

Special Court Monitoring Program Update # 69
Trial Chamber I - CDF Trial
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Summary

Oral arguments on the Norman and Fofana Motions for an Issuance of a Subpoena Ad Testificandum to President Kabbah¹ were heard by Trial Chamber I on Tuesday. The Attorney General, representing the President, argued, in rebuttal of the defence's submissions, that Kabbah was not subject to the authority of the Special Court. Furthermore, if a subpoena was indeed issued the Attorney General noted that the President would not necessarily obey it. The prosecution focused its arguments against the motion in question on the alleged relevance of a decision in the *Milosevic* case, which set out standards required for the issuance of a subpoena by a court. Witnesses led in evidence by the Norman defence team this week included former Vice President Dr. Demby, who continued his testimony from the previous week. M.T. Collier, an elder of Talia, and Osman Vandy, a Kamajor fighter, also testified.

Witness Profiles At A Glance

M.T. Collier is the fourth witness called by the Norman defence team in the CDF trial. He testified in Mende. He was born in Talia Yawbecko, where he has lived most of his life. He is currently 75 years old and is considered a respected elder of his village.

Osman Vandi, alias Vanjawai was born in Levuma Bagbo and is currently 51 years of age. While he works as a diamond miner he has also been a Kamajor since 1995 and achieved the rank of task force commander. He testified in Mende.

¹ The Norman and Fofana motions for issuance of a subpoena ad testificandum to President Kabbah, 15 and 16 December, 2005, SCSL-04-14-T

Oral arguments

Oral Arguments regarding the motion for the issuance of a subpoena to President Kabbah had been rescheduled, in accordance with witness testimony and the availability of the Attorney General, from the previous week to the morning of 14 February. The Trial Chamber heard the oral submissions from counsel for the first and second accused, followed by submissions from the Prosecution and the Attorney General.

The four parties involved made these oral arguments in addition to the previously tendered written submissions. The submissions are a result of the President's refusal to voluntarily cooperate with the requests of counsel for Norman and Fofana to appear as a factual witness. While the two defence teams argue that the President is indeed compellable as an important factual witness in the trial, the Attorney General submits that Kabbah's position as a Head of State should make him immune from testifying.

Mr. Arrow Bockarie, counsel for the second accused, began by submitting that the Trial Chamber has the power, through the court's Rules of Evidence and Procedure² and its Ratification Act³, to issue a subpoena to any individual within the Special Court's jurisdiction. Bockarie noted that Rule 8, which relates to requests and orders, of the Rules of Procedure and Evidence, was of particular relevance as it calls on the government of Sierra Leone to cooperate with all organs of the Special Court at all stages of the proceedings. Furthermore, that Rule states that all requests made by the Court will be complied with in accordance with Article 17 of the Statute. Bockarie further submitted that the constitutional protections that the President enjoys are only with respect to National courts, an argument he claims is supported by a decision taken by the Appeals Chamber with respect to Charles Taylor.⁴ Bockarie summed up his arguments as follows: Firstly, that the President is in a position to provide material assistance to issues like Mr. Fofana's alleged culpability; secondly, he is in a position to speak specifically to Mr. Fofana's alleged command responsibility; thirdly, the President could provide information on the duties associated with the position of Director of War. Under the questioning of the Presiding Judge, Bockarie maintained that the evidence Kabbah could be expected to give was the only means of obtaining this information.

Dr. Jabbi, lead counsel for the first accused, supported and added to Bockarie's arguments. He noted further applicable rules from the Rules of Evidence and Procedure, such as Rule 77 that related to Contempt of the Special Court. Jabbi also argued that the anticipated evidence of the President goes to the core of many of the allegations contained in the Indictment and he outlined the particular paragraphs⁵ for which he contended Kabbah's testimony would be factually indispensable.

After hearing the oral arguments of the two defence teams who filed the motion, the Chamber heard the Prosecution's oral submission. Despite attempts by the two defence

² SCSL Rules of Procedure and Evidence, available at <<http://scsl-server/sc-sl/new/rulesofprocedureandevidence.pdf>>

³ Special Court Agreement Ratification Act, available at <<http://scsl-server/sc-sl/new/Documents/SCSL-ratificationact.pdf>>

⁴ SCSL Appeals Chamber Decision, May 31, 2004, SCSL-03-01-I-095, Rendering of decision on motion made under protest and without waiving immunity accorded to a head of state requesting the Trial Chamber to quash the indictment and declare null and void the warrant of arrest and order for transfer of detention 23 July 2003 (immunity motion).

⁵ Indictment, Prosecutor v. Norman, paragraphs 13, 14, 17, 18, 20 and 21

teams in their written submissions to challenge the *locus standi* of the Prosecutor to make submissions on this point, the bench made it clear that they did not wish to be deprived of hearing the Prosecutor on the matter. Mr. Desmond De Silva, Chief Prosecutor, submitted that the *Milosevic* case, in a decision issued on December 9, 2005, was an important precedent in determining the criteria for the issuance of a subpoena. This particular decision of the ICTY related to the rejection of an application made for the interview and testimony of the heads of state Blair and Schroeder, which De Silva contended was of the same nature as the application made by the defence in the CDF trial.⁶ The decision set out a standard for issuing a subpoena to a prospective witness - a standard that, De Silva argued, the defence had failed to meet. De Silva also argued that as war crimes tribunals often have political aspects, particular care must be taken with respect to issuing subpoenas in order to prevent witnesses from being publicly humiliated as part of a political agenda once they are on the stand. The Prosecution argued that the Trial Chamber should consider two factors in its decision; the first being whether the information in possession of the witness is necessary for the resolution of specific issues in the trial. The Chief Prosecutor dismissed the necessity of Kabbah's testimony, given the theory of Norman's defence thus far was that no crimes committed by the CDF. Secondly, De Silva argued that the Trial Chamber should consider whether the witness possessed information that was obtainable by other means. De Silva again pointed to the defence theory raised by Norman thus far, which he contended was based on the denial of all alleged crimes. The Prosecution concluded their submission by stating that what the defence has said in terms of their need to have Kabbah testify is infinitely short of the threshold established in the decision issued in the *Milosevic* case to compel current serving Head of State to testify, and as a result, the application should fail.

Mr. Carew, the Attorney General and representative of President Kabbah, followed the Prosecution's lead and based his submission on the international jurisprudence of the *Milosevic* case. He also argued that there was nothing the President could add to Demby's testimony, that the President was thousands of miles away when the alleged crimes occurred. Furthermore, he noted that Norman never once alleged that Kabbah issued any illegal commands. As well as adopting the legal authorities submitted by the Prosecution, he introduced an additional argument regarding the Court's right to safeguard it from having its authority publicly diminished. He stated that "assuming that your Lordships grant the subpoena, we submit and we request that this Honourable Court should not act in vain. No court in any part of the world has ever made orders that will make them look – that will diminish their authority because it's difficult to enforce."⁷ The Attorney General continued on to say that he considered that "the purpose of making this application...is to embarrass His Excellency the President...and they get personal satisfaction that they have brought the head of state before a court."⁸ Once the Attorney General had completed his submission The Presiding judge, Justice Boutet, asked him to clarify his response should the court issue the subpoena, to which Mr. Carew replied that as long as the President had not been indicted or committed any offence he could not imagine himself ordering his arrest. Justice Thompson immediately questioned the Attorney General on this stance and noted that a court does not decide to issue orders purely on the basis of whether its directives will be complied with. As the sole Sierra Leonean judge on the trial Thompson spoke with particