

Case No. SCSL-2004-14-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
MOININA FOFANA
ALLIEU KONDEWA

THURSDAY, 2 AUGUST 2007
9.37 A.M.
JUDGMENT

TRIAL CHAMBER I

Presiding	Before the Judges:	Benjamin Mutanga Itoe, Bankole Thompson Pierre Boutet
	For Chambers:	Ms Roza Salibekova Ms Anna Matas
	For the Registry:	Mr Herman von Hebel Ms Maureen Edmonds Mr Thomas George
	For the Prosecution:	Mr Stephen Rapp Mr James C Johnson Mr Christopher Staker Mr Joseph Kamara Mr Mohamed Bangura Ms Lynn Hintz (Case manager)
	For the Principal Defender:	Mr Vincent Nmehielle Mr Lansana Dumbuya
	For the accused Moinina Fofana:	Mr Arrow Bockarie Mr Steven Powles

For the accused Allieu Kondewa: Mr Yada Williams
Ms Sandra Lee
Mr Osman Jalloh

1 [CDF02AUG07A- MD]

2 Thursday, 02 August 2007

3 [Open session]

4 [The accused present]

5 [Upon commencing at 9.37 a.m.]

morning

6 JUDGE ITOE: Good morning, learned counsel. Good

7 once again, learned counsel. My mic was not on when I was

of

8 addressing you. You are welcome to this virtually final lap

for

9 the judgment in this case which has lasted for quite a while

10 understandable reasons and the Chamber will now proceed to

11 delivering its judgment in the case.

which

12 I would like to say here that it is a summary of the

13 judgment that we are reading but the main judgment itself,

would

14 has been crafted and which is summarised in this summary,

15 be published as soon as the proceedings are through so, this

16 said, we would commence our proceedings.

17 May we have representations, please.

for

18 MR RAPP: Mr President, Your Honours, learned counsel,

19 the Prosecution appearing today are Steven Rapp, Christopher

Lynn

20 Staker, Joseph Kamara, Mohamed Bangura, James Johnson and Ms

21 Hintz. Thank you, Your Honours.

22 JUDGE ITOE: Quite a complete team, Mr Prosecutor.

23 MR RAPP: Yes, thank you.

24 JUDGE ITOE: It reflects the way they have always
appeared

25 before us during the proceedings that have preceded this final
26 one. Thank you. Yes, for the Defence first.

27 MR JABBI: For the deceased --

28 JUDGE ITOE: No, Mr Jabbi, Dr Jabbi, I'm sorry, I wonder
if

29 you have been following the course of events; I don't know.

1 Yes, Dr Jabbi, you are very welcome to these proceedings
2 which you have graced and nourished throughout the time that
they
3 have lasted but, as you very well know, your client, very
4 unfortunately and as destiny would have it, died before this
5 judgment day.

6 We all express our sympathies and we have done so before
7 now, but the remark I want to make is that you are very
welcome
8 to sit with us in court, but you don't appear to have a right
of
9 representation because your client is no more. I think this
is
10 what the message that we would like to send to you.

11 So we, this said, we know that you have come as one of
12 those who has featured in this case but may you please be
13 informed that you don't have a legal right of representation
14 because the subject of your representation is no more.

15 MR JABBI: My Lord, I hope I at least have a right of
16 saying "thank you."

17 JUDGE ITOE: Thank you, too, for understanding us.

18 Yes, for the second accused, please.

19 MR BOCKARIE: Yes. For the second accused Steven Powles
20 and Arrow Bockarie. Thank you.

21 JUDGE ITOE: For the third.

third, 22 MR WILLIAMS: May it please Your Lordships, for the
23 Yada Williams, Sandra Lee and Osman Jalloh.
24 JUDGE ITOE: Thank you.
25 As I mentioned earlier on, learned counsel and all the
26 parties concerned, what the Chamber is presenting today is the
27 summary of the judgment which is comprehensively contained in
the
28 judgment itself that will be published after these
proceedings.
29 And I will proceed to read the summary as has been agreed upon
by

Presiding
Justice
and

1 the majority of the Judges of this Chamber.
2 Trial Chamber I of the Special Court for Sierra Leone,
3 composed of Honourable Justice Benjamin Mutanga Itoe,
4 Judge, Honourable Justice Bankole Thompson and Honourable
5 Pierre Boutet, recalling that this case opened on 3 June 2004
6 closed on 18 October 2006, that the Prosecution called 75
7 witnesses, over 131 trial days and that the Defence teams for
8 Norman, Fofana and Kondewa called 44 witnesses over 112 trial
9 days, and that the closing arguments of the parties were heard
10 on 28, 29 and 30 November 2006.

as I
by

11 Noting that what follows is a summary of the judgment,
12 have said, the authoritative version of it will be published
13 our usual traditional media.

referred
not a

14 For the introduction, this trial has commonly been
15 to as the Civil Defence Forces, CDF trial. In fact, it was
16 trial of the CDF organisation itself but, rather, a trial of
17 three individuals alleged to be its top leaders.

18 Samuel Hinga Norman was the national coordinator of the
19 CDF; Moinina Fofana was its Director of War and Allieu Kondewa

mainly
employ
said
in
and
clear

20 its High Priest. The CDF was a security force comprised
21 of Kamajors, traditional hunters normally serving in the
22 of local chiefs to defend villages in the rural parts of the
23 country.
24 The CDF fought in the conflict in Sierra Leone between
25 November 1996 and December 1999. In general terms it can be
26 that the CDF supported the elected government of Sierra Leone
27 its fight against the Revolutionary United Forces, the RUF,
28 Armed Forces Revolutionary Council, the AFRC.
29 Leaving aside the motives behind the conflict, it is

1 that atrocities of all sorts were committed by members of all
the 2 parties to the conflict.

3 Each of the three accused was charged with eight counts
of 4 war crimes, crimes against humanity and other serious
violations 5 of International Humanitarian Law relating to atrocities
6 allegedly committed by them during the conflict. The charges
7 included murder of civilians, violence of life, health and
8 physical and mental well-being, inhumane acts, cruel
treatment, 9 pillage, acts of terrorism, collective punishments and
enlisting 10 children under the age of 15 years, or using them to
participate 11 actively in hostilities.

12 The first accused, Samuel Hinga Norman, died untimely in
13 hospital on 22 February 2007 after the completion of the trial
14 but before pronouncement of judgment. In a decision dated 21
May 15 2007, on the Registrar's submission of evidence of the death
of 16 the accused Samuel Hinga Norman, and consequential issues, we,
17 the Chamber, held that the trial proceedings against accused
18 Samuel Hinga Norman are hereby terminated by reason of his
death.

the
would
19 We further held in that judgment that the judgment of
20 Chamber, in relation to the two remaining accused persons
21 be based on the evidence that was adduced on the record by all
22 the parties.

Hinga
defence
by
23 In this regard we recall for the record that Samuel
24 Norman, the deceased first accused, in the conduct of his
25 before his death, testified on his behalf, was cross-examined
26 the Prosecution and re-examined by his counsel.

the
27 In accordance with this decision we have, in our
28 deliberations as a Chamber, considered the entire evidence on
29 record during our deliberations, including that given by the

1 deceased accused person.

2 In addition, in arriving at this decision, we were
guided
3 by the legal principle that no finding of guilt or of
innocence
4 should be made against a deceased person because he no longer
has
5 the status, nor is he in a position to exercise his right to
6 challenge such a finding by any legally recognised process
since
7 the issue of responsibility in criminal matters is personal
and
8 personified.

