Neutral Citation Number: [2018] EWHC 3506 (QB)

Case No: 13X05618

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/12/2018

Before :

THE HON. MR JUSTICE TURNER

- -

Between :

Kadie Kalma & Others	**Claimants**
- and -	
(1) African Minerals Limited	**Defendants**
(2) African Mineral (SL) Limited	
(3) Tonkolili Iron Ore (SL) Limited	

- -
- -

Richard Hermer QC, Chris Buttler and **Eleanor Mitchell**
(instructed by **Leigh Day Solicitors**) for the **Claimants**
Neil Moody QC, Andrew Bershadski and **Robert Cumming**
(instructed by **DWF LLP**) for the **Defendants**

Hearing dates: 29, 30, 31 January; 1, 2, 5-9, 12-16, 19-23, 26, 27, 28 February;
1, 2, 5-9, 12, 14 March 2018

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

THE HON. MR JUSTICE TURNER

TABLE OF CONTENTS

Mr Justice Turner :

INTRODUCTION

1. The deeply unhappy events with which this judgment is concerned unfolded in Tonkolili, a remote and inaccessible district in the north of Sierra Leone in West Africa. For centuries, generation upon generation of local villagers had lived and worked on the land. Most of them depended for their livelihoods upon small scale local trading or the subsistence farming of rice and other crops. Then, ten years ago, beneath the lands which they had farmed so modestly over countless generations was discovered the largest iron ore deposit in Africa.

2. In 2010, the first defendant, African Minerals Ltd ("AML"), secured a licence conferring upon it the mining rights to the area and forthwith embarked upon a massive infrastructure project to construct a mine and build a railway to transport the ore to the coast. For many of those living in the vicinity, the experience must have been akin to that of an intense, unheralded and almost instantaneous industrial revolution with all of the attendant stark contrasts of good and ill effects.

3. Thus it was that the impact of the arrival of AML upon the local population was both profound and immediate. On the one hand, the promise of relatively well paid and steady employment augured well. On the other, the inevitable disruption to traditional ways of life together with the tensions and resentments consequent upon, for example, disputes over wage levels and the distribution of compensation payments gave rise to serious conflict.

4. In November 2010, and again in April 2012, matters came to a head. Disputes between AML and members of the community prompted a significant overreaction from some members of the Sierra Leone Police ("SLP") whose response to disruptive protests and threats against the personnel, property and business of AML soon degenerated into violent chaos during the course of which many villagers were variously beaten, shot, gassed, robbed, sexually assaulted, squalidly incarcerated and, in one case, killed.

5. The claimants allege that they were among the victims of these abuses. They also contend that, although the SLP perpetrated the worst of these excesses, the defendants are nevertheless liable to compensate them by the application of a broad range of distinct common law remedies to the facts of this case. The defendants deny liability in respect of each and every legal ground relied upon.

6. For the sake of convenience, a cohort of six lead claimants has been selected in respect of whose claims it is hoped that the findings of this Court will facilitate the disposal of forty or so others. Those six comprise the following:

    - **Musa Walerie**, a villager from Kemedugu, who earned a living through farming and panning for gold. He claims to have been falsely arrested during the 2010 incident at the instigation of an employee of the defendant following which he was beaten by the police and by that same employee. He was detained temporarily at the mine camp after which he was held in extremely poor conditions before being released after about three months.

- **Alpha Dabo**, a villager from Ferengbeya, who worked as a motorbike taxi driver. He alleges that during the 2010 incident he was beaten into unconsciousness by police officers at his home and thereafter woke up in hospital with serious injuries.

- **Tamba Koroma**, a villager from Kegbema, who worked as a farmer. He alleges that he was falsely arrested at his home during the 2010 incident. He was dragged out of his house and taken to the mine. He was assaulted by police officers both during the course of the journey and at the mine itself. Thereafter, he was detained in very bad conditions at a police station for two months and then at a prison for five weeks following which he was released in a state of very poor health.

- **Alhaji Usman Bangura**, a villager from Bumbuna, who worked in the building trade. He witnessed the unrest over two days during the 2012 incident. On the second day, he was in Bumbuna in search of his partner and son when he was shot and wounded by police following which he was taken to hospital for treatment.

- **Kadie Kalma**, a villager from Bumbuna, who traded in electrical goods. She was looking for her son on the second day of the 2012 unrest when she was beaten and falsely arrested by the police. She was taken to the police station but was able to effect her release. On the following day, on her way to the doctor's, she heard gunshots and began to run. She was hit by a bullet to her side.

- **Andrew Conteh**, a villager from Bumbuna, who ran a small repair business from a kiosk. During the course of the 2012 incident he ran home from his kiosk when he heard gunfire. He returned later in the day to find that the kiosk had been looted. His possessions and those of his customers were gone. Neighbours told him that the police were responsible.

7. For reasons which call for no further particularisation, the third defendant has, over time, inherited the rights and obligations of the first and second defendants and is thus the only defendant to play an active part in this litigation. For ease of reference, therefore, where context allows, the defendants generically will henceforth be referred to simply as "the defendant" and references in the witness evidence and documents to "AML" should (unless the contrary appears) be taken to apply to the defendant.

8. In the interests of clarity of exposition, I propose firstly to identify the broad contours of the law relating to each of the causes of action relied upon by the claimants before making the necessary findings of fact on the evidence. The final task will be to apply the law, refined by way of more closely focussed analysis, to those findings in order to determine the outcome of these claims.

THE LAW

9. It is uncontroversial that the law of Sierra Leone applies to the issues both of liability and quantum. Gratifyingly, however, the parties are agreed that, in respect of liability, the law of Sierra Leone can be treated, for all practical purposes, as being identical to that of England and Wales. The position with regard to quantum is less straightforward and its consideration may conveniently be postponed until later in this judgment.

10. It is not disputed that, during the course of the two incidents with which this case is concerned, many villagers fell victim to various torts committed by members of the SLP. These included battery, trespass to goods, false arrest and false imprisonment. However, the SLP is not, and never has been, a party to this litigation. Although any claim against the SLP would probably have been relatively straightforward from a purely jurisprudential point of view, the practical challenges are likely to have been far more daunting. The defendant protests that these claims could and should have been brought against the SLP and not against the defendant. However, the hypothetical practical value (if any) of alternative claims against the SLP is immaterial to the strength of the legal case against the defendant and is, therefore, simply not an issue which merits further consideration.

THE BASES OF CLAIM

11. There are seven legal grounds, all founded in the common law, upon which the claimants seek to make out their claims:

    (i) Vicarious liability of the defendant for torts alleged to have been directly committed by their employees and officials ("**employee vicarious liability**");

    (ii) Vicarious liability of the defendant for torts committed by the SLP ("**non-employee vicarious liability**");

    (iii) Accessory liability of the defendant acting in furtherance of a common tortious design with the SLP ("**accessory liability**");

    (iv) Liability in respect of tortious acts carried out by the SLP in response to "some direction, or procuring or direct request or encouragement" on the part of the defendant ("**procurement liability**");

    (v) Liability for **malicious prosecution**;

    (vi) Negligence in, for example, failing to take adequate steps to prevent the SLP from committing torts against the claimants ("**negligence liability**");

    (vii) Breach of a non-delegable duty in respect of an extra hazardous activity carried out negligently by the SLP as an independent contractor of the defendant ("**breach of non-delegable duty**").

    I propose at this stage to outline the law in relation to each of these formulations but, where convenient, I will, as I have already indicated, postpone any analysis of some of the more controversial legal issues arising until the time comes to apply the legal principles to the facts as I have found them to be.

EMPLOYEE VICARIOUS LIABILITY

12. Few areas in the law of tort have developed as rapidly over recent years as that relating to the scope of vicarious liability. There are two distinct respects in which the law has moved on:

(i) The first relates to the sort of relationship which must be found to exist between an individual and a defendant before the defendant can be found to be vicariously liable in tort for the conduct of that individual;

(ii) The second concerns the scope of the conduct of such an individual in respect of which vicarious liability is to be imposed on the defendant.

These may conveniently be referred to as the "relationship" and "conduct" criteria respectively. Both must be satisfied before vicarious liability will attach.

The conduct criterion

13. In this case, it is alleged, for example, that one employee of the defendant directly and violently assaulted some of the claimants and that others encouraged members of the SLP to use excessive force. Their status as employees means that the "relationship" criterion calls for no further consideration. But what of the "conduct" criterion?

14. In Muhamud v Wm Morrison Supermarkets plc [2016] AC 677, the claimant, having stopped at the defendant's petrol station, went into the sales kiosk and asked one of the defendant's employees to print off some documents from a USB stick. The employee refused the request in an offensive manner and ordered him to leave. He then followed the claimant as he was walking back to his car and attacked him causing serious injury.

15. The defendant contended that the conduct of its employee fell outside the boundaries of that for which it could be held to be vicariously liable.

16. The proper approach to the application of the conduct criterion was summarised by Lord Toulon:

> "44 In the simplest terms, the court has to consider two matters. The first question is what functions or "field of activities" have been entrusted by the employer to the employee, or, in everyday language, what was the nature of his job. As has been emphasised in several cases, this question must be addressed broadly…
>
> 45 Secondly, the court must decide whether there was sufficient connection between the position in which he was employed and his wrongful conduct to make it right for the employer to be held liable under the principle of social justice…"

17. The Supreme Court found that, by the application of these tests, the defendant was indeed vicariously liable to compensate the claimant for the injuries, loss and damage which he had sustained.

18. In the present case, the employees against whom the relevant allegations have been made all had a duty, in promoting the interests of the defendant, as their employer, to try to bring the protests of the local villagers to an end and to discourage repetition. In my view, by the application of the principles in Muhamud, if any claimants can prove that they were the victims of torts perpetrated directly upon them by an employee or employees of the defendant (in the context of the pleaded allegations in this case) then

the means deployed, even if seriously criminal, remain sufficiently closely connected to their employment to give rise to vicarious liability on the part of the defendant.

19. In the circumstances, the defendant in the instant case, after some initial reticence, has ultimately conceded that it would be vicariously liable for any torts which can be proved to have been committed by its employees of the nature alleged. In the light of the decision in Muhamud, this concession, in my view, was not only reasonable but inevitable. No further consideration of the legal position is therefore necessary in this regard.

NON-EMPLOYEE VICARIOUS LIABILITY

20. Less straightforward than the identification of the scope of its vicarious liability for the torts of its employees is the contention that the defendant was also vicariously liable for the torts of the SLP. This requires an analysis of the "relationship" criterion identified above.

The relationship criterion

21. It is not, and could not be, contended that the defendant was the employer, under a contract of employment, of those police officers who had, for example, been involved in inflicting excessive and unlawful force on the villagers. However, it is no longer regarded to be a prerequisite of the attachment of vicarious liability that the tortfeasor should be an employee of the party against whom the claim is brought. In Cox v Ministry of Justice [2016] AC 660, a prisoner working for pay in the prison kitchen negligently injured the prison catering manager. The Supreme Court held that, although the careless prisoner was not employed by the defendant Ministry, his relationship with the defendant was such as to expose it to vicarious responsibility for his negligence.

22. In approaching this issue, Lord Reed, with whom all other members of the Court agreed, re-stated and elaborated upon the analysis of Lord Philips in Various Claimants v Catholic Welfare Society [2013] 2 AC 1. Resisting the temptation to cut, paste and adopt ungainly chunks of these respective judgments, I propose to distil from them the points most salient to the issues arising in the instant case. For ease of reference and the avoidance of burdensome repetition, I shall simply call those relationships which do not arise out of a contract of employment, by way of shorthand, "non-employment relationships".

23. The authorities now establish that the relevant test is whether or not the non-employment relationship is, upon analysis, one that is "akin to that between an employer and employee".

24. There are a number of features commonly to be found in the context of an employment relationship. If such features are also to be found in the non-employment relationship under consideration then that relationship may properly be categorised as being akin to an employment relationship for the purposes of establishing the "relationship" criterion of vicarious responsibility.

25. The law, as now refined by Cox (see paragraph 22) provides that the most important factors tending to establish a relationship akin to that between employer and employee in this context arise in the following circumstances:

(i) the tort will have been committed as a result of activity being undertaken by the tortfeasor on behalf of the defendant;

(ii) the tortfeasor's activity is likely to have been part of the business activity of the defendant; and

(iii) the defendant, by engaging the tortfeasor to carry on the activity, will have created the risk of the tort committed by the tortfeasor.

26. The extent to which the tortfeasor acts under the control of the defendant has now lost much of the significance which it had traditionally been afforded in earlier cases. However, the absence of control even over what the tortfeasor does, and not just how he does it, remains a factor liable to rule out the imposition of vicarious liability (see Cox paragraph 21).

27. The means of the defendant, and, in particular, the incidence or availability of insurance, are unlikely to be of independent significance in most cases but cannot be dismissed as a consideration which could never be relevant in any circumstances (see Cox paragraph 20).

28. A lack of precision in seeking to predict the outcome of the application of these principles in any given case is inevitable given the infinite range of circumstances in which the issue is liable to arise. The court must therefore make a judgment, assisted by previous judicial decisions in the same or analogous contexts (see Cox paragraph 28).

29. The general approach is just that: general. It is not confined in its application to a special category or categories of case (see Cox paragraph 29).

30. It must not, however, be so diffusely applied as to impose vicarious liability in circumstances in which a tortfeasor's activities are entirely attributable to the conduct of a recognisably independent business (see Cox paragraph 29). I pause to note that, in many cases, this is liable to be regarded as an important consideration not least because otherwise clearly defined and coherent contractual boundaries of responsibility would be prone to be inaptly eroded in any given circumstances.

31. The defendant need not be carrying out activities of a commercial or profit making nature so long as the activities assigned to the tortfeasor are calculated to be in the defendant's interests (see Cox paragraph 30).

32. I will set about the task of applying these principles to the facts of this case later in this judgment.

ACCESSORY LIABILITY

33. The claimants contend that, even if the defendant is not to be held to be vicariously liable for the torts of the SLP, it is, in the alternative, liable as an accessory to such torts. For example, it is alleged that the SLP's use of unlawful force on the protesters was part of a common plan between the defendant and the SLP the execution of which rendered the defendant liable for the entirety of the injuries and harm caused and thus,

importantly, such liability is not limited to the consequences of any individual torts committed by its employees.

34. The principle of accessory liability was recently reviewed and clarified by the Supreme Court in Fish & Fish v Sea Shepherd UK [2015] AC 1229 in which Lord Toulson observed at paragraph 21:

> "To establish accessory liability in tort it is not enough to show that D did acts which facilitated P's commission of the tort. D will be jointly liable with P if they combined to do or secure the doing of acts which constituted a tort. This requires proof of two elements. D must have acted in a way which furthered the commission of the tort by P; and D must have done so in pursuance of a common design to do or secure the doing of the acts which constituted the tort."

35. In common with the formulation of the principles to be applied to determine the scope of vicarious liability in any given case, the ingredients of accessory liability must, of necessity, be and remain broadly stated. As Lord Sumption pointed out at paragraph 37:

> "The legal elements of liability as a joint tortfeasor must necessarily be formulated in general terms because it is based on concepts whose exact ambit is sensitive to the facts."

36. In Fish & Fish, there was no dispute that the defendant shared a common design with the primary tortfeasor. Their joint objective was to disrupt the claimant's controversial but lawful fishing of blue fin tuna in pursuance of which the primary tortfeasor mounted an attack on the claimant's vessel thereby causing loss and damage. The issue in contention was thus limited to the extent, if any, to which the defendant had actually furthered the commission of the tort by, for example, raising modest funds to support the primary tortfeasor's unlawful activities.[1]

37. Notwithstanding the fact that the question did not arise in the context of a live issue before them, the Supreme Court Justices did, however, make some observations on the scope and content of the "common design" requirement. I will identify the principles to be applied in so far as they are material to the issues arising in this case They can be summarised thus:

    (i) Care must be taken not to treat the words "common design" as if they had been enshrined in statute. For example, as Mustill LJ observed in Unilever v Gillette [1989] RPC 583 pp 608-609, "common design" is a convenient label but

[1] I note in passing, however, that, despite the fact that their Lordships were entirely at one as to the legal test to be applied to the circumstances of the case on the question of what level of contribution to the furtherance of the tort was required to satisfy the first limb of Lord Toulson's test, they were divided as to the result. There could be no better general illustration of the potential scope for judicial disagreement concerning the consequences of applying necessarily open textured principles to the same facts. The issue upon which there was dissent was, as to whether the relevant acts of facilitation by the defendant were more than "de minimis".

expressions such as 'concerted action' or 'agreed on common action' serve just as well.

(ii) The requirement of a "common design" is not satisfied by a mere similarity of design on the part of independent actors who cause independent damage. There must be concerted action to a common end.

(iii) The mere facilitation of a tort will not give rise to accessory liability even when combined with knowledge of the primary actor's intention. The element of "common design" acts as a control mechanism limiting the ambit of a person's obligation to safeguard the rights of others where this would constrict his freedom to engage in activities which are otherwise lawful. Thus, for example, the supply of items liable in the wrong hands to be put to tortious use does not, without more, render the supplier liable as an accessory to any torts committed in the course of such use.

(iv) It is, however, sufficient that the implementation of the "common design" to commit a tort is conditional upon particular contingencies arising. The defendant and the primary tortfeasor may intend that a tort will only be committed if certain circumstances arise. If such circumstances do arise and the tort is committed then the element of common design has been made out.

(v) It is not enough for a claimant to show merely that the activity, in which the defendant assisted and which was the subject of the common design, happened to have been carried out tortiously if it could also perfectly well have been carried out without committing any tort. However, the claimant need not go so far as to show that the defendant knew that a specific act harming a specific victim was intended.

(vi) Although a common design will normally be expressly communicated between the defendant and the primary tortfeasor, it can, in appropriate circumstances, be inferred.

38. The central issue in this case, therefore, is whether or not the evidence establishes that the defendant was at the material times assisting the police in their tortious conduct to a more than minimal degree in pursuance of a common design. Furthermore, although the arguments raised in this case did not analyse the position in detail, I am also satisfied that, where the parties to an alleged common design include corporate bodies, the requisite design must be common to individuals whose acts and knowledge are legally attributable to such bodies by the application of the approach of Lord Hoffmann in the Privy Council decision of Meridian Global Funds Management Asia Limited v Securities Commission [1995] 2 AC 500. Moreover, in The "Dolphina" [2012] 1 Lloyd's Rep 304, the High Court of Singapore, following a careful analysis, applied the Meridian attribution approach to determine whether corporate bodies shared a common design in the context of the tort of conspiracy. Coherence, logic and consistency all strongly point towards the application of the same test to the common design ingredient of accessory liability. Indeed, the close relationship between conspiracy, procurement and common design is evident from the approach of Hobhouse LJ in Credit Lyonnais v EGGD 1 Lloyd's Rep 19 at 46 in which all three facets of accessory liability are considered together:

> "Mere assistance, even knowing assistance, does not suffice to make the 'secondary' party jointly liable as a joint tortfeasor with the primary party. What he does must go further. He must have conspired with the primary party or procured or induced his commission of the tort… or he must have joined in the common design pursuant to which the tort was committed."

Thus I find the relevant test to be: "Whose act (or knowledge, or state of mind) was for this purpose intended to count as the act etc. of the company?" In the context of this case, I conclude that the requisite intent on the part of the defendant must, at least, be proved to have been that of a member (or members) of its senior management who shared a common tortious intention with the SLP. I do not, of course, discount the possibility that the acts of subordinates may, in any given case, evidence the intentions of those who are more senior even where they would not, when taken in isolation, give rise to liability.

PROCUREMENT LIABILITY

39. In Fish & Fish, at paragraph 19, Lord Sumption identified, in passing, a number of distinct respects in which joint liability might arise in tort other than by way of the facilitation of a common design. One such category concerned cases in which a defendant might incur liability by procuring the commission of a tort by, for example, "inducement, incitement or persuasion" of the primary tortfeasor.

40. This manifestation of joint liability is referred to in concise terms in Clerk & Lindsell on Torts 22nd Ed. (2018) paragraph 4-04 p. 286:

> "Where one person instigates another to commit a tort they are joint tortfeasors..."

41. In their pleaded case, the claimants appear to have treated the facilitation of a common design and procurement as different aspects of the same basis of liability and it is fair to say that the factors material to each may well be very similar in the circumstances of any given case. Nevertheless, I take the view that it is preferable, in order to avoid confusion, to follow the approach of Lord Sumption and treat the two alleged bases of liability as being jurisprudentially distinct. As Buckley LJ observed in Belegging-en Exploitatiemaatschappij Lavender B.V. v Witten Industrial Diamonds Limited [1979] FSR 59 at page 66:

> "Facilitating the doing of an act is obviously different from procuring the doing of the act."

There is, however, an overlap. As Lord Sumption noted in Fish & Fish at paragraph 41:

> "Inducing or procuring a tort necessarily involves common intent if the tort is then committed."

42. In Davidson v Chief Constable of North Wales [1994] 2 All ER 597 a store detective mistakenly concluded that the plaintiff had stolen a music cassette. She reported the matter to the police. The plaintiff was arrested but subsequently released when the truth came to light. The plaintiff then sued the store detective's employers for false

imprisonment. Lord Bingham MR held that the proper test of liability involved determining whether what the store detective had done "went beyond laying information before Police Officers for them to take such action as they thought fit and amounted to some direction, or procuring, or direct request, or direct encouragement that they should act by way of arresting these defendants."

43. The background circumstances of Davidson are very different from those which are relied upon by the claimants in the instant case. The store detective had made an innocent mistake and the police were simply acting upon information received. The claimant lost, not because the store detective had been acting in good faith, but because the police had exercised an independent judgment in making their arrest. Had the claimant been able to establish that the arrest had been procured directly by the store detective without lawful justification then her bona fides would not have saved her employers from being found liable.

44. Closer to the alleged facts in the instant case are the circumstances of an authority of greater antiquity. In Aitken v Bedwell [1827] Moody and Malkin 68, the defendant was the master of an English merchant vessel. Whilst the ship was lying in port in Odessa, the plaintiff and several others of the crew were drinking on board late at night. When the defendant ordered the lights to be put out the plaintiff refused to comply and struck the defendant. The defendant immediately called upon the Russian commandant on shore to deploy a complement of Russian soldiers to board the vessel and take the plaintiff and two others of the crew into their custody. The men were taken on shore and thrown into a dungeon, where they were kept for several days without food. In the meantime, the defendant lodged a formal complaint against the plaintiff and his shipmates with the Russian commandant in consequence of which they were each taken out of prison by Russian soldiers, thrown on a barrel and flogged enthusiastically while the defendant was standing by and ordering the punishment.

45. The Chief Justice summing-up the case to the jury put the issue in this way:

> "The plaintiff contends that what was done on shore was the act of the captain, the defendant says it was the act of the Russian authorities only. The question for you is, whether the punishment inflicted on shore was done by the constituted authorities, on the mere complaint of the defendant, or whether the defendant was the actor and immediate promoter of it? If you think the defendant merely preferred his complaint, and left the constituted authorities to act as they thought fit, the defendant is entitled to your verdict; if, on the other hand, you think he did more, and was active in promoting and causing the punishment to be inflicted, then he is answerable in this form of action."

46. This formulation was cited with approval in Davidson.

47. Once again, care must be taken not to apply dicta from the decided cases as if they have been enshrined in statute. However, in the circumstances of this case, I am satisfied that the Davidson formulation is apt and that if the claimants can establish, in any given circumstances, that the torts, including battery and false arrest, perpetrated by the SLP were pursuant to "some direction, or procuring or direct request, or direct

encouragement" from the defendant then the defendant would be liable as a joint tortfeasor for the loss and damage sustained as a result.

MALICIOUS PROSECUTION

48. The ingredients of the tort of malicious prosecution are uncontroversially and conveniently set out in Clerk and Lindsell on Torts 22nd Ed. (2018) at paragraph 16-12:

> "In an action for malicious prosecution the claimant must show first that he was prosecuted by the defendant, that is to say, that the law was set in motion against him by the defendant on a criminal charge..; secondly, that the prosecution was determined in his favour; thirdly, that it was without reasonable and probable cause; fourthly, that it was malicious. The onus of proving every one of these is on the claimant. Evidence of malice of whatever degree cannot be invoked to dispense with or diminish the need to establish separately each of the first three elements of the tort."

49. Following the incident in 2010, members of the local population were rounded up and later prosecuted for various criminal offences alleged to have been committed during the disturbances. On the face of it, the prosecution was brought by the state and not by the defendant. However, circumstances may arise in which a defendant has acted in such a way as directly to initiate proceedings thereby fulfilling the requirement that he or she was, in fact, the prosecutor.

50. In Martin v Watson [1996] AC 74, the defendant and the plaintiff were neighbours who were on bad terms. The defendant maliciously and falsely complained to the police that the plaintiff had exposed himself to her. The case against the plaintiff collapsed and he sued the defendant for malicious prosecution. The House of Lords found for the plaintiff holding that where a complainant had falsely and maliciously given a police officer information indicating that a person was guilty of an offence and the facts relating to the alleged offence were solely within the complainant's knowledge, so that the officer could not have exercised any independent discretion, the complainant, although not technically the prosecutor, could properly be said to have been the person responsible for the prosecution having been brought.

51. The defendant denies that its role in the prosecutions in this case was such as to satisfy the threshold level of instrumentality as identified in Martin and, indeed, contends that the claimants have failed to satisfy any of the other ingredients of the tort. Since there is some considerable dispute over the circumstances of these prosecutions, I will defer any further discussion of the law until after I have made the relevant factual findings.

NEGLIGENCE

52. In considering the various circumstances in which a defendant may be found liable for the tortious conduct of a third party, no complaint could be made that the common law toolbox is understocked. Thus it is that circumstances may arise in which a defendant may be found liable in negligence for the deliberate, and even criminal, acts of a third party in the absence of a common design or any element of incitement, encouragement or the like.

53. The defendant points out that it is only in particular and limited circumstances that a duty of care arises with respect to the deliberate acts of others and contends that none of those circumstances arises in the present case.

