

3.4.2.3.3. *Count 7: Collective Punishments*

759. The Prosecution alleges that Fofana and Kondewa are individually criminally responsible, pursuant to Article 6(1), for committing the crimes charged in Counts 1 through 5 of the Indictment as part of a campaign to punish the civilian population of the relevant geographical areas.¹⁵⁵²

760. The Chamber recalls that only those acts for which the Accused have been found to bear criminal responsibility under another count of the Indictment may form the basis of criminal responsibility for collective punishments. In this regard, the Chamber recalls that it has found that Fofana bears criminal responsibility as a superior under Counts 2, 4 and 7 in the towns of Tongo Field.

761. The Chamber finds that the evidence adduced proves beyond reasonable doubt that the acts described in paragraph 750(i)750(iv) - 750(iv) and 750(vi) - 750(xv) [Count 2] and in paragraph 756 [Count 4] were perpetrated with the specific intent to punish the civilian population in Tongo Field and the surrounding areas.

762. The Chamber is therefore satisfied, in relation to those acts described in paragraph 750(i)750(iv) - 750(iv) and 750(vi) - 750(xv) and in paragraph 756, that both the general requirements of war crimes and the specific elements of collective punishments have been proved beyond reasonable doubt with respect to each incident.

3.4.3. Conclusion

3.4.3.1. Responsibility of Fofana

763. On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for aiding and abetting in the preparation of the crimes committed in the towns of Tongo Field as found under Counts 2, 4 and 7 above.

3.4.3.2. Responsibility of Kondewa

764. On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to Article 6(1) for

¹⁵⁵² Indictment, para. 28.

aiding and abetting in the preparation of the crimes committed in the towns of Tongo Field as found under Counts 2, 4 and 7 above.

3.5. Koribondo

765. In addition to the facts listed above in paragraph 721 (i) to (viii), the Chamber outlines below the facts as found in Sections V.2.2, V.2.4.2, V.2.4.3, V.2.4.4 and V.2.4.6 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 with respect to Koribondo:

- (i) At a passing out parade at Base Zero in early January 1998 Norman gave orders to the Kamajors to launch an "all-out offensive" in all the areas occupied by the Juntas and laid-down military instructions on how to conduct this operation.
- (ii) Fofana addressed the Kamajors at this parade, confirming Norman's order to attack various junta-held territories. During this speech Fofana told the fighters to attack the villages where the juntas were located and "to destroy the soldiers from where they were [...] settled". He also said that the failure to take Koribondo was a disgrace to the Kamajors and that this time he wanted them to go and capture Koribondo.
- (iii) Kondewa gave his blessings and the medicines which would make the fighters fearless if they did not spoil the law. He also said that all of his powers had been transferred to them to protect them, so that no cutlass would strike them and that they should not be afraid.
- (iv) A subsequent commanders' meeting for Koribondo was held by Norman at Base Zero on the same day as the passing out parade, which had in attendance, among others, Fofana, Kondewa, Lamin Ngobeh, Joe Tamidey, Bobor Tucker and other commanders. Norman chose Joe Tamidey to lead the attack on Koribondo. Norman ordered that Koribondo should be taken "at all costs" because they had already spent a lot on Koribondo. Norman gave specific orders to the commanders to destroy or burn everything in Koribondo, except for a mosque, church, the Bari and the school. He also said that anyone left in town should be termed an enemy or a rebel since they had been forewarned and should be killed.
- (v) At the same meeting Bobor Tucker's group was specifically ordered to reinforce the Bo-Koribondo Highway so that no one could come from Bo to help the juntas.