9 Following this decision the deceased accused Defence
team
10 filed an application asking for an extension of time within
which
11 to file an application with the Chamber for leave to appeal
12 against it. The Chamber, by a unanimous decision dated 19
July
13 2007, dismissed the application for want of merit.

14 The accused Moinina Fofana and Allieu Kondewa. The
Chamber
15 would also like to mention for the record and, as we have
already
16 indicated that, in the conduct of the case for the Defence,
the
17 late first accused, Samuel Hinga Norman, testified and gave

The

18 evidence on his behalf, was cross-examined and re-examined.

Kondewa,

19 two remaining accused persons, Moinina Fofana and Allieu

20 however, did not testify in their defence.

21 As a Chamber in this regard, we have cautioned ourselves
22 and while we only make mention of this fact for the record, we
23 desist, as the law requires, from attaching any meaning to it,
24 nor should we, in so doing, be understood or be seen to be
25 drawing any adverse inferences, one way or the other, on the
26 exercise by the accused of their rights as provided for under
27 Article 17.4(g) of the Statute of this Court.

28 President Kabbah's role in the conflict.

29 In the course of these proceedings persistent references

Kabbah

here

trial

and

whether

heading

1 and allusions were made by the Defence teams to President
2 and his alleged involvement in the conflict on the side of the
3 CDF. Specifically, and significantly, the Chamber recalls
4 that the accused persons, all along, in the course of this
5 as a defence, raised the fact that they did stand indicted for
6 what they were involved in in the power struggle to restore
7 President Kabbah's democratically elected government that had
8 been ousted in a coup d'etat by the Armed Forces Revolutionary
9 Council on 25 May 1997.

10 The Chamber in this judgment will consider the nature
11 the extent of this alleged involvement so as to determine
12 the President's alleged role, viewed in the light of his
13 political status, and that of his government in exile,
14 constitutes a legal defence that is available to the accused
15 persons.

16 Deletion of the name of late first accused from the
17 of this judgment.

18 Following a unanimous decision on 21 May 2007, where we
19 held that the trial proceedings against the deceased first
20 accused, Samuel Hinga Norman, had terminated by reason of his

21 death, and a consequential direction by a Chamber majority,
22 Honourable Justice Benjamin Mutanga Itoe dissenting, that the
23 name of the deceased accused should no longer feature on the
24 cover sheet of all court processes and decisions.

the

25 The Chamber will now proceed to pronounce judgment in
26 case but only in respect of Moinina Fofana and Allieu Kondewa,
27 the two remaining accused persons.

28 Preliminary issues. The Fofana challenge to the form of
29 the indictment.

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time

1 In his final trial brief Fofana raised the challenge as
2 the form of the indictment. He submitted that the indictment
3 lacking in specificity, that the form of pleading used by the
4 Prosecution is defective in relation to both Article 6.1
5 responsibility, including the allegation that he was part of a
6 joint criminal enterprise and Article 6.3 responsibility. The
7 full reasoning of the Chamber on this challenge is set out in
8 written judgment.

9 Leaving aside the issue of the timing of the objections
10 made by Fofana, it is sufficient to say that the Chamber has
11 analysed the indictment and finds that the pleadings therein
12 the required degree of specificity needed for the accused to
13 adequately mount a defence.

14 The Chamber therefore concludes that the challenge to
15 form of the indictment is devoid of merit.

16 Background to the conflict in Sierra Leone.

17 On 25 May 1997, a military coup d'etat took place in
18 Leone. President Ahmad Tejan Kabbah, and other members of the
19 democratically elected Government of Sierra Leone, at that
20 were forced to leave the country. Many of them proceeded to

21 Conakry in Guinea.

22
Organisation

Upon the President's arrival in Conakry, the

23 of African Unity, designated the Economic Community of West

24 African States (ECOWAS) to restore the democratically elected

25
Economic

government. ECOWAS in turn assigned the task to their

26 Community of West African States Ceasefire Monitoring Group

27 (ECOMOG) a peacekeeping force. In furtherance of the ECOWAS

28
to

policy, the British Government assisted by providing equipment

29 ECOMOG. President Kabbah appointed Norman as the national

1 coordinator for the CDF, a force encompassing the Kamajor
2 movement. ECOMOG donated logistics to the CDF and the two
forces
3 collaborated in their fight to restore the Kabbah government.

4 Crimes under Article 2 of the Statute.

5 Fofana and Kondewa are each charged with murder as a
crime
6 against humanity, count 1, and other inhumane acts as a crime
7 against humanity, count 3. In order to secure a conviction on
8 either of these charges the Prosecution must first prove the
9 general element common to all crimes against humanity, namely,
10 that those acts were committed as part of a widespread or
11 systematic attack directed against a civilian population, that
12 the accused's acts formed part of that attack and that the
13 accused knew his act formed part of that attack.

14 The Chamber has examined the trial record and finds
several
15 instances where the CDF, or the Kamajors, were involved in a
16 widespread attack, noting particularly the attacks on Tongo,
17 Koribondo, Bo Town, Bonthe and Kenema, between November 1997
and
18 February 1998.

19 However, considering the totality of the evidence
adduced
20 the Chamber finds that the civilian population was not the

evidence 21 primary object of these attacks. By contrast, there is
22 that these attacks were directed against the rebels or juntas
Sierra 23 that controlled towns, villages and communities throughout
24 Leone.
25 The Chamber recalls in particular the evidence of Samuel
even 26 Hinga Norman, and of Albert Joe Demby on this subject, and
27 the statement of the former Prosecutor, Mr Desmond De Silva,
who 28 admitted that the CDF and the Kamajors fought for the
restoration 29 of democracy.

systematic

1 Without finding the existence of a widespread or
2 attack directed primarily against the civilian population,
3 neither of the accused can be held responsible for the crimes
4 against humanity as alleged in the indictment.

5 Thus, the Chamber dismisses count 1, murder as a crime
6 against humanity and count 3, other inhumane acts as a crime
7 against humanity.

8 Crimes under Articles 3 and 4 of the Statute.

it

9 The Chamber recalls that in its decision of 2 June 2004

occurred

10 took judicial notice of the fact that an armed conflict

Chamber

11 in Sierra Leone from March 1991 until January 2002. The

Fofana

12 will now proceed to consider the alleged responsibility of

13 and Kondewa for violations of Article 3 common to the Geneva

14 Conventions and of Additional Protocol II war crimes and other

15 serious violations of International Humanitarian Law.

Kondewa

16 Alleged forms of responsibility, Article 6.1
17 responsibility. The indictment alleges that Fofana and

responsible

18 by their act or omissions are individually criminally

19 pursuant to Article 6.1 of the Statute for the crimes charged

to
20 under counts 1 through 8 of the indictment which they are said
21 have planned, instigated, ordered, committed or in which
22 planning, preparation or execution they have aided and
abetted.
23 The Chamber has considered each of these forms of liability in
24 full in the written judgment.
25 The joint criminal enterprise.
26 Fofana and Kondewa are further alleged to have committed
27 the crimes charged in the indictment through participation in
the
28 first or, alternatively, in the third category of the joint
29 criminal enterprise acting individually and in concert with

1 Norman as subordinate members of the CDF.

2 The Prosecution alleges that the joint criminal
enterprise
3 involved the use of any means necessary to defeat and
completely
4 eliminate the RUF and AFRC forces, their supporters,
sympathisers
5 and anyone who did not actively resist the occupation of
Sierra
6 Leone as well as gaining and exercising control over the
7 territory of Sierra Leone and its population.

