

the back with his gun. They took him to their Patrol Commander Kakpata.<sup>1416</sup> TF2-170 discovered that four of his relatives were also captives:<sup>1417</sup> Pa Jibo, Pa Serry Bangura, Pa Santigie Salami and Aluseini Kabbah.<sup>1418</sup> Kakpata said that Aluseini Kabbah had been captured for the second time and that he had failed to show the Vondos where the Gbethis were despite a promise to do so. For this reason, Kakpata stated he would kill Aluseini Kabbah and leave him there.<sup>1419</sup>

664. One of the CDF took a long sharp knife and cut Aluseini Kabbah's head. Blood oozed from his mouth.<sup>1420</sup> Some of the CDF reported the incident to Kakpata.<sup>1421</sup> Kakpata took a gun from Amadou Lavalie, cocked it and shot Aluseini Kabbah twice. Aluseini Kabbah fell over.<sup>1422</sup>

665. The three remaining captives were taken to Losint Loko Village to guard looted items that had been stored there. The CDF told TF2-170 that they would kill him in Bradford. They took him to Makabi Loko. There they met there other civilians who had five jerry cans of oil. These civilians were captured and were taken with TF2-170's group to Makabi Loko. TF2-170 was a made to carry load from Bradford but was eventually released by Kakpata because he was a civilian.<sup>1423</sup>

#### 2.9.7. Murders in Kongonani

666. In February or March 1999, a report of two murders that occurred in Kongonani,<sup>1424</sup> was made to TF2-073 in Sembahun.<sup>1425</sup> Three traders were captured by eight Kamajors. One of them escaped; the other two were shot.<sup>1426</sup> On the day he received this report, TF2-073 attended a meeting of Kamajors called by the local chief to investigate the killings.<sup>1427</sup> Eight Kamajors suspected of having committed the killings confessed. One was Tiby Bangura, the other John Aruna. TF2-073 informed the District Officer of these killings; the matter was then referred to the Criminal

<sup>1416</sup> Transcript of 7 March 2005, TF2-170, p. 59.

<sup>1417</sup> Transcript of 7 March 2005, TF2-170, p. 60.

<sup>1418</sup> Transcript of 7 March 2005, TF2-170, pp. 70-71.

<sup>1419</sup> Transcript of 7 March 2005, TF2-170, pp. 60-61.

<sup>1420</sup> Transcript of 7 March 2005, TF2-170, p. 62-63.

<sup>1421</sup> Transcript of 7 March 2005, TF2-170, p. 63.

<sup>1422</sup> Transcript of 7 March 2005, TF2-170, p. 65.

<sup>1423</sup> Transcript of 7 March 2005, TF2-170, pp. 66-67.

<sup>1424</sup> Kongonani is about 1 mile from Sembahun: Transcript of 2 March 2005, TF2-073, p. 47.

<sup>1425</sup> Transcript of 2 March 2005, TF2-073, p. 46.

<sup>1426</sup> Transcript of 2 March 2005, TF2-073, p. 48.

<sup>1427</sup> Transcript of 2 March 2005, TF2-073, p. 48.

Investigation Division of the Sierra Leone Police.<sup>1428</sup> The eight Kamajors were taken to Tihun. Kondewa was in Tihun at this time.<sup>1429</sup> The Kamajors were detained for about a month by the police.<sup>1430</sup>

2.10. Child Soldiers

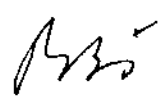
2.10.1. Testimony of Child Soldiers

2.10.1.1. Witness TF2-140

667. TF2-140 was born on 19 January 1983.<sup>1431</sup> He was abducted by the RUF in 1996. At this time, TF2-140 was 13 years old. He was forced to fight with the RUF until he was captured by the CDF in Koidu in 1997.<sup>1432</sup> The Kamajors held TF2-140 and five others in a cage made of palm fronds.<sup>1433</sup> Eventually, a Kamajor named Sandi promised to free TF2-140 if he agreed to help the Kamajors.<sup>1434</sup> TF2-140 feared for his life and felt that he had no option but to comply. He led the Kamajors to various hidden stores of ammunition and helped them to capture certain strategic points.<sup>1435</sup> TF2-140 spent a month assisting the Kamajors in this way.<sup>1436</sup> At this time, TF2-140 was 14 years old.<sup>1437</sup>

668. In August or September 1997, TF2-140 was taken to Pujehun District and was initiated into Kamajor society.<sup>1438</sup> Some of those initiated with him were adults and others were children of 10 or 11 years.<sup>1439</sup> Initiation fees were paid to the district initiator, Mualemu Sherrif, who sent the fees to Kondewa, the Kamajor High Priest.<sup>1440</sup>

<sup>1428</sup> Transcript of 2 March 2005, TF2-073, p. 49.  
<sup>1429</sup> Transcript of 3 March 2005, TF2-073, p. 39.  
<sup>1430</sup> Transcript of 3 March 2005, TF2-073, p. 41.  
<sup>1431</sup> Transcript of 14 September 2004, TF2-140, pp. 67, 141 and 148.  
<sup>1432</sup> Transcript of 14 September 2004, TF2-140, pp. 69-70.  
<sup>1433</sup> Transcript of 14 September 2004, TF2-140, pp. 69-71.  
<sup>1434</sup> Transcript of 14 September 2004, TF2-140, p. 72.  
<sup>1435</sup> Transcript of 14 September 2004, TF2-140, p. 72.  
<sup>1436</sup> Transcript of 14 September 2004, TF2-140, p. 132.  
<sup>1437</sup> Transcript of 14 September 2004, TF2-140, p. 71.  
<sup>1438</sup> Transcript of 14 September 2004, TF2-140, pp. 74 and 160-161.  
<sup>1439</sup> Transcript of 14 September 2004, TF2-140, pp. 74-75.  
<sup>1440</sup> Transcript of 14 September 2004, TF2-140, pp. 75-77.



669. From Pujehun, TF2-140 travelled with Sandi to Mano Junction. On the way they encountered fighting at Kenema; TF2-140 was armed and he participated in the fighting.<sup>1441</sup>

670. After reaching Mano Junction, TF2-140 was re-initiated along with 28 other boys.<sup>1442</sup> By this time, TF2-140 was 15 years of age.<sup>1443</sup> Some of the boys who took part in this initiation were the same age as TF2-140 and others were as young as 10 or 11 years.<sup>1444</sup> It was widely believed that little boys were more effectively immunized because they had not had any time with women.<sup>1445</sup>

671. In February 1998, TF2-140 passed through Blama and Koribondo.<sup>1446</sup> An attack took place in Koribondo shortly before TF2-140 arrived there.<sup>1447</sup> As TF2-140 passed through the town he saw Joe Tamidey, a Kamajor commander, who was being guarded by four small boys. TF2-140 estimated that these boys were younger than he was.<sup>1448</sup>

672. From Koribondo, TF2-140 made his way to Pujehun and then Bo.<sup>1449</sup> In Bo, TF2-140 stayed in a compound adjacent to Fofana's Mahei Boima Road residence.<sup>1450</sup> TF2-140 gradually became involved with the Kamajors in Fofana's compound and acted as part of the security team for the house and its occupants. While there, he met Fofana and Norman.<sup>1451</sup>

673. Some time after Christmas in 1998, TF2-140 went with Norman to Freetown.<sup>1452</sup> TF2-140 began to visit the Kamajor base at Brookfields Hotel regularly.<sup>1453</sup> At Brookfields, there were boys younger than TF2-140.<sup>1454</sup> Throughout 1999, child soldiers continued to gather at Brookfields.<sup>1455</sup>

<sup>1441</sup> Transcript of 14 September 2004, TF2-140, pp. 76-77.

<sup>1442</sup> Transcript of 14 September 2004, TF2-140, pp. 78-79.

<sup>1443</sup> Transcript of 14 September 2004, TF2-140, p. 79.

<sup>1444</sup> Transcript of 14 September 2004, TF2-140, pp. 77-78.

<sup>1445</sup> Transcript of 14 September 2004, TF2-140, p. 78.

<sup>1446</sup> Transcript of 14 September 2004, TF2-140, pp. 80 and 135.