- (vi) At the request of Joe Tamidey, Norman ordered Lumeh to provide Tamidey with ammunition, food and money. Bobor Tucker had reserve ammunitions from before that he used for the attack.
- (vii) Norman met with Nallo before the Koribondo and Bo attacks at Base Zero and gave him specific instructions for these two attacks, while Fofana was present. Norman told Nallo that the Kamajors had tried to capture Koribondo many times and that they had failed because the civilians had given their children to the juntas in marriage and thus they were all "spies and collaborators". Therefore, when he goes to Koribondo "anybody that was met there should be killed" and nothing should be left "not even a farm" or "a fowl". All houses were to be burnt, and he was given petrol for the job. Some specific names were mentioned. Shekou Gbao, the driver, should be killed and his compound be burnt because he was giving his vehicle to the juntas. The house of Mike Lamin's father was also to be burnt, because Mike Lamin was a RUF. Mr Biyo, a driver, should have his compound burnt as well. Although Joe Tamidey was appointed by Norman to lead the attack on Koribondo, he and the other commanders involved in that attack were all under Nallo's overall command.
- (viii) Fofana as Director of War and one of the leaders at Base Zero was the superior of Nallo by virtue of Nallo's positions in the hierarchical structure of the organisation that existed at Base Zero. Nallo was the Deputy National Director of Operations and the Regional Director of Operations for the Southern Region, which included Districts of Bo, Moyamba, Pujehun and Bonthe. In his capacity as Deputy National Director of Operations, Nallo was responsible for transmitting general and specific instructions from Norman to the warfront commanders, for collecting reports he received from the frontline upon his visits and transmitting them to Fofana before presenting them to Norman, and bringing arms and ammunitions to the fighters.
- (ix) As Regional Director of Operations Nallo was responsible for implementing commands he received from Base Zero with his commanders. In implementing those commands he did not distinguish between the lawful and unlawful orders and did not recognise that he had discretion to implement them or not.
- (x) The local operational planning for the attack on Koribondo was done at Kpetewoma. Nallo was the intermediary between Norman at Base Zero and Joe Tamidey. During the first meeting local manpower was provided to assist the Kamajors. At the third meeting, Nallo supplied cartridges, bombs, G3s and AK-47s to Joe Tamidey, which he had said were given by Norman for the attack on Koribondo. Thereafter plans were made, fighters were organized and the arms and ammunition were distributed to the various groups by Joe Tamidey. The following commanders were to lead the battle from three flanks: Bobor Tucker from the Bo-Koribondo Highway; Lahai George from the Sumbuya-Koribondo Highway; and Joe





Tamidey from Blama. Joe Tamidey then informed Nallo for further report to Norman that the attack was planned for the 13th of February 1998.

- (xi) The attack started from Jombohun and was commanded by Joe Tamidey, Bobor Tucker and Lamin Ngobeh. Although the commanders were operating with different groups, they were all under Nallo's command. Around 700 Kamajors that attacked Koribondo were predominantly, but not exclusively, from the Jaiama-Bongor Chiefdom. Others came from the Districts of Pujehun, Bontho and Bo.
- (xii) Four days after the capture of Bo, Joe Tamidey met with Fofana, Kondewa and Norman in Koribondo. He was taken to Bo where he was questioned by Fofana as to his reasons for not killing Shekou Gbao.
- (xiii) At the end of March 1998, Norman addressed approximately 200 civilians and 400 Kamajors at the Court Barri in Koribondo. Norman scolded the Kamajors for not having done the work he had told them to do, in particular to destroy all the houses, except for three. On this visit Fofana and Kondewa accompanied Norman but they did not attend this meeting.

3.5.1. Responsibility of Fofana

3.5.1.1. Responsibility pursuant to Article 6(1)

766. The Chamber takes the view that Fofana's speech at the passing out parade in early January 1998, when Norman gave orders to the Kamajors to launch an "all-out offensive" in all the areas occupied by the Juntas and laid-down military instructions on how to conduct this operation, was words of encouragement to the Kamajor fighters who were about to conduct those military operations. The Chamber finds, however, that this speech does not amount to urging, encouraging or prompting the Kamajors to commit criminal acts. Although this speech contained an instruction to "attack the villages", "destroy the soldiers" and "capture Koribondo" and was given by Fofana in his position as Director of War to his subordinates, it did not include the instruction to commit criminal acts. This evidence does not demonstrate beyond reasonable doubt that Fofana intended to provoke or induce or bring about the commission of the criminal acts which the Chamber found were committed by Kamajors subsequently during the attack on Koribondo or that Fofana had reasonable knowledge that criminal acts would likely be committed as a result of this speech.

767. Furthermore, the Chamber finds that uttering these words of encouragement to the Kamajor fighters who were about to conduct military operations against the junta-held territories,

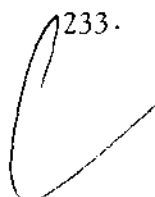
does not constitute aiding and abetting in the planning, preparation or execution of the criminal acts alleged. We find that there is no evidence to conclude beyond reasonable doubt that at the time of giving of his speech Fofana was aware of the Kamajors' intention to commit any of the criminal acts, which the Chamber found were committed in Koribondo by the Kamajors during the attack.

768. Although Fofana was present at the subsequent commanders' meeting where the attack on Koribondo was planned, we find that this evidence together with the evidence of his speech at the passing out parade does not establish beyond reasonable doubt that Fofana planned the commission of any of the criminal acts in Koribondo.

769. We further find that the mere presence of Fofana at this commanders' meeting as well at the private meeting with Nallo, at which Norman gave orders to Nallo, Joe Tamidey, Bobor Tucker, Lamin Ngobeh and other Kamajor commanders to commit criminal acts does not establish beyond reasonable doubt that Fofana aided and abetted in the planning, preparation or execution of these criminal acts.

