characterized both as an assault on physical and mental integrity, in the form of cruel treatment, and as an assault on human dignity, in the form of humiliating and degrading treatment. Forcing heavily laden civilians to march for hours while threatening them with death by weapons or beating them if they do not comply or do not move fast enough is likely to cause great suffering. This suffering is primarily physical, due to the long march the civilians were forced to undertake while carrying heavy loads and the beatings they endured along the way. The suffering is also psychological, due to the terror that gripped the civilians throughout the journey, as they were subjected to verbal intimidation, death threats, and blows with rifle butts from the soldiers accompanying them. This treatment must also be characterized as humiliating and degrading. Forcing heavily laden civilians to march while threatening them with death, striking them to make them move at the imposed pace, and treating them as mere means of transportation amounts to a violation of their humanity and constitutes a very serious form of humiliation.

4.14.3.2 The Court further specifies that there is no basis for finding additional offenses regarding the blows inflicted on the civilians and the death threats made against them, since these fall under the offenses of cruel, humiliating, and degrading treatment. As for the offense of slavery, it has not been committed. The duration of the transport was not, in fact, sufficient to conclude that powers of ownership were exercised over the civilians who were forced to participate in said transport.

4.14.3.3 Alieu KOSIAH ordered the transport, and the soldiers obeyed his orders. This attests to the defendant's status as a superior. His liability under Article 18 of the Military Penal Code (aCPM) is therefore established.

4.14.4 Subjective Elements

Alieu KOSIAH knew that by ordering the soldiers to carry out the transport, they would carry out his orders. The defendant could not have been unaware of the civilian status of the conscripted persons or that, by acting in this manner, he was seriously violating their dignity. It follows from the foregoing that he acted intentionally.

Furthermore, the alleged acts occurred in the context of a non-international armed conflict, namely the First Liberian Civil War, a fact of which Alieu KOSIAH was aware.

4.14.5 Conclusion

In light of the foregoing, Alieu KOSIAH is found guilty of ordering the cruel, humiliating, and degrading treatment of several civilians in the form of forced transport, 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, subparagraphs a and c, common to the General Provisions, and Article 4, subparagraph 2, subparagraphs a and e, of PA II (section 1.3.20 of the indictment).

4.15 Ordering the murders of two ULIMO combatants of Krahn ethnicity, including the individual known as WAR BOY, in Voinjama

Pursuant to section 1.3.21 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 murders of two ULIMO combatants of Krahn ethnicity, including a man known as WAR BOY, in Voinjama, between September 1993 and December 1993, and between early 1994 and May 1994, respectively.

4.15.1 Arguments of the Parties

4.15.1.1 The MPC maintains that Nicolas COOK's account is clear and reliable (CAR 5.200.714 et seq.). In particular, it highlights Nicolas COOK's memory, which it describes as exceptional, emphasizing that he counts and observes everything. The MPC refutes the defendant's claim that the split between ULIMO-K and ULIMO-J was a lengthy process that allegedly lasted from 1994 to 1996, arguing instead that, in the case file, all witnesses refer to the specific incident involving the firing of a *rocket-propelled grenade* (RPG) in Tubmanburg in March 1994. The MPC therefore argues that the execution of the two Krahn combatants likely took place just before or just after that event. It further emphasizes the difficulty of distinguishing, in *Liberian English*, between the pronunciations of "WAR BOY," "WAR BOSS," and "WAR BUS" (CAR 5.200.730 s.). The MPC also presented additional arguments at the trial regarding the credibility of Nicolas COOK's statements and the violent nature of the split between ULIMO-K and ULIMO-J (TPF 40.721.134 et seq.). As for the law, the MPC refers to the contested judgment (CAR 5.200.749).

4.15.1.2 Attorney TOUTOU-MPONDO (CAR 5.200.953 et seq.) argues that Nicolas COOK's account is credible because it is consistent, precise, factual, and corroborated by converging sources. She further emphasizes that the information provided by

her client covers both significant and trivial details, which lends to the authenticity of his account; she further argues that he would have no reason to lie about the execution of the two Krahn fighters, as he was not a victim of that event.

4.15.1.3 The defense challenges the conviction handed down by the Criminal Court (CAR 5.200.423 and 562 et seq.). Reiterating the arguments presented before the trial judges (TPF 40.721.503 and 624 et seq.), the defense asserts that Nicolas COOK did not recognize Alieu KOSIAH and calls into question the credibility of his testimony. The defense argues, in particular, that Nicolas COOK does not recall the orders the defendant allegedly gave during the execution of the two Krahn fighters and concludes that he did not witness this event, which the defense describes as significant. Indeed, it appears from Nicolas COOK's unscripted account that the defendant ordered the two fighters to be executed with a knife and to have their throats slit. During the same hearing before the MPC, this order was reportedly changed to a simple "Execute them," without any gesture or indication of how to carry out the executions. The defense also criticizes him for stating that he did not know anyone who had been tied up using the "tabé" method, even though he had also indicated that the two fighters had been tied up using the "tabé" method and that he knew one of them, namely the individual known as WAR BOY.

4.15.2 Assessment of the Evidence

4.15.2.1 This indictment stems from the criminal complaint filed by Nicolas COOK on August 22, 2014 (*supra*, A.3). In this regard, the Court notes at the outset that a criminal complaint does not constitute evidence (*supra*, consid. II.1.2.2.3). It also notes that it is analyzing a testimony—namely, the credibility of the statements—and not the credibility of Nicolas COOK (*supra*, consid. II.1.2.6.1). Finally, the Court notes that the theory of a conspiracy organized by CIVITAS MAXIMA and the GJRP—which the defense accused of fabricating testimony in exchange for material benefits—has been rejected (*supra*, para. II.1.1.3) and that the identifications—from a photo lineup and in person—conducted during the proceedings cannot be used, whether as evidence for or against the defendant (*supra*, para. II.1.3.3.2 and II.1.3.3.3).

4.15.2.2 With regard to the identification of Alieu KOSIAH by Nicolas COOK, the Court recalls that it has already found that he validly identified Alieu KOSIAH during the proceedings as the accused and refers to its analysis of the issue in connection with the murder of a civilian in Voinjama (*supra*, para. II.4.12.2.2).

4.15.2.3 As for the alleged facts, Nicolas COOK's statements regarding the execution of the two combatants belonging to the Krahn ethnic group were consistent

throughout the proceedings, and are consistent, characterized by numerous indicators of credibility. His statements regarding the key elements of his accusation have been coherent, and he has provided numerous details. He explained that the two combatants had been bound using the
“tabé” method (MPC 12-09-0015, lines 18 ff.; TPF 40.753.033, line 1), that their heads had been cut off (MPC 12-09-0015, lines 25–28; TPF 40.753.033, Q&A No. 222), that one of them was nicknamed “WAR BOY” (MPC 12-09-0015, lines 20 ff.; TPF 40.753.033, Q/A No. 224), and that the group of soldiers in the midst of which General KOSIAH was standing must have numbered approximately 20 to 30 people (MPC 12-09-0022, lines 4–6). Some details are out of the ordinary. Nicolas COOK reported that the heads of the two victims were taken, one to the Monrovia Highway *checkpoint* and the other to the Kolahun Highway checkpoint (MPC 12-09-0015, lines 25–28; TPF 40.753.033, Q&A No. 225). He also explained that “[t]hey cut off their heads, and they were even arguing among themselves over who would do it. They volunteered to do it. To carry out the execution, there were soldiers who stood on top of the people who were to be executed, so that they wouldn’t move while their heads were being cut off. ” (TPF 40.753.033). Nicolas COOK also provided details that appeared irrelevant to the key facts, stating, for example, that he had been “sent to the market to buy pepper” (MPC 12-09-0015; see also his statements at the trial level that he was “returning from the market ” [TPF 40.753.032, line 1]) or that “[t]he soldiers were wearing a mix of uniforms, with some in camouflage and others in civilian clothes” (MPC 12-09-0022, lines 6 ff.). Nicolas COOK’s account is characterized by the presence of various elements that lend it concreteness, such as the description of reactions and reported statements. For example, he stated that Alieu KOSIAH had explained the reason for the executions in these terms: “Since they want to fight us, then we must kill them” (TPF 40.753.031, lines 29 ff.; see also Nicolas COOK’s statements to the MPC, in which he attributes the following words to Alieu KOSIAH: “since the Krahns want to fight us, we will kill the ones who are among us ” [MPC 12-09-0015, lines 21 ff.]). Nicolas COOK’s statements contain indications of his psychological experience in connection with the execution he witnessed. He stated: “For my part, in any case, it was such an unbearable scene that I feel as though it had lasted all day. I was frozen in place” (TPF 40.753.051, lines 30 ff.). He also spontaneously admitted to certain gaps in his account, stating that he did not know where WAR-BOY was and that he knew only his nickname (MPC 12-09-0022, line 31), that he also did not know who had tied up the two combatants—stating that they were already tied up when he arrived (TPF 40.753.033, Q/A No. 219)—or the identities of the soldiers who killed the two combatants (TPF 40.753.033, Q/A No. 221). Finally, he did not seek to incriminate the defendant, as illustrated by his account of how the combatants were treated prior to their execution: “When I arrived, they were

bare-chested and had already been ‘beaten up.’ When asked, they said they had not been struck” (TPF 40.753.033, lines 1 ff.).

4.15.2.4 The Court further considers that many of the defense’s arguments concern ancillary points and are aimed not at calling into question the credibility of the testimony regarding the facts, but rather the credibility of Nicolas COOK (*supra*, consid. II.1.2.6.1). As for the arguments concerning points relevant to the assessment of the statements regarding the alleged facts, they do not stand up to an analysis of the case file, and several of them, on the contrary, tend to reinforce the credibility of the account. The Court will now examine them in detail to the extent that they have not already been addressed and appear relevant to the assessment of Nicolas COOK’s testimony regarding the facts he reported.

4.15.2.5 The defendant asserted that the account provided by Nicolas COOK did not make sense, since, on the one hand, he had dated the execution of the two combatants to early 1994, and, on the other hand, he had stated that their deaths were an act of revenge against ULIMO-J, even though the ULIMO split had not yet taken place. He also reiterated that he had been in Bomi when the split occurred and that he had never been to Voinjama before that split (MPC 13-01-0106 and 0178). During the appellate proceedings, the defendant further argued that the chronology of Nicolas COOK’s account would imply that the execution of the two Krahn fighters occurred before “Black Monday,” which would make no sense since “Black Monday” is known to have taken place in 1993 (CAR 5.301.088). However, the Court has already noted that the killings perpetrated during “Black Monday” were not limited to the year 1993 (*supra*, consid. II.4.12.2.6). Furthermore, Nicolas COOK did not establish a link between the execution of the two Krahn fighters and the split within ULIMO, noting that he knew nothing about the split in the ULIMO group (TPF 40.753.031, Q/A No. 208), an event of which he learned only after the war (TPF 40.753.048, Q/A No. 338). He thus merely reported the words he claimed to have heard from the defendant, namely that they had to kill them, since the Krahns wanted to fight against them. The Court further notes that the exact date of the execution cannot be determined, bearing in mind that dating must be done by contextualizing the events in relation to one another (*supra*, consid. II.1.2.5.3). In this case, the only relevant fact is that the acts attributed to the defendant took place against the backdrop of tensions between ULIMO-K and ULIMO-J (*infra*, para. II.4.15.2.9). The Court further notes that it has already established that the defendant was present in Lofa County—and specifically in Voinjama—as early as March 1993, and that he participated in the ULIMO takeover of Foya in July 1993 (*supra*, para. II.2.2.1.3). It has also found that he was mobile and frequently traveled within Lofa (*supra*, para. II.2.2.1.2). It therefore concludes that he was present in Voinjama at the time of the events.

4.15.2.6 The exact details of the order given by Alieu KOSIAH regarding the execution of the two Krahn fighters are disputed. During his testimony before the MPC, Nicolas COOK initially stated the following: “After that, General KOSIAH ordered that the two soldiers be executed with a knife, that their throats be slit. They cut off WAR-BOY’s head and took it directly to the checkpoint on Monrovia Highway at Iron Gate. They took the head of the other soldier, whose name I do not know, to the checkpoint on Kolahun Highway” (MPC 12-09-0015, lines 24–28). He later stated that when General KOSIAH gave the order to kill the two soldiers, “he was not speaking to any one soldier in particular from the group but to all of them,” adding that he had said: “‘Execute them.’” When asked, he did not say how to execute them, nor did he make any gestures ” (MPC 12-09-0022, lines 21–24). The fact that there is no further mention of instructions on how to kill the two combatants is not decisive when assessing the credibility of Nicolas COOK’s account. There is, in fact, a difference between the first quote—which is a summary of what he remembers—and the second quote, which contains a direct quote. It is easy to understand that, having witnessed how the order was carried out, he no longer has a clear memory of how the order was given.

4.15.2.7 As for the defense’s criticism that Nicolas COOK stated he did not know anyone who had been tied up using the “tabé” method, even though he had stated that the two Krahn fighters—including the one he identified as WAR BOY—had been tied up using the
“tabé”—this is by no means a contradiction. When Nicolas COOK states that he personally had never been subjected to such treatment and that this was also not the case for people he knew (MPC 12-09-0027, lines 27 ff.), it is clear that he is referring to his close associates; it is also emphasized that WAR BOY did not fall into this category, since Nicolas COOK knew him because he was among the soldiers who came to eat at his home (MPC 12-09-0015, lines 20 ff.).

4.15.2.8 The defendant also cast doubt on the existence of WAR BOY (CAR 5.301.088, Q&A No. 200). However, the Court was convinced during the appellate proceedings that the pronunciation of certain names can be confusing. This is clearly the case with the name “WAR BOY,” since it is particularly difficult to distinguish it from the way the names “WAR BOSS” and “WAR BUS” are pronounced. While it cannot be ruled out that Nicolas COOK misinterpreted the name of the Krahn combatant executed on the defendant’s orders, it should nevertheless be emphasized that this point may remain unresolved, since the charge relates to ordering the execution of two people, regardless of the pronunciation—and even less so the spelling—of the fighter’s name, which Nicolas COOK claimed to know because the fighter sometimes came to eat at his home (*supra*, para. II.4.15.2.7).

4.15.2.9 The executions denounced by Nicolas COOK also took place against the backdrop of Liberia's first civil war and the split within ULIMO in March 1994, which resulted from disagreements over appointments within the transitional government and led to a split, based on ethnic criteria, between ULIMO-K, the Mandingo faction led by Alhaji KROMAH, and ULIMO-J, the Krahn branch led by Roosevelt JOHNSON (*supra*, para. II.2.1.2.6; LIDOW, *op. cit.*, p. 158 ff. [MPC 14-01-0337 ff.]). The Court has, moreover, already noted above that the practice of dismembering corpses and scattering them around towns to frighten the enemy was common within ULIMO in Lofa, and that Walter VARGAS—who, it is recalled, fought alongside the defendant—had stated that they sometimes used human skulls at *checkpoints* (*supra*, para. II.2.1.2.5).

4.15.2.10 In light of the foregoing, the court finds that Nicolas COOK, between September 1993 and December 1993, and between early 1994 and May 1994, respectively, upon returning home, saw two ULIMO combatants of the Khran ethnic group bound using the "tabé" method. Alieu KOSIAH, standing among his soldiers, ordered them to kill these two men. Two soldiers killed them with knives and cut off their heads.

4.15.3 Objective Facts

The two Khran fighters killed on the orders of Alieu KOSIAH because of their membership in the Khran ethnic group and with the manifest intent of establishing the authority of the armed group to which he belonged had been disarmed; therefore, they must be considered persons not directly participating in hostilities within the meaning of Art. 3(1)(1) common to the General Provisions. Alieu KOSIAH also held the position of superior, as evidenced by the fact that the soldiers received their instructions from the defendant and carried out the order to kill the two Krahn combatants. His liability under Art. 18 aCPM is therefore established.

4.15.4 Subjective Elements

Alieu KOSIAH knew that by ordering the soldiers to execute the two Krahn combatants, they would carry out his order. Furthermore, the defendant could not have been unaware that the victims, who had been disarmed and bound using the "tabé" method, were entitled to protection, since they were not actively participating in hostilities—noting that the defendant underwent approximately six months of military training within the AFL (*supra*, consid. II.4.1.5.3). It follows from the foregoing that he acted intentionally.

Furthermore, the acts in question occurred in the context of a non-international armed conflict, namely the First Liberian Civil War, a fact of which Alieu KOSIAH was aware.

4.15.5 Conclusion

In light of the foregoing, Alieu KOSIAH is found guilty of ordering the killing of two unarmed soldiers 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)(a) common to the General Provisions, and Art. 4, subparagraph 2, letter a of PA II (section 1.3.21 of the indictment).

4.16 Ordering the looting of the village of Botosu, as well as ordering and directing the forced transport of property by civilians from Botosu

According to 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 looting of Botosu between March and December 1993 or between March 1994 and the end of 1995 (section 1.3.22 of the indictment), and of subsequently having ordered and directed the forced transport of looted property from the village of Botosu by civilians (section 1.3.23 of the indictment).

4.16.1 Arguments of the Parties

4.16.1.1 The Office of the Prosecutor (MPC) maintains that Carol ALEXANDER's account of the looting and forced transport is credible and that she was sincere and genuine in the simplicity that characterizes her (CAR 5.200.719 et seq.). It emphasizes that she is uneducated and that she has, in fact, repeatedly used the expression "I don't know book," explaining that she knows nothing about war, factions, or political issues. Nor is she said to be familiar with PEPPER AND SALT or Alieu KOSIAH's rank. In this regard, the MPC argues that Carol ALEXANDER would state who she saw—the defendant—and what she heard—"General KOSIAH." It adds that the *Report on Findings and Pictorials* dated January 9, 2023 (*supra*, C.25), submitted by the defense, is irrelevant, since the village mentioned therein—Bethesu, reportedly located northeast of Foya—is not the one where Carol ALEXANDER lived. The MPC also presented other arguments at the trial regarding the credibility of Carol ALEXANDER's statements and, in particular, contended that if the destination of the forced transport were unknown, the goods would likely have been transported to Voinjama and then to Guinea (TPF 40.721.140 et seq.). As for the law, the MPC refers to the contested judgment (CAR 5.200.749).

4.16.1.2 Attorney WAKIM refers to the first-instance judgment regarding the crimes of looting and forced transport (CAR 5.200.900). She also provided

evidence at the trial to support the credibility of her client's statements (TPF 40.721.354 et seq.).

4.16.1.3 The defense challenges the conviction handed down by the Criminal Court (CAR 5.200.423 et seq. and 579 et seq.). Reiterating the arguments presented before the trial judges (TPF 40.721.504 and 641 et seq.), the defense argues that Carol ALEXANDER did not recognize Alieu KOSIAH and questions the credibility of her testimony. The defense further objects to her having mentioned the term "ULIMO" in her complaint, as well as the fact that Alieu KOSIAH himself was allegedly a member of this armed group, before stating before the Office of the Attorney General that the ULIMO had never done anything to her and that she did not know whether General KOSIAH's group was part of the ULIMO—which would imply that she did not know the defendant. The defense also accuses Carol ALEXANDER of contradicting herself regarding how she learned of the proceedings against Alieu KOSIAH in Switzerland, stating first that Nicolas COOK had told her about it, and then that he had not mentioned it to her. The defense further contends that Carol ALEXANDER's account contains inconsistencies, particularly regarding the men who were allegedly gathered and then disappeared, the complainant's escape during the forced transport, the direction in which the forced transport took place, and its destination.

4.16.2 Assessment of the Evidence

4.16.2.1 This indictment stems from the criminal complaint filed by Carol ALEXANDER on August 23, 2016 (*supra*, A.9). In this regard, the Court notes at the outset that a criminal complaint does not constitute evidence (*supra*, consid. II.1.2.2.3). It also notes that it is analyzing testimony—specifically, the credibility of the statements—and not the credibility of Carol ALEXANDER (*supra*, consid. II.1.2.6.1). Finally, the Court notes that the theory of a conspiracy organized by CIVI-TAS MAXIMA and the GJRP—which the defense accused of fabricating testimony in exchange for material benefits—has been rejected (*supra*, para. II.1.1.3) and that the identifications—both from a photo lineup and in person—conducted during the proceedings cannot be used, whether as evidence for or against the defendant (*supra*, para. II.1.3.3.2 and II.1.3.3.3).

4.16.2.2 Regarding the identification of Alieu KOSIAH by Carol ALEXANDER, the latter provided details that were frequently cited during the proceedings to describe the defendant's physical appearance at the time of the events (*supra*, consid. II.1.3.3.6): "very dark-skinned, even darker than me," of average height, and with *"big*, *big eye balls*," "bulging eyes" (MPC 12-21-0012, lines 21–24; TPF 40.752.008, Q&A Nos. 39, 018, Q&A No. 117, and 041, Q&A No. 296;
CAR 5.302.014, Q&A No. 86). She also knew the defendant by the name of General KOSIAH, explaining that the fighters called him "General"

(MPC 12-21-0039, lines 7 ff.; TPF 40.752.007, Q&A Nos. 33 and 35). While it may seem surprising at first glance that she stated she did not know whether General KOSIAH's group belonged to ULIMO (MPC 12-21-0056) even though she had mentioned that group several times in her complaint (MPC 05-02-0002 ff.), this circumstance actually stems from the way the complaint was drafted, bearing in mind that the complainants themselves acknowledged certain shortcomings (*supra*, consid. II.1.2.1.2) and that Carol ALEXANDER is illiterate, states that she has no formal education, and does not even remember her birthday (CAR 5.302.002); for these reasons, one must be cautious about attaching too much weight to this document. Furthermore, the mere fact of not knowing whether the defendant was a member of ULIMO cannot be decisive; on the contrary, linking the defendant to the alleged events appears to be decisive. It should be noted in passing that even the combatants sometimes had difficulty knowing which leader—and, by extension, which group—they were supposed to be affiliated with (MPC 10-01-0258). The evidence outlined above has convinced the Court. The Court therefore finds that Carol ALEXANDER was confronted by Alieu KOSIAH at the time of the events.

4.16.2.3 As for the alleged events, Carol ALEXANDER's statements regarding the looting of the village of Botosu and the forced removal of property from that village have been consistent throughout the proceedings, coherent on the essential points, and supported by numerous indicators of credibility.

4.16.2.4 Regarding the looting, Carol ALEXANDER provided consistent details on the key elements of her testimony. She explained that when the soldiers arrived, they ordered the villagers to cook, then to take the food and bring it to the *palaver house*, which is a gathering place (MPC 12-21-0009, lines 5–8; see also TPF 40.752.009, Q&A nos. 48 ff.), that she did not know if they were ULIMO members, but that when they entered the village, they were calling the accused General KOSIAH (MPC 12-21-0056, lines 11–13; see also TPF 40.752.005, Q&A No. 17), and that he had ordered his men to "gather all our rice and oil" (MPC 12-21-0043, lines 7 ff.; see also TPF 40.752.010, Q&A nos. 56–58). She provided details that allowed the events to be dated, stating that "we were digging at the time " (MPC 12-21-0014, line 24) and that this was the time of year when she went to the fields to cultivate rice, and that the next day the attackers had entered the village of Botosu (TPF 40.752.009, Q/A No. 47). Her account is contextualized in relation to previous passages by other soldiers (MPC 12-21-0090; TPF 40.752.031, Q/A nos. 227–229). On this subject, Carol ALEXANDER described the villagers' reaction to the approach of armed groups, a detail that helps bring her testimony to life: "[…] there might be soldiers passing by every day or every two or three days. When we were lucky, we'd hear gunfire

that alerted us, and we knew which direction to go. When we were unlucky, there was no warning of the soldiers' arrival, and we were taken by surprise" (MPC 12-21-0090, lines 25–28). She provided details about the looting and how the rice and oil were gathered. She described how clean rice was stored in bags or old cloth, and how unclean rice was stored in the granary, explaining that the soldiers would take the rice that had already been threshed, since they did not know how to thresh rice and would not take things they could not consume (MPC 12-21-0087, 0089 and 0090, lines 10 ff.). She specified that the large bag used for long-term storage could hold up to 100 kg and that, in this instance, once the rice had been gathered, the bag was half-full (MPC 12-21-0089, lines 4–6). As for the oil, Carol ALEXANDER stated that it was stored in tins, that the soldiers had taken fourteen of them, and that she had seen them fill them (MPC 12-21-0088 et seq.; see also TPF 40.752.011, Q&A No. 65; CAR 5.302.018 et seq., Q&A nos. 115 et seq. and 118), specifying that the cans were generally 20 liters (TPF 40.752.011, lines 5 et seq.). Finally, Carol ALEXANDER provided details of no apparent relevance, for example regarding her duties in preparing food for the soldiers, namely washing dishes and fetching water from the stream (MPC 12-21-0009, lines 6 ff.), or the mention that the soldiers had not yet eaten what had been prepared for them at the time the civilians were rounded up (MPC 12-21-0009, line 23).

4.16.2.5 As for Carol ALEXANDER's statements regarding the forced transport from the village of Botosu, they are consistent on the key points. She stated that the soldiers had forcibly taken rice and oil from the people, then loosened the men's bonds and instructed them to carry the loads while the women followed behind (MPC 12-21-0009 et seq.), with the group being forced to move forward "because if you refuse, it is at your own risk " (TPF 40.752.016, Q/A No. 99). She explained as follows: "They said we had to carry the rice, the oil, and the ammunition. I don't know how many people were needed. There was the bag of rice, three bags of their ammunition, and the oil. They put everything together, and the remaining people had to carry it all" (MPC 12-21-0089, lines 15–17). The fact that ammunition was also transported, in addition to the looted goods, is also evident from Carol ALEXANDER's testimony at the trial (TPF 40.752.014, Q&A No. 83). She consistently stated that she had fled during the march (MPC 12-21-0044 and 0089, line 19; TPF 40.752.016, Q&A No. 104) under the pretext of needing to relieve herself (TPF 40.752.011, Q&A No. 66; CAR 5.302.021, Q&A Nos. 140 et seq. and 145). Although she told the MPC that she had walked a "good distance" before escaping (MPC 12-21-0044, line 7), and then, at the trial, that it had not taken very long (TPF 40.752.017, Q&A No. 105), it should be noted that Carol ALEXANDER told the Court that she could not answer the question regarding the duration of the walk because she was

uneducated (CAR 5.302.015); as a result, she does not have a precise concept of time, as evidenced by her answer to the question of what a week means to her: “For me, a week isn’t too long or too short. I can’t explain all that” (TPF 40.752.028, Q/A No. 197). The fact that she supplemented her account by stating that she had returned to the village after her escape to find out what had happened to her father and brother (MPC 12-21-0044 et seq.), which was not included in the complaint (MPC 05-04-0003), is also an indication of her credibility. She also spontaneously acknowledged gaps in her testimony. She stated that she did not know why the women were not transporting goods—only the men were (TPF 40.752.013 et seq., Q&A No. 82)—nor why they were nevertheless required to accompany the convoy (TPF 40.752.014, Q&A No. 85). She indicated that she did not know whether the convoy had gone as far as Voinjama, though she offered a theory on the matter, noting that the soldiers were in that town a week later (MPC 12-21-0015). She also stated that she could not confirm whether her mother had accompanied the cargo transport until its conclusion because she herself had fled (TPF 40.752.033, Q/A No. 244), thereby casting herself in a negative light by admitting that she had not been concerned about her mother’s fate. She also reported memory lapses, as she could not recall the defendant’s behavior during the transport, explaining that she was traumatized by the attack on the village (TPF 40.752.015, Q&A No. 94). Carol ALEXANDER also corrected herself spontaneously, for example when she mentioned that vehicles were accompanying the convoy, only to correct herself in response to the very next question; it should be noted that the hearing transcript indicated she did not seem to have understood the initial question (TPF 40.752.014, Q/A 87 ff.). Finally, she did not seek to incriminate the defendant. She thus did not observe any threats or blows during the transport (TPF 40.752.015 et seq., Q&A Nos. 96–99).

4.16.2.6 The Court further considers that many of the defense’s arguments relate to ancillary issues and are aimed not at calling into question the credibility of the testimony regarding the facts, but rather the credibility of Carol ALEXANDER (*supra*, consid. II.1.2.6.1). As for the arguments concerning points relevant to the assessment of the statements regarding the alleged facts, they do not stand up to scrutiny of the case file, and several of them, on the contrary, tend to reinforce the credibility of the account. The Court will now examine them in detail to the extent that they have not already been addressed and appear relevant to the assessment of Carol ALEXANDER’s testimony regarding the facts she reported.

4.16.2.7 When questioned about the allegations against him, Alieu KOSIAH denied them, stating that he did not know the village of Botosu, had never been there, and had never left the main road, on which Botosu is not located (MPC 13-01-0652, lines 3–5; see also CAR 5.301.010, Q/A No. 19). However, it is implausible that Alieu KOSIAH, who was part of an armed group involved in what he

himself repeatedly described as a guerrilla group (*supra*, consid. II.4.14.2.6), never left the main road. A map showing the location of the village of Botosu, which is included in the case file, also illustrates how close it is to the main road, as it is approximately two kilometers from the road connecting Voinjama to Zorzor (MPC 10-01-0479). It follows that there are a number of reasons—both military and logistical—justifying Alieu KOSIAH and his group's journey to this village, which is situated along a major road and near the Lofa River. The Court further notes that it has already had occasion to establish that the accused was present in Lofa County, and specifically in Voinjama, as early as March 1993 (*supra*, para. II.2.2.1.3). The Court therefore finds that he was present at the scene at the time of the events, given, on the one hand, that the village of Botosu is located approximately twenty kilometers from Voinjama, and, on the other hand, that the defendant was mobile and frequently traveled within Lofa (*supra*, para. II.2.2.1.2).

4.16.2.8 The defense criticizes Carol ALEXANDER for first stating that some of the soldiers who came to the village did nothing, while others took food and killed people, and then for declaring that all groups of combatants killed people (CAR 5.200.589). These statements are in no way contradictory, as the individual behavior of soldiers differs from that of the groups to which they belong. Carol ALEXANDER was initially responding to a question regarding soldiers passing through her village, who were being fed there (MPC 12-21-0013, lines 17–22), whereas her second response concerned the existence of a hypothetical group of friendly soldiers (MPC 12-21-0108, lines 4–8). She thus drew a distinction between the soldiers she encountered in her village and armed groups in general, which, on the contrary, tends to reinforce the plausibility of her account.

4.16.2.9 The defense argues that there are inconsistencies in Carol ALEXANDER's account regarding the sequence of events when the soldiers arrived in the village of Botosu (CAR 5.200.579 et seq. and 594). In this instance, and contrary to what is stated in her complaint, the men from the village reportedly disappeared one by one—and not all at once—and were taken to the road—and not into the bush (MPC 05-04-0002; MPC 12-21-0009, lines 24–26). However, this is more a clarification of the sequence of events than a contradiction, bearing in mind here as well that this detail relates to the manner in which the complaint was drafted. As for the treatment of the men in the village, Carol ALEXANDER stated during her hearing at the initial proceedings that the first thing the soldiers did upon arriving in her village was to tie them up using the "tabé" method (TPF 40.752.005, Q&A No. 23). However, during her hearing before the MPC, she stated that the only people who were tied up were the civilians who remained after the twenty-

sixth man had refused to follow the soldiers out of the *palaver house* (MPC 12-21-0009, lines 27 ff.). These explanations therefore appear inconsistent. They may, however, be explained by the length of time that had elapsed since the events at the time of the hearing, Carol ALEXANDER's young age at the time, and the trauma caused by this episode—during which she lost her father and brother—as well as the language difficulties experienced by Carol ALEXANDER. This discrepancy is, moreover, not decisive, as these facts are not directly related to the charges set forth in the indictment. Finally, it should be added that this observation in no way supports the defense's argument that her testimony was prepared in advance.

4.16.2.10 The defense criticizes Carol ALEXANDER for having been imprecise during her testimony at the trial, citing in particular the fact that, when confronted with the names on the list—which she herself had provided during the preliminary investigation (MPC 12-21-0042) —of the individuals who were allegedly taken from the *palaver house* and who are therefore presumed dead—she stated that she did not recall the names Juan and Warren (CAR 5.200.596). However, it must be noted, on the one hand, that she explained she was unable to answer due to the pronunciation of certain names—it being specified here that more than four years had elapsed between Carol ALEXANDER's hearings before the MPC and at the trial, and, on the other hand, that she did recall other names on that list and mentioned them in her responses (TPF 40.752.039 et seq., Q&A No. 288).