8 The Chamber, however, finds that the evidence led by the
9 Prosecution in this case to show a joint criminal enterprise
10 insufficient to prove its existence against those named
persons
11 beyond reasonable doubt.

12 Article 6.3, superior responsibility.

13 In addition, or alternatively, the indictment alleges
that
14 Fofana and Kondewa are individually criminally responsible as
15 superiors pursuant to Article 6.3 of the Statute for the
crimes
16 charged under counts 1 through 8 of the indictment which are
said
17 to have been committed by their subordinates.

18 Factual and legal findings. Factual findings first.

19 The Chamber sets out its reasoning in full in its
written

20 judgment. Unless otherwise stated the Chamber will, in this
21 summary, outline only those facts and forms of liability on
which
22 there was evidence sufficient to merit a finding of guilt
beyond
23 reasonable doubt.

24 The Chamber will first consider the command structure of
25 the CDF, largely as it operated out of Talia, also known as
Base
26 Zero, since this was the location where the High Command
27 established its headquarters for the CDF. The meetings,
speeches
28 and other events occurring there, and the accused's
involvement
29 in them will have an impact upon the liability for crimes
alleged

in 1 to have occurred throughout the geographical areas mentioned
2 the indictment.

3 The Chamber will then turn to its findings in relation
to 4 counts 1 to 7 of the indictment according to geographical
areas.

5 These areas consist of the towns of Tongo Field, Koribondo
6 District, Bo District, Bonthe District, Kenema District,
Moyamba 7 District and Talia/Base Zero. Finally, the Chamber will give
its 8 factual findings on offences relating to child soldiers, count
8 9 of the indictment, which have been extracted from various
10 geographical locations grouped together under a separate
heading.

11 Despite this grouping, it should be understood that
events 12 occurring in one area cannot be understood to be entirely
13 distinct from those occurring in another.

14 Base Zero. Talia, renamed Base Zero by Norman, existed
as 15 the headquarters for the CDF High Command from 15 September
1997 16 to 10 March 1998. Norman, as CDF National Coordinator, Fofana
as 17 the National Director of War, and Kondewa as the High Priest,

18 were the leaders of the CDF. Nobody could take a major
decision
19 in their absence and all the Kamajors looked up to them.
20 Base Zero was the central storage and distribution site
for
21 all of the CDF logistics. Commanders came to Base Zero from
22 every group and location in the country to take instructions
from
23 the High Command or Norman and to receive logistics. Reports
24 were being delivered to Base Zero from the frontlines.
Thousands
25 of civilians and Kamajors travelled to Base Zero for
initiation
26 and military training. Although the CDF was a cohesive force
27 under one central command, there were some fighters who acted
on
28 their own without the knowledge of the central command.
29 Commanders' authority to discipline their men on the ground
was

1 entirely their own.

2 Norman, Fofana and Kondewa, together with Joseph Koroma,
3 Albert Nallo, Mohamed Orinco Moosa, Lamin Ngobeh, and the
4 battalion commanders, made strategic war decisions of

determining

5 where and where to go to war.

6 The role of Fofana.

7 Fofana, in his capacity as Director of War at Base Zero,
8 planned and executed the war strategies and received frontline
9 reports from commanders. In executing these functions he was
10 largely assisted by Albert J Nallo and, on occasion, Fofana
11 passed on his responsibilities to Nallo. Fofana selected
12 commanders to go to battle and could, on occasion, issue

direct

13 orders to these commanders. Fofana was responsible for the
14 receipt and provision of ammunitions at Base Zero to the
15 commanders upon the instructions of Norman.

Zero

16 Fofana was seen as having power and authority at Base
17 and was the overall boss of the commanders in Base Zero.

18 The role of Kondewa.

of

19 Kondewa, in his capacity as High Priest, was in charge
20 initiations at Base Zero and, after time, was a head of all

the

mystical

21 CDF initiators in the country. The Kamajors believed in
22 powers of the initiators, especially in Kondewa, and that the
23 process of initiation and immunisation would make them
24 bullet-proof.

such

25 The Kamajors looked up to Kondewa and admired him for

powers

26 powers. They believed he was capable of transferring his

had

27 to them to protect them. By virtue of these powers, Kondewa

28 command over the Kamajors in the country.

29 He never went to the war front himself but, whenever a

1 Kamajor was going to war, Kondewa would give his advice and
2 blessings as well as the medicines which the Kamajors believed
3 would protect them against bullets. No Kamajor would go to
war
4 without these blessings.

5 Kondewa attended passing out parades at Base Zero, which
6 signified that the Kamajors had passed their training and
could
7 present their skills. He, along with Norman, and Mbogba,
signed
8 a training certificate which each trainee received after the
9 training.

10 The Chamber will now turn to the crimes alleged against
the
11 accused in the specific geographical areas already identified.

12 The legal findings: Towns of Tongo Field.

13 After a passing out parade at Base Zero, between 10 and
12
14 December 1997, Norman gave instructions for the Tongo and
Black
15 December operations. Norman said that the attack on Tongo
will
16 determine who wins the war. He also said that there was no
place
17 to keep captured prisoners like the juntas, let alone their
18 collaborators. He directed the Kamajors that instead of
wasting

as
the
juntas.
and
as
said

19 their bullets, to chop off the left hand of any captured junta
20 a signal to any group that would want to seize power through
21 barrel of the gun and not the ballot paper.
22 He told the fighters not to spare the houses of the
23 After hearing Norman's instructions, Fofana addressed the
24 Kamajors saying that any commander failing to perform
25 accordingly, and losing your own ground, should kill himself
26 not come to report to Base Zero.
27 After that, the fighters looked to Kondewa admiring him
28 a man with mystic power. Kondewa gave the last comment. He
29 that the time for the surrender of rebels had long been

1 exhausted; they did not need any surrendered rebels. He then
2 gave his blessings.

3 Subsequent to the passing out parade attacks were
conducted
4 and many crimes occurred in the Tongo Field. At various dates
in
5 early January 1998 several protected persons, some identified
6 such as Foday Koroma, a 12-year old boy, and others
unidentified,
7 were killed by the Kamajors. The victims were mainly
civilians,
8 including women and children, and were shot and hacked to
death
9 with machetes by Kamajors. Sometimes the Kamajors would set
up
10 checkpoints or separate people on the basis of whether they
were
11 perceived to be collaborators. Some had their hands amputated
or
12 were hacked in the neck with machetes. The Chamber finds many
of
13 these acts to be sufficiently related to the armed conflict so
as
14 to satisfy the nexus requirement for war crimes.

15 After carefully examining the evidence, the Chamber
finds
16 that following Norman's speech, both Fofana and Kondewa's
17 contributions at the passing out parade for the Tongo Field in
18 December 1997, had a substantial effect on the commission of

19 crimes by Kamajors in the towns in the Tongo Field area.

and

20 The Chamber has classified this participation as aiding

finds

21 abetting in the preparation of these crimes. The Chamber

22 that the Prosecution has proven beyond reasonable doubt that

23 Fofana and Kondewa bear individual criminal responsibility for

counts

24 the war crimes of murder and cruel treatment as alleged in

25 2 and 4 of the indictment, pursuant to Article 3(a) of the

26 Statute.

27 Furthermore, several of these crimes were committed with

28 the specific intent to punish collectively. Therefore, the

29 Chamber finds that both Fofana and Kondewa bear individual

1 criminal responsibility for the war crime of collective
2 punishments as alleged under count 7 of the indictment
pursuant
3 to Article 3(b) of the Statute.