770. The Chamber further finds that no evidence has been adduced of Fofana physically or otherwise directly perpetrating any of the criminal acts which we found were committed in Koribondo 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.

771. On the basis of the foregoing the Chamber now finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Koribondo during the time frame charged in the Indictment.



3.5.1.2. Responsibility pursuant to Article 6(3)

772. The Chamber will now proceed to examine whether the evidence adduced has established beyond reasonable doubt that Fofana is individually criminally responsible as a superior pursuant to Article 6(3) for any of the criminal acts which the Chamber found were committed in Koribondo during the time frame charged in the Indictment.

3.5.1.2.1. *Superior-subordinate relationship*

773. We find that there was a superior-subordinate relationship between Fofana and Nallo and that Fofana had authority and control over Nallo's actions. By virtue of his *de jure* status as Director of War Fofana exercised this control over Nallo, who in the hierarchical structure of the CDF organisation was his subordinate as Deputy National Director of Operations and Director of Operations for the Southern Region. Fofana also had *de facto* control over Nallo. Fofana had the legal and material ability to issue orders to Nallo, both by reason of his leadership role at Base Zero, being part of the CDF High Command, and the authority he exercised in his position as Director of War.

774. Nallo regularly brought frontline reports to Base Zero. These reports were brought to Fofana before being given to Norman. Further, Fofana and Nallo together planned and executed the war strategies. Fofana's authority at Base Zero was such that people would not approach him unless summoned by him. Finally, he acted as the overall boss of the commanders at Base Zero. The Chamber finds that Fofana had both the legal and material ability to prevent the commission of criminal acts by Nallo and other subordinates or to punish them for these acts.

775. Consonant with our earlier finding, Nallo in addition to being in charge of the commanders in the Southern Region in his capacity as Regional Director of Operations was also specifically assigned the responsibility for the Koribondo operation. Although Joe Tamidey was chosen by Norman to lead the attack on Koribondo, Nallo was the overall commander for this operation. We find that Nallo exercised command over Joe Tamidey, Bobor Tucker and Lahai George as well as the Kamajors under their immediate command.

776. The Chamber finds that the evidence of the local planning in Kpetewoma for the attack on Koribondo demonstrates not only the direct participation of Nallo in the preparation of this attack but also that his participation then ensured that the orders for the attack which the commanders

received at Base Zero were implemented by the Kamajors on the ground. Prior to the attack Nallo acted as an intermediary between Base Zero (High Command) and Kpetewoma through bringing arms and ammunitions from Base Zero to Kpetewoma and bringing reports back to Base Zero from Kpetewoma and from Joe Tamidey. Despite the fact that there were 700 Kamajors involved in the attack and that not all of them came from Jaiama-Bongor Chiefdom, they were all placed under Nallo's command. Nallo knew how the attack would proceed and who would be involved in that attack.

3.5.1.2.2. *Knew or had reasons to know*

777. Fofana knew that the attack on Koribondo would involve the commission of criminal acts by Nallo, Joe Tamidey, Bobor Tucker, Lamin Ngobeh and other commanders. He was present at the meetings at which the unlawful orders, namely, to take Koribondo "at all costs", kill everyone who was left in town for being "collaborators" and destroy or burn everything in Koribondo, except for a mosque, church, the Barri and the school, had been given to these Kamajor commanders by Norman. The Chamber further finds that the fact that Fofana met with Joe Tamidey together with Norman and Kondewa after the attack and questioned him as to his reasons for not killing Shekou Gbao, further shows that Fofana knew about the orders given by Norman to kill certain identified "collaborators" in Koribondo.

778. With respect to Count 7, the Chamber finds that it can reasonably be inferred from Norman's order that Fofana knew or had reasons to know that his subordinates were about to commit collective punishments in Koribondo.

779. With respect to Count 6, the Chamber finds that it is not the only reasonable inference that Fofana knew or had reasons to know that his subordinates would commit criminal acts in Koribondo with the primary purpose of spreading terror, as the commission of such acts was not explicitly included in Norman's order.

780. Similarly, while some of the criminal acts which were committed subsequently by the Kamajors in Koribondo might have been committed with the primary purpose of spreading terror, the Chamber finds the evidence adduced has not established beyond reasonable doubt that Fofana knew or had reasons to know that such acts had been committed by his subordinates subsequently.

781. The Chamber recognises that other criminal acts alleged in the Indictment, such as looting, were in fact committed in Koribondo.¹⁵⁵³ 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 knew or had reasons to know that these other criminal acts would also be committed by the Kamajors in Koribondo.