4.16.2.11 Carol ALEXANDER's account also reportedly contains inconsistencies regarding the weapons Alieu KOSIAH was carrying (CAR 5.200.595). As the defense points out, Carol ALEXANDER mentioned the presence of a pistol for the first time during her testimony at the trial (TPF 40.752.015, Q/A No. 93), and cited two different weapons—a pistol and a sling-mounted firearm—at two separate points during that same hearing (TPF 40.752.034, Q/A Nos. 251 and 041, Q/A No. 293)—it being noted that she was referring once to the incident in Botosu and the other time to the one in Voinjama, namely the rape she reported (*infra*, consid. II.4.17). She also stated, again at the trial and in response to a question, that she was referring to the incident in Voinjama when she told the MPC that the defendant had an AK-47. However, it is clear from her statements to the MPC that she was referring to the incident in Botosu (MPC 12-21-0103, lines 16–26 and 0124). It cannot be ruled out, however, that the defendant had both weapons and that Carol ALEXANDER only recalled the second one later. Given how long ago the events occurred at the time of the hearing, the presence of other armed individuals at the scene, her young age at the time of the events, and the trauma she suffered during each of the two incidents in which she was confronted by the defendant, such a discrepancy

call into question the credibility of her statements, especially since she is testifying against the “learned-behavior” theory.

4.16.2.12 The looting and transportation alleged by Carol ALEXANDER took place in the context of Liberia’s first civil war, given that the Court has already found, on the one hand, that ULIMO, sometimes without the central government’s consent, engaged in widespread looting of property, and, on the other hand, that forced marches—whether for the transport of weapons and ammunition or of looted property—were part of ULIMO’s *modus operandi* (*supra*, para. II.2.1.2.6), a fact further evidenced by several other sets of facts concerning various locations in Lofa County, analyzed in this judgment (*supra*, paras. II.4.3, II.4.8, II.4.9, II.4.10, II.4.11, II.4.13, and II.4.14). The de-

Alieu KOSIAH’s statements—in which he claimed that, during the first civil war, he did not witness soldiers looting food supplies belonging to civilians (TPF 40.731.066, Q/A No. 334)—are therefore devoid of credibility. Furthermore, they are contradicted by the testimony of Walter VARGAS, the child soldier who accompanied him during the war, who stated that the coffee and cocoa they transported to Guinea were the result of looting (MPC 12-16-0035, Q&A No. 33). The defendant also cast doubt on the plausibility of transporting ammunition from Botosu to Voinjama (TPF 40.731.067, Q&A No. 336). However, given the treatment meted out to civilians conscripted for forced transport, it is entirely conceivable that the soldiers wished to relieve themselves of the burden posed by the ammunition, especially since the destination of the forced transport could not be determined, in part because Carol ALEXANDER fled en route. Walter VARGAS’s statements also attest to the use of civilians to transport weapons and ammunition (MPC 12-16-0032, line 8, and 0055, lines 13 ff.). The alleged transport also aligns with the duties performed by the defendant within ULIMO, as he was in charge of the organization’s logistical and financial matters and was required to travel frequently (*supra*, consid. II.2.2.1.2).

4.16.2.13 Finally, the Court notes that the *“Report on Findings and Pictorials”* dated January 9, 2023, submitted by the defense, is not relevant to this case, since, as the Court has already noted, said report refers to a village other than that of Carol ALEXANDER (*supra*, para. I.6.3.1).

4.16.2.14 In light of the foregoing, the Court finds that Alieu KOSIAH, who was the highest-ranking officer on site (MPC 12-09-0038, lines 32 ff.), ordered the looting of the village of Botosu between March and December 1993 or between March 1994 and the end of 1995, said looting having consisted of seizing rice intended for consumption as well as oil belonging to the villagers (TPF 40.752.010, Q/A No. 57).

Regarding forced labor, the Court finds that Alieu KOSIAH, as the highest-ranking commander, ordered, organized, and directed the forced labor

by civilians, of the looted goods mentioned above as well as ammunition from the village of Botosu to an unknown destination; the complainant, who managed to escape, left the convoy along the way. The civilians were forced to carry out this transport under threat of force and in a climate of terror.

4.16.3 Ordering the looting of the village of Botosu

4.16.3.1 Objective Elements

Taking from a civilian population basic goods essential to its survival—in this case, ready-to-eat rice and oil—constitutes the offense of looting, bearing in mind that it is not necessary for the appropriation to occur on a large scale, nor for it to involve goods of great economic value (*supra*, consid. II.3.1.7.3). Alieu KO-SIAH ordered the looting. He was the highest-ranking officer present, since there were only he and his "group," and the soldiers, who called him "general," obeyed his orders. This attests to the defendant's status as a superior officer. His liability under Art. 18 aCPM is therefore established.

4.16.3.2 Subjective Elements

Alieu KOSIAH knew that by ordering the looting of the aforementioned property, the soldiers would carry out his orders and thereby deprive the civilians of their property. It follows from the foregoing that he acted intentionally.

Furthermore, the acts in question occurred in the context of a non-international armed conflict, namely the First Liberian Civil War, a fact of which Alieu KOSIAH was aware.

4.16.4 Ordering and directing the forced transport of property by civilians from Botosu

4.16.4.1 Objective Elements

The facts set forth above may 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. Forcing heavily laden civilians to walk for hours while threatening them with death by weapons if they did not comply or did not move fast enough is likely to cause great suffering. This suffering is primarily physical, due to the long march the civilians were forced to undertake while carrying heavy loads. The suffering is also psychological, due to the terror the civilians experienced throughout the journey, as they were subjected to verbal intimidation and death threats from

the soldiers accompanying them. This treatment must also be characterized as humiliating and degrading. Forcing heavily laden civilians to march while threatening them with death to ensure they kept up with the imposed pace, and treating them as mere means of transportation, amounts to a violation of their humanity and constitutes a very serious form of humiliation.

The Court further specifies that there is no basis for finding additional offenses regarding the death threats made against the civilians, since these fall under the offenses of cruel, humiliating, and degrading treatment. As for the offense of slavery, it has not been committed. The duration of the transport was not, in fact, sufficient to conclude that powers of ownership were exercised over the civilians who were forced to participate in said transport.

Alieu KOSIAH ordered the transport. He was the highest-ranking officer present, since there was only him and his "group," and the soldiers, who called him "general," obeyed his orders. This attests to the defendant's status as a superior. His liability under Article 18 of the aCPM is therefore established.

4.16.4.2 Subjective Elements

Alieu KOSIAH knew that by ordering the soldiers to carry out the transport, they would carry out his order. Furthermore, the defendant could not have been unaware of the civilian status of the persons conscripted. It follows from the foregoing that he acted intentionally.

Furthermore, the alleged acts occurred in the context of a non-international armed conflict, namely the First Liberian Civil War, a fact of which Alieu KOSIAH was aware.

4.16.5 Conclusion

In light of the foregoing, Alieu KOSIAH is found guilty of the following offenses:

- issuing an order to loot, 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 common to the General Provisions, and Art. 4(2)(g) of Protocol II (Section 1.3.22 of the indictment);
- giving the order to inflict, or the infliction of, cruel, humiliating, and degrading treatment upon several civilians in the form of forced transport, pursuant to Articles 109(1) and 108(2) of the former Military Criminal Code (aCPM) *in conjunction with* Article 18 of the aCPM, Article 3(1), subparagraph 1, letters a and c, common to the General Provisions, and Art. 4, item 2, letters a and e, PA II (item 1.3.23 of the indictment).

4.17 Rape of the civilian Carol ALEXANDER

Pursuant to section 1.3.24 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, raped civilian Carol ALEXANDER in a hamlet near Voinjama, between March and December 1993 or between March 1994 and the end of 1995.

4.17.1 Arguments of the Parties

4.17.1.1 The MPC maintains that Carol ALEXANDER's account is credible and that she was sincere and genuine in the straightforward manner that characterizes her (CAR 5.200.719 et seq.). Specifically regarding the rape charge, the MPC argues that the emotion expressed by the complainant during her appeal hearing—nearly 30 years after the events—is not misleading. The case file is said to be replete with evidence demonstrating that rapes and other forms of sexual enslavement of civilian women were commonplace under ULIMO in Lofa. He highlights the testimony of Massa WASHINGTON, a former member of the TRC, according to whom the rebels allegedly raped women in particular to target their husbands and families, to cover them with shame, adding that Lorma women like the complainant—were allegedly systematically raped by Mandingo combatants in particular. The Prosecutor's Office emphasizes the discretion with which witnesses Ann GARRISON and Gina FARRELL spoke about the sexual violence. The Prosecutor's Office further contends that the defendant is attempting to portray himself as a faithful man who behaved impeccably toward women during the war, which is not credible. It argues that the defendant stooped so low as to claim that his girlfriend at the time was ten times more beautiful than the complainant in order to justify that he could not have raped her. The MPC also presented additional arguments at the trial regarding the credibility of Carol ALEXANDER's statements and, in particular, emphasized that the alleged acts of rape left both psychological and physical scars on the complainant (TPF 40.721.145 et seq.). As for the law, the OAG refers to the contested judgment (CAR 5.200.749).

4.17.1.2 Attorney WAKIM (CAR 5.200.896 et seq.) argues that the systematic and widespread nature of sexual violence during the first civil war in Liberia is attested to by various elements in the case file: the TRC report, the testimonies given during the Jungle JABBAH trial in the United States, the judgment convicting Kunti KAMARA in France, and the testimonies given in the present proceedings. She emphasizes that three main lines of argument emerge from the defendant's defense: denial, conspiracy, and discrediting the complainant. With regard to the latter in particular, the defendant allegedly humiliated the complainant by making derogatory remarks about her physical appearance and exploiting her illiteracy. Attorney WAKIM maintains that nothing that has been produced or said since the Criminal Court's judgment would call into question the finding regarding the credibility of the

complainant's statements reached by the trial judges. She adds that the report dated January 9, 2023 (*supra*, C.25), submitted by the defense, is irrelevant, since the village mentioned therein is located 150 kilometers from the village of Botosu, where Carol ALEXANDER lived. She also provided evidence at the trial in support of the credibility of her client's statements (TPF 40.721.354 et seq.). With regard to the law, Ms. WAKIM refers to the trial judgment. She further argues that three key principles govern rape in armed conflicts: the absence of consent is presumed in times of war; the use of force in and of itself is not an essential element of rape; and there is no legal obligation to corroborate evidence of sexual violence under international criminal law. Finally, aggravating circumstances are present in this case due to the number of acts, the victim's young age, her particular vulnerability, and the particular cruelty of the acts committed.

4.17.1.3 The defense challenges the conviction handed down by the Criminal Court (CAR 5.200.423 et seq. and 579 et seq.). Reiterating the arguments presented before the trial judges (TPF 40.721.504 and 641 et seq.), the defense asserts that Carol ALEXANDER did not recognize Alieu KOSIAH and calls into question the credibility of her testimony. In addition to the arguments already raised regarding the looting of the village of Botosu and the subsequent forced transport (*supra*, consid. II.4.16.1.3), the defense raises various arguments regarding the events in Voinjama and identifies contradictions in Carol ALEXANDER's account, particularly concerning whether the men sitting on the porch called out to her or whether a *"small boy"* ordered her to go into the house, as well as regarding the identity of the person who took her into the house where she was allegedly raped, whether Carol ALEXANDER resisted, the fact that she returned to the village after the looting, and the length of her walk to the border. For example, the defense referred to the episode in which Carol ALEXANDER encountered the *young soldier* at the entrance to Voinjama. While the defense notes that this episode was reportedly portrayed as a genuine surprise and that she had no choice but to follow him, it points out that the distance between the complainant and the *"small soldier"* was reportedly about 150 meters, suggesting that such an account is irrelevant, especially since Carol ALEXANDER also reportedly stated that it was soldiers sitting under the porch of a house who asked her to follow them. The defense therefore contends that Carol ALEXANDER's testimony regarding the rape she allegedly suffered contains numerous contradictions, even though her account does not appear complicated at first glance. For the defense, one conclusion is inevitable: the complainant is not telling the truth.

4.17.2 Assessment of the Evidence

4.17.2.1 This indictment stems from the criminal complaint filed by Carol ALEXANDER on August 23, 2016 (*supra*, A.9). In this regard, the Court notes at the outset that a criminal complaint does not constitute evidence (*supra*, para. II.1.2.2.3). It also notes that it is analyzing testimony—specifically, the credibility of the statements—and not the credibility of Carol ALEXANDER (*supra*, para. II.1.2.6.1). Finally, the Court notes that the theory of a conspiracy organized by CIVI-TAS MAXIMA and the GJRP—which the defense accused of fabricating testimony in exchange for material benefits—has been rejected (*supra*, para. II.1.1.3) and that the identifications—both from a photo lineup and in person—conducted during the proceedings cannot be used, whether as evidence for or against the defendant (*supra*, para. II.1.3.3.2 and II.1.3.3.3).

4.17.2.2 With regard to the identification of Alieu KOSIAH by Carol ALEXANDER, the Court recalls that it has already found that she validly identified Alieu KOSIAH during the proceedings as the accused and refers to its analysis of the matter in connection with the looting of the village of Botosu and the subsequent forced transport (*supra*, para. II.4.16.2.2).

4.17.2.3 As for the alleged facts, it should be noted from the outset that Carol ALEXANDER was approximately 17 years old at the time of the events and was in a situation of survival after having fled her village—which had been looted a few days earlier by the ULIMO (*supra*, para. II.4.16)—and having lost her father and brother.

4.17.2.4 Her statements remained consistent throughout the proceedings, were consistent on the essential points, and were characterized by numerous indications of credibility. The complainant provided coherent details that were, for the most part, detailed. She stated that after a week in the bush without food, she told her mother she was going to look for food (MPC 12-21-0011, lines 22 ff.; TPF 40.752.018, line 43; CAR 5.302.013, lines 21 ff.), that before reaching Voinjama, there was a house where a group of men—including General KOSIAH—were waiting (MPC 12-21-0011, lines 23–26; TPF 40.752.010, Q&A Nos. 119 and 036,
Q&A No. 263; CAR 5.302.013, Q&A No. 74), that a young *boy*, a child soldier, told him to come because General KOSIAH was waiting for him (MPC 12-21-0011, lines 26 ff.; TPF 40.752.019, lines 7 ff.; CAR 5.302.013, Q/R No. 74), that Alieu KOSIAH had taken her to another house, where he had locked her up, and that he had left (MPC 12-21-0011, lines 28 ff.; TPF 40.752.021, Q&A No. 138; see also CAR 5.302.013, Q&A No. 75), that he had returned a few hours later and told her that he was going to keep her and take her as his wife (MPC 12-21-0011, lines 29–31; TPF 40.752.021, Q&A No. 138; see also CAR 5.302.013, Q&A No. 75). Carol ALEXANDER also provided details regarding her

escaped, stating that Alieu KOSIAH had left her in the house and gone to rejoin his men, leaving the door open (MPC 12-21-0011, lines 34–36; TPF 40.752.021, Q/A No. 138), that she had fled into the bush and encountered people from her village, whom she asked to tell her mother that she was leaving for Guinea (MPC 12-21-0011, lines 38 ff.; TPF 40.752.034 ff., Q&A No. 253) and that she had crossed the river at the border after recounting what had just happened to her (MPC 12-21-0012, lines 3–6) and had gone to Koyama (MPC 12-21-0036, line 14; TPF 40.752.024, Q/A No. 166). The complainant's account is, however, less detailed when she describes the rape itself. That said, she does provide certain details, such as the fact that Alieu KOSIAH first set down his firearm as well as his knife (MPC 12-21-0029, line 21; TPF 40.752.041, Q&A No. 293), the fact that she was penetrated by Alieu KOSIAH on several occasions (MPC 12-21-0011, lines 32–34; TPF 40.752.021, Q&A No. 143;
CAR 5.302.013, Q&A No. 79), the fact that Alieu KOSIAH told her she was going to become
his wife (TPF 40.752.020, Q&A No. 134; CAR 5.302.013, Q&A No. 75), and that she stated he had used her as a woman (MPC 12-21-0030, line 9: "He used me as a woman"), that he had slept with her (MPC 12-21-0031, line 4), or that he had threatened to kill her if she refused (MPC 12-21-0011, lines 31 ff.; TPF 40.752.022, Q&A No. 148 et seq.; see also CAR 5.302.013, Q&A No. 76), but that he had not forced her to engage in any other sexual acts (TPF 40.752.022, Q&A No. 152), and that she did not say anything because Alieu KOSIAH was speaking in English (MPC 12-21-0028, lines 18 ff.; see also TPF 40.752.023, Q&A No. 155). She also mentioned that she had experienced pain, which persists to this day, indicating its location with gestures, and that she had noticed bleeding at the time of the rape (MPC 12-21-0031; TPF 40.752.023, Q&A No.^{os} 159 et seq.), specifying that she had never been penetrated before (MPC 12-21-0031, line 11) and that she had never had a menstrual period before either (TPF 40.752.029, Q&A No. 204). The lack of details directly related to the sexual acts she endured can be explained by a certain modesty, as these statements by James CAMDEN on appeal clearly illustrate: "A woman who is going to talk about this kind of thing isn't going to use crude language or say that she was raped or that someone jumped on her. She'll simply say that things happened that happen between men and women" (CAR 5.303.007, Q/A No. 27; see also CAR 5.303.007 et seq., Q/A No. 29, and 009, Q/A No. 37). This modesty, if it exists in Liberia, can only be exacerbated in a context such as that of hearings in the context of criminal proceedings in Switzerland—a country geographically and culturally far removed from the context in which Carol ALEXANDER lives—especially given that the majority of people present in the room during each of her hearings were men. The reserve in question here is also evident in the testimony of the witness Gina FARRELL, who was heard during the appellate proceedings and who described her forced marriage to a ULIMO soldier and

her rape in simple terms and using euphemisms (see *below*, para. II.4.17.2.12).

4.17.2.5 Carol ALEXANDER's account is also characterized by certain details that are irrelevant to the key facts, such as her statement that the group of soldiers among whom Alieu KOSIAH was standing when he called her was smoking (MPC 12-21-0024, lines 17 ff.; TPF 752.021.020, Q/A No. 131; CAR 5.302.017, Q/A No. 110). She also described interactions, thereby making her account more concrete, as evidenced by the following: "I cried, but when I cried, he told me he was going to kill me. I was afraid, so I kept quiet" (MPC 12-21-0030, lines 15 ff.). She also described her psychological state, indicating that she was feeling bad ("I was feeling bad " [MPC 12-21-0024, line 11], noting that this expression carries a stronger meaning in English than in French [CAR 5.302.018, lines 3 ff.]) when she thought about what would happen to her after he told her she was going to become his wife. She also mentioned a feeling of fear related to the rape (MPC 12-21-0024, line 14) and the fact that she felt resentment toward the defendant (MPC 12-21-0009, lines 1 ff.). Carol ALEXAN-DER spontaneously acknowledged certain gaps in her account, such as, for example, the fact that she did not know the distance between the place where the child soldier approached her and the house toward which they then headed (TPF 40.752.020, Q/A No. 129). Finally, she did not seek to incriminate the defendant, as evidenced by the fact that she stated she had not been beaten by the defendant (MPC 12-21-0030, line 12; TPF 40.752.022, Q/A No. 147) and that he did not force her to engage in other sexual acts (TPF 40.752.022, Q/A No. 152).

4.17.2.6 The Court further considers that many of the defense's arguments concern ancillary issues and are aimed not at calling into question the credibility of the testimony regarding the facts, but rather the credibility of Carol ALEXANDER (*supra*, consid. II.1.2.6.1). As for the arguments concerning points relevant to the assessment of the statements regarding the alleged facts, they do not stand up to an analysis of the case file, and several of them, on the contrary, tend to reinforce the credibility of the account. The Court will now examine them in detail to the extent that they have not already been addressed and appear relevant to the assessment of Carol ALEXANDER's testimony regarding the facts she reported.

4.17.2.7 With regard to the defendant's presence in Voinjama at the time of the events, the Court refers to its analysis concerning the looting of the village of Botosu and the subsequent forced transport (*supra*, para. II.4.16.2.7).

4.17.2.8 The defense alleges that the complainant contradicted herself regarding the manner in which she was apprehended by the child soldier (CAR 5.200.582 and 597 et seq.). Although she did not mention that the child soldier threatened her during her hearing before

the MPC (MPC 12-21-0022 et seq.), even though she was allegedly threatened with being beaten according to the content of her complaint (MPC 05-04-0003), and given that the complaint itself is open to criticism (*supra*, consid. II.1.2.1.2), this can easily be explained, since it is clearly a case of confusion between what she experienced and what she feared. It is understandable that the mere presence of an armed child soldier nearby—especially in the presence of other soldiers, including Alieu KOSIAH—is sufficient to make one feel threatened. Furthermore, and contrary to the defense's assertion, her encounter with the child soldier at the entrance to Voinjama could indeed have been experienced as a surprise. The possibility of fleeing—which forms the basis of the defense's argument—has not been proven in any way. On the contrary, the 150-meter distance separating Carol ALEXANDER from the child soldier (MPC 12-21-0021, lines 13–18), could have been quickly covered by the latter, who, it should be recalled, was armed; it is also worth noting that the complainant had observed a few days earlier, during the events in Botosu in which her father and brother lost their lives (*supra*, consid. II.4.16), that the combatants were capable of killing without hesitation.

4.17.2.9 During the proceedings, the defendant expressed surprise that Carol ALEXANDER knew only his name among the many ULIMO combatants, and in particular that she did not know the name of PEPPER AND SALT (TPF 40.731.067, Q/A No. 342). However, it is hardly surprising for an illiterate teenage girl, who barely understood English and lived in a small village, not to know the names of any fighters other than that of the person who had a particularly negative impact on her life—whether in connection with the events in Botosu or with the rape she suffered near Voinjama.

4.17.2.10 Alieu KOSIAH stated that he did not know Carol ALEXANDER and had never raped a woman (MPC 13-01-0651, lines 1–3). In this regard, the Court notes that the defendant's statements—in which, when questioned, he said he knew of only one case of rape by ULIMO soldiers (TPF 40.731.025, Q&A No. 96)—are diametrically opposed to the Court's findings (*supra*, para. II.2.1.2.4; see also *infra*, para. II.4.17.2.11). As for his defense consisting of asserting that he had "a lot of women who were after [him]," that he had to turn them down (MPC 13-01-0651, lines 2 ff.) and that his girlfriend was ten times more beautiful than the complainant (TPF 40.731.066, Q/A No. 341), it must be noted that this defense is irrelevant, since the defendant's considerations could not prevent him from committing rape, especially in the specific context of a civil war, given the power undoubtedly conferred upon him by his status as a commander and the fact that he possessed weapons. The Court notes, first of all, that the defendant admitted to having engaged in sexual relations while the conflict was ongoing. When questioned about this during the appellate proceedings, the defendant exclaimed: "Of

sure, I'm a man" (CAR 5.301.006, Q/A No. 8). Furthermore, Alieu KOSIAH illustrated his attitude when, already before the MPC during the hearing of Georges ROSADO, he sang his version of the song "Zo Kele Kele," specifying that it contained the lyrics "C.O. KOSIAH, you let that loma girl, that big toumba; when you touch it, it makes you high," the meaning of this song, according to him, being that "when you touch the big buttocks that women in Lofa have […], it turns us on […]" (MPC 12-08-0025 et seq., lines 43 ff.).

4.17.2.11 Ultimately, the rape reported by Carol ALEXANDER took place against the backdrop of Liberia's first civil war. Indeed, 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 (TRC, *op. cit.*, pp. 17 and 19 [MPC 14-01-0022 et seq.]). Girls between the ages of 15 and 19 were the primary victims of sexual violence (TRC, *op. cit.*, p. 274 [MPC 14-01-0150]). In her testimony taken by U.S. authorities, Massa WASHINGTON, a former member of the TRC (TRC, *op. cit.*, pp. 27 ff. [MPC 14-01-0027]), explained that women were specifically targeted and used as weapons of war to strike at the enemy (TPF 40.261.1.135 and 139), referring in particular to the systematic rape of Lorma women by Mandingo combatants (TPF 40.261.1.192). The Court further notes that it has already found that the issue of sexual violence, particularly that perpetrated by the ULIMO, in connection with the first civil war, had been documented (*supra*, para. II.2.1.2.4).

4.17.2.12 Gina FARRELL's testimony during the appellate proceedings further illustrates the TRC's findings regarding sexual violence against women. She explained how she was forced to become the wife of a ULIMO soldier: "When the war broke out, I was young—I was 14 years old. Well, I don't remember my exact age, but I already had breasts. That's when they arrived, captured us in the villages, and took us to Kolahun. Then they lined us up. To answer your question, it was the ULIMO soldiers who lined us up. While we were in line, they picked people from the line, looked at our chests, and chose the ones they then took with them to Foya to be their wives" (CAR 5.309.003 et seq., Q/A No. 4). Gina FAR-RELL described what happened to her in simple, modest terms, as evidenced by her account of the rape she endured: "I was placed in the house of a man named Carl, who made me his wife. He was the one who showed me how to live. I stayed with him the whole time. I was afraid; sometimes he would go off to fight, and we had to stay inside and do whatever he told us to do.

We couldn't do anything else. I was in a place where I didn't know anyone. When he forced himself on me, I started bleeding; I was covered in blood *[the witness points* to *her lower abdomen]*. So I started crying. He told me not to cry, that I'd get used to it. Meanwhile, I was covered in blood, but he told me I mustn't try to run away because, if I did, he would kill me. So I stayed there. I couldn't go anywhere" (CAR 5.309.004, Q/A No. 10). The case file also contains other testimonies attesting to the systematic nature of sexual violence against women, particularly by the ULIMO, during the first civil war. This is the case, among others, with the account of James CAMDEN, who explained how women were exploited by the ULIMO in general and by the defendant in particular:
"Women were exploited in various ways. They were forced to marry and consented out of fear. They were sexually harassed. So many things were done to them because women were vulnerable—they are the most vulnerable in a war. A soldier could very well tell a woman he wanted her to be his wife, and she would agree out of fear of the consequences if she refused—namely, death. Even Alieu KOSIAH, who is sitting behind me, took a girl from my community one day. He said he wanted a girl; she was very young and had light skin. She was afraid, so she went with him" (MPC 12-28-0046, lines 15–22). Christopher GREENE's statements further illustrate the stigma suffered by victims of sexual violence; during the appellate proceedings, he explained, regarding his former partner, that UGLY BOY had made her a sex slave and that, to this day, she has been unable to return to Foya with the child she had from her forced relationship with UGLY BOY (CAR 5.304.019, Q&A No. 103). Such statements are also found in documents from proceedings conducted abroad against former ULIMO commanders. This is notably the case with testimony from the proceedings against Mohammed JABBATEH in the United States, which include a woman who states that she was raped by Mohammed JABBATEH for two to three weeks, systematically two to three times a day (TPF 40.261.1.011–0112), another woman who explains that Jabbateh gave women to his soldiers and that she was personally assigned to a soldier who detained her and regularly raped her (TPF 40.261.1.011–0138 and 0142–0144) or from a witness who recounted that soldiers had come to take his fiancée—who was pregnant at the time—to their commander, who raped her for three days, after which she suffered a miscarriage (TPF 40.261.1.011–0769 et seq.).

4.17.2.13 In light of the foregoing, the court finds that Alieu KOSIAH, a few days after the looting of the village of Botosu (*supra*, consid. II.4.16), while he was standing under the porch of a house near Voinjama, had a child soldier summon Carol ALEXANDER, who was about to cross the road. He locked her inside a house, to which he subsequently returned

and, threatening to kill her, had sexual intercourse with the complainant four times, lying on top of her. The Court specifies that it is adopting the scenario most favorable to the defendant, in accordance with the principle *of in dubio pro reo*, namely that the four instances of forced sexual intercourse constitute a single natural course of action (*infra*, para. II.4.17.3.2). After being forced to spend the night with Alieu KOSIAH, the complainant was able to escape in the morning.

4.17.3 Objective Evidence

4.17.3.1 Alieu KOSIAH forced Carol ALEXANDER to have sexual intercourse with him on four occasions, under threat of killing her. These acts constitute rape, both under international law and under Swiss law.

4.17.3.2 Since the complainant was unable to be very precise regarding the time intervals between the various sexual acts—ranging from one to two hours according to her estimate (TPF 40.752.022, Q/A No. 151), and given that she has an approximate perception of time, the information she provided cannot be considered certain. Thus, the Court adopts the scenario most favorable to the defendant, in accordance with the principle of *in dubio pro reo*, namely that the four acts of forced sexual intercourse constitute a natural unit of action—that is, separate acts that stem from a single decision and objectively appear as events forming a whole due to their close relationship in time and space— and not as four independent offenses, bearing in mind that 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).

4.17.3.3 The Court further clarifies that there is no basis for finding additional offenses regarding the death threats made against the complainant, since these threats constitute part of the coercion used to force the victim to submit to the act and thus do not constitute a separate offense, as rape is a specific form of coercion (CORBOZ, Offenses under Swiss Law, vol. 1, 2010, n. 42 ad Art. 181 Swiss Penal Code).

4.17.4 Subjective Elements

Alieu KOSIAH knew that Carol ALEXANDER did not consent, as evidenced by the fact that he first took the precaution of locking the complainant up before assaulting her, and then made death threats against her should she refuse to submit to him.

Furthermore, the alleged acts occurred in the context of a non-international armed conflict, namely the First Liberian Civil War, a fact of which Alieu KOSIAH was aware.

4.17.5 Conclusion

In light of the foregoing, Alieu KOSIAH is found guilty of the rape of a civilian pursuant to 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, subparagraph 2, letter e of PA II (section 1.3.24 of the indictment).

5. Examination of the Charges from the Perspective of Crimes Against Humanity

The Court notes at the outset that the proceedings against Alieu KOSIAH regarding the offense of crimes against humanity have been dismissed with respect to the charges of torture (section 1.3.4 of the indictment), enslavement (sections 1.3.7, 1.3.10, 1.3.12, 1.3.14, 1.3.16, 1.3.19, 1.3.20, 1.3.23, and 1.3.25 of the
), other inhumane acts (section 1.3.9 of the indictment), and violation of the right to sexual self-determination (section 1.3.24 of the indictment), since the statute of limitations has expired for these charges (*supra*, consid. II.3.2.2.5).

According to the indictment, which continues to focus on the charge of crimes against humanity, Alieu KOSIAH is accused of having, in the context of the systematic and widespread attack launched by ULIMO—a rebel group of which Alieu KOSIAH was one of the leaders—against the civilian population of Liberia, particularly in Lofa, ordered the killings of seven civilians in Zorzor (section 1.3.2 of the indictment), killed the civilian Jeff JORDAN in Babahun (section 1.3.3 of the indictment), ordered the killings of six civilians in Foya (section 1.3.5 of the indictment), stabbed the civilian Georges ROSADO in Foya (section 1.3.6 of the indictment), participated in the murder of the civilian Martin McCREIGHT in Foya (section 1.3.8 of the indictment), killed the civilian Russell HASTING near the Kehair River (section 1.3.15 of the indictment), killed the civilian Brian HASTING near the Lofa River (section 1.3.17 of the indictment), and executed a civilian in Voinjama (section 1.3.18 of the indictment).

5.1 Arguments of the Parties

5.1.1 In their joint appeals, the prosecuting parties seek the conviction of Alieu KOSIAH on counts of crimes against humanity (*supra*, C.7 through C.10 and C.30). In his joint appeal brief, Georges ROSADO, represented by Counsel JAKOB (CAR 1.400.017 et seq.), argues that this legal characterization is of significant importance, insofar as it involves recognizing not only the culpability of the isolated acts attributed to the defendant, but also the dehumanization of the victims through acts occurring within the context of mass crimes against civilians in Lofa. In his closing argument on behalf of all the plaintiffs (CAR 5.200.825), Mr. JAKOB maintains that the timeline is marked by bloody events and atrocities committed against civilians in Lofa, with a particular concentration during the period when Lofa was under the command of *Area Commander*

PEPPER AND SALT, with Alieu KOSIAH as his second-in-command, crisscrossing the territory and leading the convoys. Contemporary documents reportedly already depicted a policy of terror implemented by the ULIMO and by PEPPER AND SALT's group in particular. Mr. JAKOB is of the opinion that acts of the nature of those alleged against Alieu KOSIAH were committed on a massive scale during that period. He therefore maintains that the criteria regarding both the general nature of the attack and its systematic character are met in this case. It was against this backdrop that Alieu KOSIAH's crimes were allegedly committed against a large number of people and with particular cruelty. During the trial proceedings, Mr. JAKOB also argued, in response to a preliminary question, that Swiss and international legal doctrine was unanimous on the fact that there was an ideal concurrence between war crimes and crimes against humanity, for example, when an act of murder was both linked to an armed conflict and part of a widespread or systematic attack against the civilian population, and he concluded that this imposed a substantive obligation on the criminal authority hearing the case to apply this classification (TPF 40.720.011 et seq.).