4 Koribondo.

5 At the passing out parade at Base Zero, in early January
6 1998, Norman gave orders to the Kamajors to launch an all-out
7 offensive in all areas occupied by the juntas and laid down
8 military instructions on how to conduct this operation.

9 Fofana addressed the Kamajors at this parade confirming
10 Norman's orders to attack various junta-held territories.

During

11 this speech Fofana told the fighters to attack the villages

where

12 the juntas were located and to destroy the soldiers from where
13 they were settled. He also said that the failure to take
14 Koribondo was a disgrace to the Kamajors and that this time he
15 wanted them to go and capture Koribondo.

16 A subsequent commanders' meeting for Koribondo was held
by

17 Norman at Base Zero on this same day as the passing out parade
18 which had in attendance, amongst others, Fofana, Kondewa, Joe
19 Tamidey, Bobor Tucker, Lamin Ngobeh and other commanders.

Norman

20 chose Tamidey to lead the attack on Koribondo. Norman ordered
21 that Koribondo should be taken at all costs because they had

22 spent a lot on Koribondo.

23 Norman gave specific orders to commanders to destroy or
24 burn everything in Koribondo except for the mosque, the
church,
25 the barri and the school. He also said that anyone left in
town
26 should be termed an enemy, or a rebel, since they had been
27 forewarned and should be killed.

28 Norman later met with Nallo before the Koribondo and Bo
29 attacks at Base Zero and gave him specific instructions for
these

1 attacks while Fofana was present. Norman told Nallo that the
2 Kamajors had tried to capture Koribondo many times and that
they
3 have failed because civilians had given their children to the
4 juntas in marriage and thus they were all spies and
5 collaborators. Therefore, he told Nallo, that when he went to
6 Koribondo, anybody that was met there should be killed, and
7 nothing should be left, not even a farm or a fowl. All houses
8 were to be burnt and he was given petrol for the job.

9 Fofana, as a Director of War, was Nallo's superior by
10 virtue of Nallo's position in the hierarchal structure of the
11 organisation that existed in Base Zero.

12 Nallo was the Deputy National Director of Operations and
13 Regional Director of Operations for the Southern Region, which
14 included the districts of Bo, Moyamba, Pujehun and Bonthe. As
15 the Regional Director of Operations Nallo was responsible for
16 implementing commands he received from Base Zero with his
17 commanders. In implementing those commands he did not
18 distinguish between lawful and unlawful orders and did not
19 recognise that he had a discretion to implement them or not.

20 The attacks started from Jombohun and was commanded by
Joe
21 Tamidey, Bobor Tucker and Lamin Ngobeh. Although the
commanders

Nallo's 22 were operating with different groups they were all under
23 command. Around 700 Kamajors that attacked Koribondo were
24 predominantly but not exclusively, from the Jaiama-Bongor
25 Chiefdom. Others came from the districts of Pujehun, Bonthe
and 26 Bo.

27 Subsequent to the passing out parade and commanders'
28 meeting in early January 1998, in which Fofana participated,
29 several protected persons, including groups of persons
identified

1 as collaborators, were killed in attacks in Koribondo by
2 Kamajors. The victims included, amongst others, five Limba,
who
3 were mutilated or killed on 15 February 1998; Chief Kafala,
who
4 was mutilated and killed in front of many people on 16
February
5 1998 and three soldiers' wives who were killed on 16 February
6 1998. The Kamajors also burnt many houses.

7 Between 13 February 1998 and 15 February 1998 more than
25
8 houses were burnt down by Kamajors causing serious distress
among
9 the population. The Chamber finds these acts to be
sufficiently
10 related to the armed conflict so as to satisfy the nexus
11 requirement for war crimes.

12 The Chamber finds that a subordinate superior
relationship
13 existed between Fofana and Nallo. By virtue of his de jure
14 status as Director of War, Fofana exercised control over Nallo
15 within the hierarchical structure of the CDF. Fofana also had
de
16 facto control over Nallo. He had the legal and material
ability
17 to issue orders to Nallo and the legal and material ability to
18 prevent the commission of criminal acts by Nallo and other
19 subordinates or to punish them for these acts.

the
20 Although Joe Tamidey was chosen by the chairman to lead
21 attack on Koribondo, Nallo was the overall commander for this
22 operation. We find that Nallo exercised command over Joe
23 Tamidey, Bobor Tucker and Lahai George as well as the Kamajors
24 under their immediate command, who were involved in the attack
on
25 Koribondo and the crimes committed there.

and
26 Fofana, as his superior, had the duty to take necessary
27 reasonable measures to prevent the commission of criminal acts
by
28 his subordinates. His duty to prevent arose from the moment
he
29 learned that his subordinates received unlawful orders from

left

and

the

punish

order,

1 Norman to take Koribondo at all costs, kill everyone who was
2 in the town for being collaborators, and destroy or burn
3 everything in Koribondo except the mosque, church, the barri
4 the school, and that they were about to execute those orders.

5 However, Fofana did nothing to prevent the commission of
6 these criminal acts by his subordinates. As a result of this
7 failure the Kamajors, under his effective control, committed
8 criminal acts of killing, destruction and burning.

9 The Chamber finds that the Prosecution has proven beyond
10 reasonable doubt that Fofana bears individual criminal
11 responsibility under Article 6.3 of the Statute for the war
12 crimes of murder and cruel treatment as alleged under counts 2
13 and 4 of the indictment and pursuant to Article 3(a) of the
14 Statute.

15 Furthermore, the Chamber finds that the intention to
16 collectively can reasonably be inferred from Norman's order to
17 kill captured enemy combatants and collaborators, to inflict
18 suffering or injury upon them, and to destroy their houses.

19 As Fofana was present at the time Norman gave this
20 and in view of the previous conduct of his subordinates, the
21 Chamber finds that Fofana knew or had reason to know that his

22 subordinates might commit collective punishments in Koribondo.
23 His responsibility, as a superior, was therefore engaged.

24 Therefore, the Chamber finds that Fofana, pursuant to
25 Article 6.3 of the Statute, bears individual criminal
26 responsibility for the war crime of collective punishments as
27 alleged under count 7 of the indictment, pursuant to Article
28 of the Statute.