3.5.1.2.3. *Measures to prevent or punish*

782. The Chamber finds that Fofana as a superior had a duty to take necessary and reasonable measures to prevent the commission of the criminal acts by his subordinates or to punish them. His duty to prevent arose from the moment he learnt that his subordinates received unlawful orders from Norman and were about to execute those orders. We find that Fofana's duty to prevent included both the obligation not to comply with the unlawful orders of Norman and the obligation to ensure that his subordinates did not obey those orders. We find, however, that he did nothing to prevent the commission of these criminal acts by his subordinates. As a result of this failure on his part the Kamajors under his effective control committed the criminal acts of killing, destruction and burning, which the Chamber found were committed by the Kamajors in Koribondo. Thus, he failed as a superior in the exercise of his duties to prevent the commission of these specific criminal acts by his subordinates. Under the sub-heading "Counts - Koribondo", the Chamber will examine only those particular criminal acts that were explicitly included in Norman's order.

783. Since the Chamber finds that Fofana failed his duty as a superior to prevent the commission of criminal acts by his subordinates, it is not necessary to examine whether Fofana also failed to punish those Kamajors for those same acts.

3.5.1.3. Counts - Koribondo

784. The Chamber recognises that other criminal acts have been committed by Kamajors in Koribondo 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

¹⁵⁵³ See Section V.2.4.5.4, "Looting in Koribondo".

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.

3.5.1.3.1. *Count 2: Murder*

785. The Prosecution alleges that Fofana is individually criminally responsible, pursuant to Article 6(3), for the unlawful killing of an unknown number of civilians or captured enemy combatants, committed by his subordinates on or about January and February 1998, in locations in Bo District, including Koribondo.¹⁵⁵⁴

786. As set out above in the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 2, Murder:

- (i) On 15 February 1998, the mutilation and killing at Koribondo junction of five Limba who had been accused of being collaborators.
- (ii) On 15 February 1998, the mutilation and killing at Blama Road of two Limba civilians.
- (iii) On 16 February 1998, the killing of eight people along the Blama Road: five men belonging to the junta and three soldier's wives.
- (iv) On 16 February 1998, the killing and mutilation of Chief Kafala took place in the street opposite the hospital. Chief Kafala had been accused of collaboration; this killing took place in the presence of many people.
- (v) After the capture of Koribondo, Lahai Bassie was arrested, beaten and accused of being a collaborator because his son was a soldier. He died of his wounds one week later.

787. The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i) through (v) and concludes that all of the perpetrators were Kamajors under the effective control of Fofana. We find that individuals were intentionally killed; 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 786(i)-(v) was sufficiently related

¹⁵⁵⁴ Indictment, para. 25(d).

237.

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 786, 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.

788. In light of the findings set out above, the Chamber is satisfied that the general requirements of war crimes have been established with respect to each incident described in paragraph 786.

789. With respect to those incidents described in paragraph 786 (i)-(v), listed 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 established with respect to each incident.

3.5.1.3.2. Count 4: Cruel Treatment

790. The Prosecution alleges that Fofana is individually criminally responsible, pursuant to Article 6(3), for the intentional infliction of serious mental harm and serious mental suffering on an unknown number of civilians by his subordinates in Koribondo and surrounding areas. These crimes are alleged to have occurred 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;
- the destruction of homes and other buildings;
- looting and threats to unlawfully kill, destroy or loot.¹⁵⁵⁵

791. 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 13 February 1998, TF2-032's nine-room house in Koribondo was set on fire by Kamajors. TF2-032 testified that he is still suffering from the

¹⁵⁵⁵ Indictment, para. 26(b).

Handwritten initials and marks: "K35", a large "L", and a signature "B".

loss: his children are scattered and, despite his advanced age, he currently sleeps in a kitchen.

- (ii) Between 13 and 15 February 1998, after the capture of Koribondo, Kamajors went on a rampage and burned 25 houses. People felt helpless, discouraged, and feared for their lives.

792. The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i)-(ii) and concludes that all of the perpetrators of these acts were Kamajors under the effective control of Fofana. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all of the evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 791(i)-(ii) 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 in paragraph 791, 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.

793. 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 the burning of TF2-032's house described in paragraph 791(i) and the burning of many houses, described in paragraph 791(ii).

3.5.1.3.3. *Count 7: Collective Punishments*

794. The Prosecution alleges that Fofana is individually criminally responsible, pursuant to Article 6(3), for committing the crimes alleged in Counts 1 through 5, including threats to kill, destroy and loot, to punish the civilian population for their support to, or failure to actively resist, the combined RUF/AFRC forces.¹⁵⁵⁶

795. The Chamber reiterates that only those acts for which the Accused have been found to bear criminal responsibility under another count of the Indictment may form the basis of criminal responsibility for acts of collective punishment. In this regard, the Chamber recalls that it has found that Fofana bears criminal responsibility as a superior under Counts 2 and 4 in Koribondo.