54. The claimants seek to counter this argument on the grounds that:

    (i) the defendant did not merely omit to prevent the SLP from committing torts but carried out positive acts the character of which take this case out of the scope of those authorities concerned with a mere failure to act;

    (ii) in any event, the circumstances of this case fall within one of the established exceptions to the general rule; or

    (iii) this is a novel case which justifies the imposition of a duty of care by the application of the well-known principles identified in Caparo Industries Plc v Dickman [1990] 2 AC 605.

55. Furthermore, the defendant asserts that, even if it owed a duty of care to the claimants, it did not act in breach of such duty and, in any event, no such breach was causative of loss.

56. I will postpone further and more detailed consideration of the strength of the parties' various contentions on the issue of liability in negligence until after I have made the relevant factual findings.

BREACH OF A NON-DELEGABLE DUTY

57. Finally, the claimants seek to amend their pleadings to allege that if the SLP were operating, not in a relationship akin to employment but as independent contractors to the defendant, then they were engaged in an extra-hazardous activity the negligent performance of which exposed the defendant to liability.

58. As a general rule, liability does not attach to a defendant in respect of the tortious conduct of his independent contractors. There are, however, a number of exceptions to this rule, one of which concerns extra-hazardous activities. In Honeywill & Stein Ltd v Larkin Bros (London's Commercial Photographers) Ltd [1934] 1 KB 191 a fire broke out in a cinema when a photographer ignited magnesium to create a flashlight. The photographer was acting as an independent contractor to the defendant who was found to be liable for the damage caused on the basis that the taking of the photograph was an inherently dangerous operation.

59. Honeywill remains binding on this court but it has, over the years, been subjected to stringent criticism from judges and academic commentators alike. In Biffa Waste Services Ltd v Maschinenfabrik Ernst Hese GmbH [2009] QB 725, the Court of Appeal was particularly unenthusiastic about the decision. In that case, the independent contractor caused a fire by the careless use of welding equipment on a construction site. The Court firmly rejected the submission that the party who had sub-contracted the work was liable on the basis that the operation was inherently dangerous. Indeed, the whole concept of Honeywill liability was subjected to rigorous criticism. Having observed that the authorities relied upon in Honeywill fell very far short of mandating the proposition of law which the Court in that case had laid down, the Court held:

"73 Criticism of the decision in the Honeywill case has focused on the uncertain nature of the principle stated by the Court of Appeal. Much in life is "inherently dangerous", even crossing the road, unless precautions are taken. That is particularly true of work on a construction site. What principled basis is there, therefore, for distinguishing between operations that are not inherently dangerous and those that are? We would respectfully echo the wise words of Lord Macmillan in Read v J Lyons & Co Ltd [1947] AC 156. Commenting on the suggested distinction between activities dangerous in themselves and those that are not, he said, at p 172:

"In truth it is a matter of degree. Every activity in which man engages is fraught with some possible element of danger to others. Experience shows that even from acts apparently innocuous injury to others may result. The more dangerous the act the greater is the care that must be taken in performing it. This relates itself to the principle in the modern law of torts that liability exists only for consequences which a reasonable man would have foreseen. One who engages in obviously dangerous operations must be taken to know that if he does not take special precautions injury to others may very well result. In my opinion it would be impracticable to frame a legal classification of things as things dangerous and things not dangerous, attaching absolute liability in the case of the former but not in the case of the latter. In a progressive world things which at one time were reckoned highly dangerous come to be regarded as reasonably safe. The first experimental flights of aviators were certainly dangerous but we are now assured that travel by air is little if at all more dangerous than a railway journey."

74 It is noteworthy that the activity considered by the House of Lords in Read v J Lyons & Co Ltd was the manufacture of explosives: one of the instances given by Sachs LJ in Salsbury v Woodland [1970] 1 QB 324 (in which the felling of a tree near the highway was held not to attract liability on the part of the employer of an independent contractor) of ultra-hazardous activity was precisely that.

75 As we have seen, Ramsey J himself was troubled by the distinction he was required to make. Professor Atiyah, in his seminal work Vicarious Liability in the Law of Torts (1967), p 371, said of the decisions imposing vicarious liability on a person who employs an independent contractor to do work that is inherently dangerous that they "have produced some quite preposterous distinctions arising out of the difficulty of saying what is an inherently dangerous operation". We respectfully agree. Like Professor Atiyah, we find it difficult to reconcile the principle in the Honeywill case [1934] 1 KB 191 with the decision of the House of Lords in Read v J Lyons & Co Ltd

> [1947] AC 156 rejecting the contention that special rules of absolute liability apply to extra-hazardous acts. In addition, it is in our judgment irrational to exclude from consideration, as Slesser LJ did, precautionary measures. It is ultra-hazardous to drive on a public road without keeping a lookout; it is not an ultra-hazardous activity if a sensible lookout is maintained. As Widgery LJ said in Salsbury v Woodland [1970] 1 QB 324, 337 of the principle applied in that case by the trial judge of imposing liability on the employer of an independent contractor where the act he ordered to be done contained a risk of injury to others:
>
> "Taken literally, it would mean that the fare who hired a taxicab to drive him down the Strand would be responsible for negligence of the driver en route because the negligence would be negligence in the very thing which the contractor had been employed to do."
>
> 76 To put it differently, the precaution of keeping a lookout is an intrinsic part of the activity of driving. It would be even more irrational to take into account factors increasing the hazard (such as the proximity of combustible material to a place where arc welding is carried out) without taking into account the known measures that can and should be taken to reduce or remove that hazard.
>
> 77 In Stevens v Brodribb Sawmilling Co Pty Ltd 160 CLR 16, the High Court of Australia held that the doctrine has no place in Australian law. In Bottomley v Todmorden Cricket Club [2004] PIQR P275, para 50 Brooke LJ, with whom Waller and Clarke LJJ agreed, said that the Honeywill case was binding on the Court of Appeal,
>
> "although it may well be that the House of Lords today would prefer to avoid subtle distinctions between what is and is not 'extra-hazardous' and would follow Mason J [in Stevens v Brodribb Sawmilling Co Pty Ltd]."
>
> 78 As Mr Allen accepts, this court is not free to make as robust a decision as that of the High Court of Australia, but in our judgment the doctrine enunciated in the Honeywill case [1934] 1 KB 191 is so unsatisfactory that its application should be kept as narrow as possible. It should be applied only to activities that are exceptionally dangerous whatever precautions are taken."

60. It is this heavily attenuated test which now falls to be applied to the facts of this case. However, before embarking on the task of finding such facts I should make some preliminary observations.

KEEPING THINGS IN PROPORTION

61. The sheer volume of evidential material in this case presents a considerable challenge to achieving a proportionate and coherent analysis. It is against this background that I repeat the observations which I made in Laporte v Commissioner of Police of the Metropolis [2014] EWHC 3574:

> "2. At the outset, I would wish to say something about the way in which I propose to attempt to meet the challenge, which arises in acute form in this case, of producing a satisfactory judgment which is also one of manageable length. I have considered a very substantial quantity of material. The parties in this case have produced opening and closing written submissions which run to a combined length of about 280 pages all of which I have read carefully. These documents contain long and detailed catalogues of inconsistencies and implausibilities which each side contends have the effect of weakening the evidence of the witnesses called by the other. As one might expect, the documents also contain a substantial number of examples of material alleged to enhance the credibility of their own witnesses. Whilst paying tribute to the level of industry to which these well intentioned and articulate submissions attest I resist the temptation to try to reconcile and resolve all of the subordinate issues which have thereby been generated. As the Court of Appeal held in Customs and Excise Commissioners v A and Another [2003] Fam 55:
>
> "82 A judge's task is not easy. One does often have to spend time absorbing arguments advanced by the parties which in the event turn out not to be central to the decision-making process…
>
> 83 However, judges should bear in mind that the primary function of a first instance judgment is to find facts and identify the crucial legal points and to advance reasons for deciding them in a particular way. The longer a judgment is and the more issues with which it deals the greater the likelihood that: (i) the losing party, the Court of Appeal and any future readers of the judgment will not be able to identify the crucial matters which swayed the judge; (ii) the judgment will contain something with which the unsuccessful party can legitimately take issue and attempt to launch an appeal; (iii) citation of the judgment in future cases will lengthen the hearing of those future cases because time will be taken sorting out the precise status of the judicial observation in question; (iv) reading the judgment will occupy a considerable amount of the time of legal advisers to other parties in future cases who again will have to sort out the status of the judicial observation in question. All this adds to the cost of obtaining legal advice.
>
> 84 Our system of full judgments has many advantages but one must also be conscious of the disadvantages."

> 3. I have tried to balance those advantages and disadvantages in what follows by giving reasoned decisions on those issues of fact which I consider to be central but without dealing with every peripheral issue the resolution of which would not in any event impact on my essential findings or upon the outcome of the claims."

62. The fact-finding exercise in the instant case is significantly more challenging than it was in Laporte. This is illustrated by the length of the parties' written submissions which comprised: 169 pages of skeleton arguments, 401 pages of written closing submissions (garnished, in the claimants' case, by no fewer than 1,521 footnotes) and rounded off by a 14 page "Scott Schedule" of alleged but disputed factual errors in the defendant's closing submissions.

63. I make no complaint about the volume of written material which has been provided for my assistance. I have read all of it carefully. Both sides have been extremely well served by the industry and thoroughness of their respective legal teams. Inevitably, however, and for the sake of proportionality, I have had to leave a very considerable number of these points on the cutting room floor. This does not mean that I have failed to consider them or that I have discarded them as being entirely redundant but merely that the inclusion of their analysis or resolution in an already lengthy judgment would not have a material impact on the determination of the central issues.

64. Furthermore, the process of fact-finding is rendered even more complex by factors particular to this case which go beyond the mere quantity of material which falls to be assessed. I pause to list some of these features before turning to the task of making the relevant findings of fact.

FACT-FINDING DIFFICULTIES

65. Where the evidence in this case has been contradictory, the task of determining where the truth lies has been made more problematic by a number of factors:

(i) The central events with which this Court is concerned took place between six and eight years ago. My attention has been drawn to passages in the judgments in a number of recent cases concerning the increasing fallibility of human memory over time. They include the elegantly framed and common sense observations of Leggatt J (as he then was) in Gestmin SGPS SA v Credit Suisse (UK) Ltd [2013] EWCH 3560 at paragraphs 15 and 18 to 20 inclusive upon which I could not hope to improve;

(ii) Many of the witnesses were first asked to make witness statements relatively recently and, therefore, some years after the events to which they relate;

(iii) Contemporary documentation is relatively sparse and, with respect to many aspects of the case, ambiguous or incomplete;

(iv) The incidents of rioting and violence were necessarily fast moving, frightening and confusing. Observational accuracy is unlikely to be enhanced by a witness's simultaneous experience of tear gas, rifle fire and adrenalin;

(v) Many witnesses gave evidence in the Krio language and required interpreters. In consequence, there was scope for misunderstanding and a risk that some nuances of expression would be lost in translation;[2]

(vi) The majority of witnesses lived, and continue to live, in communities in which the ability to measure time and distance is redundant. They were thus unfamiliar with the concept of telling time by the clock or of measuring distance in units of length. Thus the task of communicating where and when who was doing what was made more difficult;

(vii) Many witnesses remained in frequent contact with other witnesses for years after the traumatic events of 2010 and 2012. In tightly knit villages and corporate environments alike, it is inevitable that there arises a risk of cross-contamination of recollection in the course of which individual memories become warped by the recollections of others and gossip and rumour harden into misperceived fact;

(viii) With some exceptions, the witnesses could not generally be categorised as being neutral observers. Even before the commencement of hostilities, there were strong feelings dividing the protesters and the defendant. When these feelings gestated into bitter recrimination and conflict, the intensity of mutual resentment is very likely to have escalated;

(ix) The passage of time is not likely to have abated the risk of conscious or unconscious bias of recollection. Factors such as the chance of obtaining compensation, community loyalties and corporate and personal sensitivities to allegations of serious misconduct are all likely to have played a part;

(x) Finally, for all its merits, the adversarial system encourages a polarisation of the formulation of the advocates' submissions on the facts (for wholly understandable tactical reasons - and with exceptions) which thus leaves largely unexplored and unanalysed the possible permutations of findings which, whilst open to the court, are inconsistent with the best cases of their respective clients.

Where appropriate, I have had proper regard, and made due allowance, for each of these challenges in engaging in the fact-finding process.

MISCELLANEOUS POINTS

66. It is inevitable in a case of such factual complexity that, whilst not ignoring the finer detail, the parties will seek in addition to make overarching points which, if resolved in their favour, will operate to their broader evidential advantage. I will deal with these points in turn.

Evidence gathering

67. The defendant has encouraged me to make findings to the effect that the claimant's solicitors could and should have exercised greater care and control over the processes used in the collating of witness evidence and the drafting of witness statements.

[2] I would like to take this opportunity to express my gratitude to the two interpreters who did so much to assist the Court during the course of the trial. I pay tribute to their stamina, industry and good humour throughout.

Predictably, such suggestions, aired during the course of the trial, generated a perceptible level of frisson between the parties' respective legal teams. However, I find that these allegations, although not trespassing beyond the boundaries of permissible argument, have not been made out. I am entirely satisfied, in the face of the very significant logistical challenges arising, that the claimants' solicitors carried out their duties with all proper diligence and professionalism.

Disclosure

68. The claimants have invited me to draw adverse conclusions from gaps in the defendant's disclosure. I readily accept that the procedural history of the defendant's disclosure in this case has been troublesome in some respects but I must set this against the enormity of the task which it faced and the fact that there were always likely to be some documents which had either been lost or were to lie undiscovered in the 170 boxes of hard copy papers which I have been informed are held by the liquidators of AML.

69. It may well be, in particular, that documents material to internal investigations into the events of 2010 and 2012 were generated which have not been disclosed. I am not, however, persuaded that it would be proper to conclude that specific adverse inferences ought to be drawn on the assumption that such documents were deliberately destroyed, discarded or cynically overlooked in order to perpetrate a cover-up for the purposes of this litigation or otherwise.

70. A significant catalyst of the suspicions of the claimants that the defendant has deliberately destroyed documents was the evidence of Graham Foyle-Twining who had been the defendant's Global Head of HR and Sustainable Development between August 2012 and November 2013. He asserted in his witness statement that shortly after starting work he had been handed an "incident file" relating to the events of April 2012. The clear implication of his evidence was that the file had not been disclosed. During cross-examination, however, it transpired that much of the documentary material he remembered as having been in the file was, in fact, in the trial bundles.

71. Furthermore, in his witness statement, Mr Foyle-Twining had asserted:

> "From what I understand from my own experience, AML routinely destroyed incriminating documents. For example, I had heard of the 2010 incident during my investigations into the 2012 incident and when I sought to look for documents concerning it, I could not find any. I could think of no other explanation than that they had been destroyed. Further, there was a culture of not discussing sensitive issues over email."

72. During cross-examination, however, he contradicted this evidence in the following exchange:

> *"I have never suggested the company was going to destroy documents. I have no idea what could have happened.*
>
> *Q. So it is not your case that the company would destroy documents, is that right?*

A. I do not believe that I have actually said that the company destroyed documents."

73. Indeed, I found Mr Foyle-Twining in general (and, in part, from his demeanour and presentation in the witness box) to be a brittle, defensive and unsatisfactory witness. In particular, it was clear that his relationship with the defendant had rapidly become sour and that his dissatisfaction was eventually such as to lead to his resignation. I am satisfied that his recollection was coloured by a resentment which had not significantly dimmed with the passage of time. I do not find that he was deliberately attempting to mislead the court but he had seriously lost his objectivity and I am unable to rely upon his evidence save where it was corroborated by others.

74. Finally, the defendant makes the point that there is a substantial quantity of disclosed material which is not, on the face of it, helpful to its case and, indeed, the claimants have made significant and justifiable use of those extracts which are open to being interpreted to their advantage. This undermines the theory that there has been a deliberate process of filtering out of documentary evidence unhelpful to the defendant. For the sake of completeness, I would add that any suggestion that the defendant has, for tactical reasons, deliberately and subtly inoculated their disclosure with a modest number of mildly incriminating documents is inconsistent with the generally rough-hewn performance of their disclosure obligations under the CPR which I have found to be clumsy but guileless.

75. It follows that I am not satisfied on the evidence that there has been either a tactical spoliation in anticipation of litigation or a deliberate failure of disclosure on the part of the defendant.

Defendant's failure to call witnesses

76. The claimants point out that a number of witnesses could have been called to give evidence on behalf of the defendant but that, without explanation, they were not called. They included: Dominic Boyle (Head of Support Coordination), Jacob Sallu (Chief Security Officer), Abdul Tejan-Se (Legal Counsel), Graham Murphy (Head of Security), Mick Ford (General Manager, Health & Safety) and Joe Poraj (Security Manager).

77. The consequences of the failure of a party to call witnesses who might be expected to have material evidence to give on an issue in an action were considered in Wisniewski v Central Manchester Health Authority [1998] PIQR P324. In such circumstances, a court may be entitled to draw adverse inferences. If a court is willing to draw such inferences, they may go to strengthen the evidence adduced by the other party on that issue or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness. There must, however, be some evidence, adduced by the opposite party on the matter in question which raises a case to answer, before the court is entitled to draw the desired inference.

78. Much will depend on the circumstances of the individual case. At one end of the scale there will be cases in which an absent witness is of key importance and there is every reason to expect that he or she would have been in a position to give highly salient evidence. Wisniewski provides an example of such a case. A doctor against whom allegations of serious clinical negligence were made and upon which the outcome of

the claim was substantially dependant was not called to give evidence. At the other end of the scale, the evidence of an absent witness may be of only peripheral relevance to the issues in the dispute. The position in the present case lies somewhere between these extremes but closer, in my judgment, to the latter. The potential witnesses alluded to by the claimants would certainly have been able to provide some material evidence but this must be set against the fact that the individuals who, on the claimants' account: (i) had most to answer for; and (ii) occupied the most senior and relevant positions in the defendant's organisation have, in fact, given evidence. In my view, the proper approach would not be for the Court to default to an assumption that any or all of these named absent witnesses, if they had been called, would, in some unhelpfully speculative fashion, have done more harm than good to the defendant's case. I would say, however, that the weight to be attached to the evidence of their respective involvement in the matters under consideration in so far as it might be deployed in favour of the defendant must be attenuated to reflect the fact that they have not been called and no explanation has been proffered for their absence. Finally, I would observe that even a more robust inference would not, within the parameters of reasonable assessment, have led me to a different conclusion on any of the central issues in the case.

The defendant's failure to give a coherent account of what its key operatives were doing during the incidents

79. It is undoubtedly the case that the evidential picture presented on behalf of the defendant as to what each of its key operatives was doing during the two incidents is patchy and flawed with a degree of inconsistency of recollection. Of course, I take this into account for the purposes of fact-finding. Where there are particular omissions and inconsistences with specific consequences, I have identified them. I do not, however, conclude that this lack of coherence evidences, of itself, the fallout from an overarching, unsuccessful and systemic attempt on the part of the defendant to conceal, or a reluctance to reveal, the truth.

Particulars of the defendant's support for the police

80. The claimants correctly point out that the evidence disclosed by the defendant with respect to the details concerning the support it provided for the police during the two incidents falls short of what might reasonably have been expected in a number of respects including, for example:

    (i) what vehicles were provided and when;

    (ii) what other logistical support was provided; and

    (iii) what payments were made, when, for what and by whom.

81. Such fragmentary documentary evidence as was disclosed on these issues was, in large part, difficult to interpret and remained largely unclarified by the defendant's witnesses.

82. I am satisfied that the defendant's record keeping with respect to these issues was, at best, sporadic and incomplete. This, of course, exposes it to all the usual evidential disadvantages which this might be expected to entail. I do not, however, go so far as to conclude that the defendant's failures to provide a coherent presentation and explanation of such material as is available justifies the conclusion that it has wilfully turned a blind eye to the potential consequences of closer analysis and scrutiny out of

fear of what may thereby be revealed. The more mundane and likely explanation is that initial haphazard record keeping coupled with the passage of time has rendered interpretation speculative and resistant to further useful analysis.

Cultural differences

83. I must also keep very much in mind the need to guard against drawing unfair conclusions adverse to witnesses as a result of cultural contrasts. The claimants invite the Court to "be astute to ensure that it is not unconsciously disposed to preferring the evidence of those of a more familiar social, economic and cultural group such as the defendant's expatriate witnesses." This is an invitation which I am happy to accept.

Corporate social responsibility

84. Both sides were very enthusiastic about the idea of setting the parameters of their evidence and submissions to cover broad issues concerning the general level of social responsibility displayed by the defendant - upon which topic they predictably entertained very different views. This, however, I have not permitted. The consequences of the exploration of such issues would have been entirely disproportionate, in terms both of time and costs, to the limited value of resolving them. For the same reason, I do not propose to adjudicate upon the rights and wrongs of the community and employment disputes which lay behind the incidents to which they gave rise.

Fact-finding

85. With these factors firmly in mind, I now proceed to make such findings of fact as are necessary before identifying and applying the relevant law. For the sake of emphasis, I repeat that I will not attempt to resolve every dispute of fact which has arisen in this case. The law of diminishing returns would inevitably generate a judgment the length and sprawling content of which would cloud rather than illuminate the process of analysis. It follows that there will be a considerable number of conflicts of evidence which I will not have adjudicated upon. In such instances, I have concluded that the dispute is not one the determination of which would have led to any relevant differences in my central conclusions.

THE CONTEXT

Sierra Leone

86. Sierra Leone is a relatively small country in West Africa which has, in recent years, suffered a series of disasters. In this century alone, it has been ravaged by civil war, the deadly Ebola virus and catastrophic mudslides. At under 51 years, it has the lowest average life expectancy of any nation in the world. Poverty is endemic. Over 70% of Sierra Leoneans live on less than $1 US per day. Yet it is home to vast and valuable mineral resources including diamonds and gold which, historically, seem to have cast a Midas curse over the majority of the population who continue to starve in the midst of plenty.

Iron

87. Diamonds, although the most notorious, are not the only valuable commodity to be found in Sierra Leone. Not long after the end of the civil war at the beginning of this century, vast reserves of iron ore were discovered in distant Tonkolili and the defendant set about the task of constructing the mine and building the necessary infrastructure to transport the ore to the coast for onward export. It would be difficult to exaggerate the enormity of this undertaking. In particular, it was necessary to refurbish 31 miles of existing railway and construct over 52 miles of new rail from the mine to the port of Pepel on the Atlantic Ocean.

Geography

88. In order to understand the sequence of events pertaining to each of the two clashes which form the subject matter of this case it is necessary to have a clear picture of the respective positions of the cities, towns and villages which were directly or indirectly involved. For this purpose, it is more convenient to use maps than to rely upon descriptive prose.

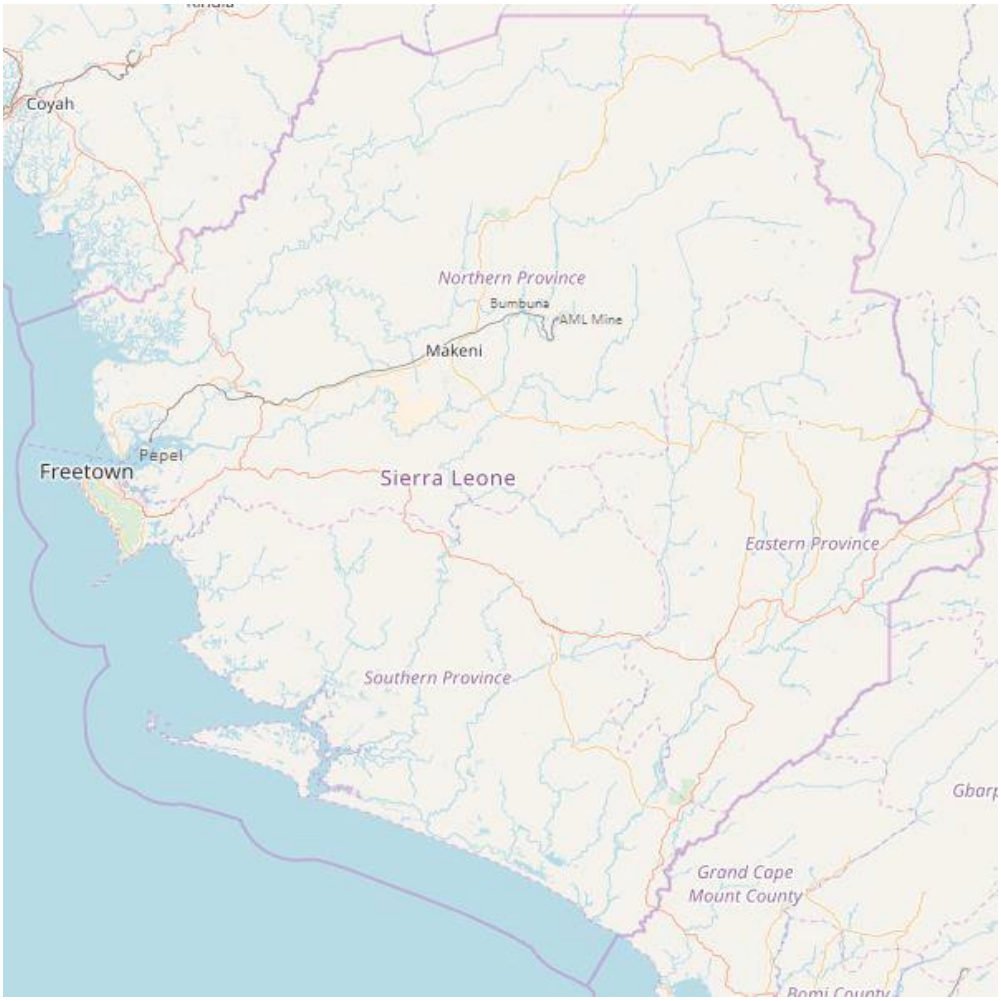

Fig. 1 illustrates the location of the mine and the nearest town, Bumbuna. Many of those employed at the mine made their home in Bumbuna from where they made their daily trip to work. To the west lies Makeni, the largest city in the Northern Province, which lies on the railway line to Pepel on the coast.