<sup>1447</sup> Transcript of 14 September 2004, TF2-140, pp. 80 and 134. This attack has been described in greater detail in section V.2.4.4.

<sup>1448</sup> Transcript of 14 September 2004, TF2-140, p. 86.

<sup>1449</sup> Transcript of 14 September 2004, TF2-140, p. 86.

<sup>1450</sup> Transcript of 14 September 2004, TF2-140, pp. 86-87.

<sup>1451</sup> Transcript of 14 September 2004, TF2-140, pp. 88-89.

<sup>1452</sup> Transcript of 14 September 2004, TF2-140, p. 90.

<sup>1453</sup> Transcript of 14 September 2004, TF2-140, p. 97.

<sup>1454</sup> Transcript of 14 September 2004, TF2-140, p. 97.

<sup>1455</sup> Exhibit 100, confidential, para. 35.

TF2-140, along with other small boys, was involved in various attacks that were planned from Brookfields, including attacks on Makoro and Mile 38.<sup>1456</sup>

2.10.1.2. Witness TF2-021

674. TF2-021 was born in 1986.<sup>1457</sup> He was abducted by rebels in 1995, along with other young boys from his village in Kailahun District.<sup>1458</sup> At the time of his abduction, TF2-021 was approximately nine years old. TF2-021 remained with the rebels until 1997, when he was captured by Kamajors in Ngiehun, Kailahun District.<sup>1459</sup> Seven other little boys and three women were captured at the same time.<sup>1460</sup> One of the captured boys was 15; the rest were all younger.<sup>1461</sup> The name of the Kamajor that captured TF2-021 is German (a.k.a. Jahman).<sup>1462</sup>

675. After the attack on Ngiehun, Kamajors made the boys carry looted property.<sup>1463</sup> TF2-021 was then taken to Base Zero for initiation.<sup>1464</sup> At Base Zero TF2-021 saw many other young boys who had already been initiated.<sup>1465</sup> About 20 other young boys were initiated at the same time as TF2-021. They were initiated by Kondewa.<sup>1466</sup> As part of the initiation process, the boys were told that they would be made powerful for fighting and were given a potion to rub on their bodies before going into battle.<sup>1467</sup>

676. TF2-021 stayed at Base Zero for some time after his initiation.<sup>1468</sup> German gave TF2-021 a gun and taught him how to shoot.<sup>1469</sup> After this training, TF2-021 started going on missions; his first mission was to Masiaka, where he and other young boys engaged in combat with the rebels.<sup>1470</sup> In the course of this fighting, TF2-021 shot an unarmed woman in the stomach. She fell, and TF2-

<sup>1456</sup> Transcript of 14 September 2004, TF2-140, pp. 97 and 99.

<sup>1457</sup> Transcript of 2 November 2004, TF2-021, pp. 28 and 31-32.

<sup>1458</sup> Transcript of 2 November 2004, TF2-021, pp. 29 and 130.

<sup>1459</sup> Transcript of 3 November 2004, TF2-021, p. 48.

<sup>1460</sup> Transcript of 2 November 2004, TF2-021, pp. 32-33 and 35.

<sup>1461</sup> Transcript of 2 November 2004, TF2-021, p. 33.

<sup>1462</sup> Transcript of 3 November 2004, TF2-021, p. 8.

<sup>1463</sup> Transcript of 2 November 2004, TF2-021, pp. 33-35.

<sup>1464</sup> Transcript of 2 November 2004, TF2-021, p. 37.

<sup>1465</sup> Transcript of 2 November 2004, TF2-021, pp. 37-38.

<sup>1466</sup> Transcript of 2 November 2004, TF2-021, p. 38, lines 26-29; p. 39, lines 22-25 and p. 42, lines 20-23. This initiation is covered in greater detail in section V.2.2.8, para. 317.

<sup>1467</sup> Transcript of 2 November 2004, TF2-021, pp.41-42.

<sup>1468</sup> Transcript of 2 November 2004, TF2-021, p. 43.

<sup>1469</sup> Transcript of 2 November 2004, TF2-021, pp.43-44 and 84.

<sup>1470</sup> Transcript of 2 November 2004, TF2-021, pp. 44 and 83.

021 left her on the ground.<sup>1471</sup> After the shooting subsided, TF2-021 and other Kamajors looted tapes, bicycles and clothing.<sup>1472</sup> They also captured women and brought them back to Base Zero.<sup>1473</sup>

677. At Base Zero, TF2-021 saw Norman arrive in a helicopter and deliver arms and ammunitions.<sup>1474</sup> TF2-021 also witnessed Norman deliver arms to the Kamajor base at Gendema.<sup>1475</sup> These arms were used in combat at Kenema and Joru.<sup>1476</sup>

678. In addition to the fighting at Masiaka, TF2-021 participated actively in the February 1998 attacks on SS Camp and Kenema.<sup>1477</sup> On Sunday, 15 February 1998, TF2-021 was part of a group of three Kamajors that searched Kenema police barracks and killed some police that were found there.<sup>1478</sup> TF2-021 also fought in Joru and Daru.<sup>1479</sup> Other boys of TF2-021's age also participated in these attacks.<sup>1480</sup>

679. In 1996, when TF2-021 was 12 years old, he was involved in screening people at checkpoints in Kenema and Joru to ensure they had Kamajor passes.<sup>1481</sup>

680. In early January 1999, Norman convened a meeting in Bo which was attended by CO Ngobeh, TF2-021's commander. After this meeting, CO Ngobeh told TF2-021 that they would participate in 6 January 1999 invasion of Freetown.<sup>1482</sup> TF2-021 and 3 other young boys went to Freetown by helicopter with their commanders.<sup>1483</sup> The boys were given guns and taken to Congo Cross, where there was heavy firing between the rebels and ECOMOG. The children started fighting against the rebels.<sup>1484</sup> After the rebels were driven away, TF2-021 went to Brookfields Hotel and set up a checkpoint.<sup>1485</sup>

<sup>1471</sup> Transcript of 2 November 2004, TF2-021, p. 45.

<sup>1472</sup> Transcript of 2 November 2004, TF2-021, pp. 45-46.

<sup>1473</sup> Transcript of 2 November 2004, TF2-021, p. 47.

<sup>1474</sup> Transcript of 2 November 2004, TF2-021, p. 61.

<sup>1475</sup> Transcript of 2 November 2004, TF2-021, p. 64.

<sup>1476</sup> Transcript of 2 November 2004, TF2-021, p. 61.

<sup>1477</sup> Transcript of 2 November 2004, TF2-021, pp. 65-66 and 68.

<sup>1478</sup> Transcript of 2 November 2004, TF2-021, pp. 68 and 70.

<sup>1479</sup> Transcript of 2 November 2004, TF2-021, pp. 82-84.

<sup>1480</sup> Transcript of 2 November 2004, TF2-021, p. 66.

<sup>1481</sup> Transcript of 2 November 2004, TF2-021, p. 83, see also Exhibit 18, confidential.

<sup>1482</sup> Transcript of 2 November 2004, TF2-021, pp. 85 and 87; The Chamber is of the view that CO Gobey and CO Ngobeh is the same person.

<sup>1483</sup> Transcript of 2 November 2004, TF2-021, pp. 85-86.

<sup>1484</sup> Transcript of 2 November 2004, TF2-021, pp. 85-86; Transcript of 4 November 2004, TF2-021, p. 27.

<sup>1485</sup> Transcript of 2 November 2004, TF2-021, p. 86.