¹⁵⁵⁶ Indictment, para. 28.

796. The Chamber finds that the evidence adduced proves beyond reasonable doubt that the acts described in paragraph 786 [Count 2] and in paragraph 791 [Count 4] were perpetrated with the specific intent to punish the civilian population in Koribondo and the surrounding areas.

797. The Chamber is therefore satisfied, in relation to those acts described in paragraph 786 [Count 2] and in paragraph 791 [Count 4], that both the general requirements of war crimes and the specific elements of collective punishments have been proved beyond reasonable doubt with respect to each incident.

3.5.1.4. Conclusion

798. On the basis of the foregoing, the Chamber finds that it has been proved beyond reasonable doubt that Fofana is individually criminally responsible as a superior, pursuant to Article 6(3), for the crimes committed in Koribondo as found under Counts 2, 4 and 7 above.

3.5.2. Responsibility of Kondewa

3.5.2.1. Responsibility pursuant to Article 6(1)

799. The Chamber takes the view that Kondewa's speech at the passing out parade in early January 1998 was words of moral support and encouragement to the Kamajor fighters who were about to conduct military operations on the junta-held territories. The Chamber finds, however, that this speech does not amount to urging, encouraging or prompting the Kamajors to commit criminal acts. This evidence does not demonstrate beyond reasonable doubt that Kondewa intended to provoke or induce the commission of the criminal acts which the Chamber found were committed by Kamajors subsequently during the attack on Koribondo or that Kondewa had reasonable knowledge that criminal acts would likely be committed as a result of his speech.

800. Furthermore, the Chamber finds that giving moral support or blessing as well as providing medicine which the Kamajors believed would protect them against the bullets does not constitute aiding and abetting in the planning, preparation of execution of the criminal acts. We find that there is no evidence to conclude beyond reasonable doubt that at the time of giving his speech and providing his medicine Kondewa was aware of the Kamajors' intention to commit any criminal acts, which the Chamber found were committed by the Kamajors in Koribondo during the attack.



801. Although Kondewa was present at the subsequent commanders' meeting where the attack on Koribondo was planned, we find that this evidence together with the evidence of his speech at the passing out parade does not establish beyond reasonable doubt that Kondewa planned the commission of any of the criminal acts in Koribondo.

802. The Chamber finds that the mere presence by Kondewa at this subsequent commanders' meeting, at which Norman gave orders to Joe Tamidey, Bobor Tucker, Lamin Ngobeh and other Kamajor commanders to commit criminal acts does not establish beyond reasonable doubt that Kondewa aided and abetted in the planning, preparation or execution of these criminal acts.

803. The Chamber further finds that no evidence has been adduced of Kondewa ordering or physically or otherwise directly perpetrating any of the criminal acts which the Chamber found were committed in Koribondo 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.

804. On the basis of the foregoing the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Koribondo during the time frame charged in the Indictment.

3.5.2.2. Responsibility pursuant to Article 6(3)

805. The Chamber will now proceed to examine whether the evidence adduced has established beyond reasonable doubt that Kondewa is criminally responsible as a superior pursuant to Article 6(3) for any of the criminal acts which the Chamber found were committed in Koribondo during the time frame charged in the Indictment.

3.5.2.2.1. *Superior-subordinate relationship*

Case No. SCSL-04-14-J

241.

2 August 2007



806. We find that there is no evidence upon which to conclude beyond reasonable doubt that Kondewa had a superior-subordinate relationship with any of the Kamajors involved in the commission of criminal acts in Koribondo. Although he possessed command over all the Kamajors from every part of the country, this was, however, limited to the Kamajors' belief in mystical powers which Kondewa allegedly possessed. This evidence is inconclusive, however, to establish beyond reasonable doubt that Kondewa had an effective control over the Kamajors, in a sense that he had the material ability to prevent or punish them for their criminal acts. The Chamber noted that Kondewa's *de jure* status as High Priest of the CDF gave him the authority over all the initiators in the country as well as put him in charge of the initiations. This authority did not give him the power to decide who should be deployed to go to the war front. He also never went to the war front himself. The evidence adduced, therefore, has not established beyond reasonable doubt that Kondewa had any superior-subordinate relationship with the Kamajors who operated in Koribondo during the attack.

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

3.5.2.3. Conclusion

808. On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Kondewa is individually criminally responsible pursuant to either Article 6(1) or 6(3) for any of the criminal acts which the Chamber found were committed in Koribondo during the time frame charged in the Indictment.