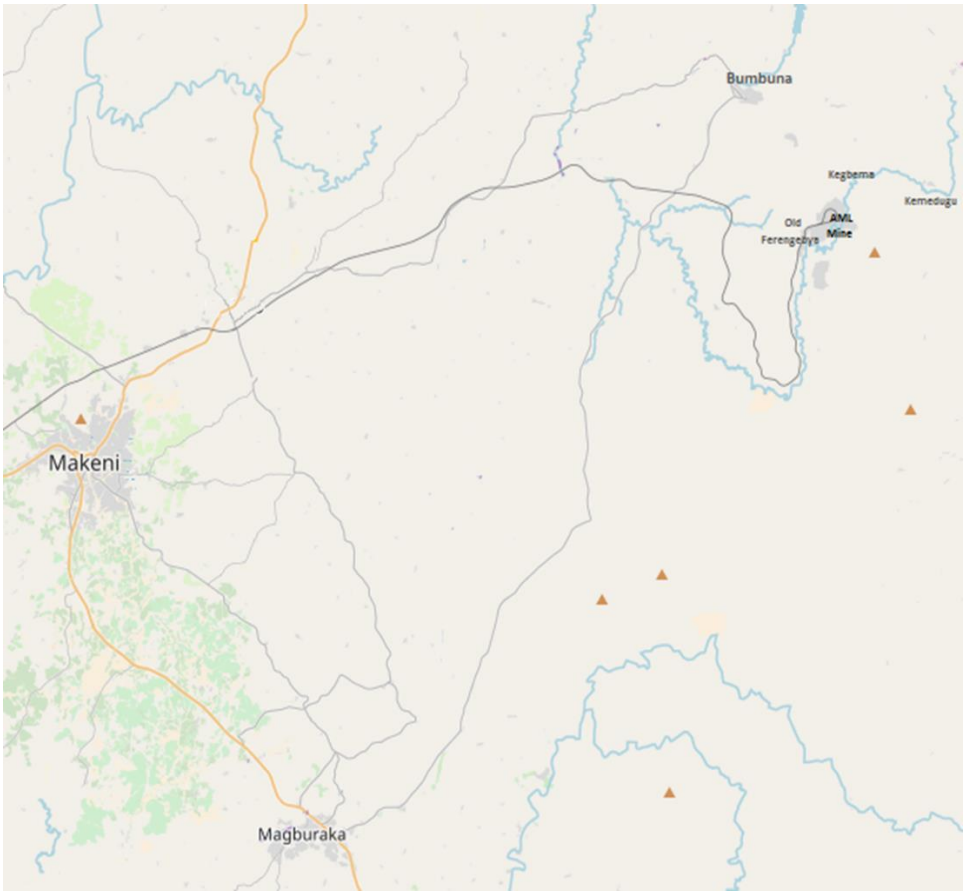

Fig. 2 illustrates the main towns and villages in the north of Sierra Leone in the vicinity of the mine and which play a part in the events of 2010 and 2012.

Fig. 3 is a satellite view which illustrates the locations of the villages in the vicinity of the mine. The rusty coloured areas in the lower centre of the map delineate areas of mining activity. The area once occupied by the village of Old Ferengbeya can be seen to have been subsumed into the area of operation of the mine. New Ferengbeya, to where the population of Old Ferengbeya was relocated, is to the far West and just off the plan. Kegbema is to the North and Kemedugu to the North East. The town of Bumbuna is located in the North West.

2010 - THE CAUSES OF CONTENTION

89. The challenges faced by the defendant were not limited to the daunting logistical task of constructing a railway and transporting iron ore for export from the mine to the coast. There were other problems brewing in the vicinity of the mine itself. The impact of the defendant's activities on local communities gave rise to serious and recurrent friction which was, in due course, to erupt into the two violent episodes which lie at the heart of this case.

90. In particular, there were significantly destabilising economic factors at work in the vicinity of the mine. The unemployment rate in Sierra Leone is very high and, certainly by western standards, wages are very low indeed. The arrival of the defendant brought the promise of employment and the mine, predictably, acted as a magnet to poor and jobless Sierra Leoneans, many from far afield, who were understandably ambitious to improve their lot.

91. Inevitably, there were fewer job vacancies than there were people hustling to fill them. This gave rise to recrimination. Many of the villagers persistently criticised the company for what they claimed to be the unfair and parsimonious allocation of job opportunities within the local communities.

92. Furthermore, the construction of the mine, the camp, the railway and other necessary infrastructure involved taking possession of areas previously occupied by local villagers for their homes and farms. As I have already observed, the whole village of Ferengbeya, for example, had to be moved to a new location which became known as New Ferengbeya. Of course, the defendant's agreement with the Sierra Leonean Government, under which it was granted licences to enable it to occupy and develop the land, provided for the payment of compensation and reparation to the local communities affected. However, the villagers were far from happy with how events seemed to be turning out. They complained that the defendant was encroaching on land for which no licence had been obtained and that their compensation had either not been paid or had been corruptly diverted into the pockets of those whose responsibility it was to distribute it. In addition, the activities of the mine were blamed for the contamination of water supplies and the defendants were accused of short changing the villagers in respect of a package of promised contributions towards the improvement of local amenities such as schools and roads.

THE GATHERING STORM

93. In order to maintain smooth relations with the villagers, the defendants employed locally recruited Community Liaison Officers ("CLOs") to act as go-betweens. One such was Atkins Yallan Koroma. In the course of this judgment, and with no disrespect, I will refer to him, as did most of the witnesses, simply as "Yallan". This is simply to

avoid confusion because Koroma is a surname common to a number of witnesses in this case.

94. On 29 May 2010, Yallan, two other CLOs and a team of temporary workers were engaged on a survey on behalf of the defendant in Ferengbeya when they were confronted by a group of hostile youths. Yallan reported to the defendant that they had been angry and abusive, slapping him and hitting him with a stick. This was described by a senior social assessor of the defendant as "a particularly worrying event". Little did he know that this incident would pale into insignificance in five months' time when community tensions would spill over into serious wanton violence and human rights abuses.

95. The developing unrest at Tonkolili became sufficiently serious to attract the attention of the Government of Sierra Leone which then became directly involved. On 4 June 2010, a high profile team of ministers and government officials intervened to stress to the local population that it was against the policy of the President himself to permit any attempts to disrupt the operation of the defendant. This stance was hardly surprising because the commercial activities of the defendant promised to generate a substantial revenue for the impoverished state and any threat to the progress of the project could put these economic and other rewards in jeopardy.

96. In August 2010, youths in Lunsar, a town in the Northern Province of Sierra Leone, went on strike because they had not been employed by local mining companies. The defendant was not involved in this dispute but was aware of the potential implications. In an internal email dated 11 August 2010 from Mohammed Jalloh (Community Liaison Officer) to Dominic Boyle it is noted that: "The police are ready to go on the offensive if anyone is caught on the strike action and base (sic.) on the assessment on the ground yesterday and today the presence of the police had made the satiation (sic.) to be calm…". In stark contrast, police intervention at Tonkolili three months later was to prove to be anything but a calming influence.

97. Shortly after the Lunsar incident, the defendant agreed to make a monthly payment of 1M Leones[3] to the Local Unit Commander ("LUC") and his team at the Lungi police station. Lungi is a small coastal town and home to Sierra Leone's international airport. The defendant relied on the police to provide support not only at the mine but at key transport locations. Police posts were set up in strategic positions across the project with the particular aim of deterring fuel theft which was a chronic and pressing problem. I note, in passing, that the nature of the defendant's relationship with the police and the legal implications thereof are of central importance to the resolution of this case and will be reviewed separately and in greater detail later in this judgment.

98. On 15 September 2010, a meeting took place between representatives of the defendant and the local communities. During the course of the meeting, complaints were made that the defendant had destroyed reserved farmland without paying compensation and that it had failed to provide adequate employment opportunities for local youths. The acting Paramount Chief ("PC"), warned the villagers not to disrupt the operations of the company and, in particular, not to set up road blocks by way of protest. Considerable power and influence continues to be wielded by the chiefdom system in Sierra Leone.

[3] At this time, $1US was worth about 4,000 Leones. It is now worth about 8,450 Leones.

Beneath the Paramount Chiefs work the Section Chiefs and beneath them the Tribal Chiefs. During the troubled times with which this case is concerned, some villagers believed that the Paramount Chief too frequently took the side of the defendant when disputes arose and suspected that the direction of his loyalty was attributable, in part, to compensation money which they assumed he had received from the defendant for distribution but which they suspected he had kept for himself.

99. This meeting failed to ease tensions between the community and the defendant. Throughout October 2010, there were continuing and serious disputes, particularly over employment opportunities and compensation.

100. On 25 October 2010, a fight broke out between employees of one of the defendant's contractors and local youths. The youths had blocked the road to complain about damage to its surface which they claimed had been caused by heavy construction traffic. A bus carrying contractors was unable to pass and some of them got out to remonstrate. The situation deteriorated into violence but, fortunately, there were only three casualties and their injuries were relatively modest.

101. On 28 October 2010, local youths constructed a road block in Bumbuna. On this occasion, negotiations attended by high ranking officers of the SLP led to a satisfactory conclusion and the road block was removed without incident.

102. The defendant's internal Health, Safety and Security Report for October 2010 recorded an increase in the incidence of "community based incidents" including the construction of blockades and stone throwing. Initiatives referred to in the report included strengthening relations with the police and the recruitment of an additional fifteen employees from the local community to enhance security at the mine.

103. On 6 November 2010, a further meeting between the defendant, local youths and the LUC of police took place. Once more, complaints were ventilated about the lack of employment opportunities but the LUC warned the youths that the putting down of road blocks was against the law and the police would not stand by and see such lawlessness. Indeed, they would, if necessary, call in the military.

104. A final meeting took place on 13 November 2010. Two particular resolutions were made:

> *"All stakeholders renounced violence as a means of seeking redress and agreed that every effort will be made to avoid resort to violence in the future."*

And, more darkly:

> *"It was resolved that all future strike actions of work disruptions will be met with the full force of the law".*

If any of those present entertained any reservations as to whether these two resolutions might, in the event, prove to be irreconcilable, they did not voice them at the time.

105. In an internal and widely distributed email of 12 November 2010, Colin Forbes, the defendant's Social and Community Manager, was looking for solutions and raised the following issues:

- What can we do to pre-empt these protests?
- Are we doing enough in terms of our recruiting practices? Are our contractors doing enough as well?
- How can we improve the way we get our messages out to protect affected people?
- How can we approach local youth groups to engage directly with them and avoid disruption?
- Is it culturally acceptable to deal directly with youth groups?
- If not, what procedures are required that would pave the way for this kind of initiative?
- Is our training program suitably advanced to start looking at enrolment in all project areas?
- How can we use training programs to limit protests?
- How are these protests organised?
- What sort of mechanism can we put in place to demonstrate to these groups that there are alternatives to disrupting AML operations?

106. However, as the month progressed, the disruptions became more rather than less frequent. The flashpoint to wholesale violence was not to be long in coming.

KEMEDUGU

107. Kemedugu is a village located close to the mine (as can be seen from Fig. 2). The defendant was intending to carry out survey activity in the vicinity of the village in November 2010 but ran into local challenges concerning permission and compensation for the interference with the land. As work came to a halt, the frustrations of the defendant were articulated in an email from Tim Fofana, (Social and Community Manager) which was widely distributed within the senior ranks of the defendant:

> *"The central Government should be asked to put in measures or legislature (sic.) to fast-track the relocation/resettlement process - sort of Stalin like thing (not quite). I don't think AML should have a job to prove that we need all that amount of land if we are to meet the deadline of producing and shipping the ore whose benefits the whole of Sierra Leone is expecting."*

108. The seriousness of the developing situation was plainly articulated in an email of 23 November 2010 from Pat Ramunno, the defendant's general manager of the mine, to other senior employees of the defendant:

> *"We urgently need to get together to map a path forward to engage and sensitizing the local communities effected (sic.) by*

> *mining and the construction of the infrastructures. Indications are that the scale of the operation and the effects it will have on the local communities is not clearly understood by them, hence continual stoppages-*
>
> *I don't think that there is anything more pressing than resolving this issue, if we don't get on top of this quickly, we are going to choke."*

109. On the same day, a meeting took place in Kemedugu between senior representatives of the defendant, including Pat Ramunno, and members of the community. The gathering took place at the Court Barray, an outdoor structure which serves, in part, as a meeting point for the discussion of local issues in Sierra Leonean towns and villages. Despite the fact that the meeting went on for five hours and appeared to have ended in agreement, it was soon to become apparent that the defendant and the community left with completely different and irreconcilable views as to what that agreement entailed. It was this misunderstanding which was the catalyst for the violence and mayhem to follow. The defendant had assumed that the members of the local community had conceded that the defendant could resume work immediately without hindrance and that their various grievances would be addressed in early course through dialogue. As it turned out, the local youths felt no such constraints and the situation spiralled out of control. There is no need for this court to adjudicate on the issue of which side was in the right.

110. I am in no doubt that, at all levels, the defendant's staff were aware that the continuing disruptions caused by local protests were capable, if not promptly resolved, of threatening the economic viability of the mining project as a whole. Inevitably, senior members of staff would have differing views about the way forward. As in any organisation confronted with such challenges, there were bound to be hawks and doves. The claimants, whilst recognising that there were members of senior management who fell in to the latter category, including Pat Ramunno himself, contend that others favoured a harder line.

111. It is apparent from the contemporaneous documentary evidence that some members of the defendant's staff were losing patience with the villagers. I am not, however, satisfied that the evidence goes so far as to establish that they intended that protests should be put down through unlawful means. Tim Fofana's reference to a "Stalin like thing" was, on any reading, a tasteless and unattractive remark and he, himself, realised this when he qualified his "modest proposal" with the words "not quite". He doubtless entertained the view, which would have been shared by a number of his colleagues that it was immensely frustrating that the process of negotiating terms with the local communities was not progressing fast enough. He was not, however, seriously suggesting that the defendant, either with or without the cooperation of the SLP, should take the law into its own hands and enforce the involuntary resettlement of local populations.

112. His frustration was shared by Brett Page (Country Security Manager) and Michael Hallahan (General Manager) both of whom, as later email exchanges were to reveal, viewed Mr Ramunno as a member of the "touchy feely brigade".

113. Regardless of the range of opinions which they held, I am not satisfied on the evidence that, before the events of the first incident of major violence, it had been the intention

of any senior member of the defendant's staff that unlawful means should, if occasion required, be deployed to resolve the recurrent disputes.

CHAOS

The roadblock

114. Yutinela was an area which comprised land suitable for subsistence farming by members of the local community. It was also land in which the defendant was interested as the potential location of a dam necessary for the future operation of their project. The defendant's activities at Yutinela could not be carried out without consequent loss of crops for which compensation fell to be paid. Access to the area from the road was via Yutinela Junction. If the defendant wanted to gain access to Yutinela it had to pass through this junction.

115. On the morning of 25 November 2010, two days after the meeting at the Court Barray at which each side had wrongly assumed the ongoing dispute to have been resolved by a transitional deal, youths erected a road block at Yutinela Junction.

116. Subsequently, a team of expatriate geotechnical personnel travelled to a site near Yutinela in two vehicles with their drivers Alusine Sillah Kanu and Uciff Koroma and CLO, Kulio Jalloh. Having stopped and parked up, the team felt threatened by a group of local youths and so they decided to leave the area and travel on to their second intended location at Nunkikoro.

117. As a precaution, Mr Jalloh contacted Yallan, who agreed to set off (with his driver, Bobson Koroma ("Bobson")) to look for the expatriates and to find out whether or not there were any issues that needed to be discussed. When Yallan arrived at the top of the lane leading from the Yutinela site, he found that a crowd of youths had barricaded the narrow road. Yallan notified the mine and also spoke to the Paramount Chief. The youths were in no mood for pleasantries. According to Bobson in his statement to the police "most of them started to insult and abuse the mother of [Yallan] such as "you stupid, you baste pickin, set you ass, no talk ya natin."" This, roughly translated from the Krio, was to the effect that Yallan was a bastard who should keep his mouth shut.

118. Subsequently, the two vehicles containing the expatriate workers were also halted by the youths at the junction of the lane to Yutinela where, by this time, Yallan and his driver were being held. By this stage, therefore, the youths had barricaded in three vehicles, and were detaining four expatriate workers, three drivers, and two CLOs against their will.

119. The expatriate workers stayed locked in their vehicles whilst the CLOs attempted to negotiate their release and safe passage. These efforts were unsuccessful.

120. The Paramount Chief (who was in Freetown that day) had reported these developments to the police and the defendant had also notified the police at Magburaka. Police from Magburaka were deployed in response to the defendant's call. They were armed.

121. Kim Gordon, the Health, Safety, and Security Manager at the mine, was sent in an attempt to negotiate the release of the hostages. He went with three of the defendant's security officers and two unarmed policemen. Eventually, the youths agreed to release

the four expatriates. They refused, however, to release the vehicles, the drivers or the two CLOs. The expatriates left with Mr Gordon and went back to the mine. This description of events is in accordance with an account given by Mr Gordon in an email sent on the evening of the events in question and I have no hesitation in accepting its accuracy in this regard. To the extent that the accounts of Yallan and Mr Jalloh, both given much later, depart from this I reject them.

After the release of the expatriates

122. What happened at Yutinela Junction between the first and second visits of Mr Gordon is controversial. Yallan's evidence at trial was to the effect that he and all the defendant's local staff were detained until the police arrived on the scene. In statements given to the police four days after the incident, two of the drivers and Mr Jalloh all said that they were released before the police arrived. Yallan's driver, Bobson, said in his statement that he and Yallan were released after about five hours of detention.

123. On the balance of the evidence, I am satisfied that Yallan did eventually manage to extricate himself from the situation and that he met up with a number of police officers and travelled back with them to the scene. His evidence at trial was starkly inconsistent with the contemporaneous statements of other witnesses. I also consider that Mr Jalloh's contemporaneous statement was more accurate than the account which later he gave to the Court.

124. As Mr Gordon was returning to make his second visit to the scene of the unrest, he met a contingent of about 25 armed members of the SLP who proceeded with him to the road block. The email from Mr Gordon sent on the same day as the events to which it relates continues, in my judgment, to be the most reliable guide as to the sequence of events. He records that, immediately upon their arrival, the SLP began to make arrests. The protesters started pelting the vehicles with rocks and the police responded by firing live rounds into the air and discharging tear gas.

125. Yallan claims that during the course of this exchange he was hit on the head by a stone and sustained a significant injury. The claimants' case is that this is a lie. They say that Yallan is making up this account in support of a false alibi to deceive the Court into accepting that he played no further active role in the events that followed because he claimed to have been receiving medical treatment for this injury and to have been rendered unfit for duty.

126. I am satisfied that Yallan was, indeed, lying about being injured. I make particular reference to the following:

(i) On 14 December 2010, a number of those arrested were brought before the Magistrates' Court at Makeni to face criminal charges. Yallan there gave evidence to the effect that the protesters: "Threw stones and in the process injured police officers." In response to questions from the bench, he is recorded to have said: "The stones did not hit me."

(ii) No one else who provided witness statements to the police or gave evidence at the Makeni Magistrates' Court reported that Yallan had been injured.

(iii) None of the fifteen charges which had been brought against the accused protesters alleged that Yallan had been assaulted.

(iv) A General Workforce Communication issued by the defendant within a week of the incident recorded that: "All personnel involved were released unharmed…"

(v) There is no record of any injury having been sustained by Yallan in the defendant's disclosure.

127. In cross examination, Yallan attempted to explain away the clear implications of the cumulative weight of this evidence. Suffice it to say that his powers of plausible mendacity failed him. His attempts to reconcile the lack of any contemporaneous support for his alleged injuries and his seriously contradictory evidence to the Magistrates' Court were simply not credible. Having had the advantage of hearing his evidence at court I am satisfied that he was making up his explanations on this issue as he went along.

128. Of course, the fact that Yallan was lying about being injured does not automatically mandate an inference that he must therefore be guilty of the unlawful behaviour alleged against him. It is not unknown for innocent people to tell lies to add spurious evidential weight to their otherwise genuine denials of guilt. Whether this can be said of Yallan is a judgment which must be postponed until after consideration of the evidence relating to his later involvement in the incident.

The arrests

129. A considerable number of claimants and their witnesses gave evidence of their recollection of the circumstances in which they were arrested by the SLP during the course of the 2010 incident.

130. Manso Turay said that he was on his way to Yutinela to re-join the roadblock when two police trucks and a Land Cruiser coming from the direction of the mine stopped in his vicinity. He said that police officers and Yallan descended from the vehicles whereupon Yallan instructed the police to arrest and beat those present. Mr Turay, himself, was apprehended and put into the back of the Land Cruiser.

131. James Conteh was also detained by the police. There is an issue, which I do not consider it necessary to resolve, as to whether he was arrested on his way to Yutinela junction or at the junction itself. He says that he was arrested with his brother and that he was slapped in the face and pushed into a truck. I am satisfied that the truck to which he referred in his witness statement was one of the defendant's Land Cruisers. It was identified to be such by other witnesses and the term "truck" was sometimes used to refer to open-backed vehicles. It is to be noted that Mr Conteh did not see Yallan at the time of his arrest and makes no allegations against him in this context.

132. Mohammed Barrie said that he had arrived from out of town and came across the scene as he was approaching the junction. He described seeing three of the defendant's vehicles which were stationary. One contained a white man. They were later joined by another of the defendant's vehicles. He was arrested, thrown into one of the vehicles and beaten by the police. He did not see Yallan at this time.

133. Yusif Koroma said that he had been working in his rice swamp when he heard gunshots. As he approached the junction he saw two white Land Cruisers and a police truck approach. Yallan and some police officers descended whereupon Yallan ordered the police to open fire. His cousin, Madusu, was shot and injured and Yallan and the officers returned to their vehicle. Mr Koroma said that he carried his cousin to his mother's house but vehicles were being driven slowly in the vicinity and police were firing. He took refuge in a grove of banana trees but failed to avoid arrest. He was placed in one of the defendant's Land Cruisers from which he later managed to escape at Kemedugu Junction when it stopped to facilitate a transfer of prisoners to a police truck.

134. Yusif was later re-arrested when he attended at the police station in Bumbuna to obtain a certificate which the doctor at the hospital had required as a condition of treating Madusu. He said that at the police station he was beaten, thrown inside a truck with several others and taken to the cells at Magburaka police station.

135. Yusif's evidence was particularly controversial because he claimed to have written an account of what had happened to him not long after the incident. He said that while he was languishing in Makeni prison he was visited by his brother, Tamba. He told him what had happened to him and asked him to write it down once he got home. Yusif is illiterate but Tamba can both read and write. It is not unusual in Sierra Leone for only some children in a large family to be formally educated.

136. Tamba gave evidence that, having written down the account, he gave it back to Yusif after the latter had been released from prison. Yusif said that, sometime after, he gave the note to a friend of his called Musa for safekeeping because his house was leaking and he wanted to keep the document dry. He claimed also to have parted with his Qur'an for the same reason.

137. There the note remained until, on 13 May 2017, Yusif was interviewed in Bumbuna by one Mr McGregor, a paralegal, engaged on behalf of the claimants' solicitors. Mr McGregor gave evidence to the effect that during the course of the interview, Yusif referred to the note and said that it was being kept by a friend of his in the town of Bendugu which is some distance from Bumbuna. Mr McGregor gave Yusif the motorbike taxi fare to go to Bendugu to collect the note and return with it. The payment for the fare is contemporaneously recorded in Mr McGregor's expenses sheet.

138. The defence case was that Yusif knew in advance that the interview would cover allegations relating to Yallan. This proposition was put to him several times in cross examination and Yusif agreed that that was his understanding. The point which the defendant was seeking to make was that if Yusif knew that the note was going to be relevant he would have made sure that he took it with him in the first place. Yusif's explanation was that he could not afford to travel to Bendugu to pick it up.

139. The defence case is that the note was forged in the period of four and three quarter hours of Yusif's absence. The trip to Bendugu never happened and was merely a cover story for the time it took Yusif to put together the counterfeit document.

140. Notwithstanding the somewhat elaborate explanation surrounding the genesis of the document and its subsequent transfer to Musa for safekeeping, I find on a balance of probabilities that it is genuine. I take into account the following:

(i) If Yusif knew that he was expected to attend the interview with a view to providing information concerning the role of Yallan then there was nothing stopping him from having a false record created in advance of the interview. There would be no need for him to go through the ostentatious charade of taking nearly five hours leave of absence from the interview in which to forge the record. The fact that he asked for and was paid the fare to get to Bendugu and back lends support to his claim that he could not otherwise have afforded to make the trip.

(ii) If, contrary to the defence case and Yusif's oral evidence, Yusif only realised the importance of the case against Yallan during his interview then the motorbike taxi deception represented a very sophisticated but fragile improvisation. It also depended on the ready availability of Tamba to write the document in time for Yusif to return with it to Bumbuna and a willingness on the part of Tamba later to lie about when it was written.

141. However, it does not necessarily follow from the fact that the account contained in the document was written in later 2010 or early 2011 that its contents are necessarily accurate. I will address this issue later in this judgment.

142. Fahther (sic.) Kargbo told that court that he and a group of others heard shots and went to see what was happening. He described seeing people running towards him from Yutinela with two of the defendant's Land Cruisers behind them. Yallan was walking in front with police officers. At this point he ran off and was able to give no further evidence about Yallan's activities.

143. Musa Saywah said that he was on his way to buy palm oil when he was met by Yallan and two police officers. Yallan directed the officers to arrest him which they did. They dragged him to where one of the defendant's vehicles and a police truck were parked. He was beaten on the way there and after he had been put in a Land Cruiser. Yallan was standing next to the vehicle at the time he was inside.

144. Kadiatu Koroma said that she had been watching what was happening at Yutinela Junction but had left to get back to her work selling fruit and clothes in Kemedugu. She said that a police truck and one of the defendant's vehicles arrived. Police officers dismounted and began shooting. Two of the defendant's employees were with them, one of whom was Yallan. Yallan was drawing the attention of the officers to people to arrest. She was arrested and beaten. She was forced into a truck being driven by a man wearing the defendant's uniform. She was indecently exposed and sexually assaulted by police officers in the vehicle.

145. Musa Walerie (the first claimant) said that he had not been present at the road block but that a police truck and one of the defendant's vehicles returned from the direction of Yutinela. He was arrested on the direction of Yallan and beaten. Yallan beat not only him but other villagers in the vicinity too.

146. Mohammed Dabor said that he had been bathing near Ferengbeya when he was seen by Yallan, a soldier and an officer of the armed Operational Support Unit ("OSD"). Yallan told the officers to grab him which they did following which he was taken on foot to the mine camp.

Detention at the mine

147. There is no dispute that the police transported a number of those whom they had arrested to the defendant's mine camp. There were, however, inconsistencies in the evidence of the witnesses who were taken there, for example, as to which of them went in which vehicle and in what sort of accommodation they were detained upon arrival. I attach little importance to such discrepancies as were revealed by sedulous cross examination on these points. These are the sort of details which are likely to be forgotten or misremembered with the passage of time. Less likely to be forgotten, however, are the circumstances in which any or all of the detainees may have been beaten by Yallan. In this respect, I find the discrepancies more significant. The likelihood that the detainee witnesses were giving an honest (but not very accurate) account of the details of their confinement does not preclude a finding that they were lying about being assaulted by Yallan or, at the very least, that their recollections had later been fatally contaminated by mutually reinforcing rumour, recrimination and resentment.

148. There are a number of sound reasons for rejecting the allegations that Yallan was involved in beating the detainees at the mine.

149. The witnesses' accounts of the nature and extent of Yallan's alleged participation in the violence are seriously discrepant. Musa Walerie said that Yallan slapped him in the face a few times and then started punching him in the side of his head. This was done in front of a white witness. This witness was presumably an employee of the defendant since none of the detainees or members of the SLP was white. He said Yallan then boxed him hard so he fell to the ground. He then started stomping on him and kicking him in the back and ribs using steel capped boots. Then he kicked him in the head so hard that he hit it on a parked vehicle.

150. James Conteh said that Yallan was slapping everyone in the room. He could hear the noise as he slapped different people. There were about twenty detainees all of whom had had their handcuffs removed as Yallan was doing this. He said that during the course of this violence there was another man in the room taking down the names of the detainees in writing. I note, that even with armed police immediately outside the hut, Yallan would have been taking a very considerable personal risk that one or more of the detainees would lose their self-control and violently and spontaneously retaliate.

151. Manso Turay, in contrast to the account given by James Conteh, said that Yallan was unaccompanied when he started to assault all of the detainees. When it was put to him, accurately, that Musa Walerie had said that he had been beaten outside and not in the hut Mr Turay said that that was a lie and was adamant that Mr Walerie was slapped inside the room.

152. Mohamed Barrie said that Yallan slapped Mr Walerie many times but that this was inside the room. In contrast to other witnesses, he said that the police were also beating them at the same time.

153. Kadiatu Koroma also said that Yallan assaulted Mr Walerie inside the room. First he kicked him in the body. Then he slapped him. She said that only Yallan and one other unidentified employee of the defendant were there when Yallan started to be violent.

Further unrest

154. In the meantime, the unrest continued. Youths who had avoided arrest had congregated intending to attack the mine and damage property. A group of them gathered at the perimeter and pelted the mine with rocks. As a result, the mine was locked down. Later in the evening, protesters set light to and destroyed a drilling rig to the value of about £500,000. In other locations, the defendant's vehicles were pelted with stones and an office was broken into and equipment damaged.

155. As events were unfolding, police officers at the mine asked to be allowed to use the defendant's vehicles. Mr Ramunno's evidence was that it was at his instigation that the police went on to check the surrounding areas. Mr Gordon told the police at the mine what was known about the events of earlier in the day. The evidence subsequently given by the LUC to the Makeni Magistrates' Court was that he remained at the mine site while three mobile patrols went out with a police inspector. They were accompanied by "AML workers". More arrests were made.

156. AW1[4] said that he saw Kim Gordon speaking to police officers before they left the mine camp at what appeared to be a briefing session but he was too far away to overhear what he was actually saying. Several of the claimants and their witnesses gave accounts of the police using excessive force in carrying out arrests in Ferengbeya that evening. Foday Kalma said that he saw OSD crossing the fence around the mine site and heading towards Ferengbeya on foot accompanied by Yallan. Fina Bangura identified Yallan as being with the police as they approached Ferengbeya. Yabah Kargbo told the Court that she saw Yallan walking in front of the police and pointing to individuals as they moved. Ali Kargbo also reported seeing Yallan pointing out individuals to the police. Other witnesses: Abubakar Daboh, Tamba Mansaray, AW 3, Alpha Dabo (the second lead claimant) and Ali Kargbo all gave evidence of police violence perpetrated against themselves and others.

157. Much of the evidence given by these witnesses was confused and inconsistent. I attribute this to the passage of time and the chaotic circumstances in which the police executed their violent raid. I attach no weight, however, to the evidence of Foray Kargbo who gave an account of his recollection of events which was entirely inconsistent with one which he had previously given to Mr Sesay, a contractor acting on behalf of Leigh Day. I reached the conclusion that it would be unsafe to rely upon either what he had said then or later.

158. That evening, the police also descended upon the village of Kegbema. Witnesses Tamba Koroma (the third lead claimant), Sandy Kargbo, Alie Koroma and Tamba Thorley each gave evidence of police violence and random breaking into homes followed by arbitrary arrests. Such discrepancies of account as were explored in cross examination did not lead me to doubt the main thrust of their evidence. There is no evidence that Yallan or any other member of the defendant's staff directly participated in the Kegbema abuses.

[4] I granted anonymity orders covering a number of witnesses who are referred to in this judgment as AW1, AW2 and so on. For the details, see Kalma v African Minerals Limited [2018] EWHC 120 (QB).

159. I am satisfied that a number of detainees were transported to the mine camp, some in AML vehicles. Once there, some of them were beaten by the police or military. Tamba Koroma said, and I accept, that police officers had raked sharp stones down his back when he was lying on the ground. There is no evidence, however, that this abuse was witnessed by any member of the defendant's staff. Sandy Kargbo said that he overheard two white men at the camp describe the detainees as rebels who had burned a machine. The most likely explanation for this exchange is that the men were repeating either what they had been told by police officers or what they had overheard.

160. Thereafter, the detainees were taken to Bumbuna in one of the defendant's buses. I accept the evidence of Mr Ramunno that he authorised the use of the defendant's vehicle because he wanted the detainees to be moved away from the camp.

161. On the following day, the detainees were transported, again in one of the defendant's vehicles, from Bumbuna police station to Rogbaneh station in Makeni.

THE AFTERMATH

162. The detainees who had been arrested in Ferengbeya made their first appearance in the Magistrates' Court after some twelve days. Tamba Koroma was held for two months in Makeni without appearing in court. This was followed by five weeks in a prison facility. Upon his release, in a very poor state of health, he was found and assisted by a human rights group. Alie Koroma was held for ten days without appearing in court. He was released on the tenth day and was never charged. Tamba Thorley was held for one or two weeks before he was released. The charge sheet from the Makeni Magistrates' Court reveals that none of these individuals was ever charged in relation to the 2010 incident.

163. The individuals arrested in Kemedugu and Ferengbeya were detained for two to three months before being granted bail. Some of those detained were never charged with any offence.

164. A total of 26 individuals who had been arrested during the course of the incident were charged with fifteen offences including riotous conduct, false imprisonment, throwing missiles and malicious damage. It is not disputed that many of those who were detained were held in wholly degrading and unacceptable conditions.

165. During their detention on remand, they made numerous appearances at Makeni Magistrates' Court but eventually bail was granted and, subsequently, the cases against them were dropped.

THE DEFENDANT'S ROLE IN THE PROSECUTION

166. The defendant was undoubtedly involved to some extent in the criminal proceedings. It instructed a lawyer, Abdul Tejan-Sie, who represented the interests of the company on at least two occasions at Makeni Magistrates' Court. He was not called to give evidence at the hearing before me. However, Kweku Lisk, another lawyer, was called to give evidence by the defendant. Initially, he denied appearing on behalf of the defendant in connection with the prosecution of the detainees. However, his testimony on this issue was contradicted by the documentary evidence and that of other witnesses.

167. It is admitted in the defence that the defendant invited the police to press charges against the accused and that lawyers for the defendant attended the criminal hearings and assisted the prosecutors.

168. Furthermore, on this issue I accept the evidence of Lasana Sowa and Abbass Kanara both of whom worked for Sierra Leone Network on the Right to Food (SiLNORF), to the effect that Mr Lisk turned up at court on at least one occasion and that he had unsuccessfully opposed the granting of bail.

169. Vandie Nabie was the lawyer representing the detainees at some of the hearings. His witness statement was tendered in evidence as hearsay but he did not give oral evidence. He, too, recalled that Mr Lisk had appeared for the defendant opposing bail and objecting to Mr Nabie appearing on behalf of the detainees. Mr Nabie recalled making the point to the magistrate that it was improper for Mr Lisk to appear for the defendant when there was a state prosecutor in court. The magistrate agreed and Mr Lisk was told to go and sit in the public gallery.

170. There is not enough evidence before me on the topic to allow me to reach a concluded view on the precise extent to which the alleged victim of a crime in Sierra Leone can properly instruct an advocate to appear on his or her behalf in criminal proceedings. In the jurisdiction of England and Wales, involvement, if any, would, as a matter of course, be limited to the attendance of a watching brief without rights of audience. It would appear from the intervention of the magistrate in this case that Mr Lisk was seen to have overstepped the mark.

171. I am also satisfied that senior members of the defendant's staff attended at some of the magistrates' court hearings. Furthermore, Yallan and Mr Sallu would appear to have made a number of "dock identifications" of some of the detainees.

172. Inadequate thought appears to have been given to the strength of the evidence against some of the detainees on some of the counts. For example, those who had been arrested and detained on 25 November 2010 could not have been guilty of the two counts on the charge sheet relating to crimes alleged to have been committed on the following day. Those detainees from Ferengbeya also appear to have been prosecuted on an inadequate evidential basis. It is suggested that the defendant and its lawyers must have realised this. I would accept that a sufficiently close analysis of the evidence would be likely to have led to these conclusions. However, I am not satisfied that the defendant or its lawyers ever embarked on such an analysis. I note, in particular that there is no evidence that the state prosecutor, the detainees' advocate or the court spotted or acted upon these points at any stage. All of them would have been duty bound to act on the conclusions now relied upon by the claimants but it appears that none ever did.

173. The evidence of Musa Bangura (Logistics Manager) was to the effect that a meeting had taken place between the Minister of Justice and Gibril Bangura (Chairman, Sierra Leone) in which the Minister suggested that the criminal prosecution should be taken out of court in order to develop a cordial relationship with the community and because the police had used excessive power. The proceedings were duly discontinued on 25 March 2011. I do not regard this development as sustaining the case that the defendant was effectively the prosecutor. The initiative for dropping the prosecution appears to have come from the State and the defendant raised no objection. The State was not thereby surrendering control over the future of the prosecution to the defendant.

CENTRAL FINDINGS WITH RESPECT TO THE 2010 INCIDENT

174. I am satisfied that, on the balance of probabilities, Yallan did not direct the police to arrest suspects nor did he participate in or condone violent attacks on his accusers. I identify the following features:

(i) The majority of the claimants' witnesses described him as a generally friendly man not given to violence. Had he shown any predisposition to violence, they would have had every incentive to tell the court about it. Although he was likely to be resentful of the treatment to which he had been subjected at the road block, I find that this would not account for his alleged participation in subsequent prolonged and random acts of violence against innocent villagers. Such actions would be wholly out of character.

(ii) Yallan was clearly a focus of resentment for many members of the local community. I am in no doubt that there were a number of individuals who blamed him personally for their failure to secure employment with the defendant. He was also a prime target for discontent over land rights and compensation. Over time, he came to be regarded by many to be acting more as the tool of the defendant than as the mouthpiece of the villagers. As such, he provided an ideal retaliatory target for unfounded allegations of serious misconduct. With the passage of time it is not surprising that the resentments of some would contaminate the recollections of others.

(iii) Although I accept that the statement made by Yusif Koroma was made while he was still in prison and was not a recent forgery, I am not satisfied that the allegations which it contains against Yallan are true. Of all the witnesses, he probably had the strongest grievance against Yallan. He believed that the defendant had spoiled, and was preparing to appropriate, the land at Yutinela where he grew his rice. He claimed to have received no compensation. He blamed Yallan for this state of affairs. Furthermore, at the Magistrates' Court Yallan identified Yusif Koroma as one of those who had constructed the road block and had refused to remove it. There would be no credible motive for Yallan to make false accusations against innocent people. He had no grievance against Yusif Koroma. The contrary is, however, not the case. I find that Yusif Koroma wrote his account of Yallan's involvement by way of retaliatory response to all the woes which he attributed to Yallan not least of which was his continued incarceration at the time he made his statement.

(iv) If Yallan had been motivated to inflict a form of random or collective punishment on members of his community it is difficult to understand why, at the Makeni Magistrates' Court, he only identified a proportion of those against whom charges had been brought as having been involved in making the road block.

(v) The Local Unit Commander of the SLP gave evidence at the Magistrates' Court on 20 December 2010. He knew Yallan to be the CLO and said that Yallan had identified Paul Sorie Turay as one of the protesters. He did not, however, assert that Yallan was involved in rounding up protesters later in the day.

(vi) It is inherently unlikely that the police would simply take orders about when and where to open fire or to beat detainees from a civilian and, in particular, from a civilian such as Yallan who was of relatively low status even within his own organisation. He was subordinate to Mr Fofana who, in turn, answered to Mr Doherty whose boss was the general manager of the mine.

(vii) I consider that it is probable that Yallan, contrary to his own account, did spend time after the incident at the roadblock identifying to the police those protesters whom he thought had participated. After all, as a longstanding member of the community, he was in the best position to recognise those involved. I cannot exclude the possibility that he may have been mistaken about some of his identifications but I do not find that they were made maliciously. In any event, the very fact that he had identified them was likely to generate further resentment on the part of those who were arrested as a result, regardless of their guilt or innocence.

(viii) On 27 November 2010, a monitoring team from SiLNORF visited the villages which had been involved in the incident. Their findings were later set out in a report. In Kemedugu they met with over a hundred villagers. There were allegations of police brutality and that tear gas had been discharged. It is notable that, in addition, the community aired a number of grievances against the defendant. However, no allegations were recorded at this stage that any employee of the defendant had participated in or directed the police violence. Abass Kamara, the author of the report, was called by the claimants. He said that he had been told by some of the detainees that the defendant's employees had been pointing them out for the police to arrest and, later, that the defendant's staff had joined with the police in beating them at the mine camp. I reject this witness's evidence to this effect. He made his witness statement about seven years after the events to which it relates and at no time in the intervening period did he record in surviving documents any complaints of violence against employees of the defendant. There was no convincing explanation as to why he had recorded a number of other grievances raised by the villagers against the defendant, some of them relatively trivial, but had made no mention of unprovoked and violent beatings by a member of the defendant's staff.

(ix) The Human Rights Commission of Sierra Leone ("HRCSL") also investigated the events and produced a monitoring and a compilation report on their findings. The complaints therein recorded were of police brutality at Kegbema and Ferengbeya. Again, there were no recorded allegations of violence on the part of the defendant's employees and there were no allegations that they had directed the police or were otherwise complicit in their activities. The only allegation involving the defendant was to the effect that it had allowed the police to use its vehicles. Abdulai Bangura, the author of the monitoring report, was called by the claimants. He said that more than five of the prisoners had told him that they had been beaten by the police and some of the defendant's employees at the mine camp. I reject the evidence of this witness as to what he alleged he had been told. He was first asked to recall these details over seven years after the report had been written. He had lost all his contemporaneous notes. His explanation for omitting reference to the defendant's employees beating the detainees at the mine was that his responsibility was to consider only acts by

state agents which would not include the defendant's staff. I do not accept this explanation. If complaints had been made of the sort he referred to in his oral evidence then there would be a strong implication that the SLP had been complicit in or, at least, passive in the face of the perpetration of unlawful violence which they were under a duty to prevent. Furthermore, his report records a considerable number of complaints against the defendant none of which asserts that the defendant's employees were involved in violence. I do not believe that Mr Bangura would have included such complaints by way of background information and yet omit to mention the salient details he now claims to remember.

(x) The BBC World Service also showed an interest in the role played by the defendant in the unrest. By an email of 2 December 2010, a journalist invited the defendant to respond to allegations raised by the local community that it had "…bulldozed a shrine; sent in bulldozers before negotiations were complete; broke promises; took and destroyed land." No allegations were made suggesting that the defendant's employees had joined in with, instigated or condoned violence on the part of the police.

(xi) Yallan continued to work as a CLO after the 2010 incident. If the allegations now made against him were true, I would expect there to have been, at least, a record of serious complaints casting doubt upon his continued suitability in this role.

(xii) The point was put to the claimants' witnesses that they did not complain of their treatment at the hands of Yallan to their barrister. In response to this suggestion, two witness statements were taken from the advocate in question, Vandie Nabie. The second statement was never signed and remained in draft, its author having declined to appear at court for perceived fear of reprisals. He said in his statements that the villagers said that they had been assaulted by the police and some officials from African Minerals. They said it was one of the men who came to the court with the prosecution. He said that he had been told his name at the time but that he had forgotten it. He was the black man who he had previously seen at the police station. I am unable to place any weight on what he said. His recollection was based on events which had occurred about seven years before he was first asked to remember them. He does not identify which of the villagers were complaining that they had been assaulted nor any details of the timing, nature or location of the assaults. He made no contemporaneous record of such complaints and the reference to "officials" in the plural would appear to suggest that other unspecified members of the defendant's staff had assaulted them. His recollection could not be tested by cross examination and raised more questions than it answered.

175. The claimants contend that the only (and implausible) basis upon which the evidence implicating Yallan could be rejected is by accepting that there was a sophisticated and rapidly concocted conspiracy between villagers from different villages to obtain compensation by lying about Yallan's involvement. I do not accept that there was any such general conspiracy. As Leggatt J observed in Gestmin at paragraph 17:

> "In fact, psychological research has demonstrated that memories are fluid and malleable, being constantly rewritten whenever they are retrieved.

> This is true even of so-called 'flashbulb' memories, that is memories of experiencing or learning of a particularly shocking or traumatic event. (The very description 'flashbulb' memory is in fact misleading, reflecting as it does the misconception that memory operates like a camera or other device that makes a fixed record of an experience.) External information can intrude into a witness's memory, as can his or her own thoughts and beliefs, and both can cause dramatic changes in recollection. Events can come to be recalled as memories which did not happen at all or which happened to someone else (referred to in the literature as a failure of source memory)."

Having rejected the evidence of Abass Kamara and Abdulai Bangura, it follows that, save in the case of Yusif Koroma, a period of nearly three years had elapsed before complaints were first made about Yallan when the claimants and their witnesses were first visited by the claimants' solicitors. This was more than enough time in which recollections could become contaminated by rumour, resentment and reconstruction. It is perfectly plausible that some, if not all, of those who gave evidence that Yallan had been involved in the violence had, with the passage of time, come honestly but mistakenly to believe that they were telling the truth. I have read with care the arguments deployed on behalf of the claimants in their closing submissions on this issue but they do not lead me to a different conclusion than that reached as a result of the twelve factors I have identified above.

176. I am satisfied that members of the defendant's management staff were aware of the fact that some police officers were using excessive force. Some care has to be taken in attempting to weigh to a nicety the justification for the use of tear gas at Yutinela junction. However, the deployment of live rounds would be far harder to justify. More particularly, Kim Gordon saw abuse and physical violence inflicted on the detainees at the mine camp including the infliction of a blow to the head from a rifle butt.

177. However, I am further satisfied that, despite what they witnessed and what they already knew of the reputation of the SLP, it was not the intention of any member of the senior management team of the defendant that the police should use unlawful means to respond to the 2010 incident. I note that:

(i) The contemporaneous documentation falls short of revealing expressly, or by implication, that senior members of the defendant's staff intended that the police should deploy unlawful measures in responding to unrest on the part of the villagers.

(ii) It was against the economic interests of the defendant for the police, for example, to use excessive force against the local population. Of course, it was to be expected that the defendant would wish there to be a firm response to the illegal blockading of the roads, stone throwing and criminal damage of company property. However, a disproportionate response, particularly one which was, in part, randomly directed against wholly innocent villagers was very likely to breed future resentment, hostility and mistrust none of which would be in the long term business interests of the defendant.

(iii) The efforts of the defendant to reach a compromise with the protesters in the period leading up to the outbreak of violence by, for example, engaging in

prolonged discussions in the Court Barray, are difficult to reconcile with a sudden strategic shift towards complicity in unlawful violence and abuse shortly thereafter.

(iv) The volatility of the police response can readily be accounted for without concluding that the defendant had a hand in it or supported it. Levels of discipline and self-control in the SLP were undoubtedly variable and, when confronted with hostility and rock throwing, some officers are unlikely to have needed any further encouragement to respond in a disproportionate manner. Many may well have thought that their more extreme actions were, in any event, likely to be cloaked in state approval rather than to be exposed and punished.

AFTER THE 2010 INCIDENT

178. In early December 2010, the defendant was drawing up plans for providing additional logistical support for the police which included the establishment of a permanent police post near the mine. It also provided several vehicles to the police to help them in the investigation of the burning of the rig and other offences of criminal damage. In an internal email Dominic Boyle observed: "The police have no transport capability, if we do not supply and or maintain it will not happen."

179. During 2011 the problems between the defendant and the local community persisted. Dissatisfied villagers continued to protest outside the mine and erect road blocks. Thefts continued and there were reports of intimidation of the defendant's security guards. There is no doubt that the defendant was beginning to become exasperated by the ongoing issues. In an email of 27 June 2011, Philip Venter commented: "If these guys don't stop mucking with my people, I'll turn their water supply off!!!! Please delete this email."

THE 2012 INCIDENT

180. The relevant events of 2012 were spread over three days.

Day One

181. On 16 April 2012, members of the defendant's workforce went on strike. One or more roadblocks were set up by discontented employees but there is no evidence of any actual violence on this day. The contemporaneous documentation supports the suggestion that the defendant, in response to the situation, requested an enhanced police presence in Bumbuna. As a result, substantial police reinforcements arrived from Makeni and other areas to bolster local numbers. The defendant's system recorded a contemporaneous payment of 4.5 million Leones from the defendant to the police at the request of the Assistant Inspector-General ("AIG").

Day Two

182. On the following day, 17 April 2012, some of the strikers attended at the Court Barray in the expectation that there would be a meeting with representatives of the defendant and the Government. It would appear, however, that no such representatives turned up and so no dialogue took place. In the meantime, about 200 police officers arrived from

as far away as Mile 91[5], Makeni and even Freetown. On the same morning, the protesters erected a roadblock on the road to the defendant's fuel farm. In the early afternoon, armed police arrived to remove the roadblock. They did so by the deployment of tear gas and the firing of live rounds. There is no evidence, other than the mere erection of the roadblock itself, that the violent response of the police had been catalysed by any provocation from the protesters.

183. Thereafter, the police moved into Bumbuna where, according to the HRCSL, they "went on the rampage shooting and beating people up, kicking doors and hurling insults at market women." The fourth lead claimant, Kadie Kalma, gave a vivid account of seeing the police arrive in the town and start to discharge tear gas. Worried about her son, she left her house only to be confronted by police who interrogated her about the strike. They then beat her up in front of her son and bundled her into the back of one of their vehicles. There can be no doubt that the police in Bumbuna were guilty of perpetrating entirely unwarranted violence upon random members of the local population. The defendant's records reveal that it received updates throughout the day concerning the numbers of arrests made and the high level of police deployment in Bumbuna. Unsurprisingly, however, these records make no reference to any reports of the use of excessive violence.

184. Predictably, the actions of the police failed to have a calming influence on the local population. Indeed, matters were, if anything deteriorating with rumours circulating that 20 or so protesters were threatening to burn one of the defendant's trains which was then about 18 miles from the mine.

Day Three

185. On 18 April 2012, the increasingly tense situation was the subject of a local radio phone-in hosted by one Reverend Bangura ("the Reverend"). Witnesses called by the defendant suggested in evidence that the Reverend had used the broadcast to incite the local population to violence. Mr Dumbuya, a Police Liaison Officer ("PLO") employed by the defendant, even asserted that the Reverend had encouraged his listeners to cut off Mr Dumbuya's head. The Reverend gave evidence and denied these allegations. I believe him. I note, in particular, that a recording of part of the programme has survived and the contents corroborate the Reverend's account that he was calling for unity and not for conflict. Furthermore, the Coroner at the inquiry into the death of one Musu Conteh (of whom more later) listened to a full recording of the broadcast and found no evidence of incitement.

186. Regardless of the content of the Reverend's personal contribution to the live radio debate, the local police resolved to intervene. It is clear from the transcript that callers were repeatedly ventilating their strong antipathy towards the defendant. The police were, I find, hoping to shut down this platform for the expression and dissemination of their grievances. It was to this end that they arrived at the radio station and attempted to detain the Reverend.

187. This turned out to be an unwise move. After the Reverend had been removed from the building by the police, a crowd of villagers intervened and secured his release by the

[5] A town in the Tonkolili district unimaginatively so named because it is 91 miles from Freetown.

threat of force. By this time, the situation was completely out of control. There followed a violent clash between the villagers of Bumbuna and the SLP during the course of which the police were firing live rounds. The actions of the protesters and police alike were chaotic. Video footage reveals a complete lack of discipline and co-ordination within the ranks of the police which was soon to have tragic consequences. There is evidence that some of the protesters had gathered flammable material with a view to burning down the police station and it may be that the police were, at first, aiming to defend the station from the threat of attack. Whatever the original plan may have been, the situation rapidly deteriorated into mayhem.

188. During the course of this turmoil, a group of women made a bid to bring the violence to an end. With this purpose in mind, they began to perform a traditional Shekereh dance to bring peace and harmony in place of conflict. Instead, it brought death.

189. The police opened fire with live rounds. One of the performers, Musu Conteh was shot dead. Eight other villagers received gunshot wounds. Others were arrested and beaten.

190. The HRCSL inquiry revealed that the police had deployed a wide range of weaponry including but not limited to: a Heckler & Koch G3 automatic rifle, an HK 471 battle rifle, an M16A2 assault rifle and its shorter variant, the M4 carbine. Musu Conteh had been shot from behind.

191. The video footage also reveals that some of the villagers were throwing rocks and stones at the police which, although far less lethal than the array of firepower which the latter had at their disposal, doubtless acted as a provocation to the continued and wholly disproportionate use of force by the police.