Reference should also be made to the arguments put forward by the complainants regarding violations of the laws of war for each of the allegations (*supra*, paras. II.4.2.1.2, II.4.5.1.2, II.4.7.1.2, II.4.10.1.2, II.4.11.1.2, and II.4.12.1.2).

5.1.2 The MPC, which, as a reminder, argued that Art. 264a of the Swiss Criminal Code (CP) would not apply to the events that occurred in Liberia in the 1990s, refrains from making formal conclusions regarding crimes against humanity and defers to the court (*supra*, C.29 and para. II.3.2.1.1).

Furthermore, reference should be made to the arguments put forward by the OAG regarding violations of the laws of war for each of the charges (*supra*, consid. II.4.2.1.1, II.4.4.1.1, II.4.5.1.1, II.4.7.1.1, II.4.10.1.1, II.4.11.1.1, and II.4.12.1.1).

5.1.3 The defense moves for acquittal (*supra*, C.28). It disputes the facts and does not present specific arguments regarding crimes against humanity; for this reason, reference should be made to the arguments presented by the defense regarding violations of the laws of war for each of the charges (*supra*, consid. II.4.2.1.3, II.4.4.1.2, II.4.5.1.3, II.4.7.1.3, II.4.10.1.3, II.4.11.1.3, and II.4.12.1.3).

5.2 The Widespread Attack on the Civilian Population

5.2.1 With regard to the indiscriminate attack against the civilian population (*supra*, paras. II.3.2.5.1 through II.3.2.5.3), in its final report of June 30, 2009, the TRC found that the conflict in Liberia was marked by a disregard for rights, in particular,

persons hors de combat, children, women, the elderly, and enemy combatants who were unarmed or had surrendered (TRC, *op. cit.*, p. 19 [MPC 14-01-0023]). It noted that combatants used brutal tactics to terrorize the civilian population and that the targeting of civilians was deliberate, calculated, and systematic throughout the conflict, across the entire country. The civilian population paid a heavy price, to a far greater extent than the combatants. The TRC indicated that in a significant number of cases where civilians had fled or abandoned their villages before the combatants arrived, there were no hostilities between combatants. The combatants either left the town or relentlessly pursued the villagers to their hiding places to persecute them, which took the form of, among other things, murder, looting, rape, forced labor, transporting ammunition, and abductions (TRC, *op. cit.*, p. 256 [MPC 14-01-0141]). According to the TRC, all armed factions contributed to widespread violations of international humanitarian law. There were reports of massacres, rape used as a weapon of war, torture, summary executions, collective punishment, attacks on life, health, and mental well-being, as well as countless threats to and violations of human dignity. Armed factions have been implicated in carrying out attacks against civilian populations and other noncombatants, such as medical personnel, humanitarian workers, peacekeeping forces, and refugee populations, and no group of people has been spared from these violations, with men, women, children, and the elderly having been deliberately targeted by all belligerent factions (TRC, *op. cit.*, p. 260 ff. [MPC 14-01-0143 ff.]). With specific regard to Lofa County, the TRC documented more than 11,200 victims and 18,800 violations (TRC, *op. cit.*, p. 257 [MPC 14-01-0142]), with an increased number of violations in 1993 and 1994 (TRC, *op. cit.*, pp. 257 and 259 [MPC 14-01-0142 et seq.]), a period corresponding to the ULIMO occupation of Lofa. The TRC further noted that the abuses committed by ULIMO in Lofa County were associated with numerous acts of reprisal against the Lormas, the Gbandis, and other ethnic groups due to their alleged actions against the Mandingos during the NPFL occupation and their alleged “support” for that armed group in its repression of the Mandingo and Krahn populations (TRC, *op. cit.*, p. 258 [MPC 14-01-0142]). The Court recalls in this regard that it appears, generally speaking, that the execution of civilians ethnically associated with enemy factions was often considered legitimate in Liberia and that violence was widely-ly directed against other ethnic groups or tribes based on the perceived characteristics of that tribe, including a tribe’s perceived support for certain political or military leaders (*supra*, para. II.2.1.2.3). The TRC also compiled a list of massacres committed in Lofa County, which shows that ULIMO and ULIMO-K, respectively, carried out sixteen massacres resulting in the deaths of approximately 1,750 people (TRC, *op. cit.*, p. 248 [MPC 14-01-0137]).

5.2.2 When questioned on appeal about the TRC's findings, Alieu KOSIAH pointed out that neither the police nor the federal prosecutor—both of whom cite the TRC—had traveled to Liberia, adding that they had not independently verified the information in question. He thus called for caution, arguing, by way of example, that certain crimes were attributed to ULIMO at times when they were not present (CAR 5.301.137 et seq., Q&A Nos. 381 and 383). He also stated that there was no physical evidence, only hearsay (CAR 5.301.139 et seq., Q/A No. 386). However, although certain errors in the TRC report cannot be ruled out (*supra*, para. II.4.12.2.6), the defendant's objections on principle cannot be upheld insofar as the information contained in the TRC's final report is corroborated by other credible and independent sources, some of which date from the time of the events. The Court has thus already had occasion to note the existence, in Lofa, under ULIMO occupation, of mass executions (*supra*, para. II.2.1.2.3), sexual violence (*supra*, para. II.2.1.2.4), acts of cannibalism (*supra*, para. II.2.1.2.5), and looting (*supra*, para. II.2.1.2.6), it being noted that this finding was based not only on the TRC report but also on articles in the Liberian press, dispatches from various news agencies, a report by MSF, scientific literature, and various testimonies (*supra*, para. II.2.1.1.1). These findings regarding the nature of ULIMO's occupation of Lofa are further illustrated by the case file and the numerous testimonies of abuses committed against the civilian population of Lofa contained therein, particularly those of the complainants.

5.2.3 In light of the foregoing, the Court finds, for the period covered by the indictment—namely, from 1993 to 1995—that there was a widespread attack carried out by the armed group ULIMO, or ULIMO-K, against the civilian population of Liberia, and in particular that of Lofa. The civilian population, far from being mere collateral damage, was in fact the primary target of the violence perpetrated by ULIMO (*supra*, para. II.3.2.5.3 and the references cited). The attack, carried out on a large scale, was further distinguished by the massive nature of the abuses and the large number of victims it caused (*supra*, para. II.3.2.5.2 and cited references). The systematic terror and subjugation of village communities constituted an essential means employed by the ULIMO to provide logistical, financial, and tactical support for their guerrilla operations. Finally, having established the widespread nature of the attack, and in accordance with the case law of the ICC, the Court notes that it is not required to examine whether the attack was also systematic, as the fulfillment of just one of the two criteria is sufficient (*supra*, para. II.3.2.5.2). This does not mean, however, that the existence of a systematic attack can be ruled out in the present case. The Court notes in this regard that the Paris Assize Court, which was also called upon to rule on facts occurring in the context of the ULIMO occupation of Lofa, convicted Kunti KAMARA, among others, of complicity in

crimes against humanity in connection with acts of sexual or inhuman torture committed in Lofa County between March 1er March 1994 and December 1994, finding the existence of a systematic attack in its criminal judgment of November 2, 2022—which, it is noted, is being challenged on appeal (CAR 4.200.128 and 136). This decision was reasoned as follows: "Clearly motivated by ethnic or religious considerations, [the reported rapes and sexual assaults] are part of a systematic practice—if not the execution of a concerted plan, then at least a commonly accepted custom based on the *'pay* yourself' principle and for the purposes, already stated, of establishing the occupier's power ."

5.3 Knowledge of the attack

5.3.1 The Court reiterates that the perpetrator of crimes against humanity must have knowledge of the attack as well as of his or her participation in it (*supra*, para. II.3.2.5.4). Evidence of knowledge of the attack may be inferred, in particular, from the historical circumstances in which the acts of violence took place, from the perpetrator's position and responsibilities within the military hierarchy, and from the nature of the crimes committed. In this regard, it is sufficient that the perpetrator was aware of the general context in which his act was committed; it should also be noted that the perpetrator's subjective motivations leading to a crime against humanity are irrelevant (*supra*, para. II.3.2.5.4).

5.3.2 In the present case, it appears from Alieu KOSIAH's statements that he was unaware of numerous abuses committed during the conflict in Liberia, particularly those perpetrated by ULIMO. Thus, when questioned during his appeal hearing regarding the TRC's conclusion that the number of civilian victims was greater than that of combatants (TRC, *op. cit.*, p. 256 [MPC 14-01-0141]; MPC 10-01-0277), the defendant replied that this did not correspond to his experience, estimating that two-thirds of civilian casualties were due to hunger and disease (CAR 5.301.153, Q/A No. 430). When asked about the existence of the mass graves identified by the TRC (TRC, *op. cit.*, p. 244 [MPC 14-01-0135]; MPC 10-01-0276), the defendant, when asked whether he could rule out the possibility that one or more of the graves might be attributed to the ULIMO, stated that it was very difficult to know who had done what (CAR 5.301.139, lines 20–23). Responding to a table listing the abuses committed by the ULIMO in Lofa County in 1993—the data for which were taken from the TRC report (MPC 10-01-0285; TRC, *op. cit.*, p. 248 [MPC 14-01-0137]), he urged caution in the absence of physical evidence (CAR 5.301.139, Q&A No. 386). He also expressed surprise at the scale of the abuses committed during the conflict, as reported by the TRC (CAR 5.301.138, Q&A No. 382). Alieu KOSIAH further denied having any knowledge of the enslavement of the civilian population in various villages near Kolahun and Voinjama, as reported by MSF for the period from July

1993 to December 1994 (CAR 5.301.142, Q/A nos. 389 et seq.), or of widespread attacks carried out by ULIMO—with the involvement of its commander PEPPER AND SALT—in northern Lofa County in October 1993, as reported by the Liberian press, during which civilians were killed and their property looted (CAR 5.301.142, Q/R No. 392), or ULIMO confessions reported by AFP, according to which this group allegedly admitted to being responsible for abuses committed against members of the Kissi ethnic group in the Foya region in November 1993 (CAR 5.301.142, Q/R No. 393). Similarly, the defendant stated that no looting was taking place when he arrived in Lofa (TPF 40.731.024, Q/A No. 95; CAR 5.301.144, Q/A No. 401).

5.3.3 However, based on the record, the Court cannot consider these statements by Alieu KOSIAH to be credible. It should first be noted that he quickly joined the ranks of ULIMO in 1991 (MPC 13-01-0233, lines 10 ff.; TPF 40.731.011 ff., Q&A No. 49; CAR 5.301.114, Q&A No. 285), that he held leadership positions within that armed group, having been in charge of logistical and financial matters, and that he was close to Commander PEPPER AND SALT, with whom he traveled to Lofa County (*supra*, consid. II.2.2). It is further noted that Alieu KOSIAH was found guilty of multiple violations of the laws of war for acts of murder, rape, cannibalism, looting, the forced transport of ammunition and looted property, and the use of a child soldier, committed in various locations in Lofa (*supra*, consid. II.4). These crimes have, in particular, highlighted the defendant's contempt for the lives of others as well as his cruelty, as evidenced by the executions of civilians arbitrarily identified as members of the NPFL in Zorzor and Foya, or—in the cases of Jeff JORDAN, Martin McCREIGHT, Russell HASTING, and Brian HASTING —by hindering the smooth conduct of looting operations, as well as the act of eating the heart removed from a civilian's corpse in Foya, and the numerous forced transports ordered and directed by the defendant in various locations throughout Lofa, during which civilians were forced to serve as means of transportation and subjected to mistreatment that could result in death. Under these circumstances, the defendant could not have been unaware of the widespread attack launched by ULIMO and ULIMO-K, respectively, against the civilian population of Lofa.

5.3.4 In addition, Alieu KOSIAH—contrary to what he stated regarding the abuses attributed to ULIMO—admitted to having knowledge of those perpetrated by other belligerents. He explained that, at the time of the events, he had heard about the massacre of 600 displaced persons at Harbel Camp, within the Firestone plantation, on June 6, 1993—an incident attributed by the TRC to the NPFL (CAR 5.301.136 et seq., Q/A No.os 377–379; see also TRC, *op. cit.*, pp. 162 and 220 [MPC 14-01-0094 and 0123]), as well as the massacre of 500 men, women, and children at St. Peter's Lutheran Church in Monrovia on July 29, 1990,

attributed by the TRC to the AFL (CAR 5.301.135 et seq., Q&A nos. 371–376; see also TRC, *op. cit.*, pp. 219 and 281 [MPC 14-01-0123 and 0154]). He was also able to provide details on the circumstances of these two massacres. The defendant further asserted that the Mandingos were the first victims of the conflict and that they, like the Krahns, had been attacked because of their ethnicity, accusing the NPFL of having committed genocide (MPC 13-01-0378, lines 2–9; see also CAR 5.301.108, Q&A No. 258). While these elements attest to the fact that the defendant was aware that atrocities were being committed—particularly against civilians—during the conflict, it is also evident from some of his statements that he does not rule out the possibility that ULIMO itself was responsible for such acts. He thus repeated on several occasions that there was "no such thing as a clean war" (CAR 5.301.136, Q&A Nos. 376, 138, Q&A No. 384, and 0139, Q&A No. 386). He also stated, in response to a table listing the abuses committed in Lofa County in 1993 (MPC 10-01-0285; TRC, *op. cit.*, p. 248 [MPC 14-01-0137]), that he could not rule out the possibility that crimes had been committed by ULIMO in Lofa in 1993 (CAR 5.301.155, Q&A No. 448). The defendant further stated that when a soldier was stationed in one place for a long time, he felt "a bit like the king there" (TPF 40.731.134, line 18) and that ULIMO should have avoided leaving a soldier in the same place for too long in order to prevent "certain problems " (CAR 5.301.146, Q/A No. 409). Finally, certain statements by Alieu KOSIAH regarding his own actions reveal a propensity to resort to violence that is significantly greater than what he admitted during the proceedings. The defendant thus explicitly stated, regarding the moment when the child Walter VARGAS was apprehended by the ULIMO, that he had taken the child with him to Lofa because "there was no reason to kill him" (MPC 13-01-0059, lines 22 ff.).

5.3.5 Finally, and given that the judge must, in particular, consider the common characteristics between the individual act and the attack (consideration II.3.2.5.1), it should be recalled that the fight against the NPFL was a mobilizing factor for Alieu KOSIAH, and that the war against this faction may have been experienced as an act of revenge, as illustrated by an ULIMO song which, according to the defendant's statements, addressed the NPFL with the following words: "You killed us in 1990, but now we're back and we're armed, and now we can defend ourselves" (*supra*, para. II.2.2.1.1). The defendant's goals were therefore consistent with those of his organization, which he summarized as follows: "To go home, and the best way to go home was to get rid of Taylor" (TPF 40.731.012, Q&A No. 50).

5.3.6 It follows from the foregoing that Alieu KOSIAH was aware that he was committing his crimes within the broader context of an attack launched by the armed group

ULIMO, or ULIMO-K, against the civilian population of Liberia—and in particular that of Lofa—and thus of participating in the execution of that attack.

5.4 Murder

5.4.1 Additional Constituent Element Related to the Calculation of the Statute of Limitations

5.4.1.1 With regard to the eight charges at issue here, the Court has already found the offense of murder, or attempted murder, respectively, in light of violations of the laws of war (*supra*, para. II.4), with the clarification that it limited its analysis to the elements constituting this crime, since the presence of a particularly heinous element, as required for murder (Art. 112 of the Swiss Criminal Code), is not required under the framework of violations of the laws of war (SUTTER/VEST *in* Vest et al., Die völkerstrafrechtlichen Bestimmungen des StGB: Kommentar, 2014, n. 28 on Art. *264c* of the Swiss Criminal Code; KESHALAVA/ZEHNDER, *op. cit.*, n. 30 on Art. 264c of the Swiss Criminal Code; JA-KOB/MALEH, *op. cit.*, n. 15 on Art. 264c of the Swiss Criminal Code). While this element is also not required from the perspective of crimes against humanity (*supra*, para. II.3.2.6), the Court, in light of the specific circumstances of this case regarding the calculation of the statute of limitations for the acts alleged in the indictment (*supra*, para. II.3.2.2), must nevertheless examine whether the acts, when analyzed under ordinary criminal law, would constitute the crime of murder; otherwise—as explained in detail above—they would be barred by the statute of limitations.

5.4.1.2 Before proceeding to a detailed examination of the charges brought against the defendant in relation to crimes against humanity, it is therefore appropriate to recall the applicable principles regarding murder within the meaning of Art. 112 of the Swiss Criminal Code.

Murder is an aggravated form of intentional homicide, distinguished from ordinary murder (Art. 111 of the Swiss Criminal Code) by the fact that the perpetrator killed with a particular lack of scruples. This presupposes a particularly grave fault derived exclusively from the commission of the act itself; the perpetrator's prior history or conduct immediately following the incident is taken into account only to the extent that it is closely linked to the act and serves to characterize the perpetrator's personality (ATF 141 IV 61, para. 4.1). To characterize the perpetrator's culpability, Art. 112 of the Swiss Criminal Code refers to cases where the perpetrator's motives, purpose, or manner of acting are particularly heinous. The motive is particularly heinous, for example, when it appears trivial—such as when the perpetrator kills out of revenge, without serious cause, or over a trifling matter. The manner of acting is particularly heinous when it is barbaric or atrocious, or when the perpetrator has treacherously exploited the victim's trust. The list provided in the statutory text is not exhaustive. A particular lack of scruples may be recognized when other elements confer a specific gravity on the act. Thus, the deliberation and planning of the act may constitute elements that could lead to a finding of a particular lack of scruples. Through the cold-bloodedness of the execution and the self-control

self-control, the perpetrator also demonstrates the utmost contempt for the life of another (141 IV 61, para. 4.1; Federal Supreme Court decision 6B_734/2021 of February 23, 2022, para. 2.1). To determine whether a case of murder has occurred, one must conduct a comprehensive assessment of the external circumstances (the perpetrator's behavior and manner of acting) and the internal circumstances of the act (motive, purpose, etc.). Murder is established when it follows from the totality of these circumstances that the perpetrator demonstrated the most complete contempt for the lives of others. While a murderer acts for motives that are more or less understandable—generally in the context of a serious conflict—an assassin is a person who acts in cold blood, without scruples, who displays a primal and odious selfishness, and who, in pursuit of his own interests, shows no regard for the lives of others. For the assassin, selfishness generally takes precedence over all other considerations. He is often willing, to satisfy selfish needs, to sacrifice a human being who has done him no harm (141 IV 61, consid. 4.1).

5.4.2 Ordering the murder of seven civilians in Zorzor

5.4.2.1 With regard to the assessment of the evidence and the findings of fact, the Court refers to its analysis from the perspective of violations of the laws of war (*supra*, consid. II.4.2.2 and II.4.2.2.16). The Court further notes that it has already held, in the context of violations of the laws of war, that the facts underlying this charge constitute the offense of murder (*supra*, paras. II.4.2.3 and II.4.2.4). It remains for the Court to determine whether they also constitute murder—failing which they would be barred by the statute of limitations—as well as the manner in which the defendant participated in the offense.

5.4.2.2 Objectively speaking, Alieu KOSIAH ordered the killing of seven people, chosen at random from the civilian population under the pretext that they belonged to the NPFL, with the clear aim of establishing ULIMO's authority in the newly conquered town of Zorzor. These individuals were executed in public and in a particularly violent manner, namely with rifle butts and clubs. Alieu KOSIAH was not in a particularly confrontational situation; he thus acted for a trivial motive—namely, to establish his authority over the population through terror—and in a particularly heinous manner, showing no regard for the lives of others; for this reason, the charge of murder should be upheld if the facts were to be analyzed under ordinary criminal law. By giving this order to the soldiers, Alieu KOSIAH, in his capacity as a superior, exerted direct psychological influence on the formation of their will, which is why the charge of instigation must be upheld.

5.4.2.3 Subjectively, Alieu KOSIAH intended for his order to be carried out, given that he could not have been unaware that the seven people killed—chosen at random—did not belong to the NPFL and that they would be shot in a

particularly violent manner. Furthermore, the acts in question occurred in the context of a widespread attack against the civilian population of Liberia, particularly in Lofa, a fact of which Alieu KOSIAH was aware (*supra*, paras. II.5.2 and II.5.3).

5.4.2.4 It follows from the foregoing that the acts are not barred by the statute of limitations and that Alieu KOSIAH is guilty of incitement to the murder of seven civilians under Art. *264a*(1)(a) of the Swiss Criminal Code (SCC) *in conjunction with* Art. 24(1) SCC (section 1.3.2 of the indictment).

5.4.3 Murder of the civilian Jeff JORDAN in Babahun

5.4.3.1 With regard to the assessment of the evidence and the findings of fact, the Court refers to its analysis from the perspective of violations of the laws of war (*supra*, consid. II.4.4.2 and II.4.4.2.13). The Court further notes that it has already held, in the context of violations of the laws of war, that the facts underlying this charge constitute the offense of murder (*supra*, paras. II.4.4.3 and II.4.4.4). It remains for the Court to determine whether they also constitute murder; otherwise, they would be barred by the statute of limitations.

5.4.3.2 Objectively speaking, the group of ULIMO soldiers was searching for Jeff JORDAN as a plantation owner. It was in this context, and after Jeff JORDAN stated that he had no money, that Alieu KOSIAH killed him. He therefore acted for a trivial motive and in a particularly heinous manner, showing no regard for the life of another person—a reason why the charge of assassination should be upheld if the facts were to be analyzed under ordinary law.

5.4.3.3 From a subjective standpoint, the defendant was also aware that the victim owned plantations, and he made the decision to kill him once confronted with the victim's refusal to give them money. Furthermore, the alleged acts occurred in the context of a widespread attack against the civilian population of Liberia, particularly in Lofa, a fact of which Alieu KOSIAH was aware (*supra*, paras. II.5.2 and II.5.3).

5.4.3.4 It follows from the foregoing that the statute of limitations has not expired and that Alieu KOSIAH is guilty of the murder of the civilian Jeff JORDAN under Art. *264a*(1)(a) of the Swiss Criminal Code (section 1.3.3 of the indictment).

5.4.4 Ordering the murders of six civilians in Foya

5.4.4.1 With regard to the assessment of the evidence and the findings of fact, the Court refers to its analysis from the perspective of violations of the laws of war (*supra*, consid. II.4.5.3 and II.4.5.3.21). The Court further recalls that it has already held, with respect to violations of the laws of war, that the facts underlying this charge

constituted the offense of murder (*supra*, para. II.4.5.5). The Court must now determine whether they also constitute the offense of assassination—failing which they would be barred by the statute of limitations—as well as the manner in which the defendant participated in the offense.

5.4.4.2 Objectively speaking, Alieu KOSIAH ordered that six people, chosen at random from the civilian population under the pretext that they belonged to the NPFL, be killed with the clear aim of establishing ULIMO's authority in the newly conquered town of Foya. These individuals were executed in public and in a particularly violent manner, notably—in the case of at least one victim—by being struck with stones. Alieu KOSIAH thus acted for a trivial motive and in a particularly heinous manner, showing no regard for the lives of others—a reason why the charge of murder should be applied if the facts were to be analyzed under ordinary criminal law. By giving this order to the soldiers, Alieu KOSIAH, in his capacity as a superior, exerted direct psychological influence on the formation of their will, which is why the charge of instigation must be upheld.

5.4.4.3 Subjectively, Alieu KOSIAH intended for his order to be carried out, given that he could not have been unaware that the six people killed—chosen at random—did not belong to the NPFL and that they would be killed in a particularly violent manner. Furthermore, the acts in question occurred in the context of a widespread attack against the civilian population of Liberia, particularly in Lofa, a fact of which Alieu KOSIAH was aware (*supra*, paras. II.5.2 and II.5.3).

5.4.4.4 It follows from the foregoing that the acts are not barred by the statute of limitations and that Alieu KOSIAH is guilty of instigating the murder of six civilians under Art. *264a*(1)(a) of the Swiss Criminal Code (SCC) *in conjunction with* Art. 24(1) SCC (count 1.3.5 of the indictment).

5.4.5 Stabbing the civilian Georges ROSADO in Foya

5.4.5.1 With regard to the assessment of the evidence and the findings of fact, the Court refers to its analysis from the perspective of violations of the laws of war (*supra*, consid. II.4.5.3 and II.4.5.3.21). The Court further notes that it has already held, with regard to violations of the laws of war, that the facts underlying this charge constituted the offense of attempted murder and that the defendant should be found guilty of complicity (*supra*, para. II.4.5.6). It remains for the Court to determine whether these acts also constitute murder—failing which they would be barred by the statute of limitations—as well as the nature of the defendant's participation in the offense.

5.4.5.2 Objectively speaking, Alieu KOSIAH argued with Kunti KAMARA over which of the two would kill the seventh man identified as a member of the NPFL, namely Georges ROSADO, thereby participating in the attempt to kill the complainant by stabbing a person who was already weakened

by the mistreatment he had suffered, particularly the fact that he had been bound using the “tabé” method. Alieu KOSIAH therefore acted for a trivial motive and in a particularly heinous manner, showing no regard for the life of another person; for this reason, the charge of murder should be upheld if the facts were to be analyzed under common law.

5.4.5.3 Subjectively speaking, Alieu KOSIAH intended for Georges ROSADO—whom the defendant could not have been unaware did not belong to the NPFL—to be executed in public and in a violent manner, noting that he himself attempted to carry out his plan by arguing with Kunti KAMARA over which of the two would kill the complainant. Furthermore, the alleged acts took place in the context of a widespread attack against the civilian population of Liberia, particularly in Lofa, a fact of which Alieu KOSIAH was aware (*supra*, paras. II.5.2 and II.5.3).

5.4.5.4 It follows from the foregoing that the statute of limitations has not expired and that Alieu KOSIAH is guilty of complicity in the attempted murder of the civilian Georges ROSADO pursuant to Art. *264a*(1)(a) *in conjunction with* Art. 22(1) and Art. 25 of the Swiss Penal Code (section 1.3.6 of the indictment).

5.4.6 Participation in the murder of the civilian Martin McCREIGHT in Foya

5.4.6.1 With regard to the assessment of the evidence and the findings of fact, the Court refers to its analysis from the perspective of violations of the laws of war (*supra*, consid. II.4.7.2 and II.4.7.2.14). The Court further notes that it has already held, in the context of violations of the laws of war, that the facts giving rise to the charge constituted the offense of murder and that the defendant must be found guilty of complicity (*supra*, para. II.4.7.3). It remains for the Court to determine whether they also constitute the crime of assassination—failing which they would be barred by the statute of limitations—as well as the manner in which the defendant participated in the offense.

5.4.6.2 Objectively speaking, Martin McCREIGHT was apprehended after getting out of the aid workers’ car. Labeled a spy and a traitor, he was taken to the airfield, on the orders of Alieu KOSIAH, where he was killed for having provided sensitive information to the aid workers regarding the looting of the *Borma mission* by ULIMO. He was executed in public and in a violent manner, with an axe, after being mistreated and bound using the “tabé” method. It must therefore be concluded that the defendant acted out of revenge—a trivial motive—and in a cruel and particularly heinous manner, showing no regard for the lives of others, and that the charge of murder should be applied if the facts were to be analyzed under ordinary criminal law.

5.4.6.3 From a subjective standpoint, Alieu KOSIAH knew what kind of treatment Martin McCREIGHT would be subjected to at the airfield near the UGLY

BOY's residence—a location where executions of civilians had previously taken place. It follows from the foregoing that the defendant acted intentionally. Furthermore, the acts in question occurred in the context of a widespread attack against the civilian population of Liberia, particularly in Lofa, a fact of which Alieu KOSIAH was aware (*supra*, paras. II.5.2 and II.5.3).

5.4.6.4 It follows from the foregoing that the acts are not barred by the statute of limitations and that Alieu KOSIAH is therefore guilty of complicity in the murder of the civilian Martin McCREIGHT pursuant to Art. *264a*(1)(a) *in conjunction with* Art. 25 of the Swiss Penal Code (section 1.3.8 of the indictment).

5.4.7 Murder of the civilian Russell HASTING near the Kehair River

5.4.7.1 With regard to the assessment of the evidence and the findings of fact, the Court refers to its analysis from the perspective of violations of the laws of war (*supra*, paras. II.4.10.2 and II.4.10.2.14). The Court further recalls that it has already held, in the context of violations of the laws of war, that the facts underlying this charge constitute the offense of murder (*supra*, para. II.4.10.5). It remains for the Court to determine whether they also constitute assassination; otherwise, they would be barred by the statute of limitations.

5.4.7.2 Objectively speaking, Alieu KOSIAH killed Russell HASTING in connection with the forced transport of the Pasolahun generator, while the latter was exhausted and defenseless, with the aim of asserting his authority and on the grounds that the victim could no longer continue to carry his load—a particularly trivial motive. The defendant therefore acted in a cruel and particularly heinous manner, showing no regard for the life of another person, which is why the charge of murder should be upheld if the facts were to be analyzed under common law.

5.4.7.3 From a subjective standpoint, Alieu KOSIAH spoke with Russell HASTING and threatened to kill him if he refused to continue carrying his load, a threat he subsequently carried out. This illustrates the defendant's utter disregard for the lives of the conscripted individuals. It follows that the defendant acted intentionally. Furthermore, the alleged acts occurred in the context of a widespread attack against the civilian population of Liberia, particularly in Lofa, a fact of which Alieu KOSIAH was aware (*supra*, paras. II.5.2 and II.5.3).

5.4.7.4 It follows from the foregoing that the acts are not barred by the statute of limitations and that Alieu KOSIAH is guilty of the murder of the civilian Russell HASTING under Art. *264a*(1)(a) of the Swiss Criminal Code (section 1.3.15 of the indictment).

5.4.8 Murder of the civilian Brian HASTING near the Lofa River

5.4.8.1 With regard to the assessment of the evidence and the findings of fact, the Court refers to its analysis from the perspective of violations of the laws of war (*supra*, consid. II.4.11.2 and II.4.11.2.21). The Court further recalls that it has already held, in the context of violations of the laws of war, that the facts underlying this charge constituted the offense of murder (*supra*, para. II.4.11.4). It remains for the Court to determine whether they also constitute assassination; otherwise, they would be barred by the statute of limitations.

5.4.8.2 Objectively speaking, Alieu KOSIAH killed Brian HASTING in connection with the forced transport of ammunition from Gondolahun to Fassama, while the latter was exhausted and defenseless, with the aim of asserting his authority and on the grounds that the victim could no longer continue to carry his load—a particularly trivial motive. The defendant therefore acted in a cruel and particularly heinous manner, showing no regard for the life of another person, which is why the charge of murder should be upheld if the facts were to be analyzed under common law.

5.4.8.3 From a subjective standpoint, it is evident from the context of the forced transport of ammunition from Gondolahun to Fassama—which Alieu KOSIAH ordered and during which he was present—and from the conditions under which it took place, that the defendant had little regard for the lives of the conscripted individuals. It follows from the foregoing that the defendant acted intentionally. Furthermore, the alleged acts occurred in the context of a widespread attack against the civilian population of Liberia, particularly in Lofa, a fact of which Alieu KOSIAH was aware (*supra*, paras. II.5.2 and II.5.3).

5.4.8.4 It follows from the foregoing that the acts are not barred by the statute of limitations and that Alieu KOSIAH is guilty of the murder of the civilian Brian HASTING under Art. *264a*(1)(a) of the Swiss Criminal Code (count 1.3.17 of the indictment).

5.4.9 Murder of a civilian in Voinjama

5.4.9.1 With regard to the assessment of the evidence and the findings of fact, the Court refers to its analysis from the perspective of violations of the laws of war (*supra*, paras. II.4.12.2 and II.4.12.2.8). The Court further notes that it has already held, in the context of violations of the laws of war, that the facts underlying this charge constitute the offense of murder (*supra*, paras. II.4.12.3 and II.4.12.4). It remains for the Court to determine whether they also constitute murder; otherwise, they would be barred by the statute of limitations.

5.4.9.2 Objectively speaking, it was in the context of arbitrary killings perpetrated by ULIMO—known as “Black Monday”—that Alieu KOSIAH fired

at a defenseless young man who was unable to flee, at point-blank range, on the grounds that he had refused to obey the soldiers' orders and get into their *pickup truck*. The defendant therefore acted out of revenge—a trivial motive—and in a particularly heinous manner, showing no regard for the life of another person, which is why the charge of murder should be upheld if the facts were to be analyzed under common law.