29 The Chamber finds insufficient evidence to find Kondewa

3(b)

for

1 responsible for any of the crimes charged in the indictment
2 Koribondo, under either Article 6.1 or Article 6.3 of the
3 Statute.

in

4 The Chamber recalls its findings as to the passing out
5 parade at Base Zero, in early January 1998, already mentioned
6 relation to the findings for Koribondo. Subsequent to that
7 meeting, Norman called a commanders' meeting and ordered the
8 Kamajor commanders, James Kaillie, Joseph Lappia and TF2-017

to

these

9 attack Kebi and Bo Towns. Norman gave specific orders to
10 commanders to kill enemy combatants and collaborators, to burn
11 down their houses and loot big shops, especially pharmacies.
12 Fofana and Kondewa were both present at this meeting.

specific

13 After the commanders' meeting Fofana provided arms,
14 ammunition and a vehicle to James Kaillie, Joseph Lappia and
15 TF2-017. As already stated, Norman met with Nallo before the
16 Koribondo and the Bo attacks at Base Zero and gave him
17 instructions for these two attacks while Fofana was present.

identified

18 Norman gave specific orders to Nallo to kill certain

to

19 civilians in Bo, who he labelled as collaborators, to loot and

the

20 burn their houses, to loot the Southern Pharmacy and to bring
21 medicines to Norman. Specifically the name of MB Sesay was
22 mentioned. Norman also ordered Nallo to kill the police
23 officers.

in

24 Nallo, in addition to being in charge of the commanders

for

25 the Southern Region, in his capacity as Regional Director of
26 Operations, was also specifically assigned the responsibility

27 the Bo operation. The Chamber finds that he exercised command
28 over the group of Kamajors led by James Kaille, which included
29 Joseph Lappia and TF2-017, as well as the Kamajors under their

1 immediate command.

Base

2 Having received specific instructions from Norman at

3 Zero, in the presence of Fofana, Nallo ensured that his

4 subordinates implemented those instructions. Indeed, as was

by

5 found by the Chamber above, it was the group of Kamajors led

6 James Kaille who committed the criminal acts in Bo, as

Nallo

7 specifically ordered by Norman. Thus, it is evident that

8 had effective command and control over this group of Kamajors.

9 Subsequent to the passing out parade and commanders'

identified

10 meeting in early January 1998, in which Fofana participated,

11 several protected persons, including groups of persons

12 as collaborators, were killed by Kamajors in the Bo District.

13 These included the killing by the Kamajors of an unidentified

14 woman, who was alleged to have cooked for the rebels, on the

15 order of TF2-017, and the killing of John Musa, an alleged

16 collaborator, by Kamajors under the control of Joseph Lappia.

as

17 There were also other acts by Kamajors that, under the

18 circumstance, must have caused serious mental suffering such

001,

19 the detention and beating of OC Bundu and the arrest of TF2-

police

20 both targeted by the Kamajors because of their status as

collaborators

21 officers, a group considered by the Kamajors to be
22 with the juntas.

involved

23 On 15 and 16 February 1998 the Kamajors were also

24 in looting. This included the looting of ammunition from the
25 home of OC Bundu, the looting of items from MB Sesay's hotel,
the

26 looting of medicines from two pharmacies and also personal
27 property and money seized from TF2-001. The Chamber finds all
28 these acts to be sufficiently related to the armed conflict so
as

29 to satisfy the nexus requirement for war crimes.

1 Fofana, as a superior, had a duty to take necessary and
2 reasonable measures to prevent the commission of criminal acts
by
3 his subordinates. However, Fofana did nothing to prevent the
4 commission of these criminal acts. As a result of this
failure,
5 Kamajors under his effective control committed the criminal
acts
6 of murder, cruel treatment and pillage.

7 The Chamber finds that the Prosecution has proved beyond
8 reasonable doubt that Fofana bears individual criminal
9 responsibility as a superior under Article 6.3 of the Statute
for
10 the war crimes of murder, cruel treatment and pillage as
alleged
11 under counts 2, 4 and 5 of the indictment and pursuant to
Article
12 3(a) and 3(f) of the Statute.

13 Furthermore, the Chamber finds that the intention to
14 collectively can reasonably be inferred from Norman's order to
15 kill collaborators, burn their houses and loot big shops,
16 including the Southern Pharmacy. As Fofana was present at the
17 time Norman gave this order, the Chamber finds that Fofana
knew
18 or had reason to know that his subordinates might commit
19 collective punishments in Koribondo. His responsibility as a

20 superior was therefore engaged.

21 The Chamber therefore finds that Fofana bears individual
22 criminal responsibility under Article 6.3 of the Statute for
the
of
23 war crime of collective punishments as alleged under count 7
24 this indictment, pursuant to Article 3(b) of the Statute.

25 The Chamber finds insufficient evidence to find Kondewa
26 responsible for any of the crimes charged in the indictment
for
27 the Bo District under either Article 6.1 or Article 6.3 of the
28 Statute.

29 The Bonthe District.

1 On 15 February 1998 a group of approximately 300 to 500
2 Kamajors entered Bonthe. The Kamajors came from three
chiefdoms,
3 including Sittia and Nongoba Bullom. From 15 February 1998
4 Bonthe Town was under the control of Kamajors headed by the
5 district battalion commander, Morie Jusu Kamara. Commander
6 Julius Squire was the second in command to Morie Jusu Kamara.

7 On 16 February 1998 Kamajors announced a meeting at the
St
8 Patrick's parish compound. Morie Jusu Kamara was present at
the
9 meeting together with Commander Julius Squire, the secretary
and
10 spokesman for the meeting. Morie Jusu Kamara promised that no
11 one else would be killed in Bonthe but demanded money from the
12 civilians.

13 On 15 February, Kamajors looked for Lahai Ndokoi Koroma,
a
14 chiefdom speaker in the Catholic mission. Two delegations
were
15 sent to Bonthe from Base Zero under Kondewa's instructions.

16 On 1 March 1998, a third group of Kamajors came to
Bonthe
17 under the leadership of Kondewa. At a public meeting, Kondewa
18 said that he had not allowed his men to enter Bonthe, but that
19 they had not listened to his advice and had done what they had
20 done. Kondewa apologised on their behalf. Kondewa also told

were 21 those assembled that they should forget about ECOMOG as they
22 not responsible for Bonthe. Kondewa said that it was the
23 Kamajors who were responsible for security in the area.
24 He told Father Garrick that he was aware of atrocities
25 committed by the Kamajors and, for this reason, he wanted to
get 26 Lahai Ndokoi Koroma out of the country. After getting paid
27 600,000 leones, Kondewa took Lahai Ndokoi Koroma to Talia and
28 later to Bo. Only Kondewa had authority to release Lahai
Ndokoi 29 Koroma. Kondewa claimed to kill without restraint and to send

1 people to Mecca.

ECOMOG

2 Around 23 February 1998, Norman, accompanied by two
3 officials, came to Bonthe. At a public meeting at the Bonthe
4 town hall, Norman said that any complaint against Kamajors was
5 useless, as they had fought and saved the nation, and that
6 working with Kamajors was like working with a cutlass.

to
killing,
his
did
refused

7 In March 1998, a letter from Solomon Berewa, addressed
8 Kamajors in Bonthe, requesting them to stop looting and
9 was given to Commander Morie Jusu Kamara, who passed it on to
10 second in command, Julius Squire. Julius Squire said that he
11 not recognise the authority of the Attorney-General. He
12 to accept the instructions in the letter unless they came from
13 Norman or from Kondewa.

a
Jusu
Julius
battalion
and

14 The Chamber finds that on the evidence adduced there was
15 superior subordinate relationship between Kondewa and Morie
16 Kamara, district battalion commander of Bonthe District,
17 Squire, Kamara's second in command, and Kamajor Beigeh,
18 commander of the Kassilla Battalion. Kondewa had authority

19 control over the actions of these Kamajor commanders and the
20 Kamajors under their immediate command.

his
21 By virtue of his de jure status as the High Priest, and
22 de facto status as a superior to these Kamajors, Kondewa
and
23 exercised effective control over them. Kondewa had a legal
24 material ability to issue orders to Kamara.