681. When TF2-021 fought with the Kamajors he took marijuana. He was also supposed to take brown-brown, which was a form of cocaine.<sup>1486</sup> Kondewa's boys gave them drugs at Base Zero.<sup>1487</sup>

682. In 1999, TF2-021 was initiated into the Avondo Society, a group of Kamajors led by Kondewa.<sup>1488</sup> After the initiation TF2-021 received a certificate bearing his photograph, to prove that he was one of Kondewa's Kamajors.<sup>1489</sup> TF2-021 was thirteen years old at this time.<sup>1490</sup>

#### 2.10.1.3. Witness TF2-004

683. TF2-004 testified that he was 20 years old at the time he testified and that he turned 20 in the year 2004.<sup>1491</sup> The Chamber therefore finds that he was born between 1 January 1984 and 9 November 1984.<sup>1492</sup> He was abducted by the rebels from Fyndah, his village in Pujehun District.<sup>1493</sup> The rebels took TF2-004 to Maka. Kamajors attacked Maka and captured TF2-004 and five other boys who ranged in age from 10 to 16.<sup>1494</sup> The boys were taken from Maka to Liya, Kpaka Chiefdom, Pujehun District.<sup>1495</sup>

684. From Liya, TF2-004 was taken to Telu-Bongor. The rebels attacked the Kamajors there. TF2-004 was armed with a machete and participated in the fighting.<sup>1496</sup>

685. After the fighting at Telu-Bongor, TF2-004 returned to Liya where he was initiated by Muniro Sherrif.<sup>1497</sup> Many others were initiated at the same time, including children as young as 10 years old.<sup>1498</sup> The purpose of the initiation was to fight the war.<sup>1499</sup>

686. On the same day that he was initiated, TF2-004 left Liya to go fight in Zimmi.<sup>1500</sup> TF2-004 witnessed his commander, CO Small, kill an unarmed male collaborator who had warned the

<sup>1486</sup> Transcript of 3 November 2004, TF2-021, p. 50-53.

<sup>1487</sup> Transcript of 4 November 2004, TF2-021, p. 36.

<sup>1488</sup> Transcript of 2 November 2004, TF2-021, pp. 87-89 and 91; Transcript of 3 November 2004, TF2-021, p. 20, Exhibit 100, para. 54.

<sup>1489</sup> Transcript of 2 November 2004, TF2-021, pp. 91-94, and Exhibit 18, confidential.

<sup>1490</sup> Transcript of 2 November 2004, TF2-021, pp. 91-94, and Exhibit 18, confidential.

<sup>1491</sup> Transcript of 9 November 2004, TF2-004, p. 61, pp. 85-86.

<sup>1492</sup> Transcript of 9 November 2004, TF2-004, pp. 60-64, *ibid.*, pp. 85-87.

<sup>1493</sup> Transcript of 9 November 2004, TF2-004, pp. 60-64.

<sup>1494</sup> Transcript of 9 November 2004, TF2-004, pp. 64-66.

<sup>1495</sup> Transcript of 9 November 2004, TF2-004, pp. 68-69.

<sup>1496</sup> Transcript of 9 November 2004, TF2-004, pp. 73-75.

<sup>1497</sup> Transcript of 9 November 2004, TF2-004, pp. 75-77.

<sup>1498</sup> Transcript of 9 November 2004, TF2-004, pp. 75-77.

<sup>1499</sup> Transcript of 9 November 2004, TF2-004, pp. 75-77.

rebels that the Kamajors were approaching Zimmi.<sup>1501</sup> The Kamajors won the battle at Zimmi and then burnt the houses. TF2-004 was actively involved in the fighting at Zimmi.<sup>1502</sup> After this battle, TF2-004 returned to Liya with the Kamajors.<sup>1503</sup>

687. TF2-004 was also involved in other battles with Kamajors.<sup>1504</sup> He does not know how long he remained with them.<sup>1505</sup>

#### 2.10.2. The Use of Child Soldiers Throughout Sierra Leone

688. In addition to the evidence set out above, there is further evidence that during the time period relevant to the Indictment, children who appeared to be aged less than 15 were conscripted, enlisted, or used to participate actively in hostilities in the following locations: Kenema;<sup>1506</sup> Base Zero;<sup>1507</sup> Bo;<sup>1508</sup> Daru;<sup>1509</sup> Masiaka;<sup>1510</sup> Port Loko;<sup>1511</sup> Yele;<sup>1512</sup> and Ngichun.<sup>1513</sup>

- (a) Initiators, including Kondewa, used child soldiers as body guards at Base Zero.<sup>1514</sup>
- (b) There was a Kamajor named "Junior Spain" at Base Zero who was around 12 -15 years of age.<sup>1515</sup>
- (c) In Ngichun, Kamabote ordered a child soldier named Small Hunter, who was about 12 years old, to shoot TF2-035. There is still one bullet in TF2-035's body.<sup>1516</sup>

The Chamber accepts the testimony of TF2-079 that the name "Small Hunter" was

<sup>1500</sup> Transcript of 9 November 2004, TF2-004, pp. 77-82.

<sup>1501</sup> Transcript of 9 November 2004, TF2-004, pp. 77-82.

<sup>1502</sup> Transcript of 9 November 2004, TF2-004, p. 82.

<sup>1503</sup> Transcript of 9 November 2004, TF2-004, p. 83.

<sup>1504</sup> Transcript of 9 November 2004, TF2-004, p. 83.

<sup>1505</sup> Transcript of 9 November 2004, TF2-004, p. 83.

<sup>1506</sup> Transcript of 15 February 2005, TF2-005, p. 110, (CS); Transcript of 5 November 2004, TF2-201, pp. 62-63.

<sup>1507</sup> Transcript of 8 June 2005, TF2-011, pp. 23-24, (CS); Transcript of 27 May 2005, TF2-079, pp. 12-15; Transcript of 8 June 2005, TF2-011, pp. 23-24 (CS); Transcript of 19 November 2004, TF2-017, pp. 89-91; Transcript of 27 May 2005, TF2-079, pp. 12-15; Transcript of 5 November 2004, TF2-201, pp. 62-63; Transcript of 7 June 2005.

<sup>1508</sup> Transcript of 5 November 2004, TF2-201, p. 62-63.

<sup>1509</sup> Transcript of 7 June 2005, TF2-218, p.16 (CS); Transcript of 7 June 2005, TF2-218, pp. 11-15 (CS). Boys as young as 7 years danced in front of the CDF as they went into battle. This practice was not limited to Daru. Exhibit 100, confidential, para. 51.

<sup>1510</sup> Exhibit 116, p. 9.

<sup>1511</sup> Exhibit 116B, pp. 9-10.

<sup>1512</sup> Exhibit 116B, p. 9.

<sup>1513</sup> Transcript of 14 February 2005, TF2-035, pp. 24-26, see also *ibid.* pp. 56-59.

<sup>1514</sup> Transcript of 27 May 2005, TF2-079, pp. 12-13.

<sup>1515</sup> Transcript of 11 March 2005, TF2-014, pp. 15-16.

<sup>1516</sup> Transcript of 14 February 2005, TF2-035, pp. 24-27, see also *ibid.* p. 56-59. See para. 388 in section on Togo for further particulars of this incident.

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*[Signature]*

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given to all of the child combatants in the CDF, and that children were called by that name instead of their true names.<sup>1517</sup>

- (d) In May 1998, in Daru, children as young as 13 years were present and were armed with knives, cutlasses and guns.<sup>1518</sup> At this time, Daru was an active combat zone.<sup>1519</sup> It was the responsibility of a small boy dressed in Kamajor clothing to carry a stick known as "the commander" and lead the Kamajors into combat.<sup>1520</sup> There is similar evidence that children as young as 7 years danced in front of the Kamajors as they went into battle.<sup>1521</sup>
- (e) Children were involved in monitoring checkpoints in Daru.<sup>1522</sup>
- (f) According to Colonel Abu Bakar, elders liked to use children in combat because they are obedient.<sup>1523</sup>
- (g) In July 1998, a small proportion of the 4000 registered Kapras in Massingbi were children under the age of 15.<sup>1524</sup>
- (h) By mid-August 1998, between 315 and 350 children under the age of 15 had been registered in a demobilization and reintegration program in Bo.<sup>1525</sup>
- (i) In 1999, the CDF registered over 300 children aged less than 14 in a disarmament, demobilization and reintegration program in the Southern Province.<sup>1526</sup>

### 2.10.3. Norman's address at a Meeting at Base Zero

689. In January 1998, Norman spoke at a meeting at Base Zero. He complained that the child combatants were outperforming the adult fighters. Children were present at this meeting.<sup>1527</sup>

<sup>1517</sup> Transcript of 27 May 2005, TF2-079, p. 11.

<sup>1518</sup> Transcript of 7 June 2005, TF2-218, pp. 16-17; Transcript of 7 June 2005, TF2-218, pp. 11-15 (CS).