3.6. Bo District

809. In addition to the facts, listed in paragraphs 721 (i) to (viii) and 765 (i) to (iii), (viii) and (ix) above, the Chamber outlines below the facts as found in Sections V.2.2, V.2.5.2 and V.2.5.3, V.2.5.6 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) After a passing out parade at Base Zero in early January 1998 a subsequent commanders' meeting was held on the same day at the back of the field at Base Zero. At this meeting Norman ordered the Kamajor commanders James Kaillie, Joseph Lappia and TF2-017 to attack Kebi and Bo Towns. Norman gave specific orders to these commanders to kill enemy combatants and "collaborators", to burn down their houses and loot big shops, especially pharmacies. Fofana and Kondewa were both present at this meeting.
- (ii) After the commanders' meeting Fofana provided arms, ammunitions and a vehicle to James Kaillie, Joseph Lappia and TF2-017.
- (iii) In Dar-es-Salam TF2-017 presented a verbal situation report on the Kebi attack and handed over a captured soldier and two solar panels to Norman, in the presence of Fofana and Kondewa. Norman handed over the captured soldier to Kondewa who took him to Base Zero.
- (iv) The order to attack Bo was reiterated by Norman to TF2-017 in Bumpeh, in the presence of the Director of War Fofana and the High Priest Kondewa. Kondewa renewed the initiation of certain Kamajors to prepare them for the attack.
- (v) Norman met with Nallo before the Koribondo and Bo attacks at Base Zero and gave him specific instructions for these two attacks, while Fofana was present. Norman gave specific orders to Nallo to kill certain identified civilians in Bo who he labelled as "collaborators", loot and burn their houses, loot the Southern Pharmacy and bring the medicines to Norman. Specifically the name of MB Sesay was mentioned. Norman also ordered Nallo to kill the police officers.
- (vi) The attack on Bo proceeded from four flanks. James Kaillie was the Battalion Commander and the commander of the group coming from the Tikonko road (Mattru). Joseph Lappia was his deputy. TF2-017 was part of this group with his 38 Kapras. Nallo, in his capacity as the Regional Director of Operations, was in charge of the commanders below him but could not exercise full or strict control over all of them because of their large numbers. In Bo operation specifically, he was regarded by TF2-017 as his "operational" or "division" commander.
- (vii) In addition to the James Kaillie's group, there were at least three other groups of Kamajors who attacked Bo from Gerihun, Dambara and Moyamba-Bo Highway. At least 270 Kamajors participated in this attack. The tactical planning for the Bo attack was done in Bumpeh, which was considered by Norman as a focal point for this attack. Nallo knew about the local planning in Bumpeh.
- (viii) In April 1998, Norman, Fofana and Kondewa with other Kamajor leaders and initiators visited the New Police barracks in Bo Town. Norman complained that the Kamajor chiefs, in particular Fofana, had lied to him

about the burnt down police barracks and policemen killed in Bo Town. Norman said that he felt deceived after having seen the barracks intact and the police at the parade.

- (ix) Sometime after the attack on Bo in February 1998, a CDF office was set up in Bo. It was initially run by Alhaji Daramy Rogers, the Regional Coordinator for the Southern Region. Around June 1998, the position of Regional Coordinator was replaced by that of the District Administrator. Kosseh Hindowa occupied the latter position in Bo.
- (x) After the dissolution of Base Zero, Fofana retained his position of Director of War. However, he was no longer responsible for the conduct of the war and the fighting forces. His duties included distribution of logistics to the various parts of the country. In mid-1999 he became the Director of the Peace Office in Bo.

3.6.1. Responsibility of Fofana

3.6.1.1. Responsibility pursuant to Article 6(1)

810. The Chamber reiterates that Fofana's speech at the passing out parade in early January 1998 does not constitute instigating or ordering the commission of the criminal acts, or aiding and abetting in the planning, preparation or execution of the criminal acts, which the Chamber found were subsequently committed by Kamajors in Bo District.

811. The Chamber finds that although Fofana was present at the subsequent commanders' meeting where the attack on Bo was planned, this evidence does not establish beyond reasonable doubt that Fofana planned the commission of any of the criminal acts in Bo.

812. The Chamber finds that the mere presence by Fofana at this commanders' meeting as well at the private meeting with Nallo, at which Norman gave orders to Nallo, James Kaillie, Joseph Lappia and TF2-017 to commit criminal acts does not establish beyond reasonable doubt that Fofana aided and abetted in the planning, preparation or execution of these criminal acts.

813. We found that although Fofana was responsible at Base Zero for the receipt and the provision of ammunitions to the commanders, he could only perform these acts, if and when directed to do so by Norman. Furthermore, the Chamber finds that Fofana provided logistics to launch military attacks on Kebi and Bo Towns. Although at this stage Fofana knew that the plan to attack Bo Town included the commission of criminal acts, it is not the only reasonable inference that the logistics provided by Fofana were used to commit specific criminal acts in Bo

Town or that such provision had a substantial effect upon the perpetration of these specific criminal acts in Bo. Therefore, these actions by Fofana do not constitute aiding and abetting in the planning, preparation or execution of the criminal acts committed by Kamajors subsequently in Bo.