5.4.9.3 From a subjective standpoint, Alieu KOSIAH was aware of the context of arbitrary killings perpetrated by ULIMO and therefore acted intentionally. Furthermore, the acts in question occurred in the context of a widespread attack against the civilian population of Liberia, particularly in Lofa, a fact of which Alieu KOSIAH was aware (*supra*, paras. II.5.2 and II.5.3).

5.4.9.4 It follows from the foregoing that the statute of limitations has not expired and that Alieu KOSIAH is guilty of the murder of a civilian under Art. *264a*(1)(a) of the Swiss Criminal Code (count 1.3.18 of the indictment).

5.5 Conclusion

In light of the foregoing, and bearing in mind that crimes against humanity are substantively distinct from war crimes and that these two offenses may occur concurrently in relation to the same set of facts (*supra*, consid. II.3.2.7), Alieu KOSIAH is found guilty of crimes against humanity with respect to the following counts:

- incitement to the murder of seven civilians and incitement to the murder of six civilians, pursuant to Art. *264a*, para. 1, subpar. a of the Swiss Penal Code (CP) *in conjunction with* Art. 24, para. 1 of the Swiss Penal Code (CP) (counts 1.3.2 and 1.3.5 of the indictment);
- murder of four civilians under Art. *264a*, para. 1, subpar. a of the Swiss Criminal Code (SCC) (sections 1.3.3, 1.3.15, 1.3.17, and 1.3.18 of the indictment);
- aiding and abetting the attempted murder of a civilian under Art. *264a,* para. 1, subpar. a
  in conjunction with Art. 22, para. 1, and Art. 25 of the Swiss Criminal Code (CP) (count 1.3.6 of the indictment);
- aiding and abetting the murder of a civilian under Art. *264a*, para. 1, subpar. a, *in conjunction with* Art. 25 of the Swiss Criminal Code (section 1.3.8 of the indictment).

6. Sentencing

The appellant contested all of the facts alleged against him and moved for his acquittal (*supra*, C.4 and C.29). The defense therefore did not address the issue of sentencing in its closing argument, either as a primary or secondary argument. As for the Office of the Attorney General, it moved to affirm the judgment of the court of first instance and, in particular, to sentence the defendant to 20 years' imprisonment, with credit for time served prior to trial

(*supra*, C.30; CAR 5.200.761), essentially arguing that Alieu KOSIAH's guilt was extremely grave and that no mitigating circumstances were applicable (CAR 5.200.758 et seq.).

6.1 Principles Applicable to Sentencing

6.1.1 According to Art. 44 of the former Military Penal Code (aCPM), the judge shall determine the sentence based on the offender's culpability, taking into account his motives, his criminal history, and his personal circumstances. This article corresponds to Art. 63 of the former Penal Code (aCP) and, in substance, to the current Art. 47 of the Penal Code (CP).

6.1.2 In determining the sentence, the Court may apply the general principles governing sentencing under the current Art. 47 of the Swiss Penal Code (CP). Under this provision, the judge determines the sentence based on the offender's culpability. The judge takes into account the offender's prior record and 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).

6.1.3 Art. 44 aCPM, like Art. 47 CP, grants the judge broad discretion (Federal Supreme Court decision 6B_348/2023 of April 28, 2023, para. 1.1). The reasoning must justify the sentence imposed, allowing the reader to follow the line of reasoning adopted, even though the judge is not required to express in numbers or percentages the weight he or she assigns to each of the factors cited (ATF 136 IV 55, para. 5.6; 134 IV 17, para. 2.1; Federal Supreme Court decision 6B_675/2023 of October 18, 2023, para. 1.1). The higher the sentence, the more comprehensive the reasoning must be (127 IV 201, para. 2c; Federal Supreme Court decision 6B_86/2023 of August 7, 2023, para. 3.3).

6.1.4 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 injury 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 will be given to the importance of the legally protected interest and the result of the unlawful act. With regard to the reprehensible nature of the act and the manner of its commission, consideration will be given to the way in which the perpetrator carried out the criminal activity and to the totality of the circumstances, with the scheme employed being decisive in this regard. Where applicable, the perpetrator's lack of scruples will also be taken into account (MATHYS, *op. cit.*, p. 38, n. 91 ff.; WIPRÄCHTIGER/KELLER, Basler Kommentar,

4e 2019 ed., no. 90 ff. on Art. 47 of the Swiss Penal Code; QUELOZ/MANTELLI-RODRIGUEZ, Commen-
Taire Romand,2nded., 2021, No. 6, 14 ff. and 22 ff. regarding Art. 47 of the Swiss Criminal Code (CP)). From a subjective perspective, the intensity of the criminal intent as well as the perpetrator's motivations and objectives are taken into account (*subjective element of the offense*). With regard to the intensity of the intent to commit the offense, it is particularly important 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 their decision to violate it is weighed, and thus the more serious their fault; and *vice versa* (ATF 127 IV 101, para. 2a; 122 IV 241, para. 1a, and the cited decisions). Account must also be taken of the repetition and duration of the unlawful conduct—that is, the criminal energy expended by the perpetrator. With regard to the perpetrator's motives and purpose, the reasons that prompted him to violate the law must be examined; the selfish or frivolous nature of the motive constitutes an aggravating factor in determining the penalty (MATHYS, *op. cit*., p. 57, n. 142 ff.; WIPRÄCHTIGER/KELLER, *op. cit.*,
n. 115 ff. regarding Art. 47 of the Swiss Penal Code; QUELOZ/MANTELLI-RODRIGUEZ, *op. cit.*, n. 22 ff. and 36 ff. regarding Art. 47 of the Swiss Penal Code).

6.1.5 Under Art. 49(1) of the former Military Penal Code (aCPM), where, through a single act or multiple acts, an offender has incurred multiple custodial sentences, the judge shall sentence the offender to the penalty for the most serious offense and shall increase its duration according to the circumstances, but not by more than half the maximum penalty prescribed for that offense. Furthermore, the judge is bound by the statutory maximum for that type of sentence. Since this provision corresponds to the current Article 49(1) of the Swiss Penal Code (CP), reference should be made to the general principles governing its application. First, the judge must establish the sentencing framework by determining the most serious offense, namely the one carrying the highest statutory maximum penalty. If several offenses carry the same maximum penalty, the offense that results in the highest penalty in the specific case should be used as the basis (MATHYS, *op. cit*., p. 157, n. 359). Next, the judge sets the base sentence for that offense (*Einsatzstrafe*), taking into account all relevant factors, including the aforementioned aggravating or mitigating circumstances. In a third step, the judge will increase this base sentence by adding additional penalties to punish each of the other offenses in accordance with the principle of aggravation (*Asperationsprinzip*), again taking into account all relevant circumstances (ATF 144 IV 217, para. 3.5.1, and the cited decisions; 144 IV 313, para. 1.1.2; Federal Supreme Court decision 6B_348/2023 of April 28, 2023, para. 1.2). The reasoning in the judgment must make it possible to identify the base sentence and the additional penalties in order to understand how the aggregate sentence (*Gesamtstrafe*) was determined. The principle of aggravation applies if the offender meets the conditions for multiple penalties of the same type. To determine whether the offender meets the conditions for multiple penalties of the same type, the judge must first set the penalty for each offense and then examine

which penalties, taken individually, can be combined to form a total sentence because they are of the same type (147 IV 241, para. 3.2; 144 IV 217, paras. 4.1 and 4.3). When the principle of aggravation under Art. 49(1) of the Swiss Criminal Code (CP) applies, it cannot result in a maximum sentence greater than the sentence that would result from the principle of cumulative sentencing (*Kumulationsprinzip*) (143 IV 145, para. 8.2.3).

6.1.6 The judge must also assess factors related to the offender himself (*Täterkomponente*) (MATHYS, *op. cit*., n. 227 ff., p. 101; WIPRÄCHTIGER/KELLER, *op. cit.*,
n. 120 ff. regarding Art. 47 of the Swiss Criminal Code; QUELOZ/MANTELLI-RODRIGUEZ, *op. cit.*, n. 47 ff. regarding Art. 47 of the Swiss Criminal Code). Insofar as they do not relate to any one specific offense but rather to the offenses as a whole, aggravating or mitigating factors related to the offender must be taken into account only after the provisional aggregate sentence has been determined, if applicable (MATHYS, *op. cit*., p. 157, n. 359, and p. 203, subpar. c). Under Art. 47 of the Swiss Criminal Code, these factors include the offender's prior criminal record and personal circumstances, as well as the impact of the sentence on the offender's future. The absence of a criminal record generally has a neutral effect on sentencing. It need not be taken into account as a mitigating factor (ATF 141 IV 61, para. 6.3.2; 136 IV 1, para. 2.6; Federal Supreme Court decision 6B_675/2023 of October 18, 2023, para. 1.3). In exceptional cases, however, it may be taken into account in the assessment of the offender's character as a mitigating factor, provided that the offender's law-abiding conduct is extraordinary. This condition should be applied with restraint, given the risk of unequal treatment (136 IV 1, para. 2.6.4). With regard to the defendant's person, the judge must, in particular, take into account his or her personal circumstances (age, health, education, socioeconomic background), their reputation, their vulnerability to punishment, their social integration, and their attitude and behavior after the acts with which they are charged as well as during the proceedings (confession, cooperation with the investigation, remorse, recognition of their own wrongdoing) (141 IV 61, para. 6.1.1; 134 IV 17, para. 2.1;
129 IV 6, para. 6.1; Federal Supreme Court decision 6B_474/2022 of November 9, 2022
para. 2.1; QUELOZ/MANTELLI-RODRIGUEZ, *op. cit.*, n. 65 ff. on Art. 47 CP).

6.1.7 Pursuant to Art. 45 aCPM, the judge may mitigate the sentence when the offender acted out of a noble motive, under the influence of a person to whom he owes obedience or on whom he depends, in a state of profound distress, or under the impression of a serious threat, unless the duties imposed by his service preclude taking this into account; when the offender was led into serious temptation by the victim's conduct; when the offender was driven by anger or 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 he was between the ages of 18 and 20 and did

had not yet fully developed the capacity to appreciate the unlawful nature of his act. The effects of mitigation are governed by Art. 46 aCPM, and the cases in which the law provides for discretionary mitigation of the sentence are governed by Art. 47 aCPM.

6.1.8 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). However, Art. 48(e) of the Swiss Criminal Code (which corresponds to Art. 45 of the former Military Penal Code) does not apply to crimes for which there is no statute of limitations. In fact, it is Art. 101, para. 2, of the Swiss Criminal Code (CP), which provides that the judge may reduce the sentence if criminal prosecution is barred by the statute of limitations under Arts. 97 and 98 CP, that applies; it should be noted that this provision corresponds to Art. 56$^{(bis),}$para. 2 of the aCPM (140 IV 145, para. 3.2; Federal Supreme Court decisions 6B_1138/2017 of May 11, 2018, para. 3; 6B_665/2017 of January 10, 2018, para. 4.1). The judge thus has the discretion to reduce the sentence, but is not obligated to do so.

6.1.9 Articles 5 of the Criminal Procedure Code (CPP), 29(1) of the Constitution, and Article 6(1) of the European Convention on Human Rights (ECHR) guarantee, in particular, every person's right to have their case heard within a reasonable time. These provisions enshrine the principle of expeditious proceedings and prohibit undue delay in rendering a decision. The principle of promptness applies to all stages of the proceedings and requires the authorities to conduct criminal proceedings without delay, from the moment the defendant is informed of the allegations against him or her, so as not to keep the defendant in unnecessary anxiety (ATF 143 IV 373, para. 1.3.1; 133 IV 158, para. 8). Whether the duration of proceedings is reasonable is assessed based on the circumstances of the case, which generally require a comprehensive evaluation (143 IV 373, para. 1.3.1). Relevant criteria in this regard include, in particular, the seriousness of the alleged offenses, the complexity of the facts, the investigative measures required, the difficulty and urgency of the case, and the conduct of the competent authorities and the defendant, as well as the party to whom the procedural delay is attributable (130 I 269, para. 3.2; 124 I 139, para. 2c; Federal Supreme Court decision 6B_1521/2022 of April 27, 2023, para. 2.1.1). With regard to the defendant's conduct, the defendant certainly cannot be required to cooperate actively, and cannot be criticized for making full use of the legal remedies available to him under domestic law; but purely dilatory actions he may have taken may be taken into account (Federal Supreme Court decision 6B_684/2022 of August 31, 2022, para. 5.1.1, and the case law cited therein). Since the criminal authority cannot be required to deal constantly with a single case, it is inevitable that a proceeding will involve some periods of inactivity. When none of these periods is of an unreasonably long duration, the overall assessment prevails. In this context, an accumulation of various procedural steps—even if their individual durations may still be considered reasonable—may also appear inappropriate as a whole (124 I 139, para. 2c; decision of the

Federal Supreme Court, 6B_684/2022, Aug. 31, 2022, para. 5.1.1, and the case law cited). Furthermore, periods of intense activity may offset the fact that the case was temporarily set aside due to other matters (130 IV 54, para. 3.3.3; 124 I 139, para. 2c). The reasonable time limit begins as soon as a person is charged, which is understood to mean the moment when the criminal authorities first inform the person concerned that they are accused of committing an offense (see 119 Ib 311, para. 5a; Federal Supreme Court decision 6B_684/2022 of August 31, 2022, para. 5.1.3, and the decisions cited therein). The time limit generally ends with the final decision ruling on the case (117 IV 124, para. 3; Federal Supreme Court decision 6B_684/2022 of August 31, 2022). A violation of the principle of promptness may result in a reduced sentence, in some cases exemption from any sentence, or even a dismissal of the case as *a last resort* in the most extreme cases (143 IV 373, para. 1.4.1; Federal Supreme Court decision 6B_1521/2022 of April 27, 2023, para. 2.1.2).

6.1.10 According to Art. 50(1)(a) of the Military Criminal Code (aCPM), first sentence, the judge shall deduct the period of pretrial detention from the custodial sentence to the extent that the convicted person did not, through his or her conduct after the offense, have caused his or her own 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).

6.2 Sentencing *in this case*

6.2.1 Sentencing Framework

6.2.1.1 The first step is to establish the sentencing range by determining, in the abstract, the most serious offense committed by Alieu KOSIAH, who was found guilty of violations of the laws of war (Art. 108 and 109a MCP *in conjunction with* Art. 3 common to the General Provisions and Art. 4 of Part II of the Penal Code) and crimes against humanity (Art. *264a* of the Penal Code).

6.2.1.2 Article 109(1) of the former Military Penal Code (aCPM) provides for imprisonment in simple cases (at least three days and no more than three years [Article 29(1) aCPM]) and imprisonment with hard labor in serious cases (at least one year and no more than 20 years [Article 28(1) aCPM]). 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 of the Military Penal Code (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. That said, only the name has changed; the terms of the sentence remain identical. As for Article *264a* of the Swiss Penal Code (CP), it provides for a custodial sentence of at least five years (para. 1) and no more than 20 years (Article 40, para. 2, CP). The Court clarifies in this regard that neither the provisions for particularly serious cases (para. 2), for which

the judge may impose a life sentence, nor those of lesser gravity (para. 3), for which the judge may impose a custodial sentence of at least one year, apply in this case. Indeed, these options must be ruled out from the outset, since the charges of crimes against humanity brought by the Office of the Attorney General of Switzerland (MPC) in connection with the facts set forth in the indictment of March 22, 2019, as amended on September 2, 2022, were brought solely under Art. *264a*, para. 1, of the Swiss Criminal Code (CP). Furthermore, the convictions handed down by this Court for crimes against humanity all pertain to Article *264a*(1)(a) of the Swiss Criminal Code, which excludes less serious cases, as the Swiss Criminal Code provides that such cases fall under Article *264a*(1)(c) through (j) of the Swiss Criminal Code.

6.2.1.3 In the present case, while both Article 109(1) of the Military Penal Code (aCPM) and Article *264a*(1) of the Swiss Criminal Code (CP) provide for a maximum sentence of 20 years, the offense of crimes against humanity appears more serious in light of the legal interest protected by Article *264a* of the Swiss Criminal Code, as this provision criminalizes any inhumane act that intentionally causes great suffering or serious harm to physical integrity or to physical or mental health, committed as part of a widespread or systematic attack directed against a civilian population, and is therefore not limited to armed conflicts (GARIBIAN, *op. cit.,* n. 4 et seq. on Art. *264a* of the Swiss Criminal Code). In addition, the minimum sentence provided for in Art. *264a*(1) of the Swiss Criminal Code—which is five years of imprisonment—is higher than that provided for in Art. 109(1) of the former Military Penal Code. The Court must therefore set the base sentence for the most serious offense from the perspective of crimes against humanity, before increasing it by additional penalties for each offense constituting a crime against humanity and a violation of the laws of war. Finally, the Court must determine the aggregate sentence.

6.2.2 Crimes Against Humanity (Art. *264a of* the Swiss Criminal Code)

In determining the sentence for offenses constituting crimes against humanity—noting that only murder (Art. *264a*, para. 1, subpar. a of the Swiss Criminal Code) and attempted murder (Art. *264a,* para. 1, subpar. a *in conjunction with* Art. 22, para. of the Swiss Criminal Code) have been found to constitute crimes against humanity— the Court must proceed from the most serious offense charged against Alieu KOSIAH, namely incitement to murder seven civilians (section 1.3.2 of the indictment; *supra*, consid. II.5.4.2), as this resulted in the greatest number of victims.

6.2.2.1 Instigation to murder seven civilians

The defendant was found guilty of incitement to murder seven civilians under Art. *264a,* para. 1, subpar. a of the Swiss Criminal Code (SCC) *in conjunction with* Art. 24, para. 1 of the SCC (section 1.3.2 of the indictment; *supra*, consid. II.5.4.2) in connection with the events in Zorzor.

From an objective standpoint, the severity of the harm is very significant, given that the defendant attempted to take the lives of seven people. The act of which he was found guilty is particularly reprehensible in that he targeted

unarmed victims who were unable to defend themselves and were completely at the mercy of their attackers. Apart from the particular cruelty of the victims' deaths—as they were beaten with rifle butts and clubs—it should be emphasized that the victims, who were civilians, were arbitrarily targeted by the defendant under the false pretext that they belonged to an enemy armed group. The aim was to establish ULIMO's authority in the town of Zorzor, which had just been conquered, by instilling terror among the local population through a public and particularly violent execution, thereby traumatizing those who witnessed it.

From a subjective standpoint, the intensity of the defendant's criminal intent is very high. He had no need to carry out the act or to order the killing of one person, *let alone* seven people, since he was under no pressure whatsoever and, it should be noted, the victims were unable to defend themselves. Added to this is the fact that the defendant necessarily had some knowledge of international humanitarian law, given that he had relatively extensive military experience and had been trained in the Liberian National Army. He therefore knew that he could not attack persons who were out of combat. Furthermore, he acted for a trivial motive—namely, to establish his authority over the population through terror—and in a particularly heinous manner, showing no regard for the lives of others. His offense is thus particularly serious.

In light of the foregoing, the Court sets the prison sentence at 20 years. It notes that this constitutes the maximum sentence. However, in the interest of transparency and out of respect for the victims, the Court must establish the theoretical sentences for the remaining offenses of which the defendant has been found guilty.

6.2.2.2 Instigation to Murder Six Civilians

The defendant was found guilty of incitement to murder six civilians under Art. *264a*(1)(a) of the Swiss Criminal Code (SCC) *in conjunction with* Art. 24(1) of the SCC (count 1.3.5 of the indictment; *supra*, consid. II.5.4.4) in connection with the events in Foya.

From an objective standpoint, the severity of the harm is very significant, as the defendant endangered the lives of six people. The act of which he was found guilty is particularly reprehensible in that he targeted unarmed victims who were unable to defend themselves and were completely at the mercy of their attacker, as illustrated by the fact that they were bound using the
"tabé" at the time they were executed. Aside from the particular cruelty of the victims' deaths—one of their skulls having been crushed with a stone and the bodies having been thrown into a well—it should be emphasized, as was the case in Zorzor (*supra*, para. II.6.2.2.1), that the victims—civilians—were arbitrarily singled out by the defendant under the false pretext that they belonged to an enemy armed group. The aim was to establish ULIMO's authority in the town of Foya, which had just been conquered,

by instilling terror among the local population through a public and particularly violent execution, thereby traumatizing those who witnessed it.

From a subjective standpoint, the intensity of the defendant's criminal intent is very high. He had no need to carry out the act or to order the killing of one person, *let alone* six people, since he was under no pressure whatsoever and, it should be noted, the victims were unable to defend themselves. As for the fact that the defendant knew he could not attack defenseless persons and the trivial motive for his actions, the Court refers to its reasoning regarding the similar act of which the defendant was guilty in Zorzor, which applies fully in this case (*supra*, consid. II.6.2.2.1). His offense is thus particularly serious.

In light of the foregoing, the Court sets the prison sentence at 20 years.

6.2.2.3 Murder of civilian Jeff JORDAN

The defendant was found guilty of the murder of civilian Jeff JORDAN under Art. *264a*(1)(a) of the Swiss Penal Code (section 1.3.3 of the indictment; *supra*, para. II.5.4.3), for acts that took place in Babahun.

From an objective standpoint, the severity of the offense is significant, as the defendant attacked the most precious legal right by endangering the life of Jeff JORDAN. The act of which he is guilty is particularly reprehensible in that he attacked an unarmed victim who was unable to defend himself and was completely at the mercy of his assailant. Moreover, Jeff JORDAN, a plantation owner, was executed at point-blank range for the sole reason that he had stated he had no money, and without any discussion taking place.

From a subjective standpoint, the intensity of the defendant's criminal intent is significant. He had no need to carry out the act and kill a person, since Jeff JORDAN, an unarmed civilian, posed no danger to him. Furthermore, he acted for a particularly trivial motive—out of spite—after Jeff JORDAN refused to give money to the ULIMO, and in a particularly heinous manner, showing no regard for the lives of others. Finally, the Court has already established that the defendant knew he could not attack unarmed individuals; therefore, reference should be made to the Court's reasoning on this point (*supra*, consid. II.6.2.2.1). His offense is therefore serious.

In light of the foregoing, the Court sets the prison sentence at 15 years.

6.2.2.4 Murder of Civilian Russell HASTING

The defendant was found guilty of the murder of civilian Russell HASTING under Art. *264a*(1)(a) of the Swiss Penal Code (count 1.3.15 of the indictment; *supra*, para. II.5.4.7), for acts that took place near the Kehair River, in the context of the forced transport of the Pasolahun generator from that village to Kolahun.

From an objective standpoint, the severity of the harm is significant, as the defendant attacked the most precious legal right by endangering the life of Russell HASTING. The act of which he is guilty is particularly reprehensible in that he attacked an unarmed victim who was extremely fatigued, unable to defend himself, and completely at the mercy of his assailant. Furthermore, Russell HASTING was shot dead for the sole reason that he could no longer continue carrying his load, and after the defendant had threatened to kill him if he refused to continue—all in order to assert the defendant's authority by terrorizing the other participants in the forced labor.

From a subjective standpoint, the intensity of the defendant's criminal intent is significant. He had no need to carry out the act and kill a person, since Russell HASTING, an unarmed civilian, posed no danger to him. Furthermore, he acted for a particularly trivial motive—out of spite—when confronted with Russell HASTING's refusal to continue carrying his load and in order to assert his authority, showing no regard for the lives of others. Finally, the Court has already found that the defendant knew he could not attack individuals who were out of combat, and therefore reference should be made to the Court's reasoning on this point (*supra*, para. II.6.2.2.1). His offense is therefore serious.

In light of the foregoing, the Court sets the prison sentence at 15 years.

6.2.2.5 Murder of civilian Bria HASTING

The defendant was found guilty of the murder of civilian Brian HASTING pursuant to Art. *264a*(1)(a) of the Swiss Penal Code (count 1.3.17 of the indictment; *supra*, consid. II.5.4.8), for acts that took place near the Lofa River, in the context of the forced transport of ammunition from Gondolahun to Fassama.

From an objective standpoint, the severity of the harm is significant, as the defendant attacked the most precious legal right by endangering the life of Brian HASTING. The act of which he is guilty is particularly reprehensible in that he attacked an unarmed victim who was extremely fatigued, unable to defend himself, and completely at the mercy of his assailant. Furthermore, Brian HASTING was shot dead for the sole reason that he could no longer carry his load, and without any discussion, in order to assert the defendant's authority by terrorizing the other participants in the forced labor.

From a subjective standpoint, the intensity of the defendant's criminal intent is significant. He had no need to carry out the act and kill a person, since Brian HASTING, an unarmed civilian, posed no danger to him. Furthermore, he acted for a particularly trivial motive—out of spite—once confronted with the fact that Brian HASTING was too tired to continue carrying his load, and in order to assert his authority, showing no regard for the lives of others. Finally, the Court has already found that the defendant knew he could not attack individuals who were out of combat, and therefore reference should be made to the Court's reasoning on this point (*supra*, consid. II.6.2.2.1). His offense is therefore serious.

In light of the foregoing, the Court sets the prison sentence at 15 years.

6.2.2.6 Murder of a Civilian

The defendant was found guilty of the murder of a civilian under Art. *264a*(1)(a) of the Swiss Penal Code (count 1.3.18 of the indictment; *supra*, para. II.5.4.9), for acts that took place in Voinjama, in the context of arbitrary killings perpetrated by ULIMO known as "Black Monday."

From an objective standpoint, the severity of the harm is significant, as the defendant attacked the most precious legal right by endangering the life of a young man. The act of which he was found guilty is particularly reprehensible in that he targeted an unarmed victim who was unable to defend himself and was completely at the mercy of his attacker. Moreover, the young man was shot out of spite, simply because he had refused to obey the soldiers' orders and get into their *pickup truck*, as part of an act of revenge against a segment of the local population on "Black Monday."

From a subjective standpoint, the intensity of the defendant's criminal intent is significant. He had no need to carry out the act and kill a person, since the young man in question—an unarmed civilian—posed no danger to him or his troops. He also acted for a particularly trivial motive—out of spite— in the context of revenge carried out in the form of arbitrary killings perpetrated by the ULIMO, once confronted with the young man's refusal to carry out the soldiers' orders, and in a particularly heinous manner, showing no regard for the lives of others—it being emphasized that he could easily have forced his victim to get into the *pickup truck*. Finally, the Court has already found that the defendant knew he could not attack persons who were out of combat, and therefore reference should be made to the Court's reasoning on this point (*supra*, para. II.6.2.2.1). His offense is therefore serious.

In light of the foregoing, the Court sets the prison sentence at 15 years.

6.2.2.7 Aiding and Abetting the Murder of Civilian Martin McCREIGHT

The defendant was found guilty of aiding and abetting the murder of civilian Martin McCREIGHT pursuant to Art. *264a*(1)(a) *in conjunction with* Art. 25 of the Swiss Criminal Code (count 1.3.8 of the indictment; *supra*, para. II.5.4.6) in connection with the events that took place in Foya, specifically at the town's airfield.

From an objective standpoint, the severity of the offense is significant, since the defendant, acting as an accomplice, attacked the most precious legal interest by contributing to the taking of Martin McCREIGHT's life. The act of which he is guilty is particularly reprehensible in that the victim was unarmed, unable to defend himself, and completely at the mercy of a group of assailants, as illustrated by the fact that Martin McCREIGHT was mistreated, bound using the "tabé" method " method, and taken to the airfield by an angry group of ULIMO members, where he was executed in public in an extremely violent manner with an axe. Furthermore, Martin McCREIGHT was killed out of revenge—a trivial motive—for having provided sensitive information to humanitarian workers regarding a looting incident carried out by ULIMO.

From a subjective standpoint, the intensity of the defendant's criminal intent is significant. He had no need to carry out the act and cause the death of an unarmed civilian who posed no danger to him. He also acted for a particularly trivial motive—revenge—and in a particularly heinous manner, given that he knew what kind of treatment Martin McCREIGHT would face at the airfield near UGLY BOY's residence, a location where executions of civilians had previously taken place. In doing so, he showed no regard for the lives of others. Finally, the Court has already established that the defendant knew he was not permitted to attack persons who were out of combat, so reference should be made to the Court's reasoning on this point (*supra*, consid. II.6.2.2.1). His offense is therefore serious.

In light of the foregoing, and given that the Court would set the prison sentence at 20 years if the defendant had acted as the principal offender, the sentence is set at 10 years to take into account the defendant's role in this offense, namely, aiding and abetting.

6.2.2.8 Aiding and Abetting the Attempted Murder of Civilian Georges ROSADO

The defendant was found guilty of aiding and abetting the attempted murder of civilian Georges ROSADO pursuant to Art. *264a*(1)(a) *in conjunction* with Articles 22(1) and 25 of the Swiss Penal Code (CP) (section 1.3.6 of the indictment; *supra*, consid. II.5.4.5) in connection with the events that took place in Foya.

From an objective standpoint, the severity of the injury must be viewed in a broader context, given that the defendant acted as an accomplice in an attempt to take the life of Georges ROSADO—the most precious legal right. The act of which he was found guilty is particularly reprehensible insofar as the victim

was unarmed, weakened, unable to defend himself, and completely at the mercy of his attackers, as illustrated by the fact that Georges ROSADO was mistreated and bound using the "tabé" method. Moreover, as was the case with the six other civilians accompanying him (*supra*, consid. II.6.2.2.2), he was arbitrarily singled out by the defendant, under the false pretext that he belonged to an enemy armed group, with the aim of instilling terror among the local population through a public and particularly violent execution, in order to establish ULIMO's authority in the town of Foya, which had just been conquered.

From a subjective standpoint, the intensity of the defendant's criminal intent is significant. He had no need to carry out the act or to facilitate the attempt to kill an unarmed civilian who posed no danger to him. Furthermore, he acted for a trivial motive—namely, to establish his authority over the population through terror—and in a particularly heinous manner, showing no regard for the lives of others. Finally, the Court has already found that the defendant knew he could not attack persons who were out of combat, so reference should be made to the Court's reasoning on this point (*supra*, consid. II.6.2.2.1). His fault is therefore serious.

In light of the foregoing, and given that the Court would set the custodial sentence at 10 years if the defendant had acted as the principal offender, the sentence is set at 5 years to take into account the defendant's role in this offense, namely that of an accomplice.

6.2.2.9 Interim Summary Regarding Crimes Against Humanity

The Court sets the prison sentence at 20 years, noting that even taking into account the principle of aggravation, the statutory maximum would be significantly exceeded by adding to the base sentence of 20 years any additional penalties based on the lengthy prison terms imposed above in connection with each of the offenses. While the statutory maximum and the principle of aggravation preclude the accumulation of sentences, it is nevertheless important to note that the total of the sentences imposed for crimes against humanity would exceed 100 years. In addition, no mitigating factors can be taken into account (*see below*, paras. II.6.2.4 and II.6.2.5).

6.2.3 Violations of the laws of war (Art. 108 and 109 of the Military Criminal Code [aCPM] *in conjunction with* Art. 3 common to the General Provisions [CG] and Art. 4 of Protocol II [PA II])

6.2.3.1 Ordering the murder of seven civilians

The defendant was found guilty of ordering the killing of seven civilians pursuant to Art. 109(1) and 108(2) of the Military Criminal Code (aCPM) *in conjunction with* Art. 18 of the aCPM, Art. 3(1)(1)(a) common to the General Provisions (CG), and Art. 4, subparagraph 2, letter a of PA II (section 1.3.2 of the indictment; *supra*, consid. II.4.2) in connection with the events in Zorzor.

The Court sets the prison sentence at 20 years and refers to its reasoning regarding crimes against humanity pertaining to the same set of facts, since it can be fully incorporated under the framework of violations of the laws of war (*supra*, consid. II.6.2.2.1).

6.2.3.2 Ordering the Murder of Six Civilians

The defendant was found guilty of ordering the killing of six civilians pursuant to Art. 109(1) and Art. 108(2)(a) of the Military Criminal Code (aCPM) *in conjunction with* Art. 18 of the aCPM, Art. 3(1)(1)(a) common to the General Provisions, and Art. 4, subparagraph 2, letter a of PA II (section 1.3.5 of the indictment; *supra*, consid. II.4.5) in connection with the events in Foya.

The Court sets the prison sentence at 20 years and refers to its reasoning regarding crimes against humanity pertaining to the same set of facts, since it can be fully incorporated under the framework of violations of the laws of war (*supra*, consid. II.6.2.2.2).

6.2.3.3 Order to Kill Two Unarmed Soldiers

The defendant was found guilty of ordering the killing of two unarmed soldiers pursuant to Art. 109(1) and Art. 108(2)(a) of the Military Criminal Code (aCPM) *in conjunction with* Art. 18 of the aCPM, Art. 3(1)(1)(a) common to the General Provisions, and Art. 4, subparagraph 2, letter a of PA II (section 1.3.21 of the indictment; consideration II.4.15), for acts that took place in Voinjama, in the context of the split within ULIMO between ULIMO-K, the Mandingo faction led by Alhaji KROMAH, and ULIMO-J, the Krahn faction led by Roosevelt JOHNSON.