<sup>1519</sup> Transcript of 7 June 2005, TF2-218, p. 16-17 (CS) and Transcript of 7 June 2005, TF2-218, p. 11-15 (CS).

<sup>1520</sup> Transcript of 7 June 2005, TF2-218, p. 16-17 (CS); The use of armed children to at CDF checkpoints was not limited to Daru: Exhibit 100, confidential, para. 50.

<sup>1521</sup> Transcript of 16 June 2005, TF2-EW2, p. 15-19.

<sup>1522</sup> Transcript of 7 June 2005, TF2-218, pp. 32-33 (CS).

<sup>1523</sup> Transcript of 7 June 2005, TF2-218, pp. 32-33 (CS).

<sup>1524</sup> Transcript of 7 June 2005, TF2-218, pp. 20-22 (CS).

<sup>1525</sup> Transcript of 7 June 2005, TF2-218, pp. 24-25 (CS).

<sup>1526</sup> Exhibit 100, confidential, paras 29-30.

<sup>1527</sup> Transcript of 19 November 2004, TF2-017, pp. 89-91 (CS).



### 3. Legal Findings

#### 3.1. Findings on the General Requirements for Crimes Against Humanity, War Crimes and Other Serious Violations of International Humanitarian Law

#### 3.2. Findings on the General Requirements for Crimes Against Humanity, War Crimes and Other Serious Violations of International Humanitarian Law

##### 3.2.1. Article 2: Crimes Against Humanity

690. As stated in the section on Applicable Law, the general requirements that must be established to prove a Crime against Humanity are as follows:

1. There must be an attack;
2. The attack must be widespread or systematic;
3. The attack must be directed against any civilian population;
4. The acts of the Accused must be part of the attack; and
5. The Accused knew or had reason to know that his acts constitute part of a widespread or systematic attack directed against any civilian population.

691. The Chamber finds that the following events constitute part of a widespread attack:

1. The attacks by Kamajors on Tongo in late November/ early December 1997; in early January 1998; and on 14 January 1998;
2. The attack by Kamajors on Koribondo between 13 and 15 February 1998;
3. The attack of Kamajors on Bo Town between 15 and 23 February 1998;
4. The attack by Kamajors on Bonthe on 15 February 1998; and
5. The attack by Kamajors on Kenema between 15 and 18 of February 1998;

692. In the light of the broad geographical area over which these attacks occurred, the Chamber is satisfied that the requirement of a widespread attack has been established in this case. Since the requirement that an attack be widespread or systematic is disjunctive, the Chamber does not need to consider whether the attack was also systematic.

693. The Chamber finds, however, that the evidence adduced does not prove beyond reasonable doubt that the civilian population was the primary object of the attack. By contrast,

there is evidence that these attacks were directed against the rebels or juntas that controlled towns, villages, and communities throughout Sierra Leone.<sup>1528</sup> In this regard the Chamber recalls the admission of the Prosecutor that “the CDF and the Kamajors fought for the restoration of democracy”.<sup>1529</sup>

694. Having thus found that the essential requirement of an attack against the civilian population has not been satisfied beyond reasonable doubt, the Chamber finds that the Fofana and the Kondewa are not guilty of Crimes against Humanity as charged in Count 1 (Murder as a Crime against Humanity) and Count 3 (Other Inhumane Acts as a Crime against Humanity).

### 3.2.2. Article 3: War Crimes

695. As stated in the section on Applicable Law, the general requirements that must be established to prove a War Crime are as follows:

1. An armed conflict existed at the time of the alleged violation of Common Article 3 or Additional Protocol II;
2. There existed a nexus between the alleged violation and the armed conflict;
3. The victim was a person not taking direct part in the hostilities at the time of the alleged violation; and
4. The accused knew or had reason to know that the person was not taking a direct part in the hostilities at the time of the act or omission.

696. As regards the first requirement the Chamber recalls that it has taken judicial notice of the fact that the “armed conflict in Sierra Leone occurred from March 1991 until January 2002.”<sup>1530</sup>

<sup>1528</sup> Transcript of 26 January 2006, Sam Hinga Norman, pp. 2-5; Transcript of 30 January 2006, Sam Hinga Norman, pp. 21-22; Transcript of 3 February 2006, Sam Hinga Norman, p. 55; Transcript of 6 February 2006, Sam Hinga Norman, pp. 83-85; Transcript of 13 February 2006, Albert Joe Demby, pp. 42-43 and 49.

<sup>1529</sup> Statement of Mr. Desmond De Silva, “Prosecutor”: Transcript of 8 May 2006, pp. 2-3; Transcript of 9 February 2006, Peter Penfold, p. 8, 13-14 and 46-47; Transcript of 13 February 2006, Albert Joe Demby, pp. 55-56, 65-66; Transcript of 6 February 2006, Sam Hinga Norman, pp. 17, 23-24, 54, 80 and 93; Transcript of 16 February 2005, TF2-005, pp. 67-69; Transcript of 17 November 2004, TF2-008, pp. 31-34; Transcript of 11 November 2004, TF2-071, pp. 110-112.

<sup>1530</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence (TC), 2 June 2004, Annex I, Fact A [Decision on Judicial Notice]. This finding was upheld on appeal in *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-AR73, Fofana – Decision on Appeal Against





697. With respect to the other general requirements for war crimes, where findings have been made of murder (Count 2), cruel treatment (Count 4), pillage (Count 5), acts of terrorism (Count 6) or collective punishments (Count 7) as war crimes, the Chamber is satisfied that the perpetrators were aware of the protected status of the victims who were either civilians (a category which includes "collaborators"<sup>1531</sup> and police officers) or captured enemy combatants. Similarly, where such findings have been made the Chamber is satisfied that the alleged crimes were closely related to the armed conflict.

### 3.2.3. Article 4: Other Serious Violations of International Humanitarian Law

698. As stated in the section on Applicable Law, the general requirements that must be established to prove an "Other Serious Violation of International Humanitarian Law" are as follows:

1. An armed conflict existed at the time of the alleged offence; and
2. There existed a nexus between the alleged offence and the armed conflict.

699. Again, the Chamber recalls that it has taken judicial notice of the fact that an armed conflict existed in all parts of the Republic of Sierra Leone throughout the period relevant to the Indictment.<sup>1532</sup>

700. Where findings have been made on the enlistment or use of children under the age of 15 to participate actively in the hostilities (Count 8), the Chamber finds that the alleged crimes were closely related to the armed conflict.

### 3.3. Responsibility

701. The Indictment alleges that Fofana and Kondewa, by their acts or omissions, are individually criminally responsible pursuant to Article 6(1) of the Statute for the crimes charged under Counts 1 through 8 of the Indictment, which they are said to have planned, instigated,

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"Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence" (AC), 16 May 2005, paras 34-40 [Appeal Decision on Judicial Notice].

<sup>1531</sup> The Chamber accepts the Prosecution's definition of "collaborators" as "[c]ivilians, including women and children, who were suspected to have supported, sympathized with, or simply failed to actively resist the combined RUF/AFRC forces." See Indictment, para. 23.

<sup>1532</sup> See Decision on Judicial Notice and Appeal Decision on Judicial Notice.

ordered, committed, or in which planning, preparation or execution they have aided and abetted.<sup>1533</sup>

702. Fofana and Kondewa are further alleged to have committed these crimes through participation in the first, or alternatively, the third category of a joint criminal enterprise, acting individually and in concert with Norman and subordinate members of the CDF. The Prosecution alleges that the JCE involved the use of "any means necessary" to defeat and completely eliminate the RUF/AFRC forces, their supporters, sympathisers, and anyone who did not actively resist their occupation of Sierra Leone, as well as gaining and exercising control over the territory of Sierra Leone and its population.<sup>1534</sup>

703. In addition, or alternatively, the Indictment alleges that Fofana and Kondewa are individually criminally responsible pursuant to Article 6(3) of the Statute for the crimes charged under Counts 1 through 8 of the Indictment, which are said, to have been committed by their subordinates.<sup>1535</sup>

704. On the basis of the factual findings made by the Chamber in section V.2. "Factual Findings" of this Judgement, we now proceed to determine whether the allegations against Fofana and Kondewa as set out in the Indictment have been proved beyond reasonable doubt.