192. The claimants contend that the only explanation of events consistent with the defendant's case must be an implausibly sophisticated conspiracy between the claimants' witnesses. I do not accept this analysis. I will deal in greater detail with the claimants' specific allegations concerning the events of the 2012 incident below but make the following general observations at this stage:

(i) This is not a case in which the only options open to the Court are either to accept the evidence of the claimants' witnesses in its entirety or to accept the evidence of the defendant's witnesses in its entirety. As my more detailed findings reveal, the credibility and accuracy of the individual witnesses called by both sides varies.

(ii) The contrast between the claimants' evidence and the defendant's evidence about, for example, payments to the police and the lending of vehicles is a matter only of degree. There is no doubt that some money was paid and vehicles lent and conflicting evidence about the scale of these acts of facilitation are more likely to be attributable to the fallibility of human memory than any overarching conspiracy on either side.

ELEVEN ALLEGATIONS

193. With respect to the 2012 incident, the claimants have invited me to make certain specific findings on the evidence. I propose to deal with each in turn.

Allegation 1: M S Dumbuya was present in the centre of Bumbuna on 16 April 2012, accompanied by police. Mr Dumbuya boasted about his control over them.

194. This allegation is based upon the evidence of AW1 to which I have already referred. This was, in short, to the effect that Mr Dumbuya, the defendant's local PLO who had been travelling in the company of the SLP, told AW1 and those with him not to worry because the police were under his command. Mr Dumbuya denied that any such conversation had taken place. I am prepared to accept, on balance, that there was indeed an exchange between AW1 and Mr Dumbuya on day one. I am not, however, satisfied that AW1 could be expected, so many years after the event, to have retained an exact recollection of the words used by Mr Dumbuya. But even if AW1's evidence were to be taken as being entirely accurate as to what was said, I would still not reach the conclusion which the claimants invite me to as to its significance. Context here is important. AW1's account was that Mr Dumbuya was not showing hostility towards the defendant's other employees but appeared, on the contrary, to be trying to reassure them. Against this background I am satisfied that Mr Dumbuya was intending at the time only to put the minds of the protestors at rest and that any reference he may have made to the level of control he exercised over the SLP was an act of bravado rather than an objective or accurate description of the level of his authority.

Allegation 2: The Defendant's staff briefed and paid police at the mine camp on the morning of 17 and/or 18 April 2012. The instructions given included that the police should use force on protesters if considered necessary.

195. I am satisfied that, on one or more occasions, members of the SLP attended at the mine during the course of the 2012 incident and that they were given cash payments. Indeed, both Mr Jansen (the general manager of the mine succeeding Mr Ramunno) and Mr Gordon recalled that the police had attended during this period. I am also satisfied, despite Mr Dumbuya's protestations to the contrary, that he made at least some of the payments to the SLP.

196. I would have been surprised if such payments had not been made. After all, there was an established history of the defendant making cash payments to the police for the provision of their services. The police presence in the location of the mine specifically in April 2012 was on a considerable scale and had involved the re-deployment of many men from far distant locations. I am satisfied that, but for the provision of cash, the police response would have been considerably less robust. The significance of this is that it cannot be assumed that the payment of money is, in itself, a compelling factor supporting the conclusion that the defendant had thereby assumed a greater than appropriate level of control over the SLP. It would be understandable, against the background of a more tightly regulated and stringent police organisation than that which then operated in Sierra Leone, that a darker purpose might be inferred from such payments but, not for the first time in this case, the fact-finding exercise must not be performed without regard to the prevailing social and political context in which it falls to be carried out.

197. Several witnesses gave evidence of what they allege was said by employees of the defendant to the officers to whom money was being distributed. I readily accept that the cash was not given out in silence and that the donors made no secret of the fact that they were looking for some return on their investment. However, there is a distinction to be drawn between, on the one hand, encouragement to do a proper job with

proportionate enthusiasm and, on the other, giving instructions to deploy unlawful means. In this regard it is to be noted that the evidence of the claimant's witnesses on the point is, by and large, distinctly bland.

198. AW3 said that he overhead Mr Dumbuya say, for example, that the money had been given to the police as a "token" so that the officers would "do their job actively." It is to AW3's credit that he conceded that he did not purport to be able to remember word for word what had been said but that what Mr Dumbuya had said was "something like" what he recalled. Such evidence falls far short of establishing that the defendant was encouraging the SLP to use unlawful means.

199. AW4 also gave evidence that a brown envelope had been passed from hand to hand originating from Mr Gordon and eventually finding its way via Mr Dumbuya to the OSD commander. He recalled that Mr Gordon had said: "These guys are stubborn unless you use the hard way on them but I have arranged with your boss and your boss will do everything for you." He went to say: "I am certain that these were his exact words. While referring to the "boss", Mr. Gordon patted the shoulder of the OSD commander." Again, the reference to the "hard way" does not automatically carry with it the implication that the SLP were expected to use disproportionate force. There was evidence that the protesters had already deployed an unlawful road block and further illegal activity could hardly be ruled out. It would be perfectly understandable if the defendant were to hope and expect that the SLP would not be tempted to assume the role of mere passive observers but would adopt a more proactive strategy. The latter might be the "hard way" but not necessarily an unlawful one.

200. AW5 referred to a black employee of the defendant whom he overheard talking to the police. He said: "This AML manager spoke in Krio. I heard him for a moment. He said something along the lines of: "the workers want to cause problems and stop the work of the mine. If they cause problems, they need to face the consequences, you should do anything to them." When he said this, I thought he gave them the mandate to do anything to the workers."

201. Again, the witness accepted that what he could remember was "something along the lines" of what he could relate. The combination of the understandable limitation of the precision of his recollection after the passage of years combined with the level of ambiguity inherent in the dialogue he remembered does not persuade me that what he overheard amounted to a general order from Mr Dumbuya to the police officers present not to hesitate before using unlawful force. I ought to add that AW5 also gave evidence that the police and the defendant would, on occasion, shoot intruders to the mine dead and bury the corpses. This allegation was unsupported by any other source of evidence and, coming from an anonymous witness, must be rejected as being, at the very least, highly implausible.

202. Furthermore, if Mr Dumbuya held a position of command and the power to direct the police it would be expected that his orders would be somewhat more specific than a general encouragement to "do anything". Indeed, it is to be noted that the claimant's evidence with respect to Mr Dumbuya's communications to police officers is limited, in the main, to general exhortations rather than extending to specific strategic or tactical commands. I am satisfied that what AW5 overheard amounted to a call for police proactivity rather than unlawful violence.

203. Mr Foyle Twining, to whose evidence I have already made adverse reference, carried out an investigation into the defendant's role in the 2012 incident and said in his witness statement:

> *"Following my investigations, it seemed that AML had exercised a high degree of control and direction in relation to the police. It was clear that AML vehicles and drivers had been used during the incident and that money had been paid to the police. I had also been informed that Kim Gordon had played a major role in the police operation and provided direction on behalf of AML."*

204. Again, what is striking about this conclusion is its lack of specificity. Beyond the facts that the defendant provided vehicles and money to the police (which is not in dispute) he gives no examples of what is meant by "control and direction". It is further to be noted that in a letter to Human Rights Watch in March 2013, Mr Foyle Twining responded to formal written questions about the defendant's role in the 2012 incident and, again, limited his observations to the payment of money and the provision of vehicles.

205. The queries raised by Human Rights Watch included the following:

- Does AML regularly supply the police with material such as transport, and did it do so during the Bumbuna protest?

- With whom did AML coordinate to respond to the workers' protest?

206. Mr Foyle Twining answered:

> "In the execution of Police security work, AML provides 3 vehicles and drivers because the Sierra Leone Police Force does not have enough vehicles to cover the length of the rail infrastructure at any given time. In terms of AML providing material assistance to the police – in addition to the above noted vehicles and drivers, the police are provided with water and food, when these items are not readily provided by the police agency AML has also provided a sun shelter for the police."

207. There is no mention whatsoever of any further degree of coordination between employees of the defendant and the SLP such as that now alleged against Mr Gordon and Mr Dumbuya. I found Mr Foyle Twining's explanation for the contrast between his response to Human Rights Watch and his evidence at trial to be unconvincing. He explained that he was "presenting the organisation in the most professional way he [could]" and that he "didn't feel it appropriate to put it [in the way he did in his statement] in the letter." I am satisfied that what he said in that letter he believed to be the substantial truth and that over the passage of time since he wrote it, his resentment towards the defendant has gestated to the point where, at the very least, he has convinced himself of a more sinister type of cooperation than the primary evidence was capable of sustaining.

208. Mr Jansen took notes of subsequent conferences attended by senior members of staff, including Mr Gordon, at which the relationship between the defendant and the police

was examined in the context of the 2012 incident. The first relevant note appears to be dated 21 August 2012 and refers to the defendant paying money to the police and providing them with water, payment for food, and accommodation. The note goes on to record occasions when police officers were requested to accompany, escort and provide protection for employees of the defendant on visits to Bumbuna.

209. During the course of a follow up telephone conference on the following day, Keith Calder (CEO) is recorded to have made a number of observations pertinent to the relationship between the defendant and the police:

> "AML left it exposed, not compared to local custom, but against int. standards.
>
> Need to feedback a strong commitment to international standards…
>
> -Key areas to look at:
>
> *OK to have close relations with Police
>
> *Tight line though when -pay them
>
> -give instructions
>
> -seen to be involved in their activity…
>
> Cumulative action, although in good intent, left AML exposed…
>
> Pointed out Kim's incident – when walking around Bumbuna with 2 guards (police) getting specific personal attention and then population hours after this in direct confrontation with Police."

His conclusions included the following:

> "- Kim had for 3 days protection from Police"

210. A few weeks later, Mr Calder prepared an internal memorandum in which he noted the nature of inquiries which had been raised by Amnesty International:

> "The questions from AI are quite specific and one would assume that there is evidence backing up all of their points. It is possible that AML were seen to be at the front of police, talking with the Inspector General, moving around with armed support, pointing at individuals, then providing food and payment to the military and so on."

211. My interpretation of these observations, set against the context in which they were made, is that, faced with inquiries from Amnesty International, the defendant realised that its relationship with the SLP was problematical. On the one hand, a close relationship was necessary, in particular, to secure adequate protection for the

defendant's employees, business and property. On the other, a line had to be drawn beyond which the relationship was in danger of becoming too informal and close.

212. The claimants rely upon these notes as supporting the evidence of their witnesses. However, my interpretation of the notes is that the concerns of Mr Calder were directed predominantly at the perception of those who were scrutinising the relationship between the defendant and the police. He was worried that a lack of appropriately formal arrangements and the public appearances of employees of the defendant in the presence of the SLP would send out the message to observers that the role of the defendant and the police had been inadequately differentiated.

213. Importantly, however, the notes do not reveal any concerns that employees of the defendant were, in fact, encouraging or conspiring with the police to exceed the legitimate bounds of their powers whether by the deployment of excessive violence or otherwise.

214. The concise reference to "Kim's incident" would appear to suggest that Mr Gordon was to be seen out and about in Bumbuna with two police officers and that some hours after this the direct confrontation between the police and the local villagers took place. I am satisfied that if this incident had involved either significant or deliberate wrongdoing on the part of Mr Gordon then it would have been referred to in more explicit terms and that Mr Gordon would have been asked to account for his behaviour.

215. The claimants suggest that "Kim's incident" was more serious than this and ask the court to draw adverse conclusions from the fact that neither Mr Gordon nor Mr Jansen said they could recall any detail about it. I am satisfied, however, that they genuinely did not recall the detail because it was not a matter that had merited more than a passing reference at the time of the meeting and, over the years they had, understandably, forgotten the details. I note also that both Mr Gordon and Mr Jansen described in their witness statements how they went to Bumbuna on the morning of the third day under police protection to see if arrangements could be made to allow expatriates to leave and to see if any members of the workforce, many of whom lived in Bumbuna, would be willing to come into work. They made their way back to the mine, via the fuel farm, as the atmosphere was becoming tenser but before the violence broke out.

Allegation 3: The Defendant was aware in advance that police planned to remove the roadblock near the fuel farm on 17 April 2012, if necessary through violence.

216. On the morning of day two, Mick Ford (General Manager, Health and Safety) reported to Alan Watling (CEO):

> "Police are mobilising for an all-out assault to clear the road in Bumbuna. I expect them to arrive in Bumbuna 10:00 to make arrests".

Mick Ford subsequently forwarded the email to Miguel Perry (Chief Financial Officer). The email shows that the defendant was aware that the police were preparing to clear the road in Bumbuna but the expression "all-out assault", although suggesting the likelihood that robust force might well be used, does not carry with it the implication that such force would necessarily amount to unlawful violence.

Allegation 4: The Defendant was soon made aware of the violence in Bumbuna on 17 April.

217. This contention is uncontested. Mr Jansen conceded that it was likely that the defendant's contacts on the ground would have become aware of the violence at the fuel farm and in the marketplace at Bumbuna soon after it had occurred.

Allegation 5: Police were accompanied by and/or transported in AML vehicles throughout the incident.

218. There is no dispute that the defendant provided their own vehicles for the use of the SLP during the 2012 incident. The contemporaneous documents reveal that by the morning of the third day all of the defendant's vehicles had been loaned to the police. It is not, therefore, surprising that many of the claimants' witnesses recalled seeing police officers being transported in the defendant's distinctive vehicles.

Allegation 6: Police were billeted at the AML guest house on the night of 17 April 2012.

219. I am satisfied that OSD members and soldiers were accommodated at a guest house run by the defendant in Bumbuna on the night of the second day of the 2012 incident. Hannah Turay, the manager of the guest house gave evidence to this effect and the transcript of the proceedings before the HRCSL records the evidence of several police officers who recalled that they had stayed there on this occasion.

220. It follows that I do not believe Mr Dumbuya's evidence that he had lodged at the guest house that evening but that there had been no OSD staying there at the same time. His account of the events of that evening are simply not credible. He described how he was attacked and injured by intruders at the guesthouse and made his escape to the police station. If this were true, the intruders would have had to have breached the gates to the guesthouse and to have got past two security guards and two armed police officers on duty outside. I am satisfied that Mr Dumbuya invented this account to provide him with an alibi for events later that day. I will consider further Mr Dumbuya's version of the events of that night later in this judgment.

Allegation 7: Musa Bangura supplied police with water at Bumbuna police station on the afternoon of 17 April 2012.

221. Musa Bangura, to whose evidence I have already referred, was the defendant's logistics manager at the time of the 2012 incident. However, by the time he came to give evidence, he was no longer employed by the defendant. Kadie Kalma implicated Mr Bangura in the actions of the police. She said that she had been arrested violently and without cause in Bumbuna and taken to the police station. In her witness statement she asserted that Mr Bangura had arrived at the police station with water for the police and had directed the police to take her and other detainees to the court at Makeni to learn a lesson. Also detained at Bumbuna police station at the same time was Manty Kamara who said in her witness statement that Mr Bangura had ordered the police to manhandle the detainees and treat them like slaves.

222. I reject the evidence of these two witnesses in so far as they purport to implicate Mr Bangura in directing and encouraging the police to act unlawfully by manhandling the detainees or otherwise.

223. Both Ms Kalma and Ms Kamara were openly hostile to the defendant variously complaining, broadly speaking, that it had brought more harm than good to the local communities. Ms Kamara was of the view that the defendant had polluted the local water and desecrated sacred sites. I make no comment as to whether these complaints were justified or not. Suffice it to say that neither witness could be categorised as a neutral observer.

224. More specifically, Ms Kamara had given an account of her treatment at the hands of the police to the HRC in which she made no mention of the alleged role of Mr Bangura or, indeed, anyone on behalf of the defendant. I found her explanation that her memory had improved with the passage of time to be implausible. Furthermore, under cross examination, Ms Kamara said that it was a police officer rather than Mr Bangura who said that they should be treated like slaves and Ms Kalma appeared to suggest that it was the police and not Mr Bangura who decided to transfer the detainees to Makeni.

225. I must also take into account the context in which their respective observations of Mr Bangura were made. About 26 prisoners were inside the police station at Bumbuna. It was a scene of chaos. Ms Kamara said of Ms Kalma: "I recognised one of the women as Kadie Kalma who I knew from the town. She had been beaten badly and was crawling on the floor because she could not stand. She looked very bad and was urinating on herself and crying very much."

226. I have no doubt that these two witnesses were appallingly treated by the police and that the circumstances of their detention were inexcusably dire. I do not accept, however, that their evidence suggesting that Mr Bangura encouraged the police to mistreat them or otherwise sought to exercise control over the SLP was correct.

227. I am, however, satisfied that, contrary to his denials, Mr Bangura did supply the police with water at the police station on that occasion.

228. In reaching this conclusion, I bear in mind that Mr Bangura's evidence was unsatisfactory in a number of respects. I will not list all of the examples relied upon by the claimants but I note, in particular, that, in evidence, he sought to minimise his contacts with the police and his assertion that he had no direct dealings with them was fatally contradicted by the contemporaneous documentary evidence. I am also satisfied that he deliberately misled the HRCSL by asserting to the Commission in his evidence to them that the defendant did not provide material help or transportation to the police. Furthermore, the presence of Mr Bangura was confirmed by AW7 whose evidence on this issue I have no reason to doubt.

229. Ultimately, however, I am not satisfied that the identity of the representative of the defendant who distributed water to the police is a matter of particular significance. After all, it is not in dispute that the defendant did, in fact, supply water to the SLP.

230. My conclusion is that Mr Bangura was seeking to understate his contact with the police generally and that he lied about not distributing water to the SLP at the station. However, I find that it has not been shown that his motive in lying was to cover up for the fact that he was exercising any degree of control over the police or encouraging them to exceed their lawful powers. His motives are adequately explained by the fact that the behaviour of the police during the 2012 incident was so deplorable as to give rise to well-merited public outrage and formal investigation such that he wanted to

distance himself from the SLP as much as he could - even to the extent of lying about his role.

Allegation 8: Anthony Navo made cash payments to the police at Bumbuna police station on the afternoon of 17 April 2012. Mr Navo also instructed the police to release a detainee.

231. AW7 gave evidence to the effect that he was one of many people randomly arrested by the SLP on the second day of the 2012 incident and had been taken to the police station in Bumbuna. He said that Mr Navo, a Public Relations Manager employed by the defendant, was there and a police commander asked him what they should do with AW7. Mr Navo told him to let AW7 go and he did. He later saw Mr Navo being handed a bag of cash by his driver the contents of which he proceeded to hand out to the LUC.

232. Mr Navo denied being in Bumbuna on the day in question and maintained that he had spent the evening of the first day of the 2012 incident in Makeni and returned to his office in Freetown on the second day.

233. I accept the evidence of AW7 and reject that of Mr Navo on this issue. I note that Mr Bangura admitted that he went to Bumbuna on the second day and that he did so in the company of Mr Navo. Mr Bangura had no motive to mislead the court on this issue. Furthermore, AW7 was an independent witness with no discernible motive to lie about Mr Navo's activities at the police station. Mr Navo, in contrast, was seeking to distance himself from the events in Bumbuna in April 2012 and the SLP in an attempt to dissociate himself from the shocking and tragic consequences. I do not accept, however, that the fact that the police officer asked Mr Navo what they should do with AW7 is evidence that the police deferred to him more broadly. AW7 was not involved in the dispute and it is likely that the police would check with Mr Navo whether he knew of any reason for his continued detention. Neither does this exchange support the proposition that Mr Navo was encouraging the police to act unlawfully.

Allegation 9: M S Dumbuya was present during the attempted arrest of Reverend Bangura on the morning of 18 April 2012.

234. Mohamed Dumbuya was the only PLO working in Bumbuna. He had previously worked as an Inspector in the SLP and this made him particularly eligible for the job of acting as go-between representing the interests of the defendant in its dealings with the police.

235. His evidence was to the effect that he had spent nearly all day on the second day of the unrest at the police station in Bumbuna during which time he had witnessed many people being brought in and detained. That evening he went to spend the night at the defendant's guesthouse. I have already found that I do not believe Mr Dumbuya's evidence to the effect that there were no police officers staying in the guesthouse with him. I also find his account of what happened at the guesthouse during the night and early morning to be untrue.

236. He said that he had heard the Reverend Bangura on the radio in the early morning urging his listeners to track down Mr Dumbuya and cut off his head. After that, a number of protesters stormed the guesthouse and found Mr Dumbuya hiding in the bathroom. They began to punch him all over and his face and body were swollen and bruised. He was rescued by a military man who provided him with a spare military uniform which

he wore when making his way on foot to the police station. Later that day, he went to Makeni hospital for treatment.

237. I have seen photographs of the guest house and, as I have already observed, it is protected by a high wall and a gate which was closed at night. It was guarded by members of the defendant's security team and the SLP. Although there were 18 rooms at the guest house there were so many OSD officers staying there that some of them had to sleep in the sitting room. Hannah Turay, the manager of the guest house, who occupied a house nearby, was completely unaware of any such attack and rescue. I find that the events described by Mr Dumbuya could not have escaped her attention if they had in fact taken place as he described. In addition to the Falstaffian implausibility of Mr Dumbuya's account, it is to be noted that no witness provides independent evidence of Mr Dumbuya's injuries. His own account of what happened in an email to Gibril Bangura of 2 August 2012 made no reference whatsoever to a physical attack and Mr Dumbuya's diary refers to a threat and a rescue but, again, not to any physical attack.

238. I am satisfied that Mr Dumbuya was "rescued" in the sense that threats of serious physical violence had been made against him by callers on the Reverend's radio show. Bumbuna Officer in Charge (OC) Konneh went to the guest house and then went with Mr Dumbuya to the radio station. OC Konneh gave the following evidence to the Musu Conteh inquiry:

> "I had no vehicle by then but I was called upon by the PLO and military officers who asked me to rescue them from the guest house, I drove down to the guest house. I went alone to rescue the military and the other man in the guest house. The place was calm when I went there. There were no barricades along the road. After the recue I used a vehicle which they had with them there. I rescued the PLO and two other military personnel. I took them from the guest house and we drove to the radio station and collected the pastor for questioning."

239. OC Konneh had no motive to omit any mention of injuries sustained by Mr Dumbuya. Furthermore, there is no explanation as to why he would say that they went to the radio station together unless it were true. OC Konneh gave similar evidence to the HRCSL. The Commission concluded:

> "There was an allegation that the police went to arrest Rev. Daniel Bangura with a HAWK vehicle driven by the AML Police Liaison Officer. HAWK is one of the subcontractors of AML. This allegation was proved."

240. I concur with this conclusion and am satisfied that Mr Dumbuya was, indeed, at the radio station when the Reverend was arrested.

Allegation 10: M S Dumbuya, transported and accompanied police throughout the strike.

241. I am satisfied that Mr Dumbuya did indeed transport and/or accompany members of the SLP throughout the strike. I have found him to have been lying in his account of being injured and that the only rational explanation for such a lie is that he wanted to camouflage his activities on day three.

242. Nevertheless, the further question arises as to why Mr Dumbuya was so anxious to distance himself from the SLP.

243. Two of the anonymous witnesses gave evidence to the effect that Mr Dumbuya told them things that suggested that he was in authority over the police. AW1, as I have already observed, said that Mr Dumbuya had said that the police were under his command and AW3 said that Mr Dumbuya announced that he was "going down to Bumbuna to stop these guys from striking". I attach little weight to this evidence which was based on recollections long after the event and thus gives rise to a real risk of a deterioration of recollection of the exact words used on any given occasion. Even if these recollections can be treated as being entirely accurate they are more consistent with mischievous braggadocio than a serious declaration of the true level of his influence and power.

244. Indeed, there are a number of reasons why the allegations suggesting complicity in police lawlessness on the part of Mr Dumbuya or an intention that such lawlessness should take place (as opposed to mere physical presence) fall to be treated with some caution:

(i) As the only PLO on the ground at the mine and in Bumbuna, it was hardly surprising that Mr Dumbuya should be seen in the company of the SLP at various stages of the unrest. That was part of his job. I am satisfied that it is likely that many protesters had concluded that he was on the wrong side of the dispute which thereby diluted the reticence which they might otherwise have felt about making adverse assumptions about his involvement in the 2012 incident.

(ii) In addition to his duties as PLO, Mr Dumbuya had responsibilities to investigate employees charged with disciplinary offences the discharge of which did not enhance his popularity with the workforce in general and was likely to colour the recollections of those who purported to implicate him in directing police violence.

(iii) AW8, the member of the SLP called by the claimants, who was in a position of some authority in the police and who was present when Musu Conteh was shot, made no mention of Mr Dumbuya giving any directions at any time.

245. It is against this background that the evidence of Yusuf Turay falls to be assessed. He worked for a sub-contractor for the defendant and was on strike during the course of the dispute. His evidence was to the effect that an employee of the defendant was directing the police to arrest people during the clash at Bumbuna. I am invited to conclude that this was Mr Dumbuya.

246. I found Mr Turay to be an unsatisfactory witness. His witness statement was dated just five months before he gave his oral evidence. In it he said:

> "Some police started to approach us and some of us scattered. I saw the police beat a young man and take a chain from his neck. The CLO [a solicitor's transcription error for PLO] from the Hawk vehicle had got out of his motorcar and was shouting to the police and pointing and telling them to arrest and beat people

> he was identifying. The situation was out of hand so I decided to run."

When he came to give his oral evidence, however, he said that the PLO had pointed straight at him shouting:

> "Arrest that man!"

Under cross-examination, he claimed to have remembered this detail since giving his statement. I do not accept that, immediately after having seen another man being beaten up by the police, Mr Turay could simply have forgotten that he had then been singled out personally for arrest by the very man who appeared to be directing them. On the contrary, I find that this was a salutary example of the dangers of recollection "improving" over time.

247. Furthermore, in Mr Turay's case he had no motive to hold back in his recriminations. He described the PLO as his "first enemy" and said that he had talked to people in his community about him and that they had responded by telling him about the PLO. This describes the perfect environment in which evidence is likely to be fatally contaminated by rumour, reconstruction and communal resentment.

248. I also found implausible the fact that Mr Turay, when faced with the violence and mayhem surrounding him did not immediately turn on his heels and run. His account of the activities of the PLO suggested a rather more unhurried period of observation than circumstances would be expected to have afforded him. His explanation that he was exercising caution in case he might be ambushed when running away did not have the ring of truth.