From an objective standpoint, the injury is serious, as the defendant attacked the most precious legal right by endangering the lives of two Krahn combatants. The act of which he is guilty is particularly reprehensible in that he attacked two unarmed combatants who were unable to defend themselves, as illustrated by the fact that they were bound using the “tabé” method at the time they were executed and were completely at the mercy of their assailant. Furthermore, the victims were shot as part of a power struggle arising from the split within ULIMO.

From a subjective standpoint, the intensity of the defendant’s criminal intent is very high. He had no need to carry out the act and kill these two unarmed combatants, since he was under no pressure whatsoever and, as noted, the victims were unable to defend themselves. Furthermore, the Court has already had occasion to emphasize that the defendant necessarily possessed a basic understanding of international humanitarian law (see also *supra*, consid. II.6.2.2.1) and that he therefore knew it was prohibited to attack unarmed combatants, as they are considered to be out of combat. Finally, he acted in a particularly heinous manner, showing no regard for the lives of others. His fault is therefore serious.

In light of the foregoing, and given that—in contrast to the general context of the ULIMO split—the Court is unaware of a substantial portion of the circumstances leading to the execution of the two Krahn combatants, it is required in this case to impose the most favorable sentence on the defendant; for this reason, it sets the prison sentence at 15 years.

6.2.3.4 Murder of the civilian Jeff JORDAN

The defendant was found guilty of the murder of civilian Jeff JORDAN 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, subparagraph 2, letter a of PA II (section 1.3.3 of the indictment; *supra*, consid. II.4.4), for acts that took place in Babahun.

The Court sets the custodial sentence at 15 years and refers to its reasoning regarding crimes against humanity pertaining to the same set of facts, since it can be fully incorporated under the framework of violations of the laws of war (*supra*, para. II.6.2.2.3).

6.2.3.5 Murder of the civilian Russell HASTING

The defendant was found guilty of the murder of civilian Russell HASTING 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 and Art. 4, subparagraph 2, letter a of PA II (section 1.3.15 of the indictment; *supra*, consid. II.4.10), for acts that took place near the Kehair River, in the context of the forced transport of the Pasolahun generator from that village to Kolahun.

The Court sets the custodial sentence at 15 years and refers to its reasoning regarding crimes against humanity pertaining to the same set of facts, since it can be fully incorporated under the framework of violations of the laws of war (*supra*, para. II.6.2.2.4).

6.2.3.6 Murder of the civilian Brian HASTING

The defendant was found guilty of the murder of the civilian Brian HASTING 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 and Art. 4, subparagraph 2, letter a of PA II (section 1.3.17 of the indictment; *supra*, consid. II.4.11), for acts that took place near the Lofa River, in the context of the forced transport of ammunition from Gondolahun to Fassama.

The Court sets the prison sentence at 15 years and refers to its reasoning regarding crimes against humanity pertaining to the same set of facts, since it can be fully incorporated under the framework of violations of the laws of war (*supra*, para. II.6.2.2.5).

6.2.3.7 Murder of a Civilian

The defendant was found guilty of the murder of a civilian 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 and Art. 4, subparagraph 2, letter a of PA II (section 1.3.17 of the indictment; *supra*, para. II.4.12), for acts that took place in Voinjama, in the context of arbitrary killings perpetrated by ULIMO known as “Black Monday.”

The Court sets the prison sentence at 15 years and refers to its reasoning regarding crimes against humanity pertaining to the same set of facts, since it can be fully incorporated under the framework of violations of the laws of war (*supra*, para. II.6.2.2.6).

6.2.3.8 Aiding and Abetting the Murder of Civilian Martin McCREIGHT in Foya

The defendant was found guilty of complicity in the murder of the civilian Martin McCREIGHT pursuant to Art. 109(1) and Art. 108(2)(a) of the Military Criminal Code (aCPM) *in conjunction with* Art. 23 of the aCPM, Art. 3(1)(1)(a) common to the General Provisions, and Art. 4, subparagraph 2, letter a of PA II (section 1.3.8 of the indictment; *supra*, consid. II.4.7) in connection with the events that took place in Foya, specifically at the town’s airfield.

The Court sets the prison sentence at 10 years and refers to its reasoning regarding crimes against humanity pertaining to the same set of facts, since it can be fully incorporated under the framework of violations of the laws of war (*supra*, para. II.6.2.2.7).

6.2.3.9 Aiding and Abetting the Attempted Murder of the Civilian Georges ROSADO

The defendant was found guilty of complicity in the attempted murder of the civilian Georges ROSADO pursuant to Art. 109(1) and 108(2)(a) of the Military Criminal Code (aCPM) *in conjunction* with Art. 19(1) and 23 of the aCPM*,* Art. 3(1)(1)(a) common to the General Provisions, and Art. 4, subparagraph 2, letter a of PA II (subparagraph 1.3.6 of the indictment; *supra*, consid. II.4.5), in connection with the events that took place in Foya.

The Court sets the custodial sentence at 5 years and refers to its reasoning regarding crimes against humanity pertaining to the same set of facts, since it can be fully incorporated under the framework of violations of the laws of war (*supra*, consid. II.6.2.2.8).

6.2.3.10 Rape of a Civilian

The defendant was found guilty of the rape of the civilian Carol ALEXANDER pursuant to 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, subparagraph 2, letter e of PA II (section 1.3.24 of the indictment; *supra*, consid. II.4.17) for acts that took place near Voinjama.

From an objective standpoint, the injury is serious, given that the defendant repeatedly violated the physical and psychological integrity of Carol ALEXANDER

on repeated occasions. The act of which he is guilty is particularly reprehensible given the young age of the victim, who was still a teenager and had never had sexual relations, and her vulnerability, which was exacerbated by the fact that she had wandered for several days in the bush after the attack on her village, searching for food. The defendant, who sent a child soldier to find Carol ALEXANDER, further took advantage of his position as a military commander and his superior physical strength to abuse his victim and force her to spend the entire night with him, threatening to kill her if she refused to submit to him.

From a subjective standpoint, the intensity of the defendant's criminal intent is significant, given that he had no need to carry out the act. He also demonstrated considerable criminal determination by forcing Carol ALEXANDER to spend the entire night with him and acted in a particularly heinous manner by threatening his victim with death. His offense is therefore serious.

In light of the foregoing, the Court sets the prison sentence at 8 years.

6.2.3.11 Use of a Child Soldier

The defendant was found guilty of using the child soldier Walter VAR-GAS pursuant to Art. 109(1) and Art. 108(2) of the Military Criminal Code (aCPM) *in conjunction with* Art. 3 common to the General Provisions and Art. 4(3)(c) of Part II of the Penal Code (PA II) (section 1.3.1 of the indictment; *supra*, consid. II.4.1).

From an objective standpoint, the severity of the harm is significant, as the defendant infringed upon Walter VARGAS's freedom and endangered his life by taking him to the front lines on numerous occasions, as evidenced by the fact that he was wounded twice—once by a bullet to the neck during an enemy ambush and once by stepping on a landmine. The defendant, who had Walter VARGAS accompany him on all his travels, also deprived him of access to education. Furthermore, he took advantage of his intellectual control over Walter VARGAS to exploit him over a relatively long period of more than two years.

From a subjective standpoint, the intensity of the defendant's criminal intent was significant. He had no need to carry out the act, despite the fact that Walter VARGAS had offered to be assigned to the defendant, which the latter could have refused. The defendant also demonstrated a particularly high degree of criminal determination by exploiting Walter VARGAS for more than two years—including after the latter had recovered from his injuries—and acted out of pure self-interest. His conduct is therefore serious.

In light of the foregoing, the Court sets the prison sentence at 7 years.

6.2.3.12 Order to Subject Seven Civilians to Cruel Treatment in Foya

The defendant was found guilty of ordering the cruel treatment of seven civilians pursuant to Art. 109(1) and Art. 108(2)(a) of the Military Criminal Code (aCPM) *in conjunction with* Art. 18 of the aCPM, Art. 3(1)(1)(a) common to the General Provisions, and Art. 4, subparagraph 2, letter a of PA II (section 1.3.4 of the indictment; *supra*, consid. II.4.5) in connection with the events that took place in Foya.

From an objective standpoint, the injury is serious, as the defendant attacked the physical integrity of the seven civilians, and their number constitutes an aggravating circumstance. The act of which he is guilty is particularly reprehensible in that he attacked unarmed victims who were unable to defend themselves. Furthermore, as the Court has already noted (*supra*, paras. II.6.2.2.2 and II.6.2.2.8), the victims—who were civilians—were arbitrarily singled out by the defendant under the false pretext that they belonged to an enemy armed group.

From a subjective standpoint, the intensity of the defendant's criminal intent is significant. He had no need to carry out the act or to treat one person—*let alone* seven people—cruelly, given that he was under no pressure whatsoever and, as noted, the victims were unable to defend themselves. Furthermore, he acted for a trivial motive, namely to assert his authority over the population through terror. Finally, the Court has already established that the defendant knew he could not attack persons who were out of combat, so reference should be made to the Court's reasoning on this point (*supra*, consid. II.6.2.2.1). His culpability is therefore moderate.

In light of the foregoing, the Court sets the prison sentence at 3 years.

6.2.3.13 Order to loot the Foya power plant

The defendant was found guilty of issuing, as a co-perpetrator, an order to loot the Foya power plant 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 common to the General Provisions, and Art. 4(2)(g) of PA II (section 1.3.11 of the indictment; *supra*, consid. II.4.9).

From an objective standpoint, the defendant, acting as an accomplice, contributed to the looting of an important piece of infrastructure in the town of Foya—the most significant of the acts of looting for which he was found guilty—and for these reasons, the severity of the harm must be classified as moderate. His act not only contributed to depriving the population of Foya of an important piece of infrastructure, but also to financing the war effort and, by extension, to prolonging the conflict. It also took place within the context of systematic looting carried out by ULIMO at the expense of the civilian population of Lofa.

From a subjective standpoint, the intensity of the defendant's criminal intent is moderate, given that he had no necessity to carry out the act. The

must also be viewed in context, given that he acted in concert with other commanders present at the scene. Finally, the defendant acted out of greed. His culpability is therefore moderate.

In light of the foregoing, the Court sets the prison sentence at 2 years.

6.2.3.14 Repeated orders to loot

The defendant was found guilty of repeatedly ordering looting pursuant to Art. 109(1) and Art. 108(2) aCPM *in conjunction with* Art. 18 aCPM, Art. 3 common to the General Provisions, and Art. 4, subparagraph 2, letter g of PA II (sections 1.3.13 and 1.3.22 of the indictment; *supra*, paras. II.4.10 and II.4.16) for the looting of the generator in Pasolahun and the village of Botosu.

From an objective standpoint, the severity of the harm must be classified as moderate, as the defendant, by ordering the looting of a generator and food, targeted property of significant importance to the populations of the villages of Pasolahun and Botosu. Moreover, these items were difficult to replace in the context of the civil war. His actions not only deprived the local population of valuable property but also helped finance the war effort—specifically, by ensuring the supply of provisions to the troops—and, by extension, prolonged the conflict. Furthermore, these acts were part of a pattern of systematic looting carried out by ULIMO at the expense of the civilian population of Lofa.

From a subjective standpoint, the Court emphasizes that the defendant had no need to commit these acts and that he acted out of greed. His culpability is therefore moderate.

In light of the foregoing, the Court sets the prison sentence at 2 years, which corresponds to 1 year for each act of looting.

6.2.3.15 Desecration of the corpse of Martin McCREIGHT

The defendant was found guilty of violating the dignity of a deceased civilian pursuant to Art. 109(1) and Art. 108(2)(a) of the Military Penal Code (aCPM) *in conjunction with* Art. 3(1)(1)(c) common to the General Provisions and Art. 4, subparagraph 2, letter e of PA II (section 1.3.9 of the indictment; *supra*, consid. II.4.7) for desecrating the corpse of Martin McCREIGHT.

From an objective standpoint, the severity of the offense is significant. The act of which the defendant is guilty is particularly reprehensible in that, by eating a piece of Martin McCREIGHT's heart, he did not merely disturb the peace of the dead, but, in a particularly cruel and dehumanizing manner, he also physically altered the deceased's body and violated the dignity of his loved ones. It should be noted, however, that the defendant neither removed the heart from the body nor cut it out, but merely

eating a piece of it along with the other ULIMO members present at the scene.

From a subjective standpoint, the intensity of the defendant's criminal intent is significant, given that he had no need to carry out the act. He also acted for a trivial motive, namely to establish ULIMO's authority over the population through terror. His offense is therefore serious.

In light of the foregoing, the Court sets the prison sentence at 6 months.

6.2.3.16 Repeated orders to treat several civilians cruelly, and in a humiliating and degrading manner, through forced transportation

The defendant was found guilty of repeatedly ordering the cruel, humiliating, and degrading treatment of several civilians in the form of forced transport, pursuant to Art. 109(1) and Art. 108(2)(a) MCP *in conjunction with* Art. 18 MCP, Art. 3(1)(1, subpar. a and c (common to the General Provisions) and Art. 4, subpar. 2, subpar. a and e of PA II (sections 1.3.10, 1.3.12, 1.3.14, 1.3.16, 1.3.19, 1.3.20, 1.3.23, and 1.3.25 of the indictment; *supra*, paras. II.4.3, II.4.8, II.4.9, II.4.10, II.4.11, II.4.13, II.4.14, and II.4.16).

From an objective standpoint, the severity of the harm is significant, given that the defendant attacked the physical and psychological well-being of numerous civilians. The acts of which he is guilty are particularly reprehensible in that he targeted victims who were entirely at the mercy of ULIMO soldiers. By ordering civilians to forcibly transport looted goods and ammunition, and by accepting that civilians were constantly threatened with death and humiliated, he acted out of greed and personal convenience—motives that are particularly trivial. His actions also took place within the context of the civil war, during which ULIMO systematically resorted to forced labor by the civilian population of Lofa, particularly to transport looted goods and ammunition.

From a subjective standpoint, the intensity of the defendant's criminal intent is significant. He had no need to carry out these acts or to order the cruel, humiliating, and degrading treatment of a person, *let* alone of the many civilians who were coerced—especially given that they were at the mercy of ULIMO soldiers. He demonstrated great criminal zeal by repeatedly ordering the use of forced labor by civilians to transport goods and ammunition. He also acted out of greed and personal convenience—two extremely trivial motives. His offense is therefore serious.

In light of the foregoing, the Court sets the prison sentence at 4 years, which corresponds to 6 months per transport. In this regard, while each forced transport had its own specific characteristics, it must be noted that common features,

as highlighted above, from both an objective and subjective perspective. For this reason, it is appropriate to impose the same sentence for each of these transports, which also ensures equal treatment.

6.2.3.17 Repeated infliction of cruel, humiliating, and degrading treatment on several civilians in the form of forced transports

The defendant was found guilty of repeatedly inflicting cruel, humiliating, and degrading treatment on several civilians in the form of forced transport, pursuant to Art. 109(1) and Art. 108(2)(a) of the Military Criminal Code (aCPM) *in conjunction 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 (counts 1.3.10, 1.3.12, 1.3.16, 1.3.23, and 1.3.25 of the indictment; *supra*, paras. II.4.3, II.4.8, II.4.9, II.4.11, and II.4.16).

From an objective standpoint, the severity of the harm is significant, as the defendant attacked the physical and psychological well-being of numerous civilians. The acts of which he is guilty are particularly reprehensible in that he targeted victims who were entirely at the mercy of him and his soldiers. By forcing civilians to carry looted goods and ammunition, constantly threatening them with death, and humiliating them, he acted out of greed and personal convenience—particularly trivial motives. His acts also took place within the context of the civil war, during which ULIMO systematically resorted to forced labor by the civilian population of Lofa, particularly to transport looted goods and ammunition.

From a subjective standpoint, the intensity of the defendant's criminal intent is significant. He had no need to carry out these acts or to treat a person cruelly, or in a humiliating and degrading manner, and, *a fortiori*, the numerous civilians he forced to labor—bearing in mind that they were at his mercy. He demonstrated great criminal zeal by repeatedly resorting to the forced labor of civilians to transport goods and ammunition, and acted out of greed and personal convenience—two extremely trivial motives. His offense is therefore serious.

In light of the foregoing, the Court sets the prison sentence at 15 months, which corresponds to 3 months per transport. In this regard, as was the case with the orders given in connection with the forced transports at issue here (*supra*, consid. II.6.2.3.16), and although each forced transport has its own specific characteristics, it must be noted that common characteristics, highlighted above, emerge from both an objective and a subjective perspective. For this reason, the same sentence should be imposed for each of these transports, which also ensures equal treatment.

6.2.3.18 Interim Summary Regarding Violations of the Laws of War

The Court sets the custodial sentence at 20 years, noting that even taking into account the principle of aggravation, the statutory maximum would be significantly exceeded by adding to the base sentence of 20 years any additional penalties based on the lengthy custodial sentences imposed above in connection with each of the offenses. While the statutory maximum and the principle of aggravation preclude the accumulation of sentences, it is nevertheless important to note that the total of the sentences imposed for violations of the laws of war would exceed 150 years. Furthermore, no mitigating factors can be taken into account (*see below*, paras. II.6.2.4 and II.6.2.5).

6.2.4 Factors Related to the Perpetrator

With regard to factors related to the perpetrator himself, the Court notes the following:

- Alieu KOSIAH has no prior convictions on his Swiss criminal record (CAR 4.401.004), which has no bearing on the determination of the sentence.
- The defendant is 48 years old. Regarding his state of health, the behavioral report dated December 9, 2022, indicates that he is not undergoing any therapy while in custody (CAR 4.401.012). Furthermore, based on the record, there is no justification for considering the defendant to be particularly vulnerable to the sentence to be imposed on him.
- Although the defendant's adult son and a distant cousin live in Switzerland, the defendant cannot claim to be integrated into that country (for further details on this point, see the Court's reasoning regarding the former expulsion, *infra*, consid. II.7). Indeed, as a single man who arrived in Switzerland as an adult, he had ceased working as a tank inspector shortly before his arrest on November 10, 2014 (MPC 10.01.0008 to 0010), after which he began receiving social assistance. Furthermore, his permanent residence permit, valid until September 23, 2014 (MPC 10-01-0436), was not renewed.
- The defendant's cooperation with the criminal authorities during the proceedings was poor, so he cannot claim it as a mitigating factor. In fact, he did not admit to any of the charges against him and continued to deny any involvement and to accuse the victims of lying in exchange for money, while showing neither remorse nor compassion toward the victims. In particular, he maintained the theory of a conspiracy against the representatives of CIVITAS MAXIMA—specifically Attorney WERNER—and the GJRP, in the person of Daniel TODD, and behaved in a threatening manner toward representatives of the Swiss justice system (CAR 5.301.005 et seq., Q/A Nos. 3 et seq., 059, lines 30 et seq., 150 et seq., lines 28 et seq., and 174, Q&A No. 495). The defendant

furthermore summoned witnesses with the clear intent of misleading the Swiss judicial authorities. Finally, while the defendant certainly spoke at length during the preliminary investigation and during the first-instance and appellate proceedings, his statements often failed to answer the questions posed but rather served to divert the judges' attention from the facts on which the charges were based. Furthermore, they often amounted to a blanket denial of any allegations against him or any information that might be unfavorable to him, and served to exhaustively highlight the discrepancies he identified in the statements of his accusers or witnesses, with the ultimate aim of discrediting them.

In light of the foregoing, the factors related to the defendant have a neutral effect on the sentence.

6.2.5 Mitigating Factors

With regard to the passage of time, not only must a relatively long period have elapsed since the offenses were committed—which is indisputable in this case—but the need to punish the defendant must also diminish by virtue of the healing effect of the time that has passed. It should also be noted that, pursuant to Art. 56bis, para. 2 of the Military Criminal Code (aCPM), which corresponds to Art. 101, para. 2 of the Swiss Criminal Code (CP), the judge has the discretion to reduce the sentence, though is not obligated to do so. However, in this case, the public interest in punishment has not diminished over the years, since the victims, through their energy and determination, have demonstrated that these crimes caused injuries that have still not healed more than 25 years after the end of the conflict. From the perspective of special prevention, the passage of time has likewise had no healing effect. Although the extract from Alieu KOSIAH's Swiss criminal record certainly contains no convictions (*supra*, consid. II.6.2.4), he, seems to accept that such acts may be justified in the context of an armed conflict, has downplayed the allegations and has continued to deny any responsibility for the acts for which he was convicted by this judgment, more than 25 years after they were committed. The defendant also continues to dispute that ULIMO and ULIMO-K—the armed groups in which he fought—committed large-scale abuses against the civilian population of Liberia, and in particular in Lofa. Furthermore, while he has portrayed himself as the victim of a conspiracy allegedly directed against him, he has, on the other hand, shown no empathy whatsoever toward the victims of the war, accusing the complainants of lying about his involvement in the acts they have denounced. It must therefore be concluded that the interest in punishing the defendant has not diminished, either from the perspective of general deterrence or special deterrence. A reduction in the sentence on the grounds of the passage of time must therefore be ruled out.

As for the defendant's young age at the time of the events—since he committed most of the acts charged against him while he was between 18 and 20 years old—this cannot be

considered a mitigating factor. Indeed, it must be established, as an additional condition, that the perpetrator did not yet fully possess the capacity to appreciate the unlawful nature of his act, which cannot be accepted in this case. The defendant did, in fact, have the full capacity to understand the unlawful nature of the acts he committed, particularly given their extreme gravity, and it should also be noted that he argued that members of his family were victims of abuses during the armed conflict. Furthermore, he underwent several months of military training in the Liberian regular army, during which he in all likelihood acquired a basic understanding of international humanitarian law. The Court therefore has no doubt as to the defendant's ability to assess the unlawfulness of his acts. Finally, it notes that he invoked, on only one occasion during the proceedings—at the appellate stage—a lack of awareness of the unlawfulness of some of the acts with which he was charged, namely those related to the use of a child soldier; however, it should be noted that the Court has ruled out the possibility that the defendant could have mistakenly believed he was acting lawfully (*supra*, paras. II.4.1.5.1 and II.4.1.5.3). This mitigating factor must therefore also be dismissed.

No other mitigating factors are relevant.

6.2.6 Aggregate Sentence

In light of the foregoing, the Court sets the aggregate sentence at 20 years of imprisonment. Although the sentences imposed for crimes against humanity and for violations of the laws of war are of the same nature, the principle of aggravation cannot be applied in this case, since the Court is bound by the statutory maximum of 20 years.

6.2.7 Principle of Expeditious Proceedings

6.2.7.1 The Court must now examine whether the principle of promptness has been respected. It does so on its own initiative, noting that the defense has not alleged a violation of this principle.

6.2.7.2 With regard to the preliminary proceedings and the trial proceedings, the Court adopts the reasoning of the trial court on this matter and refers to it pursuant to Art. 82(4) of the Swiss Criminal Procedure Code (judgment SK.2019.17, para. 8.14). It nevertheless recalls the relevant elements of that analysis to facilitate the reading of this judgment. Thus, with regard to the investigative phase, the proceedings were notably marked by the complexity of the facts to be established, bearing in mind that they concerned events that took place in Liberia in the early 1990s and that the Liberian authorities were reluctant to grant mutual legal assistance. It was necessary to resort to international mutual legal assistance

with other countries and to arrange for individuals residing in Liberia to travel to Switzerland for hearings. Furthermore, the defendant's conduct proved to delay the proceedings, as he provided a large amount of irrelevant information unrelated to the facts of the case. As for the trial proceedings, it should be noted that the trial judges had to address requests for mutual legal assistance that were still pending when the case file was transferred by the Office of the Attorney General, and that it was necessary to organize unprecedented hearings, at which numerous witnesses residing in Liberia appeared, in the absence of active cooperation from the Liberian authorities. Added to this was the COVID-19 health crisis, which led the trial court to postpone the hearings on several occasions in order to ensure the health and safety of those participating in the proceedings, particularly the plaintiffs and the witnesses who had to be brought in from Africa.

6.2.7.3 With regard to the appeal proceedings, the Court notes that it received the written reasons for the first-instance judgment and the case file on March 31, 2022 (*supra*, C.1). Since then, the proceedings have never been dormant. The proceedings, including those on appeal, have been marked by the complexity involved in establishing facts that occurred in a distant geographical and temporal context. It should also be noted that the Court had to cancel the hearings scheduled for November 2022 due to the unavailability of counsel for several plaintiffs. The hearings were nevertheless held from January 11 to February 3, 2023, and consequently concluded ten months after the case file was filed. Organizing the hearings, as was the case at the trial stage, required close collaboration with the Swiss Embassy in Abidjan to enable individuals residing in Liberia to appear in court. The Court subsequently rendered its verdict on May 30, 2023, and read it aloud two days later (*supra*, C.33) during a public hearing, meaning that it reached its decision within fourteen months, to which must be added nine months spent drafting this judgment.

6.2.7.4 The proceedings thus spanned a period of approximately nine years and four months from the time of Alieu KOSIAH's arrest until the written reasons for this judgment were transmitted to the parties. Although this period may seem substantial, it must be noted that the proceedings—which involved a large number of serious charges and victims and were characterized both by the complexity of establishing the facts, all of which took place abroad, and by the COVID-19 health crisis—were conducted without interruption, and that it would not have been possible to significantly shorten their duration. A violation of the principle of promptness cannot therefore be established, and for this reason, there is no basis for reducing the 20-year prison sentence imposed on Alieu KOSIAH.

6.2.8 Pretrial Detention

Pursuant to Art. 50(1) of the Military Criminal Code (aCPM), first sentence, the court deducts the time the defendant spent in pretrial detention. This period lasted from November 10, 2014—the day of Alieu KOSIAH's arrest—to May 30, 2023—the day the Court rendered this judgment—which amounts to 3,123 days. These days must be deducted from the 20-year prison sentence to which the defendant was sentenced.

6.2.9 Detention for Security Reasons

The Court recalls that, at the time this case was brought before it, it ordered that Alieu KOSIAH remain in detention for security reasons at least until the conclusion of the appeal proceedings, or until the commencement of the enforcement of any custodial sentence (*supra*, C.2 and consid. I.5). Given that the defendant was sentenced to 20 years of imprisonment, there is no reason to reconsider this decision, it being noted that, like pretrial detention, detention for security reasons following the rendering of the judgment of May 30, 2023, will also be deducted from the sentence to which the defendant was sentenced.

6.2.10 Enforcement Authority

Pursuant to Art. 74(2) of the LOAP, the trial court designated the authorities of the Canton of Bern as having jurisdiction over the enforcement of the sentence (Section I.6 of the operative part of judgment SK.2019.17). In the absence of any challenge to this aspect of the judgment, and despite the fact that Alieu KOSIAH's last place of residence—prior to his arrest—was in the Canton of Vaud (MPC 01-01-0001), this decision must be upheld. The Court emphasizes that the place of residence is of particular importance for the prisoner's reintegration into society upon release. However, this consideration must be viewed in context in this case, given the length of the detention, which had already lasted eight years and six months at the time this judgment was rendered. Furthermore, there can be no question here of reintegration following the defendant's release, since Alieu KOSIAH is to be deported from Swiss territory for a period of ten years (*see below*, para. II.7) beginning upon his release (see *below*, para. II.7.2.4). Furthermore, keeping Alieu KOSIAH within the prison system of the Canton of Bern, where he has been detained for more than nine years, is likely to enhance the effectiveness of his care; it should also be noted that Alieu KOSIAH has ties to the Canton of Bern, where, in particular, a close relative resides who regularly visits him in detention (CAR 6.100.040).

6.2.11 Conclusion

Alieu KOSIAH is sentenced to 20 years' imprisonment, with credit for the pretrial detention he served from November 10, 2014, to May 30, 2023—a total of 3,123 days.

The authorities of the Canton of Bern are responsible for enforcing the sentence.

7. Deportation

7.1 Although the appellant contested all of the facts alleged against him and sought acquittal (*supra*, C.4 and C.28), the issue of deportation was not addressed in the defense's arguments. As for the Office of the Attorney General (MPC), it moved to affirm the judgment of the court of first instance and, in particular, to order expulsion from the territory for a period of fifteen years (*supra*, C.29; CAR 5.200.581), arguing that there were no grounds to preclude such a measure (CAR 5.200.579).

7.1.1 Pursuant to Art. 40(1) of the former Military Criminal Code (aCPM) and Art. 55(1) of the former Criminal Code (aCP) in force at the time of the offenses, a judge may order the expulsion from Swiss territory, for a period of three to fifteen years, of any foreign national sentenced to imprisonment or detention. In the event of a repeat offense, expulsion may be ordered for life.

7.1.2 These provisions were repealed on January[1,] 2007. Since October[1], 2016, the principle of judicial deportation has been reintroduced into the Military Criminal Code (Articles *49a* and *49b*) and the Swiss Criminal Code (Articles *66a* through *66d*). Henceforth, these laws provide for mandatory deportation for a list of offenses, including crimes against humanity, serious violations of the Geneva Conventions of August 12, 1949, and other war crimes (Art. *49a*(h) CPM and *66a*(m) CP), and non-mandatory deportation as a supplementary measure for crimes and misdemeanors not included on this list (Art. *49a*$^{(bis)\ of}$the Military Criminal Code and Art. *66a*$^{(bis)\ of}$the Swiss Criminal Code). It follows that, from the perspective of deportation as well, the former law—which established only the discretion—and not the obligation—to deport a foreign national convicted of imprisonment or confinement—is more favorable to the defendant, insofar as it left greater discretion to the court. The *lex mitior* defense therefore cannot be considered, and thus Art. 40, para. 1 of the former Military Criminal Code (aCPM) must be applied to the present case.

7.1.3 According to the Federal Supreme Court's case law regarding Art. 55(1) of the former Swiss Penal Code (aCP), when deciding whether or not to order deportation, the judge must take into account both the criteria governing the determination of a sentence and the public safety objective sought by this measure. The decision regarding deportation required a specific examination of the individual's personal circumstances (Judgment 6B_770/2018 of September 24, 2018, para. 1.1, and the judgments cited therein). It should be noted that the aforementioned criteria remain applicable to the application of the new Art. *66a*$^{(bis)\ of}$the Swiss Criminal Code (CP), the content of which differs little from Art. 55a CP (Judgment 6B_770/2018 of September 24, 2018, para. 1.3). Furthermore, reference should be made to the case law regarding mandatory deportation when relevant. Thus, the criterion for determining the duration of deportation is the need to protect society for

a certain period of time, based on the dangerousness of the offender, the risk of recidivism, and the severity of the offenses the offender is likely to commit in the future, excluding any consideration regarding the severity of the offense committed (Federal Supreme Court decision 6B_183/2020 of October 28, 2020, para. 4.1). The duration of the deportation need not correspond to the length of the sentence imposed (Federal Supreme Court decisions 6B_93/2021 of October 6, 2021, para. 5.1; 6B_549/2019 of May 29, 2019, para. 2.3; 6B_242/2019 of March 18, 2019, para. 1.3).

7.1.4 Like any government decision, the issuance of a non-mandatory expulsion order must comply with the principle of proportionality, as enshrined in Art. 5, para. 2, and Art. 36, paras. 2 and 3, of the Constitution. It must therefore be examined whether the public interest in deportation outweighs the individual's private interest in remaining in Switzerland (Federal Supreme Court decisions 6B_1398/2022 of May 12, 2023, para. 3.1; 6B_693/2020 of January 18, 2021, para. 7.1.1; 6B_1449/2021 of September 21, 2022). Such a balancing of interests meets the requirements set forth in Art. 8(2) of the ECHR regarding interference with private and family life (Federal Supreme Court decisions 6B_1398/2022 of May 12, 2023, para. 3.1; 6B_693/2020 of January 18, 2021, para. 7.1.1, and the judgments cited therein; ECHR judgment M.M. v. Switzerland of December 8, 2020, no. 59006/18,
No. 53 and the references cited), noting that case law requires a particularly strict approach in cases of acts of violence against physical, psychological, and sexual integrity (see ATF 137 II 297, para. 3.3; Federal Supreme Court judgment 6B_122/2023 of April 27, 2023, para. 1.3.2 and the judgments cited). The assessment of proportionality requires consideration of the nature and severity of the offense, the time that has elapsed since the offense was committed, the offender's conduct during that period, the duration of their stay in Switzerland, and the strength of their social, cultural, and family ties with the host country and with the country of destination (see ATF 139 I 145, para. 2.4; 139 I 31, para. 2.3.3; 135 II 377, para. 4.3; Federal Supreme Court decision 6B_1398/2022 of May 12, 2023, para. 3.1). The requirement to return to the country of origin must be taken into account in the proportionality review, and the trial court examines the legal feasibility of the removal to the extent that it can be definitively determined (judgment 6B_1449/2021 of September 21, 2022, para. 3.2.2, and the judgments cited therein). The deportation judge may not disregard circumstances that would preclude deportation because it would result in a violation of guarantees under international law, in particular the principle of non-refoulement (Federal Supreme Court decision 6B_627/2022 of March 6, 2023, para. 2.1.2).