### 3.3.1. President Kabbah's Role in the Conflict

705. As has been briefly mentioned in the introduction of this Judgement, persistent references and allusions were made by the Defence Team in the course of the proceedings that have preceded this Judgement, to President Kabbah and his alleged involvement in the conflict on the side of the CDF.

706. In this regard, and again as well mentioned in passing in the introduction of this Judgement, the Chamber recalls that the three Accused Persons all along in the course of these proceedings, raised a veiled Defence that all they did and stand charged for was as a result of their struggle to restore to power, President Kabbah's democratically elected government that had been

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<sup>1533</sup> Indictment, para. 20.

<sup>1534</sup> Indictment, para. 19.

<sup>1535</sup> Indictment, para. 21.

ousted in a *coup d'Etat* by the Armed Forces Revolutionary Council (AFRC) on the 25<sup>th</sup> of May 1997.

707. In view of the fact that the exigencies of justice require that a defence whether directly or indirectly raised by an accused in a criminal matter needs to be examined, we will proceed to determine, whether the President's alleged role, viewed in the light of his political status and that of his government-in-exile, constitutes a legal defence that is available to the Accused Persons.

708. In the light of the evidence adduced We have no doubt in Our minds that President Kabbah occupied and played a central role in this conflict because it was his overthrown Government that was waiting in the wings to be restored after the bitter wrangling and struggle that preceded it and continued after the Kabbah Government was ousted.

709. In February/March 1997, the then Vice President, Albert Joe Demby, organised two meetings to address military dissatisfaction over rice distributions because while senior officers were receiving only one bag for every two officers. A plan to reduce the rice rations provoked discontent and unrest in the Army.<sup>1536</sup>

710. In a meeting between President Kabbah, the vice President Demby and the Army Officers, the late Accused Norman accused two army officials, Hassan Conteh and Col Marx Kanga of planning a coup; an accusation which they denied.<sup>1537</sup>

711. Peter Penfold the British High Commissioner to Sierra Leone, the American Ambassador John Hirsh and the UN Special Representative, Ambassador Berhanu Dinka, in a meeting with President Kabbah, warned him of a possible *coup* against his government. He told them that he had already heard about that coup and that he would be talking to the Military.<sup>1538</sup>

712. Meantime, late Norman, on April 1997, had seen President Kabbah and handed over to him the strategic keys, a bag with working parts of dangerous weapons for safe keeping.

713. Like the Ambassadors who preceded him, Norman told President Kabbah that there was an imminent plot to overthrow him but that the *coup d'Etat* may not be deadly or destructive

<sup>1536</sup> Transcript of 8 February 2006, Peter Penfold, pp. 7-9.

<sup>1537</sup> Transcript of 10 February 2006, Albert Joe Demby, pp. 22-23; Transcript of 24 January 2006, Samuel Hinga Norman, pp. 80-83.

<sup>1538</sup> Transcript of 8 February 2006, Peter Penfold, pp. 9-13.





without those parts of the weapons. On the 5<sup>th</sup> of May 1997, President Kabbah told Norman that he returned the contents of the bag to the Chief of Defence Staff and the Army Chief, late Brigadier Hassan Conteh and late Max Kanga. Norman then told President Kabbah that the *coup d'Etat* against his government could not be averted.

714. After the *coup d'Etat* of the 25<sup>th</sup> of May 1997, President Kabbah went into exile in Guinea. His government-in-exile was still recognised and from Conakry he encouraged late Norman and his Kamajor collaborators like the Accused, Moinina Fofana and Allieu Kondewa and other CDF personnel who were engaged in this struggle to restore him to power.

715. He bought a satellite phone for Norman's use to report to him regularly on the progress of the war. He continued to provide logistics support to the Kamajors and their leaders. Samuel Hinga Norman, Moinina Fofana and Allieu Kondewa who were involved in the delegation from Bonthe, went to Freetown to see President Kabbah amongst others to complain about lootings and killings by Kamajors. The President sent 100 bags of rice to the Kamajors in Bonthe Town.<sup>1539</sup>

716. In view of the international recognition accorded to his Government, President Kabbah made it possible for the Economic Community of West African States through ECOMOG to provide military assistance to the CDF to enable it attain the objective of restoring his ousted Government to power. Indeed ECOMOG fought alongside the CDF Kamajor forces against the combined forces of the RUF and of the AFRC as the war raged inside the country for control of areas occupied by enemy forces.

717. It is also on record that Lady Patricia Kabbah gave the sum of \$10,000US to Hon. Meme Momoh Pujoh to be conveyed to late Norman for use as part of logistical support to the fighters particularly the amphibious Kassilla battalion in Bonthe. She said that she was very proud of them. She even promised them that she was communicating by a letter and that she would give further offers.<sup>1540</sup>

<sup>1539</sup> Transcript of 21 November 2004, TF2-071, pp. 82-83.

<sup>1540</sup> Transcript of 30 January 2006, Samuel Hinga Norman, pp. 10-12.

718. The President's wife, Lady Patricia Kabbah was particularly very concerned about that part of Sierra Leone she came from and she was always asking about Bonthe, about Borhoi, her birth Village.<sup>1541</sup>

719. Defence Witness, Osman Vandi, testified that a meeting which President Kabbah held in Bo, he thanked the Kamajors for dislodging the junta and restoring him as President and that he promised the Kamajors more rice which he later did.<sup>1542</sup>

720. In a second meeting held in Bo and at which prominent dignitaries were in attendance, President Kabbah told the Kamajors he would return and give them all medals. He left two sample medals at the Hall.<sup>1543</sup>

#### 3.4. Towns of Tongo Field

721. The Chamber outlines below, the facts as found in Sections V.2.2 and V.2.3.2 of the Factual Findings, upon which it will rely to make its legal findings on the individual criminal responsibility pursuant to Article 6(1) and 6(3) of Fofana and Kondewa:

- (i) Base Zero existed as the headquarters for the CDF High Command from about 15 September 1997 to 10 March 1998. Norman, as the National Coordinator, Fofana, as the National Director of War, and Kondewa, as the High Priest, were the key and essential components of the leadership structure of the organisation. They were the executives of the CDF actually taking the decisions, while nobody else could take a decision in their absence. They were the leaders of the CDF and all the Kamajors looked up to them.
- (ii) Base Zero was a central storage and distribution site for all of the CDF's logistics. Commanders came to Base Zero from every group and location in the country to take instructions from the High Command or Norman and to receive logistics. Reports were being delivered to Base Zero from the frontlines. Thousands of civilians and Kamajors travelled to Base Zero for initiation and military training. Although the CDF was a cohesive force under one central command, there were some fighters who acted on their own without the knowledge of central command. Commanders' authority to discipline their men on the ground was entirely their own.

<sup>1541</sup> Transcript of 30 January 2006, Samuel Hinga Norman, pp. 10-12

<sup>1542</sup> Transcript of 17 February 2006, Osman Vandi, pp. 99-101.

<sup>1543</sup> Transcript of 17 February 2006, Osman Vandi, pp. 99-101.