814. The Chamber further finds that no evidence has been adduced of Fofana physically or otherwise directly perpetrating any of the criminal acts which we found were committed in Bo District 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.

815. On the basis of the foregoing, the Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana is individually criminally responsible pursuant to Article 6(1) for planning, instigating, ordering, committing (including through a joint criminal enterprise) or otherwise aiding and abetting in the planning, preparation or execution of any of the criminal acts which the Chamber found were committed in Bo District during the time frame charged in the Indictment.

3.6.1.2. Responsibility pursuant to Article 6(3)

816. The Chamber will now proceed to examine whether the evidence adduced has established beyond reasonable doubt that Fofana is individually criminally responsible as a superior pursuant to Article 6(3) for any of the criminal acts which the Chamber found were committed in Bo District during the time frame charged in the Indictment.

3.6.1.2.1. *Superior-subordinate relationship*



245.




817. The Chamber reiterates its finding above that there was a superior-subordinate relationship between Fofana and Nallo and that Fofana exercised effective control over Nallo, in a sense of having the material ability to prevent Nallo's criminal acts or punish him for these acts.¹⁵⁵⁷

818. Nallo, in addition to being in charge of the commanders in the Southern Region in his capacity as Regional Director of Operations, was also specifically assigned the responsibility for the Bo operation. We find that he exercised command over the group of Kamajors led by James Kaillie, which included Joseph Lappia and TF2-017 as well as the Kamajors under their immediate command. Having received the specific instructions from Norman at Base Zero, in the presence of Fofana, Nallo ensured that his subordinates implemented those instructions. Indeed, as was found by the Chamber above, it was the group of Kamajors led by James Kaillie, who committed the criminal acts in Bo as specifically ordered by Norman. Thus, we find that the command and control exercised by Nallo over this group of Kamajors was effective.

819. However, there is no evidence from which the Chamber can conclude beyond reasonable doubt that Nallo did exercise the same degree of control over other Kamajor commanders and fighters who operated in Bo both during the attack and subsequently. By Nallo's own admission, he could not exercise full or strict control over all of the Kamajors in Southern Region due to their large numbers. Moreover, the evidence as to the local planning in Bumpah for the attack in Bo is inconclusive as to the participation of Nallo in it. Hence, on the basis of this evidence it cannot be established beyond reasonable doubt that other Kamajors who participated in the Bo attack were also under the overall command of Nallo, as the group of James Kaillie. Finally, there is no evidence to conclude beyond reasonable doubt that these other Kamajors were present at the commanders' meeting at Base Zero in early January 1998.

820. The Chamber finds that the evidence adduced has not established beyond reasonable doubt that Fofana had a superior-subordinate relationship with all the Kamajors who operated in Bo District and who committed criminal acts during the attack on Bo as well as subsequently as found by the Chamber above, except those Kamajors who are specifically mentioned above. Since the first element of a superior responsibility is not established, it is not necessary to examine the

¹⁵⁵⁷ Finding on 6(3) for Fofana in Koribondo.

two remaining elements with respect to the criminal acts which the Chamber found were committed in Bo District by other Kamajors during the time frame charged in the Indictment.

3.6.1.2.2. *Knew or had reasons to know*

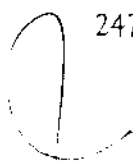
821. Fofana knew that the attack on Bo Town would involve the commission of criminal acts by Nallo, James Kaillie, Joseph Lappia and TF2-017. He was present at the meetings at which the unlawful orders, namely to kill "collaborators", burn their houses and loot, had been given to these Kamajor commanders by Norman. In Dar-es-Salam Norman in the presence of Fofana, received a situation report about the Kebi attack from TF2-017. The Chamber finds that the evidence of Fofana's presence at the third meeting held by Norman in Bo Town in April 1998, where Norman complained that Fofana lied to him about the killing of policemen and burning of their barracks in Bo Town because he could see them intact, further shows that Fofana knew about the orders given by Norman to kill policemen in Bo.

822. With respect to Count 7, the Chamber finds that it can reasonably be inferred from Norman's order that Fofana knew or had reasons to know that his subordinates were about to commit collective punishments in Bo Town.

823. With respect to Count 6, the Chamber finds that it is not the only reasonable inference that Fofana knew or had reasons to know that his subordinates would commit criminal acts in Bo with the primary purpose of spreading terror, as the commission of such acts was not explicitly included in Norman's order.