7.1.5 According to Art. 25, para. 3 of the Constitution, no one may be deported to a State where they risk being subjected to torture or other forms of cruel and inhuman treatment or punishment. According to Art. 3, para. 1, of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT; RS 0.105), no State Party shall expel, return, or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. Furthermore,

Article 3 of the European Convention on Human Rights (ECHR) provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. According to the case law of the European Court of Human Rights, it must be determined whether, having regard to all the circumstances of the case, there are serious and substantiated grounds to believe that the person concerned would face, in the country of destination, a real risk of being subjected to treatment contrary to Article 3. If the existence of such a risk is established, the applicant's removal would constitute a violation of Article 3, regardless of whether the risk stems from a general situation of violence, a characteristic specific to the person concerned, or a combination of both (ECHR judgment in Khasanov and Rakhmanov v. Russia [GC] of April 29, 2022,
Nos. 28492/15 and 49975/15, para. 95; ECHR judgment in F.G. v. Sweden [GC] of March 23, 2016, No. 43611/11, para. 116).

7.2 In the present case, Alieu KOSIAH was found guilty of violations of the laws of war and crimes against humanity and was sentenced to 20 years' imprisonment; consequently, the court may, pursuant to Art. 40(1) of the Swiss Military Criminal Code (aCPM), order his expulsion from Swiss territory.

7.2.1 The very nature of the acts committed—murders, orders to kill civilians, orders to treat civilians cruelly, rape, and the use of a child soldier—is sufficient to demonstrate that the appellant's expulsion serves a public safety objective, despite the time that has elapsed and the specific circumstances in which they were committed, namely the first civil war in Liberia from 1989 to 1996. It is recalled that his actions were characterized by an extremely high degree of criminal intensity and that he has shown no remorse (*supra*, para. II.6), continuing to deny everything and accusing the victims of lying in exchange for money. Similarly, his continued insistence on a conspiracy theory targeting representatives of CIVITAS MAXIMA—and in particular Attorney WERNER—and the GJRP, in the person of Daniel TODD, as well as his threatening attitude toward representatives of the Swiss justice system (CAR 5.301.005 et seq., Q/A nos.os 3 and 4, 059, lines 30 ff., 150 et seq., lines 28 et seq. and 174, Q&A No. 495) tend to demonstrate the scant regard he has for individuals and institutions, which illustrates the danger he poses to Swiss public order and the resulting need to protect the latter. To the Court's knowledge, Alieu KOSIAH has not been convicted of any offense since he was found guilty, on February 12, 2001, of providing harmful substances to children (Art. 136 of the Swiss Penal Code) and of violating the Federal Act on Narcotics and Psychotropic Substances (Narcotics Act [LStup]; RS 812.121) and sentenced to eight days' imprisonment, suspended for two years (MPC 18-01-0017 et seq.), and, on December 16, 2002, for violating the Narcotics Act and sentenced to a fine of CHF 500.fine (MPC 18-01-0095 et seq.). The good conduct he has demonstrated since these two convictions has a neutral effect and is not, in and of itself, sufficient to call into question the finding that he still poses a danger from which society must be protected. In light of the foregoing and the appellant's disregard for repeated

disregard for human life—and bearing in mind that case law requires a particularly strict approach in cases of acts of violence against physical, psychological, and sexual integrity (*supra*, consid. II.7.1.4 and the cited decisions)—it must be concluded that he still poses a danger to Swiss public order. Consequently, the conditions for ordering his expulsion are met.

7.2.2 Regarding the risk of being subjected to torture or inhuman or degrading treatment, the Court notes that while Liberia has long been marked by political instability and civil war, it is not currently experiencing a situation of war, civil war, or widespread violence that would allow one to presume—from the outset and regardless of the circumstances of the individual case—that all nationals of that State face a concrete risk within the meaning of Art. 83(4) of the Federal Act of December 16, 2005, on Foreign Nationals and Integration (LEI; RS 142.20) (Federal Administrative Court decisions E-1684/2019 of September 21, 2021, para. 6.1, and the references cited therein; E-1655/2022 of April 26, 2022). Furthermore, the situation in Liberia has not changed since the Court issued its decision on May 30, 2023. In particular, the country has seen a change in leadership, with the election of Joseph BOAKAI as president on November 14, 2023; this took place without major incident, as outgoing President George WEAH quickly conceded defeat (SWI SWISSINFO.CH, "Liberia President George Weah concedes election defeat to Joseph Boakai," November 18, 2023, <https://www.swissinfo.ch/eng/reuters/libe-ria-president-george-weah-concedes-election-defeat-to-joseph-boakai/48988450>, accessed February 27, 2024). Furthermore, there is no evidence that the appellant's physical integrity would be at risk if he were to return to his country of origin, as evidenced by the fact that Alieu KOSIAH stated during the appellate proceedings that he saw no security concerns regarding a return to Liberia and that Liberia would have no issue with him (CAR 5.301.174, Q/A No. 494; TPF 40.731.007, Q/A No. 30). The Court notes in this regard that the appellant traveled there on three occasions—in 2006, 2010, and 2012—while residing in Switzerland, without being sought, arrested, or subjected to other forms of reprisal (MPC 13-01-0007, Q&A No. 3; TPF 40.731.007, Q&A No. 31; CAR 5.301.174, Q/A No. 494). This illustrates the finding of the Office of the United Nations High Commissioner for Human Rights that impunity still prevails in Liberia for the perpetrators of serious human rights violations and war crimes committed during the two civil wars the country experienced between 1989 and 2003 (United Nations Human Rights Council, Compilation on Liberia: Report of the Office of the United Nations High Commissioner for Human Rights, March 6, 2020, A/HRC/WG.6/36/LBR/2, para. 26 et seq.). Moreover, the appellant has not raised any compelling grounds related to his health; indeed, it is noted that the conduct report dated December 9,

December 2022 indicates that he is not undergoing any treatment while in detention (CAR 4.401.012). Therefore, there are no serious and substantiated grounds to believe that the individual, once returned to Liberia, would face a real risk of being subjected to torture or inhuman or degrading treatment. Consequently, he may be subject to deportation.

7.2.3 With regard to his ties to Switzerland, Alieu KOSIAH—whose adult son and a distant cousin live in Switzerland—cannot claim the existence of a family life within the meaning of Art. 8 of the ECHR, since the relationships referred to in that provision are primarily those concerning the so-called nuclear family—namely, those between spouses and between parents and minor children living in the same household (Federal Supreme Court decision 6B_403/2022 of August 31, 2022, para. 2.1, and the decisions cited therein) and no relationship of dependency emerges from the case file (Federal Supreme Court decision 6B_255/2021 of October 3, 2022, para. 1.3.3; ECHR judgment in Ghadamian v. Switzerland of May 9, 2023, No. 21768/19, para. 42, and the references cited). As for the duration of his stay in Switzerland, the appellant has lived there since early 1999, having arrived at the age of 23. As a rejected asylum seeker, he was the subject of a removal order that could not be enforced. He married a Swiss woman in 2004 and subsequently divorced in 2012. The couple has no children (MPC 10.01.0007). Professionally, the defendant ceased working as a tank inspector shortly before his arrest on November 10, 2014 (MPC 10.01.0008–0010). He subsequently received social assistance. He held a residence permit valid through September 23, 2014 (MPC 10-01-0436), which, however, was not renewed. The Court therefore finds that Alieu KOSIAH, despite a ten-year legal stay during which he behaved well, has not developed close ties to his host country. He has, moreover, maintained strong ties to his country of origin, which he has visited three times since his arrival in Switzerland. He was about to travel there again at the time of his arrest (SK 40.731.007). He is fluent in two of the languages spoken there, Mandingo and English, and he stated that he has a good knowledge of a third language, Mano (MPC 18-01-0027). The appellant was born in Liberia, spent his childhood and youth there, and members of his family—including his mother, with whom he maintains regular contact—still reside there. Thus, in light of the foregoing and given the seriousness of the crimes committed, it must be concluded that the public interest in his deportation outweighs his private interest in remaining in Switzerland and that the deportation order complies with the principle of proportionality.

7.2.4 The Court therefore orders the appellant’s deportation from Swiss territory in order to ensure the country’s security. Taking into account the risk he currently poses to Swiss public order, as well as the passage of time, the Court reduces the duration of the deportation ordered by the lower court—namely, fifteen years—and sets it at ten years. It notes in particular that the crimes leading to the

the appellant's conviction date back to the years 1993 through 1995 and that, with the exception of two minor convictions in 2001 and 2002, the appellant had behaved well in Switzerland until his arrest in 2014 (*supra*, consid. II.7.2.1). The Court finds that the risk to Swiss public order will have significantly diminished at the end of the ten-year period of expulsion, which will begin after the release—possibly on probation—of Alieu KOSIAH.

7.2.5 Furthermore, the Court notes that the conditions set forth in Art. 32(1) aCPM for suspending the enforcement of the deportation have not been met. In this regard, it should be recalled that the granting or denial of a stay of deportation depends exclusively on the criteria set forth in Art. 41, item 1, para. 1 of the aCP (ATF 119 IV 195, para. 3b; 118 IV 102, para. 1b/aa; 114 IV 95, para. b; Federal Supreme Court decision 6S.456/2006 of December 28, 2006, para. 2.2), which corresponds to Art. 32(1) of the former Penal Code (aCPM). Thus, the judge may suspend the execution of deportation if the convicted person's criminal history and character suggest that this measure will deter him or her from committing further crimes or offenses (123 IV 107, para. 4a; 119 IV 195, para. 3b; 117 IV 3, para. 2b; 114 IV 95). The protection of public safety is only a factor when deciding whether or not to order deportation. As for the prospects for rehabilitation, these must be taken into account—when the defendant is sentenced to an unconditional sentence—at the time of parole (119 IV 195, para. 3b; 114 IV 95). The sole determining factor in granting or denying a suspended sentence is the prognosis regarding the convicted person's future conduct in Switzerland (123 IV 107, para. 4a; 119 IV 195, para. 3c, and the cited decision). The favorable prognosis must extend not only to identical or similar offenses but also to the entire legal order subject to criminal sanctions (HAURI, Militärstrafgesetz: Kommentar, 1983, n. 20 ad Art. 32 CPM). In the present case, and in light of the foregoing, the appellant's lack of strong ties to Switzerland and his precarious employment situation do not bode well for preventing recidivism. This finding is further reinforced by his complete lack of awareness of the seriousness of his actions and his threatening behavior toward representatives of the Swiss justice system during the proceedings (Federal Supreme Court decisions 6S.335/2006 of September 26, 2006, para. 4.2.2; 6P.73/2005 of September 6, 2005, para. 11.2), bearing in mind that he displayed an extremely high level of criminal intent in connection with the acts for which he was convicted.

7.3 The Court must now examine whether the conditions for an alert in the Schengen Information System (hereinafter: SIS) are met.

7.3.1 As part of the development of the Schengen acquis, Switzerland has adopted Regulation (EU) 2018/1861 of the European Parliament and of the Council of November 28, 2018, on the establishment, operation, and use of the SIS in the field of border checks, amending the Convention implementing the Schengen Agreement

and amending and repealing Regulation (EC) No. 1987/2006 (SIS II Regulation; OJ L 381, December 28, 2006, p. 4), which was in force at the time the contested judgment was rendered (Regulation (EU) 2018/1861; OJ L 312, December 7, 2018, p. 14; Federal Supreme Court judgment 6B_339/2023 of September 13, 2023, para. 4.1).

7.3.1.1 The entry of an alert concerning third-country nationals for the purposes of refusal of entry or prohibition of residence in the SIS is examined, in the present case, in light of the provisions of Articles 20 et seq. of Regulation (EU) 2018/1861, it being noted from the outset that the provision relevant to the present case—Article 24(1)(a) and (2)(a) of that regulation—has been interpreted by the Federal Supreme Court in a landmark decision (ATF 147 IV 40, paras. 4.4–4.8).

7.3.1.2 In accordance with the principle of proportionality enshrined in Art. 21(1) of Regulation (EU) 2018/1861, an alert concerning third-country nationals within the meaning of Article 3(4) of the Regulation may be entered into the SIS and its validity period extended only if the case is sufficiently appropriate, relevant, and significant to justify such an alert in the SIS. Article 24(1) of Regulation (EU) 2018/1861 sets forth two alternative conditions (similar to those provided for under the SIS II Regulation) under which Member States may enter an alert for the purposes of refusing entry and prohibiting residence. This is the case when the Member State has concluded, on the basis of an individual assessment—including an evaluation of the personal circumstances of the third-country national concerned and the consequences of refusing entry and residence—that the presence of that third-country national on its territory poses a threat to public order, public security, or national security, and the Member State has, consequently, adopted a judicial or administrative decision denying entry and prohibiting residence in accordance with its national law and issued a national alert for the purposes of denying entry and prohibiting residence (subparagraph (a)), or where the Member State has issued an entry ban in accordance with procedures that comply with Directive 2008/115/EC concerning a third-country national (subparagraph (b)).

7.3.1.3 Under Article 24(2) of Regulation (EU) 2018/1861, the situations covered by paragraph 1(a) of that article arise, in particular, when a third-country national has been convicted in a Member State of an offense punishable by a custodial sentence of at least one year (subparagraph (a)); if there are serious grounds to believe that a third-country national has committed a serious criminal offense, including a terrorist offense, or there are clear indications of his or her intention to commit such an offense on the territory of a Member State (subparagraph (b)); or when a third-country national has circumvented or attempted to circumvent national or Union law regarding entry into and residence on the territory of the Member States (subparagraph (c)).

7.3.1.4 It follows from the aforementioned ATF 147 IV 340 that the condition set forth in Art. 24(2)(a) of the SIS II Regulation—now Art. 24(1)(a) and (2)(a) of Regulation (EU) 2018/1861—does not require a conviction resulting in a custodial sentence of at least one year, nor does the provision require a conviction for an offense punishable by a custodial sentence of at least one year. In this regard, it is sufficient that the relevant offense carry a “maximum” custodial sentence
“maximum” term of imprisonment of one year or more. However, as a cumulative requirement, it must always be examined whether the person in question poses a threat to public safety or public order. The requirements for establishing such a threat are not overly stringent. It is not necessary for the conduct of the person in question to constitute a real, present, and sufficiently serious threat affecting a fundamental interest of society (147 IV 340, paras. 4.4–4.8; Federal Supreme Court decisions 6B_339/2023 of September 13, 2023, para. 4.2; 6B_403/2022 of August 31, 2022, para. 3.2).

7.3.2 In the present case, Alieu KOSIAH was found guilty of violations of the laws of war and crimes against humanity, two offenses punishable by imprisonment for more than one year, such that the requirement of Art. 24(2)(a) of Regulation (EU) 2018/1861 is met. Furthermore, since the Court concluded, based on an individual assessment, that the appellant’s presence on Swiss territory posed a threat to public order in the country and ordered his expulsion for a period of ten years, the cumulative condition set forth in Article 24(1)(a) of Regulation (EU) 2018/1861 is also met. In view of the severe sentence imposed on Alieu KOSIAH—20 years of imprisonment—and the Court’s examination of the proportionality of the appellant’s expulsion, which notably highlighted the contempt he has repeatedly shown for human life, his threatening behavior toward representatives of the Swiss justice system, as well as the absence of any violation of international law guarantees in the event of removal to Liberia (for further details, see *supra*, para. II.7.2), the present case is sufficiently appropriate, relevant, and significant to justify an alert in the SIS and therefore complies with the principle of proportionality enshrined in Art. 21(1) of Regulation (EU) 2018/1861.

7.4 In light of the foregoing, Alieu KOSIAH is to be expelled from Swiss territory for a period of ten years, and his expulsion will be reported in the SIS.

The authorities of the Canton of Bern have jurisdiction over the enforcement of the expulsion (*see above*, consid. II.6.2.10).

8. Civil Claims

The trial court awarded compensation for non-pecuniary damages to each of the plaintiffs (judgment SK.2019.17, para. 10). The defense moves

that the civil claims they filed at the trial court level be dismissed as a consequence of the requested acquittal (*see above*, C.28). The plaintiffs maintain these civil claims (*see above*, C.30).

8.1 Determination

8.1.1 Pursuant to Art. 47 of the Swiss Code of Obligations of March 30, 1911 (CO; RS 220), the judge 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.

8.1.2 The specific circumstances referred to in this provision relate, in particular, to the severity of the infringement of the injured party's personality rights, as Art. 47 CO is a case in which Art. 49 CO applies—a provision that specifically addresses infringements of personality rights. Bodily injury, which causes both physical and psychological harm, must therefore, in principle, result in significant physical or emotional pain or have caused lasting damage to health. Among the circumstances that may, depending on the case, justify the application of Article 47 of the Swiss Code of Obligations (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 requires, as in Art. 47 CO, that compensation be awarded taking the circumstances into account (see Art. 4 of the Civil Code of December 10, 1907 [CC; RS 210]; ATF 141 III 97, para. 11.2, and the references cited). The extent of compensation for pain and suffering depends not only 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, its monetary assessment must avoid being 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).

8.1.3 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 thus 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,

the award of compensation for emotional distress is only possible 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).

8.1.4 Where, if applicable, a lower cost of living must be taken into account when calculating compensation for non-pecuniary damages, one cannot simply apply a proportional calculation based on the ratio between the cost of living in Switzerland and the cost of living at the injured party's place of residence. The Federal Supreme Court has allowed 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: Vojvodina, where purchasing power is 18 times higher, allowing for a reduction in compensation; however, this reduction was scaled back from 14 to 2 times; Federal Supreme Court decision 1A.299/2000 of May 30, 2001, para. 5c: Bosnia and Herzegovina, where purchasing power is 6 to 7 times higher, allowing for a 75% reduction in compensation, which the Federal Supreme Court deemed high but which nevertheless remained 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 benefits. 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 there was 18.4 times higher. As a result, 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.

8.1.5 In the present case, all of the plaintiffs reside in Liberia, a country where the cost of living is approximately five times lower than in Switzerland and where the average monthly wage is around CHF 500 (average of the sources consulted). Consequently, the Court finds that the awarded damages should be reduced by two-thirds.

8.1.6 Each of the seven complainants in the proceedings requested payment of CHF 8,000 as compensation for non-pecuniary damages (TPF 40.721.319, 903, 934, and 973; CAR 5.200.996 et seq.). It is necessary to examine, for each of them, what amount appears proportionate to the harm suffered. The Court further notes that, since only the defendant appealed regarding

the civil claims, it is bound by the amounts awarded at the trial court level pursuant to the principle of the prohibition against *reformatio in peius* enshrined in Art. 391(2) of the Code of Criminal Procedure (*supra*, consid. I.1.5).

8.2 James CAMDEN

8.2.1 James CAMDEN has the status of a victim and has joined the proceedings as a civil claimant in connection with the murder of his brother Ernest CAMDEN (section 1.3.2 of the indictment; *supra*, paras. II.4.2 and II.5.4.2) and for the transport of ammunition from Zorzor to Salayae, constituting cruel, humiliating, and degrading treatment (count 1.3.25 of the indictment; *supra*, para. II.4.3).

8.2.2 James CAMDEN was the brother of Ernest CAMDEN, one of the seven victims executed on the orders of Alieu KOSIAH in Zorzor. The complainant stated during the trial 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. James CAMDEN'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 (TPF 40.757.015 et seq.). James CAMDEN expressed his grief in a very restrained manner. Nevertheless, his suffering is real and profound, all the more so because he witnessed his brother being killed, in cold blood and arbitrarily, on the defendant's orders. Ernest CAMDEN was also responsible for providing for the family and thus served as a surrogate father to James CAMDEN. James Camden stated on appeal that he had begun his academic career so late in life due to a lack of support from his brother and that even today, traumas associated with the civil war sometimes resurface (CAR 5.303.003, Q/A Nos.^{os} 1 and 2), which appears entirely convincing given the extent of the injury. In light of the seriousness 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 non-pecuniary damages.

8.2.3 With regard to the cruel, humiliating, and degrading treatment inflicted on James CAMDEN 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 food or drink, while being struck with rifle butts and subjected to death threats, caused the complainant severe physical and psychological suffering. The fear of dying accompanied the complainant throughout the journey because 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. James CAMDEN thus suffered significant trauma as a result of these events. The fact that he came to testify in Switzerland on three occasions is, moreover, strong evidence of his suffering and of the fact that it has not subsided some thirty 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.

8.2.4 Since James CAMDEN is domiciled in Liberia, the amount of CHF 22,000.- awarded by the Court (*supra*, para. II.8.1.5) should be reduced by two-thirds, which amounts to CHF 7,333.-. Since the trial court awarded James CAMDEN the sum of CHF 7,300 (Judgment SK.2019.17, para. 10.2.4), and the Court is bound by the principle prohibiting *reformatio in peius* (*supra*, paras. I.1.5 and II.8.1.6), the same amount—CHF 7,300—should be awarded as compensation for emotional distress.

8.3 Georges ROSADO

8.3.1 Georges ROSADO qualifies as a victim and has joined the proceedings as a complainant regarding the cruel treatment he suffered in Foya in the form of "tabé " (section 1.3.4 of the indictment; *supra*, para. II.4.5) as well as for the knife wound inflicted upon him, also in Foya, constituting attempted murder (section 1.3.6 of the indictment; *supra*, paras. II.4.5 and II.5.4.5).

8.3.2 The "tabé" treatment that Georges ROSADO underwent constitutes a cruel act of extreme violence, one that was, moreover, arbitrarily ordered by Alieu KO-SIAH. Tying a person's hands in front and binding their elbows behind their back causes excruciating pain in the upper limbs and compresses the chest in a way that impedes breathing. The traumatic nature of the "tabé" method was, moreover, acknowledged by the defendant before this Court when he spoke of having undergone it and stated that "it is something that never fades" (CAR 5.301.174, lines 40 ff.). 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. Georges ROSADO stated that, more than twenty years after the events, he still felt pain in his left arm and right leg and that his injuries prevented him from performing strenuous physical labor (TPF 40.755.013; CAR 5.305.004, Q/A nos. 3 and 7). With regard specifically to the aftereffects of the "tabé" treatment he underwent, Georges ROSADO stated during the appellate proceedings that he still sometimes felt a burning sensation in his chest when he ate or drank (CAR 5.305.005, Q/A No. 9). Admittedly, the plaintiff did not provide the Court with a medical certificate attesting to these pains. There is no doubt, however, that physical aftereffects may persist following an act as

violent as the one he endured, compounded by psychological trauma fueled by the fear of death that Georges ROSADO experienced. In light of these facts, it is justified to award compensation in the amount of CHF 10,000.

8.3.3 With regard to the stab wound inflicted on Georges ROSADO, the harm to his physical integrity was particularly severe, as the complainant risked losing his life as a result. He testified during the trial at first instance, more than twenty years after the events, that he continued to suffer pain from the stab wound and was unable to perform physical labor because of this injury (TPF 40.755.018). It should also be noted that the stab wound was inflicted on Georges ROSADO while he was already weakened by the treatment he had been subjected to, particularly the "tabé" treatment. Added to this is the psychological trauma caused by the fear of death, fueled by the context of the cruel treatment that was arbitrarily inflicted on Georges ROSADO as well as on the six other civilians, bearing in mind that these six civilians were executed on the orders of Alieu KOSIAH (*supra*, consid. II.4.5). It must also be taken into account that Alieu KOSIAH's liability is reduced, since he acted as an accomplice. In light of the gravity of the facts, it is justified to award the complainant the sum of CHF 30,000 as compensation.

8.3.4 Since Georges ROSADO is domiciled in Liberia, the amount of CHF 40,000.- set by the Court (*supra*, para. II.8.1.5) should be reduced by two-thirds, which amounts to CHF 13,333.-. The Court notes that it is apparent from the reasoning in the contested judgment that the intent of the trial court—which, according to the operative part, did indeed award the sum of CHF 8,000 to Georges ROSADO—was, based on its reasoning, to award the sum of CHF 6,600 (judgment SK.2019.17, para. 10.3.4), as it had done for Christopher GREENE, Eddie COULTER, and Levi FARRELL (paras. 10.4.3, 10.5.3, and 10.6.4).
The Court is therefore bound by the principle prohibiting *reformatio in peius* (*supra*, paras. I.1.5 and II.8.1.6), which is why it must not rule against the defendant and must award the same amount—CHF 6,600—to Georges ROSADO as compensation for emotional distress.

8.4 Christopher GREENE

8.4.1 Christopher GREENE is a victim and has joined the proceedings 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 (sections 1.3.10 and 1.3.12 of the indictment; *supra*, paras. II.4.8 and II.4.9).

8.4.2 With regard to the cruel, humiliating, and degrading treatment inflicted on Christopher GREENE during the shipments of goods from Foya

to Solomba, it should be noted that the defendant infringed upon two fundamental legal rights: the physical and mental integrity of the person. Having to carry a heavy load on one's head or push a heavily loaded *truck* for nearly an entire day without taking a break, without receiving anything to eat or drink, while being shoved and subjected to blows and death threats, is likely to cause significant physical and mental pain. During the proceedings, Christopher GREENE stated that he had feared for his life (TPF 40.751.024 and 033). He also 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 (MPC 12-20-0032). Given the severity of these acts and the conditions under which the transports took place, it is justified to award the sum of CHF 10,000 per transport.

8.4.3 Since Christopher GREENE is domiciled in Liberia, the amount of CHF 20,000.- awarded by the Court (*supra*, consid. II.8.1.5) should be reduced by two-thirds, which amounts to CHF 6,667.-. Since the trial court awarded Christopher GREENE the sum of CHF 6,600 (judgment SK.2019.17, para. 10.4.3), and the Court is bound by the principle prohibiting *reformatio in peius* (*supra*, paras. I.1.5 and II.8.1.6), the same amount, namely CHF 6,600, must be awarded as compensation for emotional distress.

8.5 Eddie COULTER

8.5.1 Eddie COULTER qualifies as a victim and has joined the proceedings as 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 (para. 1.3.14 of the indictment; *supra*, para. II.4.10) and the transport of ammunition from Gondolahun to Sassahun (section 1.3.16 of the indictment; *supra*, para. II.4.11), which constitute cruel, humiliating, and degrading treatment, respectively.

8.5.2 By being responsible for the cruel, humiliating, and degrading treatment inflicted on Eddie COULTER 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 haunted the complainant at every moment of the journey, all the more so because other civilians were executed before his eyes due to their state of exhaustion. During the proceedings, Eddie COULTER recounted the events he experienced in a very matter-of-fact manner. This, however, in no way diminishes the severity of his trauma. It is therefore justified, 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.

8.5.3 Since Eddie COULTER is domiciled in Liberia, the amount of CHF 20,000.- set by the Court (*supra*, consid. II.8.1.5) should be reduced by two-thirds, which amounts to CHF 6,667.-. Since the trial court awarded Eddie COULTER the sum of CHF 6,600 (judgment SK.2019.17, para. 10.5.3), and the Court is bound by the principle prohibiting *reformatio in peius* (*supra*, paras. I.1.5 and II.8.1.6), the same amount, namely CHF 6,600, must be awarded as compensation for emotional distress.

8.6 Levi FARRELL

8.6.1 Levi FARRELL qualifies as a victim and has joined the proceedings as 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 (section 1.3.14 of the indictment; *supra*, para. II.4.10) and the transport of ammunition from Gondolahun to Sassahun (section 1.3.16 of the indictment; *supra*, para. II.4.11), which constitute cruel, humiliating, and degrading treatment, respectively.

8.6.2 The arguments set forth above regarding Eddie COULTER apply in full to Levi FARRELL, as both complainants were forced to participate in the same transports (*supra*, para. II.8.5.2). Furthermore, with regard to the transport of the generator from Pasolahun to Kolahun (section 1.3.14 of the indictment), the Court finds it justified to award an additional amount of CHF 2,000 to account for the additional trauma caused by the loss of his uncle Russell HASTING during said transport. The sum of CHF 22,000 should therefore be awarded for both transports combined.

8.6.3 During the preliminary investigation, the Office of the Public Prosecutor recognized Levi FAR-RELL's status as a complainant in connection with the murder of his uncle, Russell HASTING (section 1.3.15 of the indictment; *supra*, consid. II.4.10). During the trial, Levi FARRELL 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 Bolahun, he lived with his uncle or near his uncle's home, Levi FARRELL replied that he did not remember exactly, but that they were in any case in the same neighborhood (TPF 40.756.020). Levi FARRELL did not provide any further information regarding his relationship with his uncle. The ties he described are not sufficiently close to be capable of causing exceptional emotional distress that would justify the award of compensation for emotional distress. Indeed, Levi FARRELL gave the Court no reason to believe that his relationship with Russell HASTING was of such intensity that it could be equated with the relationship he might have had with his father, for

example. Under these circumstances, no compensation for his uncle's death will be awarded to him. It should be noted, however, that the Court took into account the fact that Levi FARRELL lost his uncle during the forced transport of the Pasolahun generator by increasing the amount awarded in connection with that transport (*supra*, para. II.8.6.2).

8.6.4 Since Levi FARRELL is domiciled in Liberia, the amount of CHF 22,000.- set by the Court (*supra*, para. II.8.1.5) must be reduced by two-thirds, which amounts to CHF 7,333.-. Since the trial court awarded Levi FARRELL the amount of CHF 6,600 (Judgment SK.2019.17, para. 10.6.4), and the Court is bound by the principle prohibiting *reformatio in peius* (*supra*, paras. I.1.5 and II.8.1.6), the same amount—CHF 6,600—must be awarded as compensation for emotional distress.

8.7 Nicolas COOK

8.7.1 Nicolas COOK is a victim and has joined the proceedings as a complainant in connection with the two shipments of goods in which he was forced to participate—one from Voinjama to Gbarlyeloh (para. 1.3.19 of the indictment; *supra*, para. II.4.13) and the other from Voinjama to Solomba (section 1.3.20 of the indictment; *supra*, para. II.4.14), which constitute cruel, humiliating, and degrading treatment, respectively.

8.7.2 By being responsible for the cruel, humiliating, and degrading treatment inflicted on Nicolas COOK during the two transports in which he was forced to participate, Alieu KOSIAH violated two essential 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. Nicolas COOK stated that he feared for his life (TPF 40.753.020). During the proceedings, he recounted the events he experienced with a certain degree of restraint. This, however, in no way diminishes the severity of his trauma. His coming to Switzerland on three occasions—simply and without any compensation—to tell his story is evidence of suffering that is still present some thirty 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 from Voinjama to Gbarlyeloh and CHF 15,000 for the transport from Voinjama to Solomba. Indeed, the latter transport took place over two days, including a night spent in captivity, which justifies the award of a higher compensation amount than that granted for the first transport.

8.7.3 Since Nicolas COOK is domiciled in Liberia, the amount of CHF 25,000.- awarded by the Court (*supra*, para. II.8.1.5) should be reduced by two-thirds, which amounts to CHF 8,333.-. Since the trial court awarded an amount of CHF 8,000 to Nicolas COOK (judgment SK.2019.17, para. 10.10.4 [*recte*: para. 10.7.4]), and since the Court is bound by the principle prohibiting *reformatio in peius* (*supra*, para. I.1.5 and II.8.1.6), the same amount—CHF 8,000—should be awarded as compensation for emotional distress.

8.8 Carol ALEXANDER

8.8.1 Carol ALEXANDER is the complainant in the case of the rape of which she was a victim (section 1.3.24 of the indictment; *supra*, consid. II.4.17).

8.8.2 By forcing the complainant to engage in sexual intercourse four times in one night, Alieu KOSIAH violated a legal right of great importance, namely sexual integrity. He took advantage of his position of power created by the presence of his armed soldiers in neighboring buildings and used his authority, as well as the fact that he was armed, to force Carol ALEXANDER to submit to the act. Furthermore, he threatened to kill the victim if she did not comply. The complainant, who had never had sexual relations before, 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 during the trial proceedings that she was still experiencing pain, which was affecting her intimate relationships (TPF 40.752.024). She also stated that she still felt humiliated by these events (TPF 40.752.025) and that she felt uncomfortable seeing the defendant—via video—during the appellate proceedings (CAR 5.302.023, Q/A No. 156). The Court considers this suffering to be very severe. Given the terror Alieu KOSIAH employed to achieve his ends and the death threats he made, it is justified to award him compensation for non-pecuniary damages in the amount of CHF 30,000.