249. Accordingly, although I have no difficulty in accepting that Mr Turay saw Mr Dumbuya with the police, I am unable to give credit to his description of Mr Dumbuya participating in unlawful conduct.

250. Another witness, Dinkin Marrah, an employee of the defendant's subcontractor, HAWK, said that he came upon Mr Dumbuya during the violent clash in Bumbuna. He was standing around on the street in a group of police officers and Mr Marrah claimed to have overheard him saying loudly:

> "I am sick and tired of these guys. You guys are paid so well, why must you strike? Look at what the police officers are taking home as their salaries! We are going to correct this nonsense. These guys have to be taught some lessons."

251. However, Mr Marrah also revealed himself to be an unreliable witness. The point arose as to how he knew who Mr Dumbuya was - bearing in mind that Mr Dumbuya was just one out of thousands of people employed by the defendant. Mr Marrah's response to this very straightforward line of cross-examination took on a protean plasticity:

His first account, both in his witness statement and in his oral evidence, was that he had joined HAWK (one of the defendant's sub-contractors) in March 2011. Mr Dumbuya was at that time already working for the defendant and he met him then. He had thus known him for over a year before the 2012 incident.

It was put to him that this could not be the case because Mr Dumbuya had only started work at the mine at the beginning of 2012 and not a year earlier as Mr Marrah had claimed.

Mr Marrah accommodated this inconsistency by changing his account to say that he had actually started work in March 2012 and not 2011 and so Mr Dumbuya would, indeed, have been there when he started.

It was put to him that if that were the case, he must, out of all the employees at the mine, have got to know Mr Dumbuya within only a month of starting with the obvious implication that this was within an implausibly short time.

Mr Marrah sought to counter this point by claiming that, before he started work, he had been hanging around the gates of the mine hoping to be offered a job and it was during this period he saw Mr Dumbuya and got to know him.

Further cross-examination was predictably focussed on revealing how improbable is was that Mr Marrah had got to know Mr Dumbuya merely by hanging around outside the gates to the mine.

In response, Mr Marrah's evidence "improved" yet again when he suggested that, in fact, his wife had started work there before he had done and that it was she who had told him who Mr Dumbuya was.

252. It may be argued that the precise circumstances in which Mr Marrah came to be able to identify Mr Dumbuya are not of central importance to the main thrust of his evidence. However, it was Mr Marrah's facility in simply changing his evidence to meet whatever challenge was raised in cross-examination on this point that led me to conclude that he really was just making it up as he went along. This exchange thus seriously undermined his general credibility.

253. In addition, the circumstances in which Mr Marrah said he overheard what Mr Dumbuya was saying are strongly redolent of contrivance. His aim, perfectly understandably, was to avoid the police following upon the complete breakdown of law and order which had already resulted in the deployment of tear gas. Although not wearing his full uniform, he was wearing the standard-issue boots provided by the defendant at the time. He said that he saw that Mr Dumbuya and his SLP audience were located by a vehicle in the centre of a very wide road. The street was otherwise almost empty. Notwithstanding his anxieties, he did not avert his eyes but concentrated his attention on them and watched them whilst passing close enough to be able to hear what Mr Dumbuya was saying. Despite the hostile words used by Mr Dumbuya, Mr Marrah was simply allowed to go on his way entirely unhindered.

254. Even if I were to accept (which, on a balance of probabilities, I do not) that Mr Marrah saw and recognised Mr Dumbuya in a group of police officers in the circumstances he describes, I would be unable to treat his recollection of the words used as being likely to be accurate. These words, in any event, do not of themselves evidence any degree of control or direction on the part of Mr Dumbuya over what the police were to do. They are more consistent with the venting of spleen than the issuing of orders.

255. Extreme care must also be exercised with respect to the allegations made against Mr Dumbuya by some of those calling into the radio show. The identities of those making the allegations are unknown. The sources of their information are unnamed. The atmosphere in which they commented was febrile.

256. In all the circumstances, I am satisfied that Mr Dumbuya was out and about with the SLP during the 2012 incident and sometimes driving them in the HAWK vehicle. I am not, however, satisfied that he was encouraging or intending them to act unlawfully or condoning the use of excessive violence against victims of the police abuses.

257. In reaching this conclusion, I have not overlooked the very considerably damaged credibility of Mr Dumbuya himself. Advocates are often, and understandably, heard to say that the evidence of X can safely be discounted in its entirety because he or she has been shown to have lied about an important aspect of his or her evidence. This may often, but not always, be the case. By way of example only, and at the risk of stating the obvious, in EPI Environmental Technologies Inc v Symphony Plastic Technologies Plc [2005] 1 WLR 3456, the Court observed at paragraph 74:

> "…witnesses can regularly lie. However, lies themselves do not mean necessarily that the entirety of that witness's evidence is rejected. A witness may lie in a stupid attempt to bolster a case, but the actual case nevertheless remains good irrespective of the lie. A witness may lie because the case is a lie."

258. I am satisfied that the reason Mr Dumbuya lied about his whereabouts was to distance himself as far as possible from the events of the days of violence; not because he had participated in the unlawfulness but because his presence with the SLP carried with it the stigma of perceived complicity.

Allegation 11: Kim Gordon made cash payments to the police and gave them alcohol at the fuel farm. Mr Gordon instructed police to use live rounds on protesters if this were considered necessary in order to get the situation "under control".

259. In common with Mr Jansen, Mr Gordon had left the defendant's employment by the time he gave evidence at the trial. He attended court voluntarily and, at not inconsiderable personal inconvenience, had travelled from Australia so to do. The claimants contend that, contrary to the account given in his witness statement, he was heavily implicated in the deployment of unlawful violence against the local population.

260. In this regard, I heard from AW8, an OSD officer who was in command of a complement of about ten police officers in the vicinity of the fuel farm during the 2012 incident. He had been sent there by his superior officers. He was under the command of AIG Kabia and Superintendent Lamin both of whom were in Bumbuna at the time of the incident and from whom he took his orders. He admitted that, in common with both his colleagues and superiors, he had taken bribes during the course of his career as a police officer which he had, of course, kept secret. He said that he had spoken to Mr Gordon on each of the three days over which the unrest took place. On each of these occasions, Mr Gordon had openly provided cash to the AIG to be distributed to the officers so that each received 50,000 Leones. He also handed out alcohol. He said that if anyone tried to make a riot the police were to open fire on them. AW8 said that on day one Mr Gordon had handed out the money and given the instructions at about ten

o'clock in the morning. When challenged on this, he became very emphatic in his response about the timing.

261. AW8 was at the fuel farm when the shooting started and said that he had opened fire under orders from Mr Gordon. Mr Gordon was also present later when the shooting started which resulted in the death of Musu Conteh. AW8 said that he opened fire in accordance with the standing orders of Mr Gordon; although he then went on to say that he had started shooting in order to defend himself from the crowd.

262. I reject the evidence of AW8 concerning the allegations he made specifically against Mr Gordon. He was, by his own admission, someone who was prepared to take bribes as a serving police officer and appeared not to have any qualms about his participation in institutional corruption.

263. In addition, he became decidedly combative in cross examination when it was pointed out to him that Mr Gordon was not even in Bumbuna at the time he was first alleged to have presided over the distribution of cash and the issuing of standing orders to shoot. This was not an example of a witnesse having difficulty with telling the time as a result of cultural factors. This was a commanding officer of the SLP who, far from admitting to any uncertainty said: "I'm telling you. You weren't there. I was there and the man came to where I was at ten o' clock in the morning".

264. This exchange also provides a striking illustration of how even the most emphatic of witnesses are capable of getting their evidence badly wrong.

265. Furthermore, and perhaps more importantly, AW8's evidence was inherently implausible. He was, as he said under cross-examination, under the command of the AIG and took orders from him. There would have been no need for Mr Gordon to take the risky course of encouraging unlawful violence in the open air and in the unnecessary presence of several potential witnesses. He need only have instructed the AIG in private to give the orders to shoot without taking the risk that every officer at the fuel depot was aware that he, personally, was responsible for the instruction. Such barefaced conduct would show a reckless disregard for his own reputation and threaten to expose the conciliatory approach evidenced in the minutes of the IMT meeting at which he was in attendance as a hypocritical sham.

266. Mr Gordon was unable to recollect giving money to the police or the details of what he had said to them on any given occasion. In his position as the defendant's Health, Safety and Security Manager, I consider that it is probable that he did meet with members of the SLP on one or more occasions in order to brief the officers, many of whom may have been unfamiliar with the layout of the mine. In particular, it was only to be expected that the police should be informed of the potential flash points and targets of criminal damage and theft. In this context, I would expect Mr Gordon to emphasise the importance of taking steps to protect the fuel farm. I do not accept, however, that he would have taken it upon himself to give any orders or advice as to when, if at all, it might become operationally appropriate to use tear gas or to open fire. Neither do I accept that any such orders or advice would have made any difference to the way in which matters developed during the 2012 incident. This applies to all of the occasions when the police acted unlawfully and, in particular, opened fire using live rounds. However, the particular fact that certain members of the SLP were so undisciplined, unrestrained and violently anarchic as to open fire in the vicinity of women performing

a peace dance at a location far away from the mine provides a strong indication that "standing orders" had nothing to do with the tragedy which unfolded. I reject the suggestion that the women were shot at because they had earlier been in the vicinity of the fuel farm or that the SLP could have thought that by firing live ammunition they might thus get the strike under control. I consider that the catalyst to the shooting was a mixture of fear, ill-discipline, anger and testosterone.

267. Indeed, AW8's evidence under cross examination as to why the SLP started firing live shots seemed to be advancing two parallel and irreconcilable explanations both of which were calculated to mitigate his own personal responsibility for what had occurred.

268. Explanation 1 was the Kim Gordon "standing orders" justification:

> "So we have rules of engagement. Kim Gordon tells the AIG, the coordinator. He is the one that tells everybody what to do. So we as police will not fire on anybody unless we have been ordered to do so." [Emphasis added]

269. Explanation 2 was the self-defence justification:

> "So I opened fire on these people because their desire was to kill me. So I opened fire on them."

270. I find that the second explanation is closer to the truth. It is very likely indeed that the shooting in Bumbuna was out of all proportion to the physical risk presented by the local population but it was, in any event, a response to the latter's continued hostility and stone throwing. It takes greater restraint than AW8 was able or willing to exercise to resist using a gun under such provocation. The blame he sought to attach to "standing orders" was, I find, no more than a confection to camouflage the extent of his own responsibility.

271. I accept that AW8 earned some credit by frankly admitting that he had been open to corruption in the course of his job but the fact must remain that his general credibility was damaged by his self-confessed history of prioritising the receipt of bribes over the discharge of his duties.

272. AW4 also gave evidence implicating Mr Gordon. At the time of the 2012 incident, he was employed by the defendant at the mine in a clerical capacity. He was a close friend of some of the individuals who had organised the strike. He said that he was at work on the night shift in the early morning of day two of the incident. He saw Mr Gordon in the company of about 40 to 50 police officers. He was talking loudly and in the presence of other employees of the defendant. He told the police that they had to use "the hard way".

273. I found AW4 to be unreliable and reject the evidence he gave with respect to the alleged meeting between Mr Gordon and the police. I was particularly unimpressed by the fact that it was revealed for the first time in cross-examination that he lived with two of the claimants and that he had been in a relationship with another claimant whom he refused to identify. It must have been obvious to him that if these relationships had remained unexplored he would, by default, have presented as an independent witness. It further

transpired that AW4 had known AW8 since their schooldays and had maintained contact since then. This was a further relationship the existence of which AW4 had failed to volunteer.

274. Furthermore, it is in the highest degree unlikely that Mr Gordon would have run the wholly unnecessary risk of being overheard by employees of the defendant directing the police to use "the hard way". Such an inflammatory comment within potential earshot of the very people with whom the defendant was in industrial conflict would have been reckless in the extreme. I am satisfied that AW4 made up his evidence out of loyalty to his friends and was not trying to assist the court in getting to the truth.

THE DEFENDANT AND THE POLICE

275. I now turn to deal with the issue of the relationship between the defendant and the police. It has been necessary to refer, in passing, to matters concerning the defendant and the SLP as an essential part of the narrative of events over the period with which this case is concerned. The nature and extent of this relationship is, however, one of particular importance and merits separate attention.

276. After the civil war, which ended in 2002, significant international aid and assistance was provided to help Sierra Leone to become a functioning state in which it was hoped that the rule of law would become a practical reality. Nevertheless, such efforts were bound to take time to bear fruit and, in respect of the SLP, it is clear that, at the time of the incidents of 2010 and 2012, much work remained to be done.

277. There were particular issues relevant to the circumstances of these claims.

278. The location of the mine is very far from the major population centres of Sierra Leone and is difficult to get to, particularly in the rainy season. The building up of an effective police presence therefore required the deployment of officers in an area which previously had attracted very little by way of sustained police involvement with the local community.

279. There was a clear need for the police to operate in the Tonkolili area. As has already been observed, the arrival of the defendants brought some benefits to the local community but also gave rise to inevitable local conflicts relating to employment terms, population displacement and environmental impacts. Some of those villagers affected were prone to react to real or perceived injustices on the part of the defendant by deploying unlawful means which had included the construction of illegal roadblocks, the detention of employees, physical threats and criminal damage. None of this, of course, excuses the excesses of the SLP in dealing with the protesters during these periods of unrest but I am satisfied that, without a significant police presence, it was more likely than not that the defendant would simply not have been able to carry out its undertaking. The defendant had its own security staff but they were legally precluded from bearing arms and lacked the mantle of state authority. I find that, on a practical basis, the defendant had only three options: rely to a significant degree upon the SLP to maintain order; run the risk of repeated outbursts of largely unchecked and potentially violent criminality from protesters or abandon its undertaking altogether.

280. The defendant's need for police involvement was not limited to times of particular unrest. The contemporaneous documentation reveals that there was a major and

continuing problem involving theft. The goods taken included railway tracks, sleepers and, most persistently, fuel.

281. The SLP was relatively poorly financed. Its resources were never likely to be such as to fund the additional extra numbers required effectively to police the expanding population in the locality of the mine. The defendant could rely upon the substantial deployment of officers in the locality of the mine only by making repeated financial contributions to the SLP. The evidence that it was quite usual for individuals or companies in Sierra Leone to pay the police for their services went unchallenged.

282. Whether through lack of training, natural inclination or a combination of the two, there were clearly a number of members of the SLP whose conduct was liable to fall very far short of the standards to be expected of responsible officers thus giving rise to a risk of injury, loss and damage to the public at large.

The defendant's support for the police

283. I am in no doubt that the support provided by the defendant to the police was, on the whole, poorly documented. Nevertheless, the available records show that the defendant was providing both financial and practical backing throughout the period with which this case is concerned. Examples include, but are not limited to, the following:

(i) 27 August 2010, the defendant's Finance Manager recorded that "[t]he General Manager has approved a monthly payment of 1million Leones to the LUC at the Lungi Police Station as they will be dealing with all AML issues that come up in the area." The purpose of this payment was to secure "police commitment and ability to support operations as and when required."

(ii) On the day after the 2010 incident, Musa Bangura emailed several senior officials of the defendant seeking Le10 Million "as imprest for the mobilisation of 4 cabinet ministers and the Inspector General of Police and team to move to Tonkolili in the deployments of armed police officers at the mining sites." In his oral evidence, Mr Bangura confirmed that this reflected payment made by the defendant for the presence of the Inspector-General of Police and armed police in Tonkolili on the morning of 26 November.

(iii) On 28 November 2010 Dominic Boyle wrote: "Meeting with AIG [Assistant Inspector General] and other senior police at Makeni on Monday 11 to discuss bolstered security numbers, capability and support police elements and appropriate QRF (quick reaction force)."

(iv) On 1 December 2010, the defendant set out its plans to build, furnish and equip the police station in Bumbuna and provide the Police with a troop carrier.

(v) On 10 July 2011, the defendant is recorded to have arranged to pay for "24 Police officers for three months to support the surge in security support. …Total cost is LE 54,720,000 (approx. $12,725) which I recommend we pay monthly in advance."

(vi) The defendant's "2011 Government, Corporate and Social Responsibility Report" recorded that it had "initiated and supported the Sierra Leone Police

Administration with resources to upgrade the Bumbuna Police Station into a Unit Command and work on the project is progressing. The Company has also been supporting the police force with resources to guard its mine and railway infrastructure."

(vii) On 31 August 2011, "[f]ollowing the approval of the establishment of the Tonkolili Police Post", the defendant agreed to pay LE 45,200,000 per quarter for "police ration, food, drink and laundry" and "monthly personnel allowance for site" for 36 officers. On 30 November 2011, the defendant's finance team approved payment of LE 55.2million for the police to man the Tonkolili Police Post for three months. It appears that these quarterly payments were made on an ongoing basis.

(viii) Petty cash payment spreadsheets dating from late 2011 record payments made for "police and military services rendered to AML", including "[m]onthly wages for the SLP for rendering AML security coverage within Makeni and other AML ops areas" (2 November 2011) and monthly wages "to beef up the AML patrol team" (14 November 2011).

(ix) The defendant's internal inquiries in response to the 2012 incident recorded that it was "contributing" a fixed sum per month to twelve officers in Makeni and an "unknown amount" to eight officers in Pepel.

(x) Mohamed Turay, one of the defendant's PLOs, agreed that he was involved in the payments to police in Makeni in March 2012. At that time, the sum allocated to each officer was LE 1million (of which LE 200,000 was paid in cash to each individual officer); this represented a supplement to their police salaries to provide an incentive to perform to the defendant's standards.

(xi) Mick Hallahan also recalled payments to police in Makeni, both at the time of and subsequent to the "security surge" in July 2011. He recalled that a total of 24 officers were involved and confirmed that the payments were made in cash.

284. In mid to late 2011, the defendant was considering paying police by bank transfer rather than cash in order to increase transparency. On 2 August 2011, Musa Bangura stated that police "incentives" had to be paid in cash if the defendant was to "expect to get the services we are enjoying from the police at the sites." Mr Bangura said in evidence that "if we had paid the money directly to the police in Freetown… it would have been impossible for the police officers that were based at Kegbema to be the direct beneficiary (sic.) of that money."

285. In September 2012, Graham Murphy (Head of Security) proposed returning to cash payments on the basis that police had complained that if paid by bank transfer "the guys on the ground will not receive the 20% that they should receive." The response to this was that the defendant had "copped pineapples yesterday over police payments" and so the matter would have to be discussed with Gibril Bangura and Keith Calder.

286. I am satisfied that the defendant would have preferred to make payments to the police by way of bank transfer rather than cash and that the use of cash was not to obfuscate the nature of the relationship between the defendant and the police but to circumvent

the risk that money paid into an SLP bank account might well not end up in the hands of those officers who were the intended beneficiaries.

287. The police in Bumbuna did not have their own vehicles and were thus entirely reliant on the provision of vehicles by the defendant for transport. The defendant also provided vehicles to the police at the larger stations including Makeni as and when occasion demanded.

Support for specific investigations

288. On 6 February 2012, the defendant allocated LE 25million to "support police investigation" into the death of a man who had been hit by one of the defendant's trains.

289. On 25 April 2012, shortly after the incident, the Police requested LE12.5million (approximately £1,875 at the time) from the Defendant as "motivation" to pay for their investigation into "information gathering and riotous conduct within the operational areas of AML in the Bombali and Magburaka Divisions." The reason given was that "[s]ome incentives are of vital role in the dispensation of the said duty." This was an obvious reference to the 2012 incident.

The lawfulness of payments to the police

290. The claimants contend that the payments which the defendant made to the SLP were unlawful.

291. There are a number of common law authorities which delineate the circumstances in which it is lawful for the police to charge for the provision of their services. In Glasbrook Bros v Glamorgan County Council [1925] AC 270 a colliery manager applied for police protection for his colliery during a strike and insisted that it could only be efficiently protected by the billeting of officers on the colliery premises. The police superintendent was prepared to provide what in his opinion was adequate protection by means of a mobile force but refused to billet officers at the colliery unless the manager agreed to pay for the force so provided at a specified rate. The House of Lords held that the police authority was bound to provide sufficient protection to life and property without payment. If, however, upon request, they provided a special form of protection outside the scope of their public duty they could lawfully agree to accept payment for it.

292. The issue was recently revisited by the Court of Appeal in Ipswich Town Football Club Co Ltd v Chief Constable of Suffolk [2017] 4 WLR 195 in the context of charges levied by the police for attendance in the vicinity of football grounds on match days.

293. I do not find this line of authorities to be of particular assistance in the instant case. I am in little doubt that, save perhaps for payments made by the defendant in respect of the billeting of police officers at the mine itself, the SLP were not entitled to require, or permitted to accept, payment for the services it provided when seeking to maintain law and order in the locality of the mine. However, in reality, if the defendant had not paid for these services they would either not have been provided or, at best, would have been woefully inadequate. The SLP raised unlawful charges for services which they should have rendered free of charge but this did not give rise to any consequences of direct legal significance in the instant case. I say "direct" because it remains open to the

claimants to argue that the making of such payments impacted on the nature of the factual relationship between the defendant and the police in ways which are material to the resolution of this case.

The defendant and the foreseeability of SLP abuses

294. Although the documentary picture is incomplete, it is possible to trace the course of the relationship between the defendant and the police at least in broad terms during the period relevant to the 2010 incident.

295. By the end of 2009, the defendant had reached an agreement with the SLP for the provision of six officers to be stationed permanently at the mine site at a cost of five million Leones a month. This arrangement persisted through the period of both incidents. There is no evidence upon which it could be concluded, however, that these particular officers were involved in the unlawful conduct of which the claimants make complaint.

296. In the following months, in response to problems related to the theft of railway sleepers and tracks, the defendant sought further assistance from the SLP suggesting the establishment of check points and the deployment of an intelligence service. In September 2010, four police officers were assigned to the SOS camp in Makeni at the request of the defendant following a death threat to the site manager.

297. I am satisfied that, even prior to the incident in 2010, senior management of the defendant were aware that the SLP had a general reputation for the occasional deployment of disproportionate violence but had had no direct experience of it. Indeed, such was the evidence of Mr Ramunno. Mr Hallahan was far more circumspect about what knowledge he was prepared to admit to but he conceded that he had been aware of newspaper reports alleging corruption and violence and the only issue was as to the extent to which he did or ought to have afforded them credibility.

298. The claimants have, in addition, submitted extensive evidence of the reputation of the SLP and, in particular, the armed OSD. A statement from Solomon Sogbandi (Director of Amnesty International, Sierra Leone) confirms that the OSD is widely known to be called upon to quell demonstrations or protests by the deployment of tear gas, batons and, sometimes, live ammunition. Successive US State Department Country Reports on Human Rights Practices in Sierra Leone from 2005 have recorded reports that security and police forces have used excessive force, stolen, extorted and demanded bribes. The reports also give several examples relating to the years following 2005 in which the SLP in various parts of the country had used excessive force to disperse demonstrators.

299. After the incident in 2010, the defendant could have been in no doubt that the SLP were capable of overreacting to protest and lawlessness with a level of violence disproportionate to what was reasonably necessary and were capable of acts of random collective retaliation.

300. Of course, there is a danger that "hindsight bias" will distort any judgement as to the extent to which, in retrospect, the violence of the SLP in 2010 (and 2012, for that matter) could have been foreseen but, on the whole of the evidence, I am left in no doubt at all that senior management of the defendant was aware of at least some risk

that the police might go too far and use excessive force on protestors. Prior to the 2010 incident, however, the police had not resorted to violence in dealing with matters reported to them by the defendant and, save for the two incidents which are at the centre of these claims, the defendant was able to demonstrate that on all other occasions, the police had acted proportionately and with restraint.

301. I will postpone my analysis of the legal consequences of foreseeability in this context until the stage comes when I must apply the law to the facts I have found.

The defendant's influence over the police

302. I am not satisfied that the evidence in this case reveals that the defendant could or did exercise an improper or decisive degree of control over the actions of the police with respect to the handling of the 2010 and 2012 incidents. The following points fall to be considered:

(i) There is ample evidence that the Government of Sierra Leone publicly, consistently and strongly supported the activities of the defendant and repeatedly warned the local population against the consequences of undermining the defendant's operations. Nevertheless, these exhortations fell very far short of providing the SLP or the defendant with carte blanche to use disproportionate violence in response to unrest. Nor did they indicate or imply that the police should show undue deference to the defendant in deciding what means to deploy in maintaining the peace.

(ii) Naturally, the post of PLO was created to facilitate co-operation between the defendant and the SLP. I am satisfied, however, that the holders of these posts were neither intended nor encouraged to provide the defendant with an inappropriate degree of control over the police. On the contrary, the defendant might well have been criticised if it had failed to establish such go-betweens as might promote the free exchange of mutually beneficial information and support. The same applies to the relatively easy access the defendant no doubt enjoyed to very senior officers of the SLP. Again, I am satisfied that such access was not a means by which the defendant sought to exercise improper influence.

(iii) Furthermore, there are examples of particular occasions upon which the police would appear to have been unduly deferential to the wishes of the defendant with respect to the making of arrests, the granting of bail and the like. These are fully set out in the claimant's closing submissions. These examples, however, fall far short of demonstrating that the defendant had or exercised a power to direct the police to deploy unlawful and disproportionate means to respond to protest.

(iv) There are documented occasions upon which the defendant called for police support or reinforcements in response to specific incidents. However, bearing in mind the ever present risk of unlawful protest, it was only to be expected that the defendant called upon the police to respond and that the police would do so.

(v) There was a high degree of contact between the defendant's employees and the SLP during the course of the incidents. This, however, is hardly surprising. There was a very real risk that the local unrest could, at any time, escalate into

> a full scale assault on the mine. In 2012, for example, rumours were circulating of a plan by local youths to board a train to invade the mine and the option to evacuate the mine was under constant review. I accept the evidence of Mr Janson that the priority was always safety.

303. The local police were seriously under-resourced in personnel, equipment and finance. There were only ten officers operating out of Bumbuna and they had no, or virtually no, access to vehicles. The defendant loaned their own vehicles to the SLP and funded the provision of food and drink. In my view, they had little choice other than to run the risk that the unlawful protests would otherwise continue unchecked and could well deteriorate into action imperilling both the safety of the mine and those who worked there. The evidence of how many vehicles the defendant loaned to the SLP and what payments were made, when and by whom is confused.