25 The Chamber also finds that at this time Kondewa had
the
26 authority and power to issue oral and written directives to
and
27 Kamajors in that area, order investigations for misconduct,
28 hold court hearings. He could threaten the imposition of
29 sanctions of a terrible death on the Kamajors if they lied to

Talia, 1 him. The Kamajors, who the delegation met on its way to
2 all recognised Kondewa's authority and regarded him as their
3 boss.

4 Following the arrival of the Kamajors in Bonthe, several
5 protected persons were killed by Kamajors under the command of
6 Morie Jusu Kamara's Kamajors. On 15 February 1998, Kpana
Manso 7 was killed by Beigeh, a Kamajor commander subordinate to Morie
8 Jusu Kamara.

9 On 16 February 1998, Bendeh Battiana was accused of
being a 10 collaborator and was killed by a Kamajor named Rambo Conteh.

11 On 17 February 1998, Abu Conteh was killed at St
Joseph's 12 Secondary School by one of Morie Jusu Kamara's Kamajors.

13 In early March 1998, a woman called Jitta was killed by
a 14 Kamajor named Beigeh, between Sebongie and Bonthe.

15 Kamajors, under Morie Jusu Kamara's command, were also
16 responsible for acts of serious mental suffering to protected
17 persons in Bonthe Town.

18 On 15 February 1998, Kamajors captured Lahai Ndokoi
Koroma. 19 He was stripped naked and tied.

20 On 16 February 1998, at a meeting in St Patrick's
compound

his

21 in Bonthe Town, Julius Squire announced that Kamajors were
22 looking for three collaborators. TF2-116 was singled out and
23 life was threatened because of alleged collaboration with the
24 juntas. A boy named Bendeh Battiana was also singled out and
25 accused of being a collaborator. He was later killed by Rambo
26 Conteh.

27 In early March 1998, TF2-086 was detained by Kamajors
28 including Beigeh, along the road between Sebongie and Bonthe.
29 The Kamajors threatened her life.

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Lamina

1 The Kamajors, including those under the command of
2 Gbokambama and Julius Squire looted houses, household items,
3 equipment and money between 15 February 1998 and early March
4 1998.

of

5 The Chamber finds that these acts of killing, infliction
6 serious mental harm, and looting, are sufficiently related to
7 armed conflict so as to satisfy the nexus requirement for war
8 crimes.

the

nothing

9 Kondewa, as a superior, had a duty to take necessary and
10 reasonable measures to prevent or punish the commission of the
11 criminal acts of his subordinates. However, Kondewa did
12 to prevent or punish the commission of these acts. As a
13 of this failure Kamajors under his effective control committed
14 the criminal acts of murder, cruel treatment and pillage.

result

for

15 The Chamber finds that the Prosecution has proven beyond
16 reasonable doubt that Kondewa bears individual criminal
17 responsibility as a superior under Article 6.3 of the Statute
18 the war crimes of murder, cruel treatment and pillage as
19 under counts 2, 4 and 5 of the indictment and pursuant to

alleged

Article

20 3(a) and 3(f) of the Statute.

21 The Chamber finds that the only reasonable conclusion is
22 that he was aware of the fact that civilians were being
singled
23 out for punishment for their perceived status as
collaborators.

24 Therefore, the Chamber finds that Kondewa bears individual
25 criminal responsibility for the war crime of collective
26 punishments as alleged under count 7 of the indictment
pursuant
27 to Article 3(b) of the Statute.

28 The Chamber finds insufficient evidence to find Fofana
29 responsible for any of the crimes charged in the indictment
for

1 Bonthe, under either Article 6.1 or 6.3 of the Statute.
2 The Kenema District.
3 The Prosecution led evidence of killings and other
crimes
4 committed in Kenema District and the Chamber made many
findings
5 of fact in this respect. However, the Chamber finds that the
6 Prosecution has not established beyond reasonable doubt that
7 either Fofana or Kondewa is individually criminally
responsible
8 pursuant to Article 6.1 or 6.3 for any of the criminal acts
which
9 the Chamber found were committed in Kenema during the
timeframe
10 charged in the indictment.
11 Talia/Base Zero.
12 The Chamber finds that sometime towards the end of 1997
two
13 captured former town commanders were brought to Base Zero by
14 Kamajors. They were made to dance in front of a parade.
Kondewa
15 walked behind them. Kondewa took a gun from his priest, Kamoh
16 Bonnie. He then shot and killed one of the town commanders.
The
17 next morning witness saw two graves where the bodies of the
two
18 commanders were buried.
19 Town commanders were men appointed by the rebels to

20 organise civilians to assist them. These former town
commanders
21 had run away and were captured in the bush by Kamajors. They
22 were not taking an active part in hostilities at the time that
23 they were captured or when Kondewa killed one of them. The
24 Chamber finds that they were targeted because of their
perceived
25 status as collaborators and the unlawful killing by Kondewa
was
26 sufficiently related to the armed conflict to satisfy the
nexus
27 requirement for war crimes.

28 Thus, the Chamber finds that it has been proved beyond
29 reasonable doubt that Kondewa is individually criminally

1 responsible pursuant to Article 6.1 for committing murder as a
2 war crime as charged under count 2 of the indictment pursuant
to
3 Article 3(a) of the Statute.

4 The Chamber finds insufficient evidence to hold Fofana
5 responsible for any crimes charged in the indictment occurring
in
6 Talia, either under Article 6.1 or Article 6.3 of the Statute.

7 The Moyamba District.

8 In November 1997, Kamajors under the control of Kondewa,
9 took TF2-073 Mercedes Benz from his home in Sembehun. They
also
10 took a generator, cars and other gadgets. The Kamajors said
that

11 they were Kondewa's Kamajors and that they had come from
Talia,
12 Tihun, Gbangbatoke and other surrounding areas. Three of them
13 introduced themselves as Steven Sowa, Moses Mbalacolor and
14 Mohamed Sankoh. Mohamed Sankoh said he was Deputy Director of
15 War under Norman. The car was eventually given to Kondewa who
16 kept the car and used it without permission.

17 The Chamber finds that these incidents of looting are
18 sufficiently related to the armed conflict to satisfy the
nexus
19 requirement for war crimes. Given the circumstances
surrounding

not
20 the act, the Chamber concludes that the victims were persons
21 taking a direct part in the hostilities at the time of the
22 commission of the crimes and that the perpetrator knew this.
of
23 Kondewa's knowledge that his subordinates committed acts
was
24 pillage can be established on the basis that the looted car
only
25 given to him to be driven around, which he did. Kondewa not
subordinates
26 failed in the exercise of his duties to punish his
27 for looting but he chose to support their actions by using the
28 looted vehicle himself.
reasonable
29 Thus, the Chamber finds that it is proved beyond

1 doubt that Kondewa is individually criminally responsible as a
2 superior, pursuant to Article 6.3 for the war crime of pillage
as
3 charged in Article 5 of the indictment, pursuant to Article
3(f)
4 of the Statute.

5 The Chamber finds insufficient evidence to hold Fofana
6 responsible for any of the crimes charged in the indictment
7 occurring in Moyamba under either Article 6.1 or Article 6.3
of
8 the Statute.

9 Count 8, child soldiers.

10 Witness TF2-021 was nine years old when he was abducted
by
11 rebels. In 1997, when the witness was 11 years old, he was
12 captured by the Kamajors and forced to carry looted property.
13 The Kamajors subsequently took him to Base Zero for
initiation.