- (iii) Norman, Fofana, Kondewa, Mohamed Orinco Moosa, Joseph Koroma, Lamin Ngobeh, Albert J Nallo and the battalion commanders made strategic war decisions of determining when and where to go to war.
- (iv) Fofana in his capacity as Director of War at Base Zero planned and executed the war strategies and received frontline reports from the commanders. In executing these functions he was largely assisted by Albert J Nallo and on occasion Fofana passed on his responsibilities to Nallo. These war strategies did not include the commission of criminal acts, such as killing of civilians or looting.
- (v) Fofana selected commanders to go to battle and could, on occasion, issue direct orders to these commanders. For example, he issued the order to Joe Tamidey not to release captured vehicles and other items to any other person until they are registered with the CDF Headquarters. Fofana was responsible for the receipt and provision of ammunitions at Base Zero to the commanders upon the instruction of Norman.
- (vi) Fofana was seen as having power and authority at Base Zero and was the overall boss of the commanders at Base Zero.
- (vii) Kondewa in his capacity as High Priest was in charge of the initiations at Base Zero and was the head of all the CDF initiators in the country. The Kamajors believed in mystical powers of the initiators, especially Kondewa, and that the process of the initiation and immunisation would make them "bullet-proof". The Kamajors looked up to Kondewa and admired the man with such powers. They believed that he was capable of transferring his powers to them to protect them. By virtue of these powers Kondewa had command over the Kamajors in the country. He never went to the war front himself, but whenever a Kamajor was going to war, Kondewa would give his advice and blessings, as well as the medicine which the Kamajors believed would protect them against bullets. No Kamajor would go to war without Kondewa's blessings.
- (viii) Kondewa attended passing out parades at Base Zero, which signified that the Kamajors had passed their training and could present their skills. He, along with Norman and Mbogba, signed a training certificate, which each trainee received after the training.
- (ix) On 16 November 1997 TF2-079 prepared a situation report on events occurring between 19 September and 13 November 1997 in Zone II Operational Frontline which included Lower Bambara and Dodo Chiefdoms. It requested arms and ammunitions and described attacks which had been launched in the area. It also narrated crimes which were committed by Kamajors in that area. The report was endorsed by Musa Junisa, the then Commander-in-chief of Zone II Operational Frontline and Mohamed Orinco Moosa, his deputy. TF2-079, Junisa and Moosa with 100 other Kamajors then travelled to Base Zero. At Base Zero they gave the report first to Fofana and then to Norman. Norman commended



their efforts and told them that a good number of that group should return to the area with another senior commander to keep the area strong and only a few of them should remain at Base Zero to await ammunitions. Seven people, including Moosa and TF2-079 stayed at Base Zero.

- (x) At a passing out parade at Base Zero between 10 and 12 December 1997 Norman gave instructions for the Tongo and Black December operations. Norman said that the attack on Tongo would determine who wins the war. He also said that there was no place to keep captured prisoners like the juntas, let alone their collaborators. He directed the Kamajors that instead of wasting their bullets, to chop off the left hand of any captured junta as a signal to any group that would want to seize power through the barrels of the gun and not the ballot paper. He also told the fighters not to spare the houses of the juntas. After hearing Norman's instructions, Fofana addressed the Kamajors saying that any commander failing to perform accordingly and "losing your own ground", should kill himself and not come to report to Base Zero. Then all the fighters looked at Kondewa, admiring him as a man with a mystic power, and he gave the last comment saying that the time for the surrender of rebels had long been exhausted and that they did not need any surrendered rebels. He then gave his blessings.
- (xi) A subsequent meeting was held by Norman at Base Zero, which was attended by, among others, Fofana, Kondewa, Mohamed Orinco Moosa and some commanders from the Tongo area, such as, Musa Junisa, TF2-079 and Vandi Songo. Norman repeated that whoever took Tongo would win the war and therefore it should be taken "at all costs". He ordered them not to spare anyone working with the juntas or mining for them. He also said that all collaborators should forfeit their properties and be killed. Everyone in the meeting contributed to the discussion, including Fofana and Kondewa. Norman then ordered Fofana to provide logistics for the operation.

### 3.4.1. Responsibility of Fofana

#### 3.4.1.1. Responsibility Pursuant to Article 6(1)

722. Based on the above evidence the Chamber finds that Fofana's speech at the passing out parade in December 1997 when the attack on Tongo was discussed was clearly an encouragement and support of Norman's instructions to kill captured enemy combatants and "collaborators", to inflict physical suffering or injury upon them and to destroy their houses. At this parade Fofana, as Director of War, addressed the fighters immediately after the National Coordinator for the CDF had given his instructions about Tongo. Fofana not only encouraged the Kamajors to follow Norman's unlawful orders to commit criminal acts but also told them that if they failed to perform accordingly, they should not come back to Base Zero to report but to kill themselves rather than

losing their own ground. As found by the Chamber above, those Kamajors who then proceeded to attack Tongo not only received a direction from Norman to commit specific criminal acts, they also had a clear encouragement and support from Fofana, as one of their leaders, to commit such acts.

723. The Chamber is satisfied that Fofana's speech had a substantial effect on the perpetration of those criminal acts. Although this speech was given by Fofana at Base Zero in December 1997, prior to the commission of the criminal acts by Kamajors in Tongo in January 1998, the Chamber finds that the Accused is liable for aiding and abetting even when his conduct occurred before the principal crime had been perpetrated and at a location geographically removed from that of the principal crime.<sup>1544</sup>

724. The Chamber observes that in order to make a finding that Fofana aided and abetted in the commission of the alleged crimes it is irrelevant whether he shared the intent of the perpetrators. Similarly, the Chamber need not examine whether Fofana knew of the precise crime that was intended by the principal perpetrator. However, the Chamber is satisfied that Fofana was aware that one of a number of crimes would probably be committed by the Kamajors and that one of those crimes was in fact committed. The Chamber finds that Fofana knew of Norman's orders that the Kamajors were to kill captured enemy combatants and "collaborators", to inflict physical suffering or injury upon them and to destroy their houses. The Chamber finds that, based on his awareness that the Kamajors who operated in the towns of Tongo Field had previously engaged in criminal conduct, which had been reported to Base Zero,<sup>1545</sup> Fofana knew that it was probable that the Kamajors would commit at least one of these acts in compliance with the instructions issued. With this knowledge and his knowledge of the orders given by Norman, the National Coordinator, Fofana encouraged and supported the Kamajors in their actions, in consequence of which they committed acts of killing and infliction of physical suffering or injury in Tongo, as found by the Chamber above.

<sup>1544</sup> The *actus reus* of aiding and abetting a crime may occur before, during, or after the principal crime has been perpetrated and at a location geographically removed from the location of the principal crime: see Section IV.4.1.6 "Aiding and Abetting".

<sup>1545</sup> See fact in para. 721(ix).

725. The Chamber further finds that Fofana was present and contributed to the discussion at the subsequent commanders' meeting in December 1997 at Base Zero where plans to attack Tongo were discussed. At this meeting Norman further reiterated, clarified and expanded his unlawful orders, which now included looting, to the Kamajor commanders from Tongo. In the absence of any evidence showing how Fofana contributed to the discussion and decision at this meeting the Chamber finds that in the circumstances there is no evidence to prove beyond reasonable doubt that Fofana either planned the commission of this additional crime of looting or that he aided and abetted in the planning, preparation or execution of this additional crime in Tongo.

726. The Chamber notes that Fofana was ordered by Norman to provide logistics to the commanders from Tongo following this meeting. The Chamber observes that no specifications have been provided as to what these logistics consisted of. Although at this stage Fofana knew that the order to attack Tongo included not only instructions to kill, inflict physical suffering or injury or destroy houses, but also to loot, it is not the only reasonable inference that the logistics provided by Fofana were used to commit those specific crimes in Tongo or that such provision of logistics had a substantial effect upon the perpetration of these specific crimes in Tongo. The Chamber finds that this action by Fofana did not constitute further aiding and abetting in the planning, preparation or execution of the criminal acts committed by Kamajors in Tongo subsequently.

727. The Chamber finds, however, that Fofana's speech at the passing out parade constitutes aiding and abetting only of the preparation of those criminal acts which were explicitly ordered by Norman, namely, killing of captured enemy combatants and "collaborators", infliction of physical suffering or injury upon them and destruction of their houses,<sup>1546</sup> which the Chamber found were committed by the Kamajors in the towns of Tongo Field during the second and third attacks.

728. With respect to Count 7, the Chamber recalls that for specific intent crimes, the aider and abettor must have knowledge of the specific intent of the perpetrator to commit such crimes. The Chamber finds that the specific intent to impose a punishment on persons for acts or omissions they have not committed can reasonably be inferred from the circumstances that existed at the

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<sup>1546</sup> The Chamber notes that while the Indictment charges under Count 5 "unlawful taking and destruction by burning of civilian-owned property" burning does not constitute the offence of pillage. See the section on Applicable Law for further discussion of this point.

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time and in particular from Norman's order. The Chamber therefore finds that it has been established beyond reasonable doubt that Fofana was aware of the required specific intent to punish collectively.