8.8.3 Regarding the transport of goods from Botosu following the looting of that village (section 1.3.23 of the indictment; *supra*, consid. II.4.16), Carol ALEXANDER stated that she did not have to carry any loads and merely accompanied the convoy, from which she managed to escape. She was unable to say how long after the event she had fled. The mere fact of accompanying a convoy, without carrying any load, for an indeterminate period of time, is not sufficient to cause suffering that would warrant compensation. No compensation will therefore be awarded in connection with these facts.

8.8.4 Since Carol ALEXANDER is domiciled in Liberia, the amount of CHF 30,000.- awarded by the Court (*supra*, para. II.8.1.5) should be reduced by two-thirds, which amounts to CHF 10,000.-. Since the trial court awarded Carol ALEXANDER the amount of CHF 8,000 (judgment SK.2019.17, para. 10.8.5), and the

Court is bound by the principle prohibiting *reformatio in peius* (*supra*, para. I.1.5 and II.8.1.6), the same amount—CHF 8,000—must be awarded as compensation for emotional distress.

9. Costs and Expenses

9.1 Costs and expenses of the preliminary proceedings and the first-instance proceedings

9.1.1 Costs

9.1.1.1 Alieu KOSIAH argues, as a consequence of the requested acquittal, that the costs of the preliminary and first-instance proceedings should be borne by the Confederation (*supra*, C.4 and C.28). The Office of the Attorney General, for its part, argues for the confirmation of the first-instance judgment on this point (*supra*, C.6 and C.29).

9.1.1.2 With regard to the travel and living expenses in Switzerland incurred by the complainants, it is noted that the trial court, pursuant to Art. 434(1) of the Criminal Procedure Code, applied by analogy, covered the expenses related to the stay in Bellinzona of the six complainants who had traveled from Liberia, amounting to CHF 25,494.90. It also awarded compensation to each of these complainants for their stay in Geneva from March 11 to March 14, 2021, finding that their presence a few days prior to the proceedings was necessary so that they could prepare for the proceedings with their respective counsel (Judgment SK.2019.17, para. 11.3).

Alieu KOSIAH expressly contested the compensation awarded to the plaintiffs at the trial court level. However, it is clear from his appeal and his briefs that the modification of the trial court judgment he sought would result from a full acquittal. However, in light of Alieu KOSIAH's conviction on the charges set forth in 24 counts of the indictment, his appeal regarding the plaintiffs' travel and living expenses in Switzerland must be dismissed. It is further noted that he did not raise any other alternative arguments. Consequently, Section III(A) of the operative part of the contested judgment is affirmed. In this regard, reference should be made to the relevant findings of fact by the trial court, pursuant to Art. 82(4) of the Swiss Criminal Procedure Code (judgment SK.2019.17, paras. 11.3 and 11.4).

9.1.1.3 As a reminder, the trial court, in the contested judgment (Judgment SK.2019.17, para. 12.5), set the litigation costs at CHF 1,349,739.25 (preliminary proceedings: CHF 60,000 [fees] and CHF 1,114,852[out-of-pocket expenses]; first-instance proceedings: CHF 40,000 [fees] and CHF 134,887.25 [out-of-pocket expenses]) and the costs that may be charged to the defendant

at CHF 378,342.90 (preliminary proceedings: CHF 60,000 [fees] and CHF 145,054.40 [disbursements]; first-instance proceedings: CHF 40,000 [fees] and CHF 113,288.50 [disbursements]).

The Court notes that the defendant's appeal regarding the plaintiffs' living expenses—which form part of the litigation costs—is dismissed. It further notes that the determination of costs is not contested in any other respect, and that, in any event, it does not give rise to any criticism. The Court therefore refers to the reasoning of the Criminal Division on this matter, pursuant to Art. 82(4) of the Criminal Procedure Code (judgment SK.2019.17, paras. 12.1–12.5). It follows that only the question of who is to bear the costs must be examined.

9.1.1.4 In light of his conviction, Alieu KOSIAH shall bear the costs of the proceedings in accordance with Art. 426(1) of the Code of Criminal Procedure. However, the costs for which he is liable should be reduced, since he was partially acquitted of the charges brought against him in the indictment. As a reminder, the trial court, which had acquitted Alieu KOSIAH of four counts, reduced the costs for which he was liable by a flat rate of 10% (judgment SK.2019.17, para. 12.7). By its judgment, which supersedes that of the trial court, the Court acquitted the defendant on one count of the indictment (*supra*, para. II.4.6.3), noting that the acquittal handed down by the Criminal Court regarding the charge of recruiting a child soldier has become final (*supra*, para. I.3.2). Consequently, the costs imposed on Alieu KOSIAH should be reduced by a flat rate of 5%, amounting to CHF 359,425.75. That said, the Criminal Court took into account the defendant's incarceration, his irregular and temporary status in Switzerland, and the fact that he had no income or assets, in order, pursuant to Art. 425 of the Swiss Criminal Procedure Code, to reduce the portion of the costs attributable to him to a total of CHF 50,000.00 (judgment SK.2019.17, para. 12.7). Since the Court is bound by the principle prohibiting *reformatio in peius* (*supra*, para. I.1.5), the reduction granted by the lower court must be upheld.

9.1.1.5 The balance of the costs of the preliminary and first-instance proceedings, amounting to CHF 1,299,739.25, is to be borne by the Confederation.

9.1.2 Compensation

The following issues must be decided:

- the defendant's claims for compensation based on Art. 429 of the Criminal Procedure Code;
- compensation for the court-appointed defense counsel.

As a reminder, the decisions regarding compensation for the complainants' pro bono legal counsel have become final (*supra*, consid. I.3.2).

9.1.2.1 Compensation for the Defendant

Alieu KOSIAH requested the following compensation pursuant to Art. 429 of the Code of Criminal Procedure (*supra*, C.28):

- Compensation to be determined based on Attorney GIANOLI's bill of fees for expenses incurred in the reasonable exercise of his rights of defense (Art. 429(1)(a));
- CHF 600,000 as compensation for economic loss suffered due to mandatory participation in the criminal proceedings (Art. 429(1)(c));
- CHF 1,000,200 as compensation for non-economic damages suffered as a result of a particularly serious infringement of personal rights (Art. 429(1)(c)).

However, it is clear from the defendant's appeal and arguments that the amendments to the first-instance judgment he has requested would result in his full acquittal. Given Alieu KOSIAH's conviction on 24 counts of the indictment, his appeal regarding compensation for the preliminary and first-instance proceedings must be dismissed. The Court, which has broad discretion, finds that the defendant's acquittal on the charges related to the recruitment of a child soldier (count 1.3.1 of the indictment) and forced transportation (count 1.3.7 of the indictment; *supra*, para. II.4.6) did not give rise to additional costs, whether in relation to investigative measures that would have had to be conducted specifically regarding these facts or to complex factual or legal developments in this regard (Federal Supreme Court decision 6B_780/2022 of May 1er May 2023, para. 5.2). It is further noted that the defendant did not raise any other alternative claims. Consequently, Section IV of the operative part of the contested judgment is affirmed. For the remainder, reference should be made to the relevant considerations of the trial court, pursuant to Art. 82(4) of the Criminal Procedure Code (judgment SK.2019.17, para. 13.3).

9.1.3 Compensation for the Court-Appointed Defense Counsel

Pursuant to Art. 135(1) of the Criminal Procedure Code (CPP), the court-appointed defense counsel is compensated in accordance with the federal attorneys' fee schedule. Under Art. 73(1)(c) of the Federal Criminal Procedure Act (LOAP), the issue of compensation awarded to court-appointed counsel in federal criminal proceedings is governed by Articles 11 et seq. of the Federal Criminal Court's Regulation of August 31, 2010, on Costs, Fees, Expenses, and Compensation in Federal Criminal Proceedings (RFPPF; RS 173.713.162).

In his appeal of April 20, 2022, drafted by Attorney KLEGER, Attorney GIA-NOLI made the following submissions (*supra*, C.3):

> *"I. Set aside Section V of the Judgment rendered on June 18, 2021, by the Criminal Division of the Federal Criminal Court;*

II. Accordingly, award the appellant, Attorney Dimitri Gianoli, compensation for court-appointed counsel in the amount of 1,410,887.35 francs (including VAT and disbursements), less advance payments of 644,280.75 francs, said compensation to be borne by the Confederation;

III. Costs and expenses are to be borne by the parties."

Mr. GIANOLI's appeal is being heard pursuant to the written procedure. During this proceeding, the Office of the Attorney General (MPC) declined to submit observations (*supra*, C.15). At the conclusion of its closing arguments, the MPC indicated that it would leave the matter to the court's discretion (*supra*, C.29).

9.1.3.1 Determination of the Hourly Rate

The appellant claims an hourly rate of CHF 300. However, given the complexity of the case, the hourly rate determined by the trial court judges in accordance with the criteria established for federal proceedings (judgment SK.2019.17, para. 14.1.1) should be upheld; it should also be noted that the counsel for the plaintiffs did not contest this rate. The hourly rate is therefore set at CHF 230 for hours of work, CHF 200 for travel hours, and CHF 100 for hours worked by interns. The Court notes that the VAT rate has been 8% since 2011 and 7.7% since January[1,] 2018, with the clarification that the new rate of 8.1%, in effect since January[1,] 2024, does not apply in this case.

While the number of hours worked by Mr. GIANOLI in connection with these proceedings is certainly significant, the sheer number of hours cannot justify an increase in the hourly rate, as this does not affect the complexity of the case. It should be emphasized that the arguments, both at the trial court and on appeal, focused almost exclusively on the facts, and that this case was not characterized by a multitude of complex legal issues. Mr. GIANOLI himself acknowledges that the assessment of the credibility of the various testimonies formed the basis of his legal reasoning (CAR 1.101.005). Furthermore, the alleged language barriers were offset by the defendant's own knowledge, on which the defense relied heavily, noting that the numerous hours of meetings between the defendant and his attorney were admitted in their entirety. Finally, the Court notes that Mr. GIANOLI did not appeal any of the interim decisions rendered by the Court in which his hourly rate had already been set at CHF 230.00 (see Orders CN.2022.3 of April 14, 2022 [*supra*, C.2], CN.2022.4 of May 10, 2022 [*supra*, C.5], and CN.2022.6 of December 20, 2022 [*supra*, C.5]).

9.1.3.2 Time Clearly Deemed Excessive

The appellant invokes the principle of good faith (CAR 1.101.006 et seq.), claiming to have complied with the remarks made by the MPC in its first decision

(see letter of March 12, 2015 [MPC 16-01-0108 et seq.], with the prosecutor's annotations). He adds that the MPC never disallowed any activities on the grounds that the work appeared disproportionate or excessive.

However, on each occasion an advance payment was made—on seven separate occasions throughout the preliminary proceedings—the MPC expressly stated that it did not wish to prejudge the statements of account provided by the appellant (see decision on the request for advance payments dated July 23, 2015 [MPC 16-01-0207 et seq.], April 25, 2016 [MPC 16-01-368 et seq.], July 29,
2016 [MPC 16-01-0466 et seq.], January 25, 2017 [MPC 16-01-0595 et seq.], August 11, 2017
[MPC 16-01-0748 et seq.], January 17, 2018 [MPC 16-01-0876 et seq.] and August 22, 2018
[MPC 16-01-1041 et seq.]). This argument must therefore be dismissed.

The Court will now examine, in detail and for each year, the breakdown of the services billed by Mr. GIANOLI:

Year 2015

- The appellant challenges the deduction of 4 hours and 15 minutes from a total of 10 hours and 30 minutes of work spent preparing a chronology of events and a table listing the names of those involved (section 3.4.2 of the appeal [CAR 1.101.007]). This objection is fully upheld; these tasks were justified, reasonable, and served to simplify the work of the court-appointed defense counsel, thereby making it more effective. 4 hours and 15 minutes should be added.

- The appellant challenges the deduction of 3 hours and 55 minutes for various legal research and the preparation of questions for Alieu KOSIAH on September 9 and 10 (section 3.4.3 of the appeal [CAR 1.101.008]). This objection is fully upheld, since, as the appellant points out, with the exception of the entry
  "various legal research" for 45 minutes on September 10, there are no other corresponding entries in the expense report (MPC 16-01-0272). Furthermore, this research was conducted as part of the proceedings before the TMC and appears all the more justified given that the proceedings were still in their early stages. 3 hours and 55 minutes should be added.

- The appellant challenges the deduction of 4 hours and 45 minutes from an 8-hour and 45-minute entry for submissions to the TMC on December 11 (section 3.4.4 of the appeal [CAR 1.101.008]). This objection is fully upheld, as it appears all the more justified given that the proceedings were in their early stages. The observations in question are original. 4 hours and 45 minutes should be added.

Year 2016

- The appellant challenges two deductions: the first of 16 hours out of 22 for the preparation of a voluntary brief on Levi FARRELL at the MPC between March 5 and 11, and the second of 12 hours and 15 minutes out of 18 hours

and 15 minutes concerning Levi FARRELL between June 17 and July 22, 2016 (section 3.4.5 of the appeal [CAR 1.101.009]). This claim is partially upheld, as these actions, which were intended

to call into question the complainant's credibility are relevant but overemphasized. Consequently, 18 hours should be added.

- The appellant challenges three deductions for observations at the TMC: the first of 4 hours out of 9 on March 13 and 14, the second of 4 hours and 15 minutes out of 8 hours and 15 minutes on September 15, and the third of 8 hours and 15 minutes out of 12 hours and 15 minutes on December 11 and 12 (section 3.4.6 of the appeal [CAR 1.101.009]): This complaint is partially upheld, since these operations are partially overestimated. The observations in question are original, but certain passages and arguments have been reused from previous briefs. Consequently, 7 hours and 45 minutes should be added.

Year 2017

- The appellant challenges two deductions for observations at the TMC: the first of 4 hours and 45 minutes out of 8 hours and 45 minutes on June 9, and the second of 11 hours and 50 minutes out of 15 hours and 50 minutes on September 7 and 9 (Section 3.4.7 of the appeal [CAR 1.101.010]). This claim is partially upheld, as these tasks were overestimated. The observations in question are original, but contain certain reused passages and arguments, and follow a structure that persists as detention is extended. Approximately half should be credited, and consequently 5 hours should be added.
- The appellant challenges the deduction of 2 hours and 45 minutes from a 3-hour-and-45-minute shift for the review of a procedural document on June 5 (section 3.4.7 of the appeal [CAR 1.101.010]). This claim is rejected, since the appellant does not dispute that he was already familiar with the annexes, as noted by the SK.

Year 2018

- The appellant challenges two time deductions for observations submitted to the TMC: the first of 9 hours and 30 minutes out of 13 hours and 30 minutes between March 7 and 9, and the second of 22 hours and 55 minutes out of 26 hours and 55 minutes between September 4 and 7 (section 3.4.8 of the appeal [CAR 1.101.010]). This claim is partially upheld, as these operations have been overestimated. The observations in question are original, but contain certain reused passages and arguments, and follow a structure that persists as detention is extended. Consequently, approximately half should be retained, and 11 hours should be added.

Year 2019

- The appellant challenges three deductions for observations at the TMC: the first of 20 hours and 20 minutes out of 24 hours and 20 minutes on March 7 and 8, the second of 8 hours out of 10 hours on March 28 and 29, and the third of 8 hours and 50 minutes out of 12 hours and 50 minutes on September 20 (section 3.4.8 of the appeal [CAR 1.101.010]). This claim is

rejected, since

these operations are overestimated. The numerous hours billed are no longer justified given the progress of the proceedings and the reuse of the structure and arguments.

Year 2020

- The appellant challenges four deductions: the first of 26 hours and 45 minutes out of 30 hours and 45 minutes (submissions to the TMC) between March 20 and 22; the second of 3 hours and 30 minutes out of 7 hours and 30 minutes (statement of position to the TMC) between September 24 and 25; the third of 10 minutes (*corrected*: 25') out of 55 minutes (review of a procedural document [order extending detention]) on March 27, and the fourth of 10 minutes (review of correspondence from the TMC) on September 29 (section 3.4.8 of the appeal [CAR 1.101.010]). This claim is dismissed, as these activities are overestimated. The Court notes in particular, with regard to the submissions to the TMC, that the numerous hours billed are no longer justified in light of the progress of the proceedings and the reuse of the structure and arguments.

Interim Calculation

CHF 13,579.90 (including VAT) should be added for justified work for the period from 2015 to 2020, namely CHF 3,204.40 for 2015 (12.9 x 230 × 1.08), CHF 6,408.70 for 2016 (25.8 × 230 × 1.08), CHF 1,242.00 for 2017 (5 × 230 × 1.08), CHF 2,724.80 for 2018 (11 × 230 × 1.077), and CHF 0 for 2019 and 2020.

9.1.3.3 Meetings and Conferences with the Client

The Court will now examine the items contested by the appellant in connection with the meetings and conferences with his client:

- The appellant challenges three deductions: the first of 50 hours out of a total of 94 hours and 25 minutes for meetings with the client from January 1January 2018 to March 22, 2019 (section 3.5.1 of the appeal [CAR 1.101.010]), the second of 100 hours out of a total of 156 hours and 55 minutes for meetings with the client at the end of 2019 (section 3.5.2 of the appeal [CAR 1.101.012]), and the third of 60 hours out of a total of 158 hours and 5 minutes for meetings with the client in 2020 (section 3.5.2 of the appeal [CAR 1.101.012]). These claims are fully upheld, since the authority must exercise restraint and take care not to interfere with the defendant's defense, which is particularly relevant in a situation of detention and given the seriousness of the charges. The Court finds that three 8-hour workdays per month for Attorney GIA-NOLI and his intern are justified. Double that amount—six workdays per month—is allowed for the three months preceding the trial, as the workload is heavier as the trial approaches. The Court clarifies that its decision here has no impact on travel time and

the related expenses, which have already been accepted at the trial court level. It is therefore appropriate to add 210 hours (50 + 100 + 60).

- The appellant challenges the deductions made from the interns' hours (section 3.5.3 of the appeal [CAR 1.101.012]):

    - For the period from November 11, 2014, to December 31, 2017, the Criminal Court deducted 85 hours from 120 hours and 40 minutes of client meetings. The appellant argues that the intern's work, paid at a rate of CHF 100, represents a cost savings for the authority. This claim is fully upheld, and 107 hours should therefore be added. The Court finds that three 8-hour workdays per month for Mr. GIANOLI and his intern are justified. Double that amount—six workdays per month—is allowed for the three months preceding the hearings, as the workload is heavier as the hearings approach. The 120 hours and 40 minutes billed are therefore fully accepted. In addition, the 21 hours deducted by the Criminal Court for travel—in addition to the 85 hours deducted at the trial court level—should be added and rounded up to 22 hours, as the travel time is 2 hours. Since the intern's commute takes 2 hours, the expenses for 11 trips should also be added, amounting to CHF 577.50 (25 [train] + 27.50 [1 meal] = 52.50 per trip).

    - For the period from March 23, 2019, to March 12, 2021, the Criminal Court deducted all hours spent in meetings with the client, totaling 514 hours and 15 minutes. The appellant argues that the work of the intern, paid at a rate of CHF 100, represents a cost savings for the authority. This claim is partially upheld, and 257.1 hours should therefore be added. The Court finds that three 8-hour workdays per month for Mr. GIANOLI and his intern are justified. Twice that amount—six workdays per month—is accepted for the three months preceding the hearings, as the workload is heavier as the hearings approach. Specifically, 1h30 is accepted for the end of 2019 (corresponding to what was deducted), 202 hours for 2019 (out of the 497 hours and 10 minutes deducted), and 15 hours and 35 minutes for 2021 (corresponding to what was deducted), for a total of 219.1 hours. In addition, 38 hours should be added for travel (which corresponds to the proportion of hours accepted for interviews). Since the intern's commute takes 2 hours, expenses for 19 trips must also be added, amounting to CHF 997.50. (25 [train] + 27.50 [1 meal] = 52.50 per trip.)

    - The decision of the Criminal Court is upheld in all other respects.

Interim Calculation

The following amounts should be added: CHF 92,839.80 (including VAT and disbursements), comprising CHF 52,019.10 for Mr. GIANOLI's services (210 × 230 × 1.077),
CHF 11,556.00 (fees; 107 × 100 × 1.08) and CHF 577.50 (out-of-pocket expenses) for the intern's work from 2014 to 2017, as well as CHF 27,689.70 (fees; 257.1 × 100 × 1.077) and CHF 997.50 (out-of-pocket expenses) for work performed as an intern from late 2019 through 2021.

9.1.3.4 Court Hearings and Preparation for Proceedings

The Court examines below the items contested by the appellant regarding court hearing time and the hours spent preparing for hearings that were allegedly over-reported:

- The appellant challenges the deduction of 49 hours of court time from 2015 to 2020 and 4 hours and 25 minutes of court time for the first-instance proceedings (section 3.6.1 of the appeal [CAR 1.101.012]). After reviewing the hearing transcripts, this claim is partially upheld specifically with regard to the hearings before the Office of the Attorney General, for which 10 hours should be added. The 8% VAT rate is applied, since the vast majority of the hours deducted pertained to the period prior to 2018.
- The appellant challenges the deduction of 100 hours of hearing time out of 168 hours for the preparation of the first-instance proceedings (section 3.6.2 of the appeal [CAR 1.101.014]). This claim is partially upheld. Consistent with the Court's decision on this matter in connection with the appeal proceedings (*infra*, consid. II.9.2.3.2), half of the reported hours should be accepted, and consequently, 16 hours should be added.

Interim calculation

CHF 6,447.40 (including VAT) should be added, consisting of CHF 2,484.00 for the hearings (10 × 230 × 1.08) and CHF 3,963.40 for the preparation of the proceedings (16 × 230 × 1.077).

9.1.3.5 Secretarial tasks and miscellaneous

The Court now examines the other items contested by the appellant, particularly those related to secretarial tasks, which were allegedly overbilled:

- The appellant challenges the refusal to take into account secretarial tasks (preparing and organizing case files, redacting documents, etc.) and tasks related to the preparation of fee statements (section 3.7.1 of the appeal [CAR 1.101.014]), arguing in essence that the volume and complexity of the case would not allow these tasks to be entirely delegated to

administrative staff. This claim is rejected, since the activities in question are not of a legal nature. The arguments put forward are unfounded, as administrative staff are compensated through the fees collected.

- The appellant challenges the refusal to take into account the activities carried out by Rolando KAY and those related to him (section 3.7.1 of the appeal [CAR 1.101.014]), arguing, from the perspective of equality of arms, that the complainants benefited from the support of various associations and NGOs. He highlights Rolando KAY's influential role within the Liberian diaspora in Switzerland, which enabled him to conduct research and provide translations. This claim is rejected, as the appeal provides no concrete explanation of Rolando KAY's activities or their potential relevance to the court-appointed defense counsel's work.
- The appellant challenges the refusal to take into account activities related to contacts with the attorney defending Kunti KAMARA in the context of the French proceedings (section 3.7.1 of the appeal [CAR 1.101.014]). This complaint could potentially have been admitted, since it concerns Alieu KOSIAH's co-defendant. However, the appeal contains no details regarding the disputed items; furthermore, it should be noted that the items mentioned by the Criminal Court ("contact with a lawyer not involved in the proceedings"; judgment, para. 14.2.4) all relate to activities connected with Attorney KLEGER (2020: TPF 40.821.242 and 257; 2021: TPF 40.821.284 and
286 et seq.). This complaint is therefore dismissed.

Interim Calculation

No amount is to be added for other activities, including secretarial tasks.

9.1.3.6 Final calculation

In light of the foregoing, the following amounts should be added to Mr. GIANOLI's compensation:

- Justified expenses for the period from 2015 to 2020: CHF 13,579.90.
- Meetings and conferences with the client, as well as intern activities: CHF 92,839.80.
- Court appearances and preparation for hearings: CHF 6,447.40.
- Secretarial tasks and miscellaneous: CHF 0.

In total, an additional amount of CHF 112,867.10 (including VAT) is awarded to Mr. GIANOLI.

This amount is added to the sum of CHF 674,900 (including VAT and disbursements) awarded by the trial court. The new total is therefore CHF 787,767.10, which should be rounded to CHF 787,800 (including VAT and disbursements).

9.2 Costs and Expenses of the Appeal Proceedings

9.2.1 Costs

9.2.1.1 Alieu KOSIAH argues, as a consequence of the requested acquittal, that the costs of the appeal proceedings should be borne by the Confederation (*supra*, C.4 and C.28). The Office of the Attorney General argues that the defendant should be ordered to pay the costs of the appeal proceedings (*supra*, C.29).

9.2.1.2 The criminal court determines the costs in its final decision (Art. 421(1) CPP). Procedural costs consist of fees intended to cover expenses and disbursements actually incurred (Art. 422(1) CPP).

9.2.1.3 On November 25, 2022, the Court agreed in principle to cover the costs necessary for the complainants' travel to and stay in Switzerland (CAR 4.100.037 et seq.). On March 14, 2023, Attorney WERNER submitted to the Court an itemized expense report, broken down by each complainant, regarding the complainants' travel and living expenses in Switzerland (CAR 7.103.001 et seq.)

In total, the reimbursed expenses amount to CHF 35,432.40, with the understanding that only necessary expenses are reimbursed and that the counsel for the complainants are expected to ensure that the expenses to be borne by the Confederation are kept to a minimum. The reimbursed expenses are part of the costs of the appeal proceedings that may be charged to the defendant. The breakdown by complainant is set forth below:

- The amount awarded to Levi FARRELL is CHF 5,425.30. From the CHF 5,475.30 requested, CHF 50.00 is deducted for two meals that were overbilled (January 17 and 21, 2023). The remaining expenses require no further comment.
- The amount awarded to Eddie COULTER is CHF 5,494.30. From the CHF 5,544.30 requested, CHF 50.00 has been deducted for two meals that were overbilled (January 17 and 21, 2023). The other expenses require no further comment.
- The amount allocated to Georges ROSADO is CHF 5,402.20. From the CHF 5,452.20 requested, CHF 50.00 has been deducted for two meals that were overbilled (January 17 and 21, 2023). The other expenses require no comment.

- The amount allocated to Nicolas COOL is CHF 5,590.50. From the CHF 5,640.50.20 requested, CHF 50.00 is deducted for two meals that were overbilled (January 17 and 21, 2023). The other expenses require no comment.

- The amount allocated to Christopher GREENE is CHF 4,533.70. From the CHF 7,690.50 requested, the following amounts are deducted: CHF 930.75 corresponding to the flight from Abidjan to Geneva, as the complainant took a flight from Monrovia to Geneva—it being noted that this other flight was billed; CHF 1,294.35 for the rebooking of the return flight, noting that the Confederation is not responsible for covering these costs, which arose from CIVITAS MAXIMA's arrangement of Carol ALEXANDER's return; CHF 930.70 corresponding to the lodging expenses billed despite the complainant's departure to accompany Carol ALEXANDER, it being specified that the amount for the hotel night in Geneva is divided in half, since half of it pertains to James CAMDEN. The other expenses require no further comment.

- The amount awarded to James CAMDEN is CHF 4,492.10. The following amounts are deducted from the CHF 6,278.70 requested: CHF 1,294.35 corresponding to the change in the return flight reservation, noting that the Confederation is not responsible for covering these costs, which arose from CIVITAS MAXIMA's organization of Carol ALEXANDER's return; CHF 492.25 corresponding to the lodging expenses billed despite the complainant's departure to accompany Ms. ALEXANDER, noting that the amount for the hotel night in Geneva deducted from Christopher GREENE's expenses is added here, as it pertains to James CAMDEN's expenses. The other expenses require no further comment.

- The amount awarded to Carol ALEXANDER is CHF 4,494.30. The following amounts are deducted from the CHF 6,545.50 requested: CHF 411.44 for the change to the return flight reservation, since the Confederation is not responsible for covering these costs for a flight that could have been booked in advance, as Carol ALEXANDER was excused from participating in the remainder of the proceedings; CHF 1,639.73 for lodging expenses, which were, on the one hand, billed twice for the period of Carol ALEXANDER's stay in Switzerland and, on the other hand, billed despite her early return to Liberia, since she was excused from participating in the remainder of the proceedings following her hearing. The other costs require no comment.

9.2.1.4 Given the scope and complexity of the case, the parties' conduct, their financial situation, and the Registry's workload, the Court sets the court fees at CHF 30,000, it being specified that these include the costs of the interlocutory proceedings CN.2022.3, CN.2022.4, and CN.2022.6 (Art. 73

(2) LOAP in conjunction with Art. 5 RFPPF). The costs related to interpreter services amount to CHF 15,860.30 (CAR 7.501.001 et seq. and 010). The Office of the Attorney General also submitted a list of expenses during the proceedings (CAR 5.200.1027 et seq.). These amount to CHF 2,921. This corresponds to the lodging (CHF 2,151) and meal expenses (CHF 770) of the federal prosecutor who represented the OAG at the hearing. They are fully allowed. The Court also incurred additional disbursements totaling CHF 43,846.85 related to the travel to Switzerland of the complainants (*supra*, consid. II.9.2.1.3) as well as a witness (CAR 7.103.001 et seq. and 7.301.001 et seq.).

The costs of the appeal proceedings therefore amount to CHF 92,628.15.

9.2.1.5 The costs of the appeal proceedings are borne by the parties to the extent that they prevailed or were unsuccessful (Art. 428(1), first sentence, of the Swiss Criminal Procedure Code).

The costs of the appeal proceedings, excluding interpretation costs—since these cannot be borne by the defendant (Art. 426(3)(b) CPP)—amount to CHF 76,767.85.

9.2.1.6 Alieu KOSIAH, who prevailed on one count of the indictment (*supra*, consid. II.4.6), was partially acquitted of the charges against him. The criminal proceedings against him regarding crimes against humanity were also dismissed for twelve counts of the indictment (*supra*, consid. II.3.2.2.5) due to the statute of limitations. Given the marginal impact of this acquittal and these dismissals on the costs of the appeal proceedings—since the defendant was convicted on 24 counts of the indictment—they do not justify any reduction in the costs imposed on the defendant. However, given Alieu KOSIAH's incarceration, his irregular and temporary status in Switzerland, and the fact that he has no income or assets, the Court decides—in line with the ruling regarding the costs of the preliminary and first-instance proceedings (*supra*, consid. II.9.1.1.4) and pursuant to Art. 425 of the Swiss Criminal Procedure Code, to reduce the portion of the costs attributable to him to a total of CHF 10,000, with the balance to be borne by the Confederation.

9.2.1.7 The Court further finds that the costs related to Mr. GIANOLI's appeal concerning his compensation as a court-appointed defense counsel amount to CHF 1,500, which represents one-twentieth of the costs of the appellate proceedings, excluding interpretation costs and other disbursements. The appellant prevailed on half of his appeal, even though he did not obtain half of the amount he sought in his pleadings. Indeed, this issue must be assessed in light of the grounds actually raised in his appeal, noting that these do not cover all of the reductions made by the trial court

instance. He is therefore liable for one-fortieth of the costs, or CHF 750.

9.2.1.8 The balance of the costs of the appeal proceedings, amounting to CHF 81,878.15, is borne by the Confederation.

9.2.2 Compensation

The following issues must be decided:

- the defendant's claim for compensation under Art. 429 of the Code of Criminal Procedure;
- compensation for the court-appointed defense counsel;
- compensation for free legal counsel provided to the plaintiffs;
- the fees for the appellant, Attorney Dimitri GIANOLI.

9.2.2.1 The Court notes that the hourly rate is set at CHF 230 for hours of work, CHF 200 for travel time, and CHF 100 for hours worked by interns (*supra*, para. II.9.1.3.1).

9.2.2.2 Compensation for the defendant

As a reminder, Alieu KOSIAH requested the following compensation pursuant to Art. 429 of the Swiss Criminal Procedure Code (*supra*, C.28):

- Compensation to be determined based on Attorney GIANOLI's bill of fees for expenses incurred in the reasonable exercise of his right to defense (Art. 429(1)(a));
- CHF 600,000 as compensation for economic loss suffered due to mandatory participation in the criminal proceedings (Art. 429(1)(c));
- CHF 1,000,200 as compensation for non-economic damages suffered as a result of a particularly serious infringement of personal rights (Art. 429(1)(c)).

Since the defendant was convicted on appeal, no compensation within the meaning of Art. 429 of the Criminal Procedure Code is awarded to him. The acquittal regarding one count of forced transportation (*supra*, consid. II.4.6) and the dismissals due to the statute of limitations concerning twelve counts in the indictment (*consid*. II.3.2.2.5) do not call this conclusion into question due to their marginal impact on the costs of the proceedings (see, regarding the allocation of appellate costs, *supra*, para. II.9.2.1; see also Federal Supreme Court decision 6B_780/2022 of May 1er May 2023, para. 5.2).