824. Similarly, while some of the criminal acts which were committed subsequently by the Kamajors in Bo might have been committed with the primary purpose of spreading terror, the Chamber finds the evidence adduced has not established beyond reasonable doubt that Fofana knew or had reasons to know that such acts had been committed by his subordinates subsequently.

825. The Chamber recognises that other criminal acts alleged in the Indictment, such as infliction of mental harm or suffering, were in fact committed in Bo. 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 knew or had reasons to know that these other criminal acts would also be committed by the Kamajors in Bo.


3.6.1.2.3. *Measures to prevent or punish*

826. The Chamber finds that Fofana as a superior had a duty to take necessary and reasonable measures to prevent the commission of the criminal acts by his subordinates or to punish them. His duty to prevent arose from the moment he learnt that his subordinates received unlawful orders from Norman and were about to execute those orders. We find that Fofana's duty to prevent included both the obligation not to comply with the unlawful orders of Norman and the obligation to ensure that his subordinates did not obey those orders. We find, however, that he did nothing to prevent the commission of these criminal acts. As a result of this failure on his part the Kamajors under his effective control committed the criminal acts of killing, burning and looting, as will be found by the Chamber below. Thus, he failed as a superior in the exercise of his duties to prevent the commission of the criminal acts by his subordinates. Under the sub-heading "Counts - Bo District", the Chamber will examine only those particular criminal acts that were explicitly included in Norman's order.

827. Since the Chamber finds that Fofana failed his duty as a superior to prevent the commission of criminal acts by his subordinates, it is not necessary to examine whether Fofana also failed to punish those Kamajors for those same acts.

3.6.1.3. Counts - Bo District

828. The Chamber recognises that other criminal acts have been committed by Kamajors in Bo District 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.

3.6.1.3.1. *Count 2: Murder*

829. The Prosecution alleges that Fofana is individually criminally responsible, pursuant to Article 6(3), for the unlawful killing of an unknown number of civilians or captured enemy combatants committed by his subordinates on or about January and February 1998, in locations in

Bo District, including the District Headquarters town of Bo, Kebi Town, Kpeyama, Fengehun and Mongere.¹⁵⁵⁸

830. As set out above in the Factual Findings, the Chamber found that the following acts have been committed which are relevant for Count 2, Murder:

- (i) The killing of an unidentified woman who was alleged to have cooked for the rebels, by Kamajors, on the order of TF2-017.
- (ii) The killing of John Musa, an alleged collaborator, by Kamajors under the control of Joseph Lappia.

831. The Chamber has examined the facts and circumstances surrounding both incidents set out above in points (i)-(ii) and concludes that all of the perpetrators were Kamajors under the effective control of Fofana. We find that individuals were intentionally killed; in both cases they were specifically targeted because of the perpetrator's belief that they were "collaborators". 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 830(i)-(ii) 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 830, 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.

832. In light of the findings set out, above, the Chamber is satisfied that the general requirements of war crimes have been established with respect to each incident described in paragraph 830.

833. With respect to those incidents described in paragraph 830 (i)-(ii) 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 proved with respect to each incident.

3.6.1.3.2. Count 4: Cruel Treatment

¹⁵⁵⁸ Indictment, para. 25(d).

834. The Prosecution alleges that Fofana is individually criminally responsible, pursuant to Article 6(3), for the intentional infliction of serious mental harm and serious mental suffering on an unknown number of civilians by his subordinates in Bo and surrounding areas. These crimes are alleged to have occurred 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;
- the destruction of homes and other buildings;
- looting and threats to unlawfully kill, destroy or loot.¹⁵⁵⁹

835. 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 15 February 1998 OC Bundu was detained and beaten by Kamajors under the leadership of Nallo, Agbamu Murray and John Ngombeh.
- (ii) On 16 February 1998, in Kandeyama, TF2-001 and other police were separated from other civilians on the order of Kamajor leaders including Agbamu Murray. The police were arrested.

836. The Chamber has examined the facts and circumstances surrounding each incident set out above in points (i)-(ii) and concludes that all of the perpetrators of these acts listed above were under the effective control of Fofana. The Chamber finds that OC Bundu and TF2-001 were targeted by the Kamajors because of their status as police officers, a group that was considered by the Kamajors to have collaborated with the juntas.¹⁵⁶⁰ Furthermore, the incidents described immediately above occurred on the day the Kamajors entered Bo or the following day. Having considered the evidence in the context of the armed conflict that was then taking place in Sierra Leone, and having regard to all of the evidence adduced, the Chamber is satisfied that each of the acts described in paragraph 835(i) – (ii) was sufficiently related to the armed conflict to satisfy the nexus requirement for war crimes. The Chamber finds that, in light of the circumstances under

¹⁵⁵⁹ Indictment, para. 26(b).

¹⁵⁶⁰ Factual Findings, 3rd para. of Bo Section.