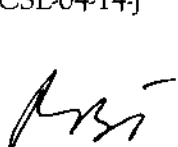
729. The Chamber recognises that other criminal acts alleged in the Indictment were in fact committed in the towns of Tongo Field. However, the Chamber finds that such acts were not included in Norman's order. Therefore, the Chamber finds that it has not been established beyond reasonable doubt that Fofana aided and abetted in the preparation of all the other criminal acts, such as infliction of mental harm or suffering and looting, which we found were committed by the Kamajors in the towns of Tongo Field during the second and third attacks.

730. Under the sub-heading "Counts - Tongo Field", the Chamber will therefore examine only those particular criminal acts that were explicitly included in Norman's order.

731. With respect to Count 6, the Chamber recalls that for specific intent crimes, the aider and abettor must have knowledge of the specific intent of the perpetrator to commit such crimes. The Chamber finds that while spreading terror may have been Norman's primary purpose in issuing the order to kill captured enemy combatants and "collaborators", to inflict physical suffering or injury upon them and to destroy their houses, this is not the only reasonable inference that can be drawn from the evidence. As such the Chamber finds that it has not been proved beyond reasonable doubt that Fofana had the requisite knowledge, an essential element of the crime of acts of terrorism.

732. In addition, the Chamber finds that no evidence has been adduced that Fofana planned, instigated, ordered or committed any of the other criminal acts which the Chamber found were committed in the towns of Tongo Field during the time frame charged in the Indictment. Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

3.4.1.2. Responsibility Pursuant to Article 6(3)



733. The Chamber finds that the evidence adduced has not established beyond reasonable doubt that there was a superior-subordinate relationship, either *de jure* or *de facto*, between Fofana and all of the Kamajors, who committed other criminal acts in the towns of Tongo Field prior to, during, and after the second and third attacks on Tongo, which the Chamber found were committed during the time frame charged in the Indictment, so as to conclude that he could or did exercise effective control over those Kamajors.

734. Since an essential element of a superior responsibility is not established, it is not necessary to examine the other remaining elements with respect to other criminal acts which the Chamber found were committed by Kamajors in the towns of Tongo Field during the time frame charged in the Indictment.

#### 3.4.2. Responsibility of Kondewa

##### 3.4.2.1. Responsibility Pursuant to Article 6(1)

735. The Chamber finds that at the passing out parade in December 1997 when the attack on Tongo was discussed Kondewa addressed the fighters as the High Priest after the National Coordinator and the Director of War had made their comments. All the fighters looked at Kondewa, admiring him as a man with mystic powers, and he made the last comment saying that the time for the surrender of rebels had long been exhausted and that they did not need any surrendered rebels. The Chamber finds that in uttering these words Kondewa effectively supported Norman's instructions and encouraged the Kamajors to kill captured enemy combatants and "collaborators", to inflict physical suffering or injury upon them and to destroy their houses. Kondewa then gave his blessings for these criminal acts as the High Priest. The Chamber notes that no fighter would go to war without Kondewa's blessings because they believed that Kondewa transferred his mystical powers to them and made them immune to bullets.

736. As found by the Chamber above, the Kamajors who then proceeded to attack Tongo not only received a direction from Norman to commit specific criminal acts, they also had encouragement and support from Kondewa through his blessing, as one of their leaders with mystical powers, to commit such acts. The Chamber is satisfied that Kondewa's words had a substantial effect on the perpetration of those criminal acts. Although Kondewa's speech was given at Base Zero in December 1997 prior to the commission of the criminal acts by Kamajors in Tongo

in January 1998, the Chamber finds that the Accused is liable for aiding and abetting even when his conduct occurred before the principal crime had been perpetrated and at a location geographically removed from that of the principal crime.

737. The Chamber observes that in order to make a finding that Kondewa aided and abetted in the commission of the alleged crimes it is irrelevant whether he shared the intent of the perpetrators. Similarly, the Chamber need not examine whether Kondewa knew of the precise crime that was intended by the principal perpetrator. However, the Chamber should be satisfied that Kondewa was aware that one of a number of crimes would probably be committed by the Kamajors and that one of those crimes was in fact committed. The Chamber finds that Kondewa knew of Norman's orders that the Kamajors were to kill captured enemy combatants and "collaborators", to inflict physical suffering or injury upon them and to destroy their houses. The Chamber finds that, based on his awareness that the Kamajors who operated in the towns of Tongo Field had previously engaged in criminal conduct, which had been reported to Base Zero,<sup>1547</sup> Kondewa knew that it was probable that the Kamajors would commit at least one of these acts in compliance with the instructions issued. With this knowledge and his knowledge of the orders given by the National Coordinator, Kondewa encouraged and supported the Kamajors in their actions, in consequence of which they committed acts of killing and infliction of physical suffering or injury in the towns of Tongo Field, as was found by the Chamber above.

738. We further find that Kondewa was present and contributed to the discussion at the subsequent commanders' meeting in December 1997 at Base Zero where plans to attack Tongo were discussed. At this meeting Norman further reiterated, clarified and expanded his unlawful orders, which now included looting, to the Kamajor commanders from Tongo. In the absence of any evidence showing how Kondewa contributed to the discussion and decision at this meeting, the Chamber finds that in the circumstances there is no evidence to prove beyond reasonable doubt that Kondewa either planned the commission of this additional crime of looting or that he aided and abetted in the planning, preparation or execution of this additional crime in Tongo.

739. The Chamber finds, however, that the speech by Kondewa at the passing out parade constitutes aiding and abetting in the preparation of those criminal acts which were explicitly

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<sup>1547</sup> See para. 721(ix).



ordered by Norman, namely, killing of captured enemy combatants and “collaborators”, infliction of physical suffering or injury upon them and destruction of their houses,<sup>1548</sup> which the Chamber found were committed by the Kamajors in the towns of Tongo Field during the second and third attacks.

740. With respect to Count 7, the Chamber recalls that for specific intent crimes, the aider and abettor must have knowledge of the specific intent of the perpetrator to commit such crimes. The Chamber finds that the specific intent to impose a punishment on persons for acts or omissions they have not committed can reasonably be inferred from the circumstances that existed at the time and in particular from Norman’s order. The Chamber therefore finds that it has been established beyond reasonable doubt that Kondewa was aware of the required specific intent to punish collectively.

741. The Chamber recognises that other criminal acts alleged in the Indictment were in fact committed in the towns of Tongo Field. However, the Chamber finds that such acts were not included in Norman’s order. Therefore, the Chamber finds that it has not been established beyond reasonable doubt that Kondewa aided and abetted in the preparation of all the other criminal acts, such as infliction of mental harm or suffering and looting, which we found were committed by the Kamajors in the towns of Tongo Field during the second and third attacks.

742. Under the sub-heading “Counts – towns of Tongo Field”, the Chamber will therefore examine only those particular criminal acts that were explicitly included in Norman’s order.

743. With respect to Count 6, the Chamber recalls that for specific intent crimes, the aider and abettor must have knowledge of the specific intent of the perpetrator to commit such crimes. The Chamber finds that while spreading terror may have been Norman’s primary purpose in issuing the order to kill captured enemy combatants and “collaborators”, to inflict physical suffering or injury upon them and to destroy their houses, this is not the only reasonable inference that can be drawn from the evidence. As such the Chamber finds that it has not been proved beyond

<sup>1548</sup> The Chamber notes that while the Indictment charges under Count 5 “unlawful taking and destruction by burning of civilian-owned property” burning does not constitute the offence of pillage. See the section on Applicable Law for further discussion of this point.

reasonable doubt that Kondewa had the requisite knowledge, an essential element of the crime of acts of terrorism.

744. In addition, the Chamber finds that no evidence has been adduced that Kondewa planned, instigated, ordered or committed any of the other criminal acts which the Chamber found were committed in the towns of Tongo Field during the time frame charged in the Indictment. Although on the basis of the evidence adduced it appears that Norman, Fofana, Kondewa and their subordinates may have acted in concert with each other, we find that there is no evidence upon which to conclude beyond reasonable doubt that they did so in order to further a common purpose, plan or design to commit criminal acts. There is no evidence proving beyond reasonable doubt such a purpose, plan or design.