14 At Base Zero the witness was initiated along with 20 other
young
15 boys. Kondewa performed the initiation and told the boys that
16 they would be powerful for fighting. He gave them a potion to
17 rub on their bodies before going into battle.

18 After receiving training, TF2-021 was sent on his first
19 mission to Masiaka where he shot a woman in the stomach and
left

with 20 her there on the ground. On subsequent missions he fought
21 the Kamajors at Kenema, SS camp, Joru and Daru.

22 In 1999, witness TF2-021 was flown by helicopter into
23 Freetown with three other small boys and their commanders,
where 24 they were given guns and sent to support ECOMOG who were
fighting 25 the rebels at the Congo Cross.

26 In 1999, when witness TF2- 021 was 13-years old, he was
27 initiated into the Avondo Society, a group of Kamajors led by
28 Kondewa. He received a certificate, Exhibit 18, which shows
his 29 membership of this group. This certificate bears details
showing

1 the place of initiation: Shows Bumpe, the initiate's name,
2 photograph and age. It bears Kondewa's name, signature and
3 stamp. The Chamber understands from the evidence that
initiation
4 into the Kamajor society does not necessarily amount to
5 enlistment into an armed force or group. Some parents put
their
6 children through initiation for other reasons. Thus, the
Chamber
7 has looked at the details of the actual initiation ceremony,
the
8 circumstances surrounding initiation, as well as subsequent
9 events to determine whether in fact a child could be said to
have
10 been enlisted in an armed force or group.

11 Having considered the evidence outlined above, that
during
12 the first initiation of witnesses, initiates were given
potions
13 to rub on their bodies before going into battle, were told
that
14 they would be made strong for fighting, were subsequently
given
15 military training, and soon afterwards went into battle, the
16 evidence is absolutely clear that, on this occasion, the
17 initiates had taken the first step towards becoming fighters.

18 It is beyond reasonable doubt that Kondewa, in these

act
021

of

too

19 circumstances, when initiating boys, was also performing an
20 analogous to enlisting them for active military service. TF2-
21 was 11-years old when Kondewa enlisted him. In the Chamber's
22 view there can be no mistaking a boy of 11-years old for a boy
23 15-years, or older, especially for a man such as Kondewa who
24 regularly performed initiation ceremonies. Kondewa knew or
25 should have known that the boy was under 15-years of age, and
26 young to be enlisted for military service.

27 Although the Chamber finds this evidence entirely
28 sufficient to establish enlistment beyond a reasonable doubt,
29 TF2-021 was given a second initiation into the Avondo Society,

18,
approval

is
nexus

of

Kondewa

relation

1 headed by Kondewa himself, when he was 13-years old. Exhibit
2 dated 10 June 1999, bears Kondewa's signature, stamp of
3 and lists the boy's age incorrectly as 12.

4 The Chamber is satisfied that the recruitment of TF2-021
5 sufficiently related to the armed conflict to satisfy the
6 requirement for war crimes.

7 Thus, the Chamber finds that it has been proved beyond
8 reasonable doubt that Kondewa is individually criminally
9 responsible, pursuant to Article 6.1, for committing the crime
10 enlisting a child under the age of 15 into an armed force or
11 group, as charged under count 8 of the indictment, pursuant to
12 Article 4(c) of the Statute.

13 The indictment charges use of child soldiers as an
14 alternative to enlistment. Therefore, having found that
15 is individually criminally responsible for enlisting child
16 soldiers, the Chamber need not consider the evidence in
17 to their use actively participating in armed hostilities.

18 The Chambers finds insufficient evidence to hold Fofana
19 responsible for any of the crimes charged under count 8 of the
20 indictment, under either Article 6.1 or 6.3 of the Statute.

whether
matter,
considered
were
defence
which
an

21 The exigencies of justice require that a defence,
22 directly or indirectly raised by an accused in a criminal
23 needs to be examined. Consequently, the Chamber has
24 the role of President Kabbah, and the fact that the accused
25 fighting to restore his democratically elected government, and
26 whether these facts are legally relevant or amount to any
27 recognised under the law, including the defence of necessity.
28 The Chamber also recalls Article 6.4 of the Statute
29 states that the fact that an accused person acted pursuant to

1 order of a government or of a superior shall not relieve him
or
2 her of criminal responsibility but may be considered in
3 mitigation of punishment if the Special Court determines that
4 justice so requires.

5 After a careful consideration of the law and the facts,
the
6 Chamber finds that no such defence absolves the accused from
7 individual criminal responsibility for the offences for which
8 they are indicted.

9 The Chamber will now proceed to pronouncing its verdict.
10 Mr Fofana, can you please stand, Mr Fofana.

11 For the foregoing reasons, having considered all the
12 evidence along with the arguments of the parties, the Trial
13 Chamber finds with respect to the accused Moinina Fofana as
14 follows:

15 Count 1: Unanimously - murder, a crime against
humanity;
16 not guilty.

17 Count 2: By a majority - Honourable Justice Bankole
18 Thompson dissenting - violence to life, health and physical or
19 mental well-being of persons, in particular murder, a
violation
20 of Article 3 common to the Geneva Conventions and of
Additional
21 Protocol II; guilty.

22 Count 3: Unanimously - other inhumane acts, a crime
23 against humanity; not guilty.

24 Count 4: By a majority - Honourable Justice Bankole
25 Thompson dissenting - violence to life, health and physical or
26 mental well-being of persons, in particular cruel treatment, a
27 violation of Article 3 common to the Geneva Conventions and of
28 Additional Protocol II; guilty.

29 Count 5: By a majority - Honourable Justice Bankole

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common
guilty.
of

1 Thompson dissenting - pillage, a violation of Article 3,
2 to the Geneva Conventions and of Additional Protocol II;

3 Count 6: Unanimously - acts of terrorism, a violation
4 Article 3 common to the Geneva Conventions and of Additional
5 Protocol II; not guilty.

6 Count 7: By a majority - Honourable Justice Bankole
7 Thompson dissenting - collective punishments, a violation of
8 Article 3 common to the Geneva Conventions and of Additional
9 Protocol II; guilty.

15

10 Count 8: By a majority - Honourable Justice Benjamin
11 Mutanga Itoe dissenting - enlisting children under the age of
12 years into the armed forces or groups or using them to
13 participate actively in hostilities or other serious
14 violations of International Humanitarian Law; not guilty.

violations

you.

15 For the counts for which we find you guilty, we convict
16 you. For those on which we find you not guilty, we acquit

17 Please be seated.

18 Mr Kondewa, would you please stand up for the verdict.

19 For the foregoing reasons, having considered all the
20 evidence along with the arguments of the parties, the Trial

21 Chamber finds, with respect to the accused Allieu Kondewa, as
22 follows:
23 Count 1: Unanimously - murder, a crime against
humanity;
24 not guilty.
25 Count 2: By a majority - Honourable Justice Bankole
26 Thompson dissenting - violence to life, health and physical or
violation
27 mental well-being of persons, in particular murder, a
Additional
28 of Article 3 common to the Geneva Conventions and of
29 Protocol II; guilty.

1 Count 3: Unanimously - other inhumane acts, a crime
2 against humanity; not guilty.

3 Count 4: By a majority - Honourable Justice Bankole
4 Thompson dissenting - violence to life and physical well-being
5 mental well-being of persons, in particular cruel treatment, a
6 violation of Article 3 common to the Geneva Conventions, and
7 Additional Protocol II; guilty.