9.2.3 Attorney GIANOLI

9.2.3.1 Attorney GIANOLI submitted a bill of costs on February 8, 2023 (CAR 5.200.1030 et seq.). In the context of an interlocutory proceeding, he had previously submitted a bill of costs dated April 26, 2022 (CN.2022.4; CAR 8.102.015 et seq.). Added to this are the compensation amounts already awarded in the incidental proceedings CN.2022.3 (extension of detention), CN.2022.4, and CN.2022.6 (both concerning the appointment of a public defender).

9.2.3.2 Specifically, the following amounts are awarded:

Hearing

An amount of CHF 23,345, corresponding to 101.5 hours at CHF 230 per hour.

Travel

An amount of CHF 6,800, which corresponds to:

- CHF 1,400: 7 hours of travel (round trip from St-Imier to Bellinzona).
- CHF 4,800: eight 3-hour trips (round-trip) to the defendant's place of detention.
- CHF 600: one 3-hour trip (round trip) to the defendant's place of detention (CN.2022.4).

Activities Performed

A total of CHF 63,308, corresponding to:

1) Expense report dated February 8, 2023 (CHF 61,594)

511.9 hours of work (excluding court appearances and travel) according to the expense report, from which 11.2 hours must be deducted for the following items:

- Items from September 21 and 24, 2021, and February 8, 2023 (0.75, 0.08, and 0.4 hours at CHF 300 for photocopies, sending said photocopies, and preparing a statement of costs and fees) and the entry for September 24, 2021 (0.08 hours at CHF 300 for mailing), since this constitutes secretarial work that is not subject to additional compensation.
- Items dated October 26, 2021, and October 26, 2022 (total of 0.16 hours at CHF 300 for two telephone conversations with Rolando KEY), as they have no direct connection to the defense.
- Entry dated December 12, 2022 (0.4 hours at CHF 300 for submissions in the proceedings to appoint a $^{\text{second}}$court-appointed attorney), since this was already the subject of compensation awarded in the context of case CN.2022.6.

- Entries dated January 10 and February 4, 2023 (total of 6.0 hours at CHF 230 for setting up and dismantling a remote office), since this does not constitute a legal activity.
- Entries dated January 9 and February 5, 2023 (total of 9.7 hours at CHF 230 for preparing the case file and the remote office, as well as tidying them up), since this does not constitute a legal activity.

Of the remaining 496.3 hours, 267.8 hours are accepted, with the following points to be noted:

- The 45.8 hours billed for meetings with the client at the detention facility are fully accepted.
- 20.0 hours out of the 47.9 billed for preparing the closing argument are accepted—approximately half—since the billing appears excessive given the extensive passages copied from the closing argument in the trial court.
- Of the 45.4 hours billed for "reviewing the case file," 23.0 hours are accepted—approximately half—as the billing appears excessive, given the continuity of the case, as evidenced by the numerous visits made by Attorney GIANOLI to his client, on whom the defense relies heavily.
- Of the 131.9 hours billed for preparing the proceedings—including preliminary questions and questions for witnesses—66.0 hours are accepted, which amounts to half, as the billing appears excessive. It should be emphasized in particular that the defense is largely informed by the defendant and his own knowledge of the case. Furthermore, the exhibits submitted in the preliminary ruling proceedings were scarcely referenced thereafter, particularly in the defense's closing argument. Regarding the preparation for the hearings, it should be noted that many of the questions were off-the-cuff and that most of the witnesses were being heard for the third time during the appellate proceedings.
- The services are generally billed at an excessive rate relative to the work performed. The Court cites, by way of example, the entry dated June 8, 2022, which amounts to 10 minutes for drafting a request for an extension of the deadline consisting of just a few lines. Of the remaining 225.3 hours, half of the billed hours—that is, 113.0 hours—should be retained, a proportion established for the preparation of the hearings and the closing arguments.
- Ultimately, 267.8 hours should be accepted, which corresponds to CHF 61,594 (267.8 × 230).

2) Expense report dated February 8, 2023, regarding Mr. GIANOLI's intern (CHF 1,070.00)

- 11.2 hours of work according to the expense report (does not include any work related to the hearing or travel), from which the entry dated June 22, 2021, must be deducted (0.5 hours at CHF 100, review of the legal framework and various legal research), as this is clearly covered by the lump-sum payment granted by the Criminal Court for reading the judgment.
- 10.7 hours at CHF 100 are approved, totaling CHF 1,070.

3) Expense report regarding case CN.2022.4 (CHF 644.-)

- 2.8 hours of work out of the 4.5 billed are approved, corresponding to CHF 644. Breakdown:
  - 20 minutes must be deducted, as the entry for July 8, 2022, was double-billed.
  - The 80 minutes of client consultation are fully accepted.
  - For the remainder, equivalent to 170 minutes, half of the billed hours should be retained according to the rate schedule established above.

Interlocutory Proceedings

CN.2022.3, 4, and 6: An amount of CHF 2,017.35 (including VAT) for compensation already awarded in connection with incidental proceedings:

- CHF 1,754.15 for CN.2022.3.
- CHF 131.60 for CN.2022.4.
- CHF 131.60 for CN.2022.6.

Reading of the Judgment

A lump sum of CHF 3,550 (including VAT and disbursements).

Total fees

The total amount of fees is CHF 106,216.25, which corresponds to fees of CHF 93,453 (23,345 + 6,800 + 63,308), plus 7.7% VAT on that amount (CHF 7,195.90), plus the compensation already awarded (CHF 2,017.35), and the lump sum granted for reading the judgment (CHF 3,550).

Out-of-pocket expenses

Out-of-pocket expenses total CHF 5,296.35, noting that CHF 6,277.05 was requested (4,304.45 + 1,850 [apartment rent] + 122.60 [CN.2022.4]). The approved out-of-pocket expenses break down as follows:

1) Hearing-related expenses (CHF 4,449.50)

- CHF 1,850: apartment rent for the duration of the proceedings.
- CHF 157: travel by car reimbursed at the cost of a first-class train ticket at half-fare.
- CHF 2,442.50: meal expenses for Mr. GIANOLI and his intern, approved as requested.

2) Other expenses (CHF 846.85)

- CHF 348.80: eight car trips to the defendant's place of detention and parking fees reimbursed at the cost of a first-class train ticket (half-fare), as the prison is accessible by public transportation.
- CHF 449.15: miscellaneous expenses.
- CHF 43.60: one trip by car to the defendant's place of detention and parking fees reimbursed at the rate of a first-class, half-fare train ticket, as the prison is accessible by public transportation (CN.2022.4).
- CHF 5.30: miscellaneous expenses (CN.2022.4).

9.2.3.3 The total amount of the compensation is CHF 111,512.60, which corresponds to the sum of the fees (106,216.25) and disbursements (5,296.35), less the advance payment of CHF 60,000 granted on March 2, 2023. This amount should be rounded to CHF 111,600.

9.2.3.4 In order to take into account the financial situation of Alieu KOSIAH, the Court sets at CHF 20,000 the amount that he must reimburse to the Confederation, as soon as his financial situation permits, for the costs and fees of Attorney GIA-NOLI (Art. 135(4)(a) CPP). This reduction also takes into account the very partial success of his appeal.

9.2.4 Attorney JAKOB

9.2.4.1 Attorney JAKOB submitted an expense report on February 10, 2023 (CAR 5.200.1110 et seq.).

9.2.4.2 Specifically, the following amounts are awarded:

Hearing

An amount of CHF 23,345, corresponding to 101.5 hours at CHF 230 per hour.

Travel

An amount of CHF 4,440, corresponding to 22.2 hours of travel at CHF 200 per hour.

Work Performed

A total of CHF 10,971, corresponding to the reported 47.7 hours of work (excluding the hearing and travel), all of which were fully accepted.

Review of the Judgment

A lump-sum amount of CHF 3,550 (including VAT and disbursements) is awarded.

Total Fees

The total amount of fees is CHF 45,290.20, which corresponds to the fees of CHF 38,756 (23,345 + 4,440 + 10,971), 7.7% VAT on that amount (CHF 2,984.20), and the lump sum awarded for reading the judgment (CHF 3,550).

Disbursements

Out-of-pocket expenses, which are fully allowed, amount to CHF 3,660.

9.2.4.3 The total amount of the compensation is CHF 48,950.20, which corresponds to the sum of the fees (45,290.20) and disbursements (3,660), less the advance payment of CHF 25,000.00 granted on March 2, 2023. This amount should be rounded to CHF 49,000.

9.2.5 Attorney MALEH

9.2.5.1 Attorney MALEH submitted an expense report on February 10, 2023 (CAR 5.200.1063 et seq.).

9.2.5.2 In detail, the following amounts are awarded:

Hearing

Attorney MALEH reported a total of 95.80 hours, corresponding to CHF 10,750, for participation in the hearing. Since the hearing lasted 101.5 hours, the amount of CHF 11,417.50 should be approved. This corresponds to 9.75 hours at CHF 230 for Mr. MALEH's attendance at the hearing of Nicolas COOK, and 91.75 hours at CHF 100 for Mr. TOUTOU-MPONDO's attendance during the remainder of the proceedings.

Travel

An amount of CHF 4,700, which corresponds to 9.5 hours at CHF 200 for Attorney MALEH's travel expenses, and 28 hours at CHF 100 for Attorney TOUTOU-MPONDO's travel expenses.

Services Rendered

An amount of CHF 4,060.30, corresponding to the following activities (excluding court appearances and travel):

- 96.52 hours are reported, equivalent to CHF 11,433, for activities during the proceedings. 0.1 hours at CHF 100 (entry dated June 21, 2021) should be deducted for reviewing the operative part of the first-instance judgment, as this activity is already covered by the flat fee allocated by the Criminal Court for reviewing the judgment. The bill, as amended, must also be reduced by four-fifths to account for the work already performed at the trial court level, which corresponds to 57 hours and 35 minutes billed outside of court for the period from March 2019 to March 2021, noting that Nicolas COOK is the complainant on two counts, relating to forced labor, that the issues at hand have, in substance, remained the same, and that Attorneys MALEH and TOUTOU-MPONDO have, for the most part, aligned themselves with Attorney JAKOB's positions regarding the newly addressed offenses of crimes against humanity. CHF 2,431.60 should therefore be awarded.
- 5.55 hours are billed, amounting to CHF 828, for correspondence. As these services appear to be overpriced, they must be reduced by half. Suffice it to say, by way of example, that the hour billed for drafting a twelve-line letter regarding the payment of compensation is excessive. Consequently, CHF 414 should be awarded.

Reading of the Judgment

A lump sum of CHF 3,550 (including VAT and disbursements).

Total Fees

The total amount of the fees is CHF 23,973.30, which corresponds to the fees of CHF 18,963.10 (11,417.50 + 4,700 + 2,845.60), the 7.7% VAT
on this amount (CHF 1,460.20), and the flat fee for reviewing the judgment (CHF 3,550).

Disbursements

Out-of-pocket expenses, which are fully allowed, amount to CHF 3,794.05.

9.2.5.3 The total amount of the compensation is CHF 27,767.35, which corresponds to the sum of the fees (23,973.30) and disbursements (3,794.05). This should be rounded to CHF 27,800.

9.2.6 Attorney WAKIM

9.2.6.1 Attorney WAKIM submitted an expense report on February 10, 2023 (CAR 5.200.1153 et seq.).

9.2.6.2 In detail, the following amounts are awarded:

Hearing

An amount of CHF 21,907.50, corresponding to 95.25 hours at CHF 230.00, with 6.25 hours to be deducted. Ms. WAKIM was indeed absent on the afternoon of January 17, 2023, to accompany Carol ALEXANDER, who had been excused from participating in the remainder of the proceedings following her hearing.

Travel

An amount of CHF 6,000, which corresponds to 30 hours of travel at CHF 200 per hour.

Work Performed

An amount of CHF 6,532, corresponding to the 29.4 hours of work reported (excluding the hearing and travel), from which 1 hour must be deducted for various letters sent to the Court—including, for example, the one dated November 23, 2022—which are clearly overestimated given the brevity of said letters.

Review of the Judgment

A lump-sum amount of CHF 3,550 (including VAT and disbursements) is awarded.

Total Fees

The total amount of fees is CHF 40,641.30, which consists of fees of CHF 34,439.50 (21,907.50 + 6,000 + 6,532), 7.7% VAT on that amount (CHF 2,651.80), and the lump sum awarded for reading the judgment (CHF 3,550).

Disbursements

The disbursements, which are fully allowed, amount to CHF 3,272.55.

9.2.6.3 The total amount of the compensation is CHF 43,913.85, which corresponds to the sum of the fees (40,641.30) and disbursements (3,272.55), less the advance payment of CHF 20,000.00 granted on March 2, 2023. This should be rounded to CHF 44,000.

9.2.7 Attorney WERNER

9.2.7.1 Attorney WERNER submitted an expense report and a supplement on February 10 and 13, 2023 (CAR 5.200.1174 et seq. and 1186 et seq.).

9.2.7.2 Specifically, the following amounts are awarded:

Hearing

An amount of CHF 46,690, corresponding to 203 hours at CHF 230 (101.5 hours each for Mr. WERNER and Mr. WAVRE).

Travel

An amount of CHF 10,960, corresponding to 54.8 hours of travel at CHF 200 (27.4 hours each for Mr. WERNER and Mr. WAVRE).

Work Performed

A total of CHF 16,928, corresponding to the reported 152.1 hours of work (excluding court appearances and travel), from which the following must be deducted:

- 2.85 hours out of 3.85 hours for the entries dated December 2, 5, 6, 7, and 15, 2022, insofar as they relate to the plaintiffs' budget, since they appear manifestly excessive.
- 2.1 hours for the entries on January 17 and 25, 2023, relating to various debriefings that are not justified.

The bill, as amended, totaling 147.1 hours, must furthermore be reduced by half—that is, 73.6 hours—to account for the work performed at the trial level, as the issues remain essentially the same, and because Attorneys WERNER and WAVRE have, for the most part, aligned themselves with Attorney JAKOB's positions regarding the newly addressed charges of crimes against humanity. The Court has also taken care to ensure consistency in the compensation awarded to the various counsel. It further notes that

coordination issues among the plaintiffs generally do not need to be borne by the Confederation. On the other hand, the costs associated with the French proceedings are justified.

Reading of the judgment

A lump-sum amount of CHF 3,550 (including VAT and disbursements) is awarded.

Total Fees

The total amount of fees is CHF 83,870.50, which corresponds to the fees of CHF 74,578 (46,690 + 10,960 + 16,928), plus 7.7% VAT on that amount (CHF 5,742.50), and the lump sum awarded for reading the judgment (CHF 3,550).

Disbursements

The disbursements, which are fully allowed, amount to CHF 7,600.40.

9.2.7.3 The total amount of the compensation is CHF 91,470.90, which corresponds to the sum of the fees (83,870.50) and disbursements (7,600.40), less the advance payment of CHF 25,000.00 granted on March 2, 2023. This amount should be rounded to CHF 91,500.

9.2.8 The appellant, Attorney Dimitri GIANOLI

9.2.8.1 Attorney KLEGER submitted an expense report on April 20, 2022 (CAR 1.101.529). This report details 18.9 hours of work, for which he claims an hourly rate of CHF 270, and CHF 50 in disbursements, for the following activities:

- two meetings with his client (0.75 hours);
- two emails to the client (0.5 hours);
- review of the judgment (0.67 hours);
- legal research (1.0 hours);
- drafting the appeal (16.0 hours);
- CHF 50.00 in unspecified expenses.

It should be noted that Attorney KLEGER did not bill for the additional work performed during the proceedings:

- September 20, 2022: decision not to participate in the appellate hearing and confirmation of the arguments set forth in the appeal filed on April 20, 2022;
- October 14, November 4, and November 24, 2022: requests for extensions of time;

- December 3, 2022: decision not to file a supplementary brief.

9.2.8.2 The hourly rate is set at CHF 200, since the appeal, which concerns the compensation of the court-appointed attorney, does not raise any complex legal issues and billing is part of a lawyer's regular practice.

9.2.8.3 Eleven point zero hours of work should be allocated for drafting a fifteen-page appeal, 10 minutes for drafting two emails, and 25 minutes for drafting five short letters. The time spent reviewing the judgment, meeting with the client, and conducting legal research is fully recognized. Thus, a total of 14 hours of work is recognized. Since Mr. GIANOLI prevailed on half of his appeal, only half of Mr. KLEGER's fees must be reimbursed. This corresponds to half of CHF 3,015.60 (14 × 200 × 1.077), namely CHF 1,507.80. With regard to disbursements, a lump-sum amount of CHF 20.00 instead of CHF 50.00 is awarded. This corresponds to the submission of an appeal exceeding 500 pages; it should be noted that Mr. KLEGER provided no details regarding this item and that it was not necessary to submit the approximately 300-page judgment to the Court—at least not the irrelevant portions.

9.2.8.4 The compensation for the appellant, Mr. GIANOLI (Art. 429(1)(a) CPP [by reference to Art. 436 of the CPP]) is therefore set at CHF 1,527.80 (1,507.80 [fees] + 20 [out-of-pocket expenses]), this amount to be rounded to CHF 1,550.

The Court of Appeals hereby rules:

I. Declaration that the judgment of the court of first instance has become final

The judgment of the Criminal Division of the Federal Criminal Court SK.2019.17 dated June 18, 2021, has become final as follows:

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 alleged in Count 1.3.1 of the indictment (Art. 109(1) and 108(2) of the Swiss Criminal Code (aCPM) *in conjunction with* Art. 3 common to the General Provisions and Art. 4(3)(c) of Part II of the Swiss Criminal Code (PA II)).

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(1) CPP).

2. The compensation to be paid to Attorney Hikmat Maleh is set at CHF 179,100 (including VAT), less the 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), 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 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 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).

II. New Judgment

1. Alieu KOSIAH

1.1 The proceedings against Alieu KOSIAH are dismissed with respect to the charges of:

- torture under Art. *264a*(1)(f) of the Swiss Criminal Code (CP) (section 1.3.4 of the indictment);
- enslavement under Art. *264a*(1)(c) of the Swiss Criminal Code (counts 1.3.7, 1.3.10, 1.3.12, 1.3.14, 1.3.16, 1.3.19, 1.3.20, 1.3.23, and 1.3.25 of the indictment);
- other inhumane acts under Art. *264a*(1)(j) of the Swiss Criminal Code (count 1.3.9 of the indictment);
- violation of the right to sexual self-determination under Art. *264a*(1)(g) of the Swiss Criminal Code (section 1.3.24 of the indictment).

1.2 Alieu KOSIAH is acquitted of the charges of:

- ordering the cruel, humiliating, and degrading treatment of several civilians under Art. 109, para. 1, and Art. 108, para. 2, aCPM *in conjunction with* Art. 18 aCPM, Art. 3, para. 1, section 1, subparagraphs a and c, common to the General Provisions, and Art. 4, section 2, subparagraphs a and e of PA II (section 1.3.7 of the indictment);
- inflicting cruel, humiliating, and degrading treatment on several civilians pursuant to Art. 109(1) and Art. 108(2) of the former Military Criminal Code (aCPM) *in conjunction with* Art. 3(1)(1)(a) and (c) common to the General Provisions (CG) and Art. 4, section 2, subparagraphs a and e of PA II (section 1.3.7 of the indictment).

1.3 Alieu KOSIAH is found guilty of violating the laws of war with respect to the following charges:

- the use of a child soldier pursuant to Articles 109(1) and 108(2) of the Military Criminal Code (aCPM) *in conjunction with* Article 3 common to the General Provisions (CG) and Article 4, item 3, subparagraph c of PA II (section 1.3.1 of the indictment);
- giving the order to kill seven civilians and giving the order to kill six civilians pursuant to Articles 109(1) and 108(2) of the Military Criminal Code (aCPM) *in conjunction* with Article 18 of the aCPM, Article 3(1)(1)(a) common to the General Provisions (CG), and Article 4, section 2, subparagraph a of PA II (sections 1.3.2 and 1.3.5 of the indictment);
- the murders of four civilians pursuant to Articles 109(1) and 108(2) of the former Swiss Military Penal Code (aCPM) *in conjunction* with Article 3(1)(1)(a) common to the General Provisions and Article 4, section 2, subparagraph a of PA II (sections 1.3.3, 1.3.15, 1.3.17, and 1.3.18 of the indictment);

– giving an order to treat seven civilians cruelly pursuant to Articles 109(1) and 108(2) of the Military Criminal Code (aCPM) *in conjunction* with Article 18 of the Military Criminal Code (aCPM), Article 3(1)(1)(a) common to the General Provisions (CG), and Article 4(2)(a) of PA II (count 1.3.4 of the indictment);

- aiding and abetting the attempted murder of a civilian pursuant to Art. 109(1) and Art. 108(2) aCPM *in conjunction with* Art. 19(1) and Art. 23 aCPM*,* Art. 3(1)(1)(a) common to the General Provisions, and Art. 4, section 2, subparagraph a of PA II (section 1.3.6 of the indictment);
- aiding and abetting the murder of a civilian pursuant to Articles 109(1) and 108(2) of the former Swiss Military Penal Code (aCPM) *in conjunction with* Article 23 of the aCPM, Article 3(1)(1)(a) common to the General Provisions, and Article 4(2)(a) of Part II of the Penal Code (PA II) (count 1.3.8 of the indictment);
- violation of the dignity of a deceased civilian pursuant to Art. 109(1) and Art. 108(2) of the former Swiss Penal Code (aCPM), *in conjunction with* Art. 3(1)(1)(c) common to the General Provisions and Art. 4(2)(e) of PA II (Section 1.3.9 of the indictment);
- giving an order, as a co-perpetrator, to loot, pursuant to Articles 109(1) and 108(2) of the Military Criminal Code (aCPM) *in conjunction with* Article 18 of the Military Criminal Code (aCPM), Article 3 common to the General Provisions (CG), and Article 4, item 2, subparagraph g of PA II (item 1.3.11 of the indictment);
- repeatedly ordering the cruel, humiliating, and degrading treatment of several civilians, in the form of forced transport, pursuant to Articles 109(1) and 108(2) of the former Military Criminal Code (aCPM) *in conjunction with* Article 18 of the former Military Criminal Code (aCPM), Article 3(1)(1)(a) and (c) common to the General Provisions, and Article 4, subparagraph 2, letters a and e of PA II (sections 1.3.10, 1.3.12, 1.3.14, 1.3.16, 1.3.19, 1.3.20, 1.3.23, and 1.3.25 of the indictment);
- repeated infliction of cruel, humiliating, and degrading treatment upon several civilians in the form of forced transport, pursuant to Art. 109(1) and Art. 108(2)(a) of the Military Criminal Code (aCPM) *in* conjunction 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 (sections 1.3.10, 1.3.12, 1.3.16, 1.3.23, and 1.3.25 of the indictment);
- repeated orders to loot pursuant to Art. 109(1) and Art. 108(2) aCPM *in conjunction with* Art. 18 aCPM, Art. 3 common to the General Provisions, and Art. 4, item 2, subparagraph g of PA II (items 1.3.13 and 1.3.22 of the indictment);
- orders to kill two unarmed soldiers pursuant to Art. 109(1) and Art. 108(2) of the former Swiss Military Penal Code (aCPM) *in conjunction with* Art. 18 of the aCPM, Art. 3(1)(1)(a) common to the General Provisions, and Art. 4(2)(a) of PA II (section 1.3.21 of the indictment);
- rape of a civilian pursuant to Articles 109(1) and 108(2) of the former Military Penal Code (aCPM) *in conjunction with* Article 3(1)(1)(c) common to the General Provisions and Article 4(2)(e) of Part II of the Act (PA II) (count 1.3.24 of the indictment).

1.4 Alieu KOSIAH is found guilty of crimes against humanity with respect to the following charges:

– incitement to the murder of seven civilians and incitement to the murder of six civilians, pursuant to Art. *264a*(1)(a) of the Swiss Penal Code (CP) *in conjunction with* Art. 24(1) of the Swiss Penal Code (CP) (sections 1.3.2 and 1.3.5 of the indictment);

– murder of four civilians under Art. *264a*, para. 1, subpar. a of the Swiss Criminal Code (SCC) (sections 1.3.3, 1.3.15, 1.3.17, and 1.3.18 of the indictment);

– aiding and abetting the attempted murder of a civilian under Art. *264a,* para. 1, subpar. a, *in conjunction with*
Art. 22, para. 1, and Art. 25 of the Swiss Criminal Code (CP) (count 1.3.6 of the indictment);

– aiding and abetting the murder of a civilian under Art. *264a*, para. 1, subpar. a, *in conjunction with* Art. 25 of the Swiss Penal Code (section 1.3.8 of the indictment).

1.5 Alieu KOSIAH is sentenced to 20 years' imprisonment, with credit for pretrial detention served from November 10, 2014, to May 30, 2023, totaling 3,123 days.

1.6 Alieu KOSIAH is to be deported from Swiss territory for a period of 10 years.

1.7 Alieu KOSIAH's expulsion will be reported in the Schengen Information System.

1.8 The authorities of the Canton of Bern are responsible for enforcing the sentence and the deportation.

2. Civil Claims

As compensation for emotional distress, Alieu KOSIAH is ordered to pay the following amounts (Art. 47 CO and Art. 49 CO):

– CHF 6,600 to Christopher GREENE;

– CHF 8,000 to Carol ALEXANDER;

– CHF 8,000 to Nicolas COOK;

– CHF 6,600 to Eddie COULTER;

– CHF 6,600 to Georges ROSADO;

– CHF 6,600 to Levi FARRELL;

– CHF 7,300 to James CAMDEN.

3. Expenses and Costs

3.1 The following amounts are awarded to cover expenses incurred as a result of their presence in Switzerland (Art. 434(1) of the Swiss Criminal Procedure Code, by analogy):

- CHF 1,197.75 to Christopher GREENE;

- CHF 1,225.80 to Nicolas COOK;

- CHF 1,225.80 to Eddie COULTER;

- CHF 1,225.80 to Georges ROSADO;

- CHF 1,225.80 to Levi FARRELL;
- CHF 1,225.80 to James CAMDEN.

3.2 The costs of the proceedings total CHF 1,349,739.25 (preliminary proceedings: CHF 60,000 [fees] and CHF 1,114,852 [disbursements]; trial proceedings: CHF 40,000 [fees] and CHF 134,887.25 [disbursements]).

3.3 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.

4. Compensation for the Defendant

Alieu KOSIAH's claims based on Art. 429 of the Swiss Criminal Procedure Code are dismissed.

5. Compensation for the court-appointed defense counsel

5.1 The Confederation shall pay Attorney Dimitri Gianoli compensation in the amount of CHF 787,800 (including VAT and disbursements), 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 (Art. 135(2) of the Swiss Criminal Procedure Code).

5.2 Alieu KOSIAH is required to reimburse the Confederation for the compensation awarded to his court-appointed defense counsel, up to the amount of CHF 100,000, as soon as his financial situation permits (Art. 135, para. 4, let. a, CPP).

5.3 Alieu KOSIAH is required to reimburse Attorney Dimitri Gianoli for the difference between his compensation as a court-appointed defense counsel and the fees he would have received as a private defense counsel as soon as his financial situation permits (Art. 135, para. 4, subpar. b, CPP).

III. Costs and Expenses of the Appeal Proceedings

1. Procedural Costs and Allocation

1.1 The following amounts are awarded to cover expenses incurred due to their presence in Switzerland (Art. 434(1) of the Code of Criminal Procedure, by analogy):

- CHF 4,533.70 to Christopher GREENE;
- CHF 4,494.30 to Carol ALEXANDER;
- CHF 5,590.50 to Nicolas COOK;
- CHF 5,494.30 to Eddie COULTER;

- CHF 5,402.20 to Georges ROSADO;
- CHF 5,425.30 to Levi FARRELL;
- CHF 4,492.10 to James CAMDEN.

1.2 The costs of the appeal proceedings amount to:

– court fees	CHF 30,000.00
– interpreter's fee	CHF 15,860.30
– other expenses	CHF 46,767.85
	CHF 92,628.15

1.3 The costs of the appeal proceedings, excluding interpretation costs, amounting to CHF 76,767.85, are to be borne by Alieu KOSIAH, in the amount of CHF 10,000 (Art. 428(1) CPP).

1.4 The costs of the appeal proceedings, excluding interpretation fees and other disbursements, amounting to CHF 30,000, shall be borne by the appellant, Attorney Dimitri Gianoli, at the rate of one-fortieth, or CHF 750 (Art. 428(1) CPP).

1.5 The balance of the costs of the appeal proceedings, amounting to CHF 81,878.15, shall be borne by the Confederation.

2. Compensation

2.1 No compensation within the meaning of Art. 429 of the Swiss Criminal Procedure Code is awarded to the defendant.

2.2 The Confederation awards Attorney Dimitri Gianoli compensation in the amount of CHF 111,600(including VAT and disbursements), less the advance payment of CHF 60,000 granted on March 2, 2023, in his capacity as Alieu KOSIAH's court-appointed defense counsel for the appeal proceedings (Art. 135(2) of the Swiss Criminal Procedure Code).

2.3 Alieu KOSIAH is required to reimburse the Confederation for the compensation awarded to his court-appointed defense counsel in the amount of CHF 20,000 as soon as his financial situation permits (Art. 135, para. 4, let. a of the Swiss Criminal Procedure Code).

2.4 Alieu KOSIAH is required to reimburse Attorney Dimitri Gianoli for the difference between his compensation as a court-appointed defense counsel and the fees he would have received as a private defense counsel as soon as his financial situation permits (Art. 135, para. 4, subpar. b, CPP).

2.5 The Confederation shall pay Attorney Raphaël Jakob an allowance of CHF 49,000 (including VAT and disbursements), less the advance payment of CHF 25,000 granted

on March 2, 2023, for providing pro bono legal counsel to Georges ROSADO in the appeal proceedings (Art. 138, para. 1, CPP).

2.6 The Confederation awards Attorney Hikmat Maleh compensation of CHF 27,800 (including VAT and disbursements) for providing pro bono legal counsel to Nicolas COOK during the appeal proceedings (Art. 138(1) CPP).

2.7 The Confederation awards Attorney Zeina Wakim compensation in the amount of CHF 44,000(including VAT and disbursements), less the advance payment of CHF 20,000 granted on March 2, 2023, for providing pro bono legal counsel to Carol ALEXANDER during the appeal proceedings (Art. 138(1) CPP).

2.8 The Confederation awards Attorney Alain Werner compensation in the amount of CHF 91,500 (including VAT and disbursements) for providing pro bono legal counsel to Christopher GREENE, Eddie COULTER, Levi FARRELL, and James CAMDEN during the appeal proceedings (Art. 138(1) CPP).

2.9 The Confederation shall award the appellant, Attorney Dimitri Gianoli, compensation in the amount of CHF 1,550 (including VAT and disbursements) for expenses incurred in the reasonable exercise of his procedural rights (Art. 429(1)(a) of the Swiss Criminal Procedure Code).

On behalf of the Appellate
Division of the Federal
Criminal Court

The Presiding Judge — The Clerk

Olivier Thormann — Rémy Allmendinger

Notification (judicial document)

- Office of the Attorney General of Switzerland, Federal Prosecutor Andreas Müller
- Attorney Dimitri Gianoli
- Attorney Philippe Currat
- Attorney Alain Werner
- Attorney Raphaël Jakob
- Attorney Hikmat Maleh
- Attorney Zeina Wakim
- Attorney Cyril Kleger (only sections II.5, III.1.4, and III.2.9 of the operative part and the relevant recitals)
- W. Prison (registered mail)

Notice of enforcement upon entry into force (registered mail)

- Office of the Attorney General of Switzerland, Enforcement of Judgments
- Cantonal Enforcement Authority

Notice to (registered mail)

- Federal Criminal Court, Criminal Division (*by hand* delivery)
- Cantonal Migration Authority (Art. 82(1) of the Ordinance on Admission, Residence, and Gainful Employment [OASA, RS 142.201])

Information on Legal Remedies

Appeal to the Federal Supreme Court

This judgment may be appealed in criminal matters to the Federal Supreme Court **within 30 days** of notification of the complete copy. The conditions for filing an appeal are set forth in Articles 78 through 81 and 90 et seq. of the Federal Supreme Court Act of June 17, 2005 (LTF). The appeal, together with a statement of reasons, must be addressed to the Federal Supreme Court, 1000 Lausanne 14.

Compliance with the deadline for filing a brief in Switzerland, abroad, or in the case of electronic transmission is governed by Art. 48, paras. 1 and 2, LTF.

Date of dispatch: February 29, 2024