#### 3.4.2.2. Responsibility Pursuant to Article 6(3)

745. The Chamber finds that the evidence adduced has not established beyond reasonable doubt that there was a superior-subordinate relationship, either *de jure* or *de facto*, between Kondewa and all of the Kamajors, who committed other criminal acts in the towns of Tongo Field prior to, during, and after the second and third attacks on Tongo, which the Chamber found were committed during the time frame charged in the Indictment, such as to conclude that he could or did exercise effective control over those Kamajors.

746. Since an essential element of a superior responsibility is not established, it is not necessary to examine the other remaining elements with respect to other criminal acts which the Chamber found were committed by Kamajors in the towns of Tongo Field during the time frame charged in the Indictment.

#### 3.4.2.3. Counts - The Towns of Tongo Field

747. The Chamber recognises that other criminal acts have been committed by Kamajors in the towns of Tongo Field during the time frame relevant to the Indictment. In the Chamber's opinion, having regard to all the evidence adduced, these criminal acts were either not charged in the Indictment or fall outside the time frame of the Indictment or there is no indication that the accused were involved in the commission of these crimes through any of the modes of liability



alleged in the Indictment. Therefore, the Chamber will not examine these criminal acts for the purposes of making legal findings on the responsibility of each Accused.

748. The Chamber observes that the allegations against Fofana and Kondewa for criminal acts alleged to have been committed by the Kamajors in the towns of Tongo Field are identical. The evidence relied on by the Chamber to make its factual findings on the criminal acts committed by Kamajors in these locations are also identical. While the Chamber has dealt with the factual findings underlying each count together, it has considered the individual criminal liability of each Accused, with respect to each count, separately.

3.4.2.3.1. *Count 2: Murder*

749. The Prosecution alleges that Fofana and Kondewa are individually criminally responsible, pursuant to Article 6(1), for the unlawful killing of an unknown number of civilians and captured enemy combatants at or near Tongo Field and at or near the towns of Lalehun, Kamboma, Konia, Talama, Panguma and Sembehun, between about 1 November 1997 and 30 April 1998.<sup>1549</sup>

750. As set out above in Sections V.2.3.3 - V.2.3.7 of the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 2, Murder:

- (i) In early January 1998, a 12 year-old boy named Foday Koroma was killed in Talama because he was related to a rebel from Tongo.
- (ii) In early January 1998, 150 Loko, Limba and Temne tribe members were separated from members of other tribes and were killed in Talama.
- (iii) On 14 January 1998, two men identified as rebels were killed by Kamabote at the NDMC Headquarters in Tongo.
- (iv) On 14 January 1998, Kamabote killed a man named "Dr. Blood" and a woman named Fatmata Kamara at the NDMC Headquarters in Tongo. Both were considered to be collaborators.
- (v) On 14 January 1998, at the NDMC Headquarters in Tongo, two women identified more than 10 men as collaborators. These men were led by armed Kamajors to a place behind the Headquarters where cows were slaughtered. Two hundred others who had been identified as rebels were also led in the same direction.

<sup>1549</sup> Indictment, para. 25(a).

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- (vi) On 14 January 1998, Kamajors took TF2-048's uncle, an unidentified woman and an unidentified child behind a house at the NDMC Headquarters in Tongo. The Kamajors returned with blood on their machetes. These people have not been seen again.
- (vii) On 15 January 1998, 20 men who had been accused of being rebels were hacked to death with machetes at the NDMC Headquarters in Tongo.
- (viii) Around noon on 15 January 1998, Kamajors shot at a crowd of civilians at the NDMC Headquarters in Tongo. Many civilians were hit by stray bullets and at least one died.
- (ix) On 15 January 1998, at an intersection near the NDMC Headquarters in Tongo, TF2-048's brother was killed by a Kamajor.
- (x) On 15 January 1998, Kamajors at a checkpoint hacked one man to death for carrying a photograph of a rebel.
- (xi) On 15 January 1998, Kamajors at another checkpoint hacked a boy named Sule to death for carrying a wallet that resembled SLA fatigues.
- (xii) Kamajors separated men and women in Bumie and killed five men after making them stare at the sun.
- (xiii) Shortly after the third attack on Tongo, a group of 65 civilians was separated into two lines in Kamboma; the Kamajors shot the first 57 people and rolled the bodies into a swamp behind a house. The last eight people were hacked in the neck with machetes and rolled into the swamp with the other bodies. Only one man survived.
- (xiv) In mid-February 1998, Aruna Konowa was killed in Lalehun, on the order of a Kamajor boss named Chief Baimba Aruna, because he was considered to be a collaborator.
- (xv) A few days after the killing of Aruna Konowa, Brima Conteh was killed in Lalehun by Kamajors who accused him of being "the chief of the rebels".

751. The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i) through (xv) and concludes that all of the perpetrators were Kamajors. We find that individuals were killed intentionally; in the majority of cases they were specifically targeted because of the perpetrator's belief that they were "collaborators" or rebels. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all the evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 750(i) - 750(iv) and 750(vi) - 750(xv) was sufficiently related to the armed conflict to

satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to above in paragraph 750, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time that they were killed and, furthermore, that the perpetrator knew that the victims were not taking an active part in the hostilities.

752. In light of the findings set out above, the Chamber is satisfied that the general requirements of war crimes have been established beyond reasonable doubt with respect to each incident described in paragraph 750.

753. With respect to those incidents described in paragraph 750(i)750(iv) - 750(iv) and 750(vi) - 750(xv), above, the Chamber is satisfied not only that the general requirements of war crimes have been established but also that the specific elements of murder have been met with respect to each incident. However, the Chamber finds that the specific elements of the crime of murder have not been established with respect to paragraph 750, as the conclusion that these people were killed is not the only reasonable inference to be drawn from the evidence.

#### 3.4.2.3.2. Count 4: Cruel Treatment

754. The Prosecution alleges that Fofana and Kondewa are individually criminally responsible, pursuant to Article 6(1), for the intentional infliction of serious physical harm and serious physical suffering on an unknown number of civilians in Tongo Field and the surrounding areas, between 1 November 1997 and 30 April 1998.<sup>1550</sup>

755. Additionally, the Prosecution alleges that Fofana and Kondewa are individually criminally responsible, pursuant to Article 6(1), for the intentional infliction of serious mental harm and serious mental suffering on an unknown number of civilians in Tongo Field and the surrounding areas, between November 1997 and December 1999, through the following acts:

- screening for collaborators;
- unlawfully killing suspected collaborators, often in plain view of friends and relatives;
- illegal arrest and unlawful imprisonment of collaborators;

<sup>1550</sup> Indictment, para. 26(a).

- the destruction of homes and other buildings;
- looting and threats to unlawfully kill, destroy or loot.<sup>1551</sup>

756. As set out above in the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 4, Cruel Treatment:

- (i) On 14 January 1998, at the NDMC Headquarters in Tongo, a Kamajor hacked at three people with a cutlass.
- (ii) On 15 January 1998, at a checkpoint in Dodo, Kamajors hacked the right hand of a man they thought was a rebel.
- (iii) Shortly after the third attack on Tongo, a group of 65 civilians was separated into two lines in Kamboma; 64 were killed. One man was hacked in the neck with a machete but survived.
- (iv) Some time after escaping from a checkpoint in Panguma, Kamabote found TF2-035 in Ngiehun. On discovering that TF2-035 was a Limba, Kamabote ordered a child soldier named "Small Hunter" to kill TF2-035. Small Hunter shot TF2-035 five times; one bullet is still in his body.

757. The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i)-(iv) and concludes that all these acts were committed by Kamajors. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all the evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 756 (i) - (iv) was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. Having considered the particular facts and circumstances of each of the incidents referred to above in paragraph 756, the Chamber is also satisfied beyond reasonable doubt that the victims were persons not taking an active part in the hostilities at the time that the acts described above occurred and, furthermore, that the perpetrators knew that they were not taking an active part in the hostilities.

758. In light of the findings set out above, the Chamber is satisfied that both the general requirements of war crimes and the specific elements of cruel treatment have been established with respect to each incident described in paragraph 756.

<sup>1551</sup> Indictment, para. 26(b).

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