304. There is no doubt that a number of officers in the SLP were corrupt and were more than willing to accept bribes in cash or kind. Equally, senior management of the defendant were well aware of this. It must, however, be borne in mind that the police clearly expected to be paid in cash even to do the job which they ought to have carried out gratis. There are examples of the defendant using money to lubricate the process of the release of employees from police custody but no direct evidence that any improper payments were made to act unlawfully against members of the local population.

305. The approach of the defendant to the process of reconciliation with the protestors after the 2012 incident, as revealed in the contemporaneous documentation, demonstrates a conciliatory attitude at odds with the suggestion that the defendant's aim, even conditionally, was to stifle protest by the deployment, if necessary, of excessive force. It is theoretically possible that the defendant simply reversed its strategy in the aftermath of the incident but such a prompt and stark volte-face would be implausible.

306. Furthermore, I am not satisfied that those in positions of power in the defendant's organisation were pursuing a policy intending that the SLP should deploy excessive force against the local population. The person in overall charge of the Tonkolili project was Gibril Bangura, now deceased. He was generally well-liked and was instrumental in pursuing the strategy of appeasement in the aftermath of the 2012 incident. Frank Timis was the Executive Chairman of the defendant. There is some evidence to support the suggestion that, at one stage, he attempted to mislead the market in respect of the financial position of the defendant. However, in the absence of any evidence of his involvement in the relationship between the defendant and the SLP, no purpose would be served by making any findings with respect to his character or credibility and I decline to do so. Mr Jansen impressed me as a genuine witness striving to do his honest best to assist the court. He is no longer employed by the defendant and so the risk of loyalty distorting accuracy was much diluted. On 17 April 2012, he chaired an Incident Management Team meeting the notes to which reveal that he identified the defendant's priorities to be "1. Human life 2. Company assets 3. Environment". Mr Jansen went on to ask the team to identify the top five actions which would help to defuse the situation. I am satisfied that this was an accurate note of what was discussed and that it reflected Mr Jansen's strategy and principles.

INDUSTRY STANDARDS

307. The claimants allege that the defendant was, or should have been, aware of the foreseeable risk of violence and human rights abuses inherent in relying upon the SLP to police disputes with local communities and/or its labour force and that the steps which it took to mitigate these risks fell far short of meeting common law standards of reasonableness.

308. In particular, it is contended that the defendant ought to have sought assurances from the police that officers would at all times act lawfully and proportionately. If it had done this then it is argued that it is probable that the extreme levels of violence giving rise to the claimants' injuries and losses would not have occurred.

309. My attention has been drawn to the development of a number of international agreements and standards that have both publicised the nature of the risks of collaborating with local security forces and provided a clear framework for mitigating them. There is no dispute that the defendant was aware of the relevant standards. Its 2009 Annual Report stated that it worked towards compliance with the Equator Principles. Its 2010 Annual Report identified a commitment to align itself with the UN Global Compact. By April 2011, at the latest, its Security Policy referred to the Voluntary Principles on Security and Human Rights ("the VPSHR").

310. In broad terms, these standards recognise the risks of corporate complicity in human rights abuses in the developing world and advise that corporate power and influence could and should be wielded to reduce those risks. This can be achieved by the drafting of risk assessments and by making it clear to the police that they are expected to comply with basic international standards, particularly as to the deployment of force which should be used only where necessary and in proportion to the threat faced.

311. The UN Global Compact is a strategic policy initiative for businesses committed to aligning their operations with ten principles in the areas of human rights, labour, environment and anti-corruption. It advises: "if financial or material support is provided to security forces, establish clear safeguards to ensure that these are not then used to violate human rights and make clear in any agreements with security forces that the business will not condone any violation of international human rights laws."

312. The Equator Principles, to which the defendant committed itself either to achieve or to try to achieve[6], mandated an Environmental and Social Impact Assessment to be carried out with reference to the International Financial Corporation Performance Standards. Performance Standard Four, in turn, required a party to: "assess and document risks arising from the project's use of government security personnel deployed to provide security services" and "seek to ensure that security personnel will act in a manner consistent with" good international practice on the use of force. Guidance Note 4 to this Performance Standard provided that clients "whose assets are being protected by public security forces" are "expected to communicate their principles of conduct to the public security forces, and express their desire that security be provided in a manner consistent with those standards by personnel with adequate and effective training."

[6] There is a dispute between the parties as to the extent, if at all this commitment was a qualified one which I do not find it necessary to resolve.

313. The Voluntary Principles on Business and Human Rights were formulated in 2000 following extensive consultation between governments, companies and non-governmental organisations in relation to companies in the extractive industries. The evidence that these Principles had, by the time of the 2010 and 2012 incidents, become the widely accepted global standard for mining companies operating in countries where the rule of law was weak went unchallenged. The VPSHR provide specific guidance governing "Interactions between companies and public security."

314. Under the heading "Security Arrangements" they provide that: "Companies should communicate their policies regarding ethical conduct and human rights to public security providers, and express their desire that security be provided in a manner consistent with those policies by personnel with adequate and effective training."

315. Under the heading "Deployment and Conduct" they provide that: "Companies should use their influence to promote the following principles with public security: … (b) force should be used only when strictly necessary and to an extent proportional to the threat; and (c) the rights of individuals should not be violated while exercising the right to freedom of association and peaceful assembly, the right to engage in collective bargaining, or other related rights…"

316. Under the heading "Consultation and Advice" they provide: "Companies should hold structured meetings with the public on a regular basis to discuss security, human rights and related work-place safety issues. Companies should also consult regularly with other Companies, host and home governments, and civil society to discuss security and human rights…In their consultations with host governments, Companies should take all appropriate measures to promote observance of applicable international law enforcement principles, particularly those reflected in the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms."

317. Under the heading "Responses to human rights abuses" they provide: "Companies should record and report any credible allegations of human rights abuses by public security in their areas of operation to appropriate host government authorities. Where appropriate companies should urge investigation and that action be taken to prevent any recurrence…Companies should actively monitor the status of investigations and press for their proper resolution…Companies should, to the extent reasonable, monitor the use of equipment provided by the Company and investigate properly situations in which such equipment is used in an inappropriate manner."

318. There is no dispute that the defendant did not carry out or document any risk assessment relevant to its relationship with the police. The defendant had not sought adequately to communicate to the police its expectations that disproportionate violence and human rights abuses should play no part in their interventions.

319. In September 2010, the defendant received a report from risk analysis experts 'Control Risks'. The report was entitled "Security Review – Sierra Leone" and had been drafted by two security risk consultants who visited the defendant's facilities in Sierra Leone over a period of five days. The authors predicted that violence might arise as a result of: "Anger related to local employment, due to individual employee grievances (e.g. dismissals) or community resentment towards workers from outside communities seen to be taking local jobs". The report pointed out that there would almost certainly be considerable attention and criticism of the defendant in the event of human rights

violations by government security forces operating with equipment provided by the defendant or combatting or preventing break down of security on behalf of the company. Such a situation might place AML in violation of the Voluntary Principles.

320. The report went on to state that the keys to working with public security providers are: regular consultation, including discussion of any human rights concerns; human rights awareness training; proportionate security determined by a risk assessment to ensure that measures do not lead to negative counter measures; clearly defined and agreed rules of engagement; and documentation including tenders, incident reports, agreed operating procedures and contracts.

321. I am satisfied that members of senior management within the defendant organisation were, or ought to have been, aware that there was a risk that disputes with the local population might well descend into unrest in response to which the police would be deployed. Despite the fact that on a number of occasions police interventions had been proportionate and effective, the risk that this may not always be so was apparent in 2010 and, more strongly, in 2012. In particular, successive US State Department Reports had recorded reports that security and police forces used excessive force, and stole, extorted, and demanded bribes.

322. The claimants contend that the defendant ought to have:

(i) conducted a formal risk assessment in relation to the involvement of the police (and particularly the OSD) in operational security in and around Tonkolili, including in public order situations affecting the defendant's operations;

(ii) prepared risk management procedures and policies designed to minimise identified risks;

(iii) entered into a written agreement with the police confirming their agreement to respect international human rights standards, particularly in relation to the use of force;

(iv) made this expectation consistently clear in interactions with the police, in general and/or during the 2010 incident, and/or training its employees to do so;

(v) ensured that the police had undertaken, and arranged for or provided, if necessary, adequate training in relation to international human rights standards, particularly in relation to the use of force; and

(vi) refrained from providing financial or logistical support to the police where it was assessed that this risked facilitating the excessive use of force or other serious human rights abuses.

323. I am satisfied that, in respect of the first four of these particulars, the defendant failed to take reasonable steps to follow recognised minimum standards. I am not satisfied that the defendant ought reasonably to have *ensured* that the SLP was properly trained or that it was unreasonable per se to have provided financial or logistical support. I will address these conclusions further when I come to consider the claimants' case in negligence, particularly with respect to the issues of duty of care and causation.

DISCUSSION

324. It is now time to apply the law to the facts.

EMPLOYEE VICARIOUS LIABILITY

325. There is no dispute that the defendant is vicariously liable for the acts of its employees carried out in attempts to respond to the challenges generated by the unrest even if such acts were seriously criminal as alleged.

326. However, I am not satisfied that the claimants have made out that the employees against whom such allegations have been raised were, themselves, guilty of free-standing tortious conduct.

327. In the case of Yallan, despite the fact that he lied to give himself a false alibi, the allegations that he participated in or encouraged the use of excessive force on others are not made out. In particular, I find that the evidence of his pointing villagers out in aftermath of his detention establishes no more than that he was identifying those whom he genuinely believed at the time had been involved in earlier unlawful conduct. He did not thereby procure their arrests.

328. In the case of Mr Dumbuya, despite the fact that he lied to give himself a false alibi, the allegations that he exercised control over the police and used this control either to direct them to act unlawfully or encourage them so to do are not made out. I find that he was with the police on the third day of the 2012 incident and that he assisted them by driving them round. It was not his intention that the claimants should be the victim of tortious acts committed by members of the SLP. In any event, such assistance as he gave to the police was not causative of the loss sustained by the claimants.

329. In the case of Mr Gordon, I accept that he spent a considerable proportion of his time over the last two days of the 2012 incident accompanying the police. I reject, however, the allegation that he had encouraged them to use unlawful violence or that he shared an intention that they should use such violence.

NON-EMPLOYEE VICARIOUS LIABILITY

330. The contention that the defendant was vicariously liable for the torts of the SLP is unsustainable. Save for the six officers permanently stationed at the mine, in respect of whom there is no evidence of wrongdoing, the officers involved were performing duties which extended far beyond the narrow parameters of the business activity of the defendant.

331. I readily accept that the relationship between the defendant and the police was far removed from what would be considered to be appropriate in England and Wales. Nevertheless, it was not so relevantly different as to establish a relationship akin to employment. In particular:

(i) The police were discharging a public duty in responding to the criminal conduct of protesters during the course of both incidents. Their authority was derived from the constitutional powers and responsibilities placed upon them for this purpose and not under any quasi-employment relationship with the defendant.

Thus the SLP were not acting on behalf of the defendant at the relevant time. The fact that the defendant was, over the relevant periods, the main potential beneficiary of the exercise of this function in the Tonkolili area cannot re-characterise its essential basis.

(ii) The involvement of the police with the defendant during both incidents was relatively transient and unstructured in a way which was inconsistent with the contention that they were acting as part of the business activity of the defendant.

(iii) It cannot be argued that, at any stage, the SLP ceased to be vicariously liable for the torts of its officers. Accordingly, it would have to be shown that the SLP and the defendant shared dual vicarious liability. Although the concept of dual vicarious liability has been recognised by the Court of Appeal in Viasystems (Tyneside) Ltd v Thermal Transfer (Northern) Ltd [2006] QB 510, such a finding should not be made too readily. I adopt and respectfully agree with the observation in Clerk and Lindsell on Torts – 22nd Edition at 6-25 that "although the dual vicarious liability device produced a just result in *Viasystems* it now requires that we be very cautious that it is not over-used, for its over-use could well threaten the principle that one cannot be held liable in respect of the torts of an independent contractor."

(iv) My findings of fact are that the defendant did not exercise any significant degree of control over the SLP. I am satisfied that communications between employees and the police did not amount to orders or direction but comprised, at their highest, encouragement to do a robust and thorough job.

ACCESSORY LIABILITY

332. As the decision of the Supreme Court in Fish & Fish makes clear, for the purposes of establishing accessory liability it is necessary, but not sufficient, to prove that the defendant facilitated the tort. It must, in addition, be demonstrated that the defendant and the tortfeasor shared a common tortious design.

333. In this case, the defendant's provision of vehicles and drivers alone was sufficient to facilitate the tortious conduct of the SLP to an extent that was more than *de minimis*. However, I am not satisfied that the defendant intended the police to act tortiously at any stage. I accept that those in authority in the defendant's organisation were understandably concerned that the disruptions to their undertaking were potentially extremely damaging to their prospects of commercial success. Nevertheless, I am satisfied that at all relevant times the solutions it was striving to apply were directed at conciliation and not at the deployment of unlawful means. In particular, it would have been perfectly possible for the SLP to deploy the defendants' vehicles lawfully and it was no part of the defendant's plans that they should do otherwise. Similarly, the provision of cash, food, accommodation and drink although alien to what would be expected in the UK were pragmatic incentives and not bribes to achieve tortious ends. If, contrary to my findings of primary fact, any employee of the defendant, such as Yallan or Mr Dumbuya, who was not, at least, a member of its senior management team had entertained the requisite tortious intention then, by the application of Meridian, this would not suffice to enable the court to attribute such intention to the defendant.

PROCUREMENT LIABILITY

334. I am not satisfied that the defendant incited or procured the SLP to act tortiously. I have no doubt that those employees on the ground were anxious that the police should deal with the protesters robustly and not tolerate the construction and manning of unlawful roadblocks or any other form of unlawful protest. I am not satisfied, however, that they exhorted them to unlawful behaviour including false arrest, battery or tortious damage to property.

MALICIOUS PROSECUTION

335. The first ingredient to be satisfied in an action for malicious prosecution is that the claimant was prosecuted by the defendant. The claimants in this case fall at this hurdle.

336. Those who were prosecuted in the aftermath of the 2010 incident faced charges which were set in motion by the police. The evidence does not support the conclusion in respect of any one of them that, by the application of Martin, the case against him was based on matters exclusively within the knowledge of the defendant's employees and that it would have been virtually impossible for the police to have exercised any independent discretion or judgment on the matter. Indeed, in respect of some of the charges, the police appear to have prosecuted without a significant evidential basis from any source.

337. Furthermore, even if, with respect to some of the detainees, the decision to prosecute was based almost exclusively on the evidence of Yallan and/or Mr Gordon, I am not satisfied that this evidence was either false or malicious. The evidence is that they implicated only a proportion of those who appeared at the Makeni Magistrates' Court from which I infer that it was not their intention to drive or maintain prosecutions against those whom they had no reason to believe were implicated in constructing or manning the roadblock.

338. I accept that lawyers acting on behalf of the defendant were, certainly by English standards, overenthusiastic in their desire to participate in the Magistrates' Court proceedings but the evidence does not reveal that their attempted contributions were such as to justify the conclusion that they had effectively usurped the role of the prosecution advocate or, indeed, had a material influence on the progress and conduct of the prosecution.

339. The defendant further seeks to contend that the prosecution was not determined in the claimants' favour because it was "settled" by way of government intervention. It is not strictly necessary for me to resolve this issue having found against the claimants on the other ingredients of the tort. However, for the sake of completeness, I would observe that, whatever the mechanism, the cases against the claimants were dropped and, on any reasonable analysis this was a resolution in the claimants' favour and I would not have decided against them on this issue.

NEGLIGENCE

Duty of care

340. This section of the judgment is not concerned with the allegations directed towards individual employees of the defendant who are alleged to have committed specific torts against particular claimants and in respect of whose actions the defendant was potentially vicariously liable. Rather, the central question is what, if any, more general duties the defendant owed to the claimants arising from how it conducted its undertaking at the time of the 2010 and 2012 incidents.

341. The claimants' case on the issue on the duty of care owed to them by the defendant is pleaded in the following terms:

> "124. The Defendants owed the Claimants a duty to take reasonable care to prevent or limit the use and/or risk of excessive force, infliction of injury and/or death and loss of liberty in the course of their response to the protests. It is averred that the duty arises in the following ways:
>
> (i) There was an obligation on the Defendants when operating in a country such as Sierra Leone to ensure clear protocols and procedures were adopted and implemented so as to ensure the use of public and private security forces did not lead to abuses of the rights of those affected by the Defendants' operations;
>
> (ii) Further or alternatively, there was an assumption of responsibility by the Defendants towards the Claimants via their commitments to abide by the international standards and in the course of their use and control of the Claimants' land and their coordinated response to the protests;
>
> (iii) Alternatively, if and in so far as the Defendants were operating as a separate entities, in the case of the First Defendant, there was an assumption of responsibility towards the Claimants via its commitments to abide by the international standards and its full effective control over the subsidiaries in respect of operational risk management and health and safety, to advise and direct its subsidiaries to take steps to prevent human rights abuses by their servants, agents and/or the police did not lead to abuses of the rights of those affected by the Defendants' operations.
>
> 125. Further, the standard and existence of the duty of care should be construed with reference to the facts and matters set out above and in particular:

(i) The international standards and principles that the Defendants have consistently committed to conforming with;

(ii) The Defendants' agreement to provide material, logistical and financial support to the police;

(iii) The knowledge that the Defendants would have had the propensity of the police to use excessive and/or lethal force without justification in relation to protests. Further, in relation to the 2012 incident, the knowledge of the use of unreasonable and/or excessive force, including the indiscriminate use of live rounds arising from the November 2010 incident;

(iv) The control of land and position of power that the Defendants had in the area as the single largest private employer and contributor to GDP in Sierra Leone. It is averred that by virtue of their close connection to the Government and local political office holders and police, that the Defendants were in an obvious position to prevent or minimise the use of excessive force in line with the standards they claim to adhere to.

126. In relation to both the 2010 and 2012 incidents the Defendants are liable in negligence for the acts and omissions of their employees and/or the police whom at all material times were engaged by them for the purposes of security and/or in order to quell, suppress or prevent protest."

342. The defendant's response in its final written submissions has been to rely primarily upon the general rule that there is no liability in negligence for the criminal acts of third parties.

343. This rule has recently been reviewed in the case of Mitchell v Glasgow City Council [2009] 1 AC 874 in which M and D were both secure tenants of the local authority and were next door neighbours. From 1994 onwards, numerous incidents occurred in which D shouted abuse at and threatened to kill M. D was arrested by the police on many occasions and the local authority warned him that it would take action to recover possession of his house if his conduct did not improve but he continued repeatedly to threaten to kill M. In January 2001 the local authority served a notice of proceedings for recovery of possession on D which provoked him into yet more threats against M. The local authority kept M informed of the steps it was taking against D at that stage but in July 2001, without informing M, the authority summoned D to a meeting at which he was warned that continued anti-social behaviour could result in his eviction from his home. About an hour after leaving the meeting D attacked M with such violence that M sustained injuries from which he subsequently died. The pursuers, M's widow and daughter, brought proceedings for damages against the local authority claiming in negligence at common law. The pursuers' case on appeal before the House of Lords rested predominantly on the averment that the local authority had been under a duty to warn M that the meeting with D was to take place so that M would have known to take

steps to avoid D afterwards. This claim failed on the basis that the local authority did not owe a relevant duty of care to M.

344. Lord Hope made certain preliminary observations at paragraph 15:

> "Three points must be made at the outset to put the submission into its proper context. The first is that foreseeability of harm is not of itself enough for the imposition of a duty of care: see, for example, Dorset Yacht Co Ltd v Home Office [1970] AC 100, 1037–1038, per Lord Morris of Borth-y-Gest; Smith v Littlewoods Organisation Ltd [1987] AC 241, 251, per Lord Griffiths; Hill v Chief Constable of West Yorkshire [1989] AC 53, 60, per Lord Keith of Kinkel. Otherwise, to adopt Lord Keith of Kinkel's dramatic illustration in Yuen Kun Yeu v Attorney General of Hong Kong [1988] AC 175, 192, there would be liability in negligence on the part of one who sees another about to walk over a cliff with his head in the air, and forebears to shout a warning. The second, which flows from the first, is that the law does not normally impose a positive duty on a person to protect others. As Lord Goff of Chieveley explained in Smith v Littlewoods Organisation Ltd [1987] AC 241, 270–271, the common law does not impose liability for what, without more, may be called pure omissions. The third, which is a development of the second, is that the law does not impose a duty to prevent a person from being harmed by the criminal act of a third party based simply upon foreseeability: Smith v Littlewoods Organisation Ltd , at pp 272–279, per Lord Goff."

345. Lord Hope, however, recognised the existence of categories of case in which exceptions to the general rule relating to liability for the acts of third parties:

> "23 One is where the defender creates the source of danger, as in Haynes v Harwood [1935] 1 KB 146, where a van drawn by horses in a crowded street was left unattended and bolted when a boy threw a stone at them. Attorney General of the British Virgin Islands v Hartwell [2004] 1 WLR 1273 may be seen as a case of this kind. Another is where the third party who causes damage was under the supervision or control of the defender, as in Dorset Yacht Co Ltd v Home Office [1970] AC 1004 where borstal boys who escaped from the island and damaged the plaintiff's yacht were under the control and supervision of the officers who had retired to bed and left the boys to their own devices. Another, which is of particular significance in this case, is where the defender has assumed a responsibility to the pursuer which lies within the scope of the duty that is alleged: Elguzouli-Daf v Comr of Police of the Metropolis [1995] QB 335, 350, per Lord Steyn; Swinney v Chief Constable of Northumbria Police Force [1997] QB 464. Other examples of that kind which may be cited are Stansbie v Troman [1948] 2 KB 48, where a decorator who was working alone in a house went out leaving it unlocked and it was entered by a thief while he was away; W v

> Essex County Council [2001] 2 AC 592 , where the parents of an adopted child had received assurances from the council that they would not be allocated a child who was known to be, or suspected of being, a sexual abuser; and the circumstances that were reviewed in R (Amin) v Secretary of State for the Home Department [2004] 1 AC 653 , where a prisoner was placed in a cell with another prisoner with a history of violence who perpetrated a racist attack on him from which he died…"

346. Again, care must be taken not to interpret statements of general common law principle as if enshrined in statute. However, distilling from Lord Hope's observations the central examples of exceptions to the general rule provides the following circumstances in which such exceptions are liable to apply in so far as may be material to the circumstances of the present case:

(i) where the defendant creates the source of danger which would not otherwise have existed; or

(ii) where the third party who causes damage was under the supervision or control of the defendant; or

(iii) where the defendant has assumed a responsibility to the claimant which lies within the scope of the duty that is alleged.

347. A similar approach was taken even more recently by Lord Reed in Robinson v Chief Constable of West Yorkshire Police [2018] 2 WLR 595 at paragraph 34:

> "…public authorities, like private individuals and bodies, are generally under no duty of care to prevent the occurrence of harm: as Lord Toulson JSC stated in Michael's case [2015] AC 1732, para 97, "the common law does not generally impose liability for pure omissions". This "omissions principle" has been helpfully summarised by Tofaris and Steel, "Negligence Liability for Omissions and the Police" (2016) 75 CLJ 128:
>
> > "In the tort of negligence, a person A is not under a duty to take care to prevent harm occurring to person B through a source of danger not created by A unless (i) A has assumed a responsibility to protect B from that danger, (ii) A has done something which prevents another from protecting B from that danger, (iii) A has a special level of control over that source of danger, or (iv) A's status creates an obligation to protect B from that danger.""

348. With specific reference to the circumstances in which a duty of care might arise in respect of the acts of third parties, Lord Reed went on to observe at paragraph 37:

> "A further point, closely related to the last, is that public authorities, like private individuals and bodies, generally owe no duty of care towards individuals to prevent them from being harmed by the conduct of a third party: see, for example, Smith

> v Littlewoods Organisation Ltd and Mitchell v Glasgow City Council. In Michael's case [2015] AC 1732, para 97 Lord Toulson JSC explained the point in this way: "It is one thing to require a person who embarks on action which may harm others to exercise care. It is another matter to hold a person liable in damages for failing to prevent harm caused by someone else." There are however circumstances where such a duty may be owed, as Tofaris and Steele indicated in the passage quoted above. They include circumstances where the public authority has created a danger of harm which would not otherwise have existed, or has assumed a responsibility for an individual's safety on which the individual has relied. The first type of situation is illustrated by the Dorset Yacht case, and in relation to the police by the case of Attorney General of the British Virgin Islands v Hartwell [2004] 1 WLR 1273 , discussed below. The second type of situation is illustrated, in relation to the police, by the case of An Informer v A Chief Constable [2013] QB 579, as explained in Michael's case [2015] AC 1732 , para 69."

349. The claimants assert that:

(i) this is a case which involved negligent acts rather than omissions on the part of the defendant and thus "it is the more general test for the existence of a duty of care which applies";

(ii) even if the case is one of pure omission then the claimants' case falls into one or more of the established categories in respect of which a duty is nevertheless imposed;

(iii) if the circumstances of the claims fall outside the presently established categories giving rise to the existence of a duty of care then the Court should go on to apply the test identified in Caparo Industries Plc v Dickman (1990) 2 AC 605 and conclude that the right course would be to find the existence of a duty of care in the novel circumstances arising in the instant case.

I will deal with each contention in turn.

Acts and omissions

350. The claimants contend that the fact that the defendant called the police and provided them with material assistance in conducting their operations even after it knew that the SLP had been using excessive force means that this is, when set against the background of the relationship between the defendant and the police, a case involving negligent acts rather than omissions.

351. In this regard, they rely on Attorney General of the British Virgin Islands v Hartwell [2004] 1 WLR 1273 in which the claimant was injured when a probationary police officer, who was not a fit and proper person to be issued with firearms, opened fire in a nightclub in a fit of jealousy with a gun to which the force had given him access. Lord Nicholls observed: "This case does not fall on the "omissions" side of the somewhat imprecise boundary line separating liability for acts from liability for omissions."