8 Count 5: By a majority - Honourable Justice Bankole
9 Thompson dissenting - pillage, a violation of Article 3 common
10 the Geneva Conventions and of Additional Protocol II; guilty.

11 Count 6: Unanimously - acts of terrorism, a violation
12 Article 3 common to the Geneva Conventions and of Additional
13 Protocol II; not guilty.

14 Count 7: By a majority - Honourable Justice Bankole
15 Thompson dissenting - collective punishments, a violation of
16 Article 3 common to the Geneva Conventions and of Additional
17 Protocol II; guilty.

18 Count 8: By a majority - Honourable Justice Bankole
19 Thompson dissenting - enlisting children under the age of 15
20 years into armed groups, or using them to participate actively
21 hostilities another serious violation of International

or

of

to

of

in

22 Humanitarian Law; guilty.

23 For the counts on which we find you guilty, we convict
you.

24 And for those on which we find you not guilty, we acquit you.

25 Mr Kondewa, you may be seated, please.

26 Honourable Justice Benjamin Itoe will append his
separate

27 and partially dissenting opinion but only on count 8 to the

28 written judgment and as far as the verdict of Moinina Fofana
is

29 concerned.

separate

1 Honourable Justice Pierre Boutet will append his
2 concurring opinion to the written judgment.

3 Honourable Justice Bankole Thompson will append his
4 separate concurring and partially dissenting opinion to the
5 written judgment.

finds

6 Honourable Justice Bankole Thompson, in this opinion,
7 both Moinina Fofana and Allieu Kondewa not guilty and acquit
8 on all eight counts.

them

9 For the sake of clarity, the Chamber reaffirms that the
10 majority decision of the Chamber, which is the judgment of
11 Court, has found Fofana to be guilty on counts 2, 4, 5 and 7
12 the indictment and Kondewa to be guilty under counts 2, 4, 5,
13 and 8 of the indictment and has convicted them accordingly on
14 those counts.

this

of

7

file

15 The Chamber will, immediately following this session,
16 a scheduling order in relation to the procedure to be followed
17 for receiving submissions of the parties on the issue of
18 sentencing and the hearing before sentencing.

colleague

19 But, before we adjourn, I would ask our learned

20 to express his view on a certain issue that concerns the
21 proceedings. Mr Justice Boutet, please.

me
22 JUDGE BOUTET: Thank you, Mr Presiding Judge, for giving
issue
23 this opportunity to express my opinion as to one particular
just
24 that forms part of the summary of our judgment that you have
25 delivered.

of
26 Although I agree and concur essentially with the content
27 the summary of the judgment as representative of the unanimous
28 view of this Chamber I do not and cannot concur with that part
in
29 the summary related to the role played by President Kabbah.

1 This element should not have received the degree of
2 prominence it did in this summary and, indeed, in the judgment
as
3 this was, in my humble opinion, a collateral matter.

4 It is my view that these comments are likely to detract
5 from the central issue of this trial which is to determine the
6 liability of the accused Fofana and Kondewa.

7 However, insofar as the Chamber has chosen to consider
the
8 alleged role of President Kabbah, as forming part of several
9 possible independent defences available to the accused, I
concur
10 with My Learned Brother Honourable Justice Benjamin Itoe in
11 dismissing them. However, I do not subscribe to all the facts
as
12 they are presented in support of that conclusion, nor do I
13 subscribe to the reasoning in reaching such a conclusion.

14 Thank you very much, Mr Presiding Judge.

15 JUDGE ITOE: Thank you, Honourable Justice Boutet. I
would
16 again say here that this decision which I've read is just a
17 summary, but it very faithfully reflects the verdicts that the
18 Chamber has just pronounced. And we will, as I said,
immediately
19 following this session, file a scheduling order in relation to
20 the procedure to be followed for receiving the submissions of
the

21 parties on the issue of sentencing and the hearing before
22 sentencing.

23 This session is here, I do not know if -- are there any
24 comments which, not on the verdict of course -- I mean, are
there
25 any suggestions? We want to be as democratic as possible. We
26 didn't want to shut off the learned Defence and the
Prosecution
27 teams.

28 So, this said, I've observed that no comments are coming
29 from either the Prosecution or the Defence at this stage and
it

1 is my duty now, and it is the duty of the Chamber, to hereby
2 adjourn this session. It will reconvene on the date that will
be
3 fixed in the scheduling order that will be issued soon after
we
4 rise at the end of this session.

5 Before we rise, I would just like to mention in passing
6 that some of our legal officers, who have been very assiduous
in
7 assisting us to arrive at this decision after working so hard
for
8 several years, are leaving us. They wouldn't even be here. I
9 wouldn't have made this comment now because I thought it is
more
10 appropriate at the time that we would be done with the
sentencing
11 hearing and when we may have considered our verdicts on
12 sentencing but, since they are leaving and they wouldn't be
here,
13 may I please seize this opportunity on behalf of my colleagues
to
14 thank them for their extraordinary dedication to duty, for the
15 assistance that they've given us all along, day and night, and
we
16 would not have been able to achieve what we have achieved
today
17 if they were not around us, if they were not there to give us
18 that assistance.

19 We very, very deeply appreciate it and I would say that
we
20 would miss them a lot but, well, human careers evolve every
day
21 and we wish them all the best in the evolution of their
careers
22 and this world is a very small global village. You never know
23 whether we meet ourselves, and I am sure we are going to meet
24 ourselves somewhere in some other forum, and that is why I'm
25 wishing you all the best in the pursuit of your careers and,
once
26 more, to thank you very sincerely on behalf of my brothers for
27 the wonderful contribution that you have made. Up to this
28 morning, you were up until about 6 in the office. You didn't
29 sleep because you had to check your footnotes. You had to
check

1 a few things. You were so meticulous. You were so thorough.
2 You wanted to give a good product for the reading of the
public.
3 I think this is what it takes to be called a devoted legal
4 officer or a devoted servant in any institution.
5 May I, again, say a huge thank you and to wish you a
safe
6 journey and a very happy evolution of your careers.
7 For those of who would still be here, and who are still
8 here and who will be here with us during the sentencing
session,
9 well, we say the same thank you to you, but we will have time
to
10 say that during the final closing of these proceedings.
11 I want to thank the Prosecution. I want to thank the
12 Defence teams for their wonderful contribution to this
verdict.
13 It has been a very controversial case, a very complicated
case, a
14 very complex case, but I think with the collaboration that we
15 have had from the Prosecution and the Defence, the Bench has
been
16 able to make at least a lot of meaning and to understand the
17 issues involved in the trial. We thank you very much and we
18 commend you for your professionalism in the conduct of the
19 Prosecution and in the conduct of the Defence cases by the
20 various Defence teams.

which
I
look
be

21 Again, I am sure we are going to meet here some time
22 will be indicated in the order. I had the date in my mind but
23 cannot pronounce it. So, this said, my duty now is to thank
24 learned counsel for being present today at the closing, at the
25 reading of this judgment, and I would like to wish them, this
26 being holiday time, a very safe journey to their respective
27 destinations and for the Defence counsel, who are here, we
28 forward to seeing you on that date, on those dates that will
29 fixed. I thank you very much and I declare this session

1 adjourned. Thank you.
2 [Whereupon the hearing adjourned at 11.06
a.m.,
3 to be reconvened on Wednesday, the 19th day
of
4 September 2007, at 10 a.m.]
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SCSL - TRIAL CHAMBER I