352. The analysis of Lord Reed in paragraph 37 of Robinson, however, demonstrates that the Hartwell decision can be viewed equally validly as an example of the "creation of a danger of harm" exception to the general rule against liability for the acts of third parties rather than as a result of a hard-edged binary approach to the act and omission categorisation.

353. In many of the relevant authorities, the alleged negligence of the defendant has been confined to one central issue. In Mitchell, for example, it was a failure to warn. In Hartwell it was the provision of access to a firearm. In contrast, the Re-Amended Particulars in the present case identify no fewer than fifteen particulars of negligence. Most of these relate to allegations falling very clearly on the omissions side of the "imprecise boundary" to which Lord Nicholls was referring in Hartwell. They include, for example, failures to have engaged in "any meaningful conflict resolution with protesters" and to have "sufficient and properly trained private security". The categorisation of the provisions of vehicles and facilities as "acts" does not, however, equip the claimants with a Trojan horse in which otherwise bare and distinct omissions can be accommodated and brought wholesale within the parameters of a duty of care. For example, if the defendants owed no duty of care to the claimants in respect of its omission to resolve the dispute with the protesters then such a duty could not arise parasitically upon the defendant's distinct acts in providing the police with vehicles and other support.

354. Upon analysis, the "acts" relied upon by the claimants can all be analysed by the application of the test as to whether they were "capable of creating a source of danger" within Lord Hope's formulation in Mitchell upon which the overarching superimposition of a distinct "act and omissions" dichotomy of Hartwell would add nothing of value in the circumstances of this case. Accordingly, I am satisfied that it is proper to focus on Lord Hope's approach as that which provides the most appropriately coherent and useful framework for the consideration of the duty of care issue in this case. The approach of Lord Nicholls in Hartwell is thus rendered superfluous by the application of Occam's razor and, even if followed, would lead to no different jurisprudential outcome.

Liability for the acts of third parties

355. The first of Lord Hope's exceptions to the general rule against imposing a duty of care for the acts of third parties arises where the defendant creates the source of danger which would not otherwise have existed.

356. In this case I am satisfied that the defendant at senior management level was aware both in 2010 and 2012 that there was a risk that the police might react to protest with disproportionate violence. Mr Ramunno unequivocally conceded in cross examination that, from what he knew of the reputation of the SLP, he would not have been surprised to learn that their officers were capable of using excessive violence although he had no direct knowledge of this before the events of 2010. The generic danger of the police causing injury and loss was not, however, one which was "created" by the defendant. The proclivities of the police were, unhappily, an institutional fact long before the arrival of the defendant and, although not mitigated by the defendant's failures to follow the active steps advocated by the relevant international standards, were not thereby exacerbated.

357. Furthermore, it cannot be said that the defendant created the danger simply by calling the police. In both 2010 and 2012, dangerous situations were already developing which called for an effective response. In particular, the defendant undoubtedly owed a duty of care to its own employees to take reasonable care for their safety. If unlawful protest and criminality were simply and routinely tolerated regardless of the potential dangers arising to those individuals who were the target of resentment and recrimination then the consequences would likely be a complete breakdown in law and order with all the injury, loss and damage that that could be expected to entail. Theoretical circumstances may arise in which within a given jurisdiction the antecedent history of the police might be such as to mandate a duty not to call them but such circumstances could only very rarely arise in practice. In this case, the past behaviour of the police (highly unsatisfactory as it had proved on occasion to be) fell significantly short of giving rise to such a duty.

358. The only sense in which it could realistically be argued that the defendant created the danger is with respect to the provision of vehicles, food, and financial or other support to the police. Even this, however, is not an argument which can succeed.

359. I can readily conceive of situations in which a duty of care may arise not to provide a third party with the means to inflict damage. The Hartwell case provides a clear example. In this case, however, the defendant was providing no more than that which the Sierra Leonean state, itself, ought to have provided to maintain an efficient police force in the first place. Suitable vehicles, proper remuneration, food and water are prerequisites to the proper functioning of any force. Doubtless, the defendant would have much preferred not to have had to provide and fund the provision of such resources. It would be a rare circumstance indeed in which a party could call the police without incurring liability for their actions but thereafter come under a duty to emasculate their ability to respond by choosing to withhold significant logistical support. It might be possible to formulate a duty of care which was sufficiently broad to provide for such circumstances but the claimants' case would thereafter flounder in any event on the issue of breach and causation.

360. The second of Lord Hope's exceptions arises where the third party who causes damage was under the supervision or control of the defendant.

361. In this case, however, I have found that the defendant exercised no such supervision or control. Individual employees did not give directions to the police and the responses of the police to the incidents which they were called upon to deal with were operationally entirely of its own choosing. As would be the case with any victim or potential victim of crime, the defendant would be expected to liaise closely with the police in the provision of information such as the location of valuable buildings particularly vulnerable to criminal damage or the identification of those thought to have been involved in earlier criminal activity. None of these features of the case (or indeed any others) undermined the fundamental autonomy of the police to take such action as it considered appropriate. The second exception, therefore, has no application to the circumstances of this case.

362. The third of Lord Hope's exceptions arises where the defendant has assumed a responsibility to the claimant which lies within the scope of the duty that is alleged.

363. The claimants in this case are members of the general public. They occupied homes in the vicinity of the mine and were policed by officers who, for the most part, would not have been there but for the activities of the defendant but I find these factors to fall far short of establishing the attachment or assumption of a responsibility for the actions of the police. As the facts in Mitchell and Michael v Chief Constable of South Wales [2015] AC 1732 illustrate, the courts have demonstrated a marked reluctance to expand the scope of the assumption of responsibility exception too widely. The circumstances in which the police are to be held to have assumed responsibilities for the acts of third parties is heavily circumscribed. The circumstances in which a party ought reasonably to be found to have assumed a responsibility for the police could hardly be less so, even in the particular context of this case. A finding to the contrary would open up the defendant to almost unlimited liability to a broad swathe of potential claimants within a class almost impossible to define or circumscribe with any clarity.

Caparo v Dickman

364. The claimants' case on the issue on the jurisprudential foundation of a duty of care in this case focuses primarily upon the contention that the circumstances fall squarely within the parameters of charted legal territory. I agree with this proposition but differ as to the consequences of the application of established principle.

365. As a backstop position, however, the claimants contend that the Court may treat these claims as giving rise to a novel duty of care situation to which the familiar three stage test of Caparo of (i) foreseeability, (ii) proximity and (iii) fairness, justice and reasonableness should apply to their advantage.

366. Caution must be exercised against resorting too readily to the Caparo formulation as a means to resolve duty of care issues. Most recently in Darnley v Croydon Health Services NHS Trust [2018] 3 WLR 1153 Lord Lloyd-Jones observed at paragraph 15:

> "First, we are not here concerned with the imposition of a duty of care in a novel situation. The common law in this jurisdiction has abandoned the search for a general principle capable of providing a practical test applicable in every situation in order to determine whether a duty of care is owed and, if so, what is its scope: Caparo Industries plc v Dickman [1990] 2 AC 605 , 617, per Lord Bridge of Harwich; Michael v Chief Constable of South Wales Police (Refuge intervening) [2015] AC 1732 , para 106, per Lord Toulson JSC; Robinson v Chief Constable of West Yorkshire Police [2018] 2 WLR 595 , para 24, per Lord Reed JSC. In the absence of such a universal touchstone, it has taken as a starting point established categories of specific situations where a duty of care is recognised and it has been willing to move beyond those situations on an incremental basis, accepting or rejecting a duty of care in novel situations by analogy with established categories: Caparo, per Lord Bridge, at p 618 citing Brennan J in the High Court of Australia in Sutherland Shire Council v Heyman (1985) 60 ALR 1, 43–44. The familiar statement of principle by Lord Bridge in Caparo, at pp 617–618 in which he refers to the ingredients of foreseeability of damage, proximity and fairness does not require a re-evaluation of

> whether those criteria are satisfied on every occasion on which an established category of duty is applied. In particular, as Lord Reed JSC demonstrated in his judgment in Robinson (at paras 26 and 27), where the existence of a duty of care has previously been established, a consideration of justice and reasonableness has already been taken into account in arriving at the relevant principles and it is, normally, only in cases where the court is asked to go beyond the established categories of duty of care that it will be necessary to consider whether it would be fair, just and reasonable to impose such a duty. The recent decision of the Supreme Court in James-Bowen v Comr of Police of the Metropolis [2018] 1 WLR 402 was such a case and it was necessary for the court on that occasion to consider whether extension by analogy of established categories of duty was justified and the policy implications of such an extension. By contrast, Robinson itself involved no more than the application of a well-established category of duty of care and all that was required was the application to particular circumstances of established principles."

367. The facts of this case are undoubtedly novel but, as the claimants concede, the scope of the legal duties arising are not. Accordingly, no purpose would be served by a detailed hypothetical consideration of what the application of the Caparo tests would have produced. Suffice it to say that, even if it were to be applied to a slate clean of established authority, the result would still be to exclude the existence of a duty of care in the circumstances of this case.

Breach and causation

368. Where there is no duty there can, of course, be no breach. However, I cannot rule out the possibility that my decision on the existence of a duty of care may be the subject of appellate challenge and there may be some contingent benefit in my addressing the issue of breach on the hypothesis that the defendant owed the claimants a duty to take reasonable care which fell within one of the exceptions to the general rule that a defendant is not liable in negligence for the acts of a third party.

369. Of course, the issues of breach and causation fall for separate consideration but for ease of reference I will deal with both, albeit sequentially, in the order in which the various breaches are pleaded. I will also, for the sake of completeness, set out the duty of care context in which these findings are made based upon the observations I have already made.

370. The claimants rely on fifteen particulars each of which I will consider in turn.

(i) Failed to have any/or adequate risk management procedures and policies in place to identify the risk of violence at protests and to ensure adequate systems in place to reduce that risk;

I am satisfied that the defendant ought reasonably to have carried out a risk assessment and thereafter put in place control measures concerning the risk of harm at the hands of third parties arising out of protests. The defendant failed to

do this. However, its duty in this regard was limited to those to whom it had assumed a responsibility, including its employees, and not to the local population at large.

I am not satisfied, in any event, that compliance with this standard would have prevented the injury, loss and damage sustained as a result of unlawful conduct by the police in the circumstances of this case.

(ii) Failed to have any/or any adequate crisis management plan in place to deal with incidents of protest and/or disorder that would ensure no mistreatment or unlawful detention of those present in or around their area of operations;

I am satisfied that the defendant ought reasonably to have identified the risks of harm at the hands of third parties and arising from incidents of protest or disorder in a risk assessment and put in place the appropriate control measures. A crisis management plan may well have been one such control measure. The defendant failed to formulate one. However, its duty in this regard was limited to those to whom it had assumed a responsibility, including its employees, and not to the local population at large.

I am not satisfied, in any event, that compliance with this standard would have prevented the injury, loss and damage sustained as a result of unlawful conduct by the police in the circumstances of this case.

(iii) Failed to have sufficient and properly trained security. Instead, relying on local and national police whom they were aware were poorly trained, equipped and known for committing human rights abuses;

I am not satisfied that the defendant ought reasonably to have been expected to provide its own security in substitution for, or significant displacement of, their reliance on the police. Any such force would lack the powers and state mandate of the police and would very likely be inadequate in numbers and equipment to deal adequately with any significant disruption. The exclusive deployment of, or heavier dependence upon, such a force would give also rise to a real chance that the members thereof would be at serious and constant risk of community reprisals.

I am also satisfied that the wider recruitment and deployment of security staff would not have prevented the episodes of unrest in 2010 or 2012 and the injuries, loss and damage sustained.

(iv) Failed to engage with public security services to inhibit and/or prevent the mistreatment of the Claimants and commission of human rights abuses;

I am satisfied that the defendant could reasonably have been expected to have done more to engage with the SLP to this end. However, it owed no duty to the claimants to do this and I am not satisfied that such engagement would have prevented the episodes of unrest in 2010 or 2012 and the injuries, loss and damage sustained.

(v) *Failed to train employees on how to engage and interact with public security forces at all and/or in order to prevent mistreatment of the local community and abuses of human rights;*

I am not satisfied that the defendant could reasonably be expected to have provided such training. In any event, no relevant duty in this regard was owed to the public at large. I am not satisfied that such training would have prevented the episodes of unrest in 2010 or 2012 and the injuries, loss and damage sustained.

(vi) *Failed to train local and/or expatriate employees adequately or at all so as to inhibit/prevent the mistreatment and/or detention of the Claimants;*

I am not satisfied that the defendant could reasonably be expected to have provided such training. In any event no relevant duty in this regard was owed to the public at large. I am not satisfied that such training would have prevented the episodes of unrest in 2010 or 2012 and the injuries, loss and damage sustained.

(vii) *Failed to engage in any meaningful conflict resolution with protestors in either 2010 or 2012;*

I am not satisfied that the defendant owed a duty of care with respect to conflict resolution or that any such duty was breached or, if breached, was causative of injury, loss or damage.

(viii) *Orchestrated and/or instigated and/or directed and/or allowed a dangerous and/or disproportionate response to the protests that was likely to, and did result in mistreatment of the Claimants;*

I am not satisfied that the defendant committed the positive acts alleged or "allowed" the police to respond disproportionately. Nor am I satisfied that the defendant's acts or omissions caused the injuries, loss and damage sustained.

(ix) *Failed to restrain employees from using force against the Claimants;*

I am satisfied that the defendant's employees did not use force against the claimants.

(x) *Failed to take any meaningful steps to restrain public security forces after it would have been apparent they were using unreasonable and/or excessive and dangerous levels of force;*

I am not satisfied that there were any such steps which the defendant could have taken or that it was under a duty to the claimants to take such steps. I am not satisfied that any such steps, even if practicable, would have made a material difference.

(xi) *Caused, incited or procured the unlawful detention and/or assault/battery and/or inhuman and degrading treatment of the Claimants;*

I am not satisfied that the defendant caused, incited or procured such conduct.

(xii) Used their property to detain the Claimants during the 2010 incident and provided staff to administer and/or ensure their detention;

The decision to detain prisoners at the mine camp in 2010 was that of the police and not the defendant. The defendant did not provide staff for the purposes alleged. I am not satisfied that it would have been reasonable for the defendant to refuse to allow the detainees to be kept temporarily at the mine. In particular, the risk of mistreatment would have been no less if the police had detained them elsewhere.

(xiii) Continued to supply logistical and/or financial and/or material support to police after it was apparent that they were causing mistreatment including personal injury, unlawful detention and/or fatal injury to the Claimants;

I am satisfied that the supply of vehicles was a reasonable response taking into account the fact that the police had inadequate means of transport of their own. Refusal to provide vehicles may well have escalated rather than mitigated the violence. The same number of police would have been present and armed at both incidents.

(xiv) Failed to take any meaningful steps to address their relationship with the police and/or the risk of excessive force and mistreatment to the local population posed by the use of public security forces following the 2010 incident;

I am satisfied that the defendant could reasonably have done more to liaise with the police in an effort to reduce the risk of excessive force and mistreatment but I am not satisfied that such failure was in breach of a duty of care owed to the claimants or that such reasonable steps as it may have taken would have impacted materially on the outcome of the 2012 incident.

(xv) Made false and/or exaggerated reports to the police and OSD retained by the Defendants for security regarding threats to staff and/or property in the course of the 2012 incident, inciting the use of immediate and unlawful and/or disproportionate force.

I am not satisfied that the defendant made any such false and/or exaggerated reports.

BREACH OF NON-DELEGABLE DUTY

371. In order to establish liability under this head, the claimants must prove that the police officers who caused them injury, loss and damage were acting as independent contractors for the defendant and that the activities they were undertaking were exceptionally dangerous whatever precautions were taken.

372. I am not satisfied that, with the possible exception of the officers stationed at the mine itself, the police were acting at any time as independent contractors of the defendant. The payment and distribution of money generally was not in return for specific services but essentially born of a pragmatic realisation that without such payment the SLP were unlikely even to discharge the general duties of the police to keep the peace. These payments did not provide the defendant, either in form or substance, with any degree

of significant control over what the police did or in what numbers. Similarly, the provision of vehicles, food and water was on an ad hoc basis and brought with it no corresponding contractual obligation on the part of the police to carry out its duties in a particular way which departed from those which they owed to the public at large to maintain the peace.

373. In any event, I do not consider that the activities to be undertaken were exceptionally dangerous whatever precautions were taken. There is no doubt that what many officers did was dangerous in both 2010 and 2012 but the task in hand was not inherently and exceptionally dangerous if proper precautions had been taken. Honeywill liability arises where the work is extra-hazardous in itself not where the contractor's performance makes it so.

CONCLUSION ON LIABILITY

374. It follows that the claimants have not succeeded in establishing liability in respect of any of the bases upon which they have sought to bring their claims. I bear in mind that the defendants have raised a very considerable number of individual criticisms of the evidence of the lead claimants and their witnesses based upon alleged inconsistences and inherent implausibilities. My findings of fact and law in respect of the central issues have, however, rendered the task of resolving all, or even most, of such issues unnecessary and disproportionate. In particular, my conclusion that the defendant is not liable for the acts of the police on any of the pleaded bases means that those whose claims depend upon such liability do not succeed irrespective of the extent to which their accounts of injury, loss and damage are (or are not) accurate. My decision not to resolve these questions should not be interpreted as any indication as to whether I would, or would not, otherwise have assessed their evidence to have been accurate had it been appropriate to embark upon the process. Furthermore, such omissions should not be taken to evidence any lack of sympathy or concern over the tribulations of so many of those who gave evidence in the case. Those witnesses to whose evidence I have made either no, or only passing, reference in this judgment must not conclude that they have thus been relegated for any other reason than that their contributions were, in the event, to play no decisive part in the resolution of those issues central to the case as a whole.

QUANTUM

375. Having determined the issue of liability in the defendant's favour it is not, of course strictly necessary for me to address the issue of quantum. Indeed, I consider that it would be a disproportionate exercise for me to attempt to place a specific hypothetical value on each claim and I make no findings as to the theoretical availability of aggravated damages in respect of any given claim. I recognise, however, that there may be some merit in analysing and resolving one particular issue which is of general application to all claims and which may become relevant in the event that my findings on liability were to be disturbed.

376. The parties are agreed that, by the application of the Rome II Regulations, the Court is required to assess damages on the same basis as would a Sierra Leonean court applying Sierra Leonean law. This, however, is a proposition easier to state than to apply. In contrast to the superabundance of guidance and case law which assists (or burdens,

depending on one's appetite for complexity) English and Welsh practitioners, the cupboard of Sierra Leonean authority is but sparsely stocked.

377. Fortunately, however, the heads of loss traditionally associated with the assessment of quantum in the two jurisdictions are the same. General and special damages are identically categorised.

378. As to general damages, in Conteh v Koroma Supreme Court [1974-82] Sierra Leone Bar Association Law Reports, the Chief Justice held:

> "The most important principle applicable is that general damages must be fair and reasonable compensation for the damage suffered and that perfect compensation is neither possible nor permissible."

379. This approach, upon which there was no further elaboration in that (or indeed it would appear in any other) case, clearly leaves open the widest possible scope for the exercise of judicial judgment untrammelled by more prescriptive guidance. There is no Sierra Leonean equivalent to the Judicial College Guidelines on the Assessment of General Damages. Personal injury claims are few and far between in that jurisdiction and reported cases are thin on the ground.

380. Furthermore, there is some tension in the Sierra Leonean authorities as to the extent, if at all, to which any reference to foreign jurisdictions is permissible as an aid to assessment. The most recent case to which my attention has been directed on this issue is Alimamy Turay v Cecelia Koroma (Civ. App. 3/80 9811) in which the majority of members of the Sierra Leone Supreme Court (with varying degrees of enthusiasm) allowed for some consideration of English authorities on the assessment of damages. The experts in this case are satisfied on this basis that the courts of Sierra Leone would take into account English and Commonwealth approaches in the absence of local precedent. Neither expert was called to give oral evidence and I have been invited to resolve the outstanding issues on a consideration and analysis of their respective reports and their joint statement.

381. Against this background, the parties invite the Court to choose between two alternative routes to the assessment of general damages.

382. Route One (favoured by the claimants) is based upon the assessment of the claimants' expert, Mr Lambert, of the circumstances of each case and his prediction, based upon his personal experience, of what a Sierra Leonean court would be likely to award.

383. Route Two (favoured by the defendant) involves a more structured approach with a high degree of correlation with English awards but attenuated by a significant discount to reflect the lower cost of living in Sierra Leone.

384. With respect to Route One, Mr Lambert has equipped the Court with a table which identifies his predictions as to what levels of general damages a Sierra Leonean court could be expected to award in the case of each of the five lead claimants who had suffered personal injury. (The claim of the sixth lead claimant, Andrew Conteh, is limited to property loss and so does not fall to be considered in this context.) Mr Lambert's evaluations range from between about £16,000 to £55,000.

385. Mr Metzger, the defendant's expert, has limited his contribution to the debate by commenting that Mr Lambert's figures are "significantly higher" than he would have expected. He offered to provide a supplementary report but none has ever been produced. Inevitably, therefore, I am unable to translate his reservations into any very useful contribution to this particular issue.

386. It is to Mr Lambert's credit that he has voiced some reservations concerning the means by which he has arrived at the figures he has proffered. In so far as he expressed concern that his approach might be seen to usurp the function of this Court I am able to put his mind at rest. More troublesome, however, is his candid confession that "there is no discernible pattern in respect of the monetary value of the awards made by the Sierra Leone courts and therefore it is difficult to rely on judicial precedents to predict the awards the court in Sierra Leone might make." In consequence, he tentatively presents his evaluations as little more than bare figures unsubstantiated by any analysis.

387. With respect to Route Two, the defendant contends that the proper approach is to assess general damages for pain, suffering and loss of amenity in accordance with the Judicial College Guidelines 14th Edition and other non-pecuniary losses in accordance with English law levels. To these figures, however, the Court is encouraged to apply a significant discount to reflect the comparatively lower level of the cost of living in Sierra Leone. This methodology reflects that which was adopted by Leggatt J in Alseran v Ministry of Defence [2018] 3 WLR 95.

388. Although Route Two is superficially attractive, it is important to bear in mind that Alseran involved the quantification of damages for the breach of the claimant's Convention rights, pursuant to section 8(3) of the Human Rights Act 1998 and not, as here, in respect of tortious liability. Accordingly, the court was fully entitled in that case to take into account local circumstances in the exercise of its discretion in its assessment.

389. The quantification of damages in this case, in contrast, does not involve the exercise of a discretion. The task of this Court is to make an award equivalent to that which would have been made by a Sierra Leonean court. It follows that it would only be permissible to apply a discount reflecting the lower cost of living in Sierra Leone if the resulting figures actually reflected the sums which the Sierra Leone courts would in fact award. There is no evidence before this Court to suggest that this would be the case. Indeed, the figures relied upon by Mr Lambert would suggest not.

390. Accordingly, I consider that the proper approach is to take Mr Lambert's figures as a general guide to the calculation of general damages in any given case. In the lead cases of Mr Dabo and Mr Bangura, there is some doubt as to whether the figures of Mr Lambert can be relied upon to the extent that his assessments were not based on the entirety of the medical evidence now available. In respect of the assessments in the cases of Mr Walerie, Mr Koroma and Ms Kalma, however, his figures are based on more accurate information. His quantifications in these cases amount to discounts of between about 50% and 64% of the awards which would be appropriate by the application of English law.

391. Rather than simply taking Mr Lambert's assessments as standalone figures, I consider that it is permissible to interpret them as a broader guide to the assessment of general damages in Sierra Leonean law. Any system for the fair and reasonable assessment of

general damages must be a coherent one. There is, of course, room for considerable argument as to the proper level of monetary compensation to be awarded in respect of any injury taken in isolation. However, once the broad starting points have been established, then there is considerable scope for the development of a rational structure of assessment in which, for example, injuries with longer term effects attract a higher level of compensation than otherwise identical injuries from which a more rapid recovery is made. In this way, a rational scheme can be formulated which, although necessarily falling short of the ideal of the seamless web, at least provides a framework of fairness of internal consistency. This is precisely the purpose of the Judicial College Guidelines. In his Forward to the First Edition, Lord Donaldson observed:

> "What it is intended to do, and what it does quite admirably, is to distil the conventional wisdom contained in the reported cases, to supplement it from the collective experience of the working party and to present the result in a convenient, logical and coherent form."

It is also to be noted that the Constitution of Sierra Leone is founded, in part, upon "existing law" which expressly incorporates the English common law as it stood on 1 January 1880. The application of common law principles of consistency of assessment of general damages in this case would not, therefore, involve the high-handed grafting of an alien and incompatible jurisprudence on the existing framework of Sierra Leonean law.

392. I readily appreciate that the assessments of Mr Lambert in only three cases and unsupported by analysis or precedent may be considered to provide rather shallow foundations upon which to construct a general scheme for the quantification of Sierra Leonean damages. However, in the absence of other competing estimates, this evidence is all the Court has.

393. It follows that, doing the best I can with the limited materials provided, I consider that the appropriate approach is to extrapolate from Mr Lambert's figures a discount of 60% on the sums which would be awarded under English law in any given case in order to reach the equivalent quantification in Sierra Leonean law.

394. In the light of my adverse findings on liability, I have concluded that it would be a disproportionate exercise to embark further upon the hypothetical assessment of damages in the cases of the individual lead claimants.

AFTERWORD

395. No one could fail to be moved by the sufferings of the Sierra Leonean people over the last quarter of a century. The civil war, in particular, took an enormous toll in human life and left a legacy of misery to millions. The witness statements of many who gave evidence in this case contained harrowing details of how the war had decimated their families and destroyed their homes. The events which lie at the centre of this case illustrate that the post-war struggle to rebuild communities and respect for the rule of law is work in progress.

396. The time I spent hearing evidence in Sierra Leone in this case allowed me to see at first hand just how resilient the people of that country are. I am grateful to all those who

facilitated and organised my visit and to the Sierra Leoneans who made me feel so welcome during my time there. It is never a comfortable experience to deny remedies to those who have suffered severe hardship as many of these claimants have. I am in no doubt that compensation would have gone some considerable way towards improving their quality of life. Ultimately, however, sympathy cannot be permitted to cloud judgement and, for the reasons I have given, it has been my reluctant duty to conclude that these claims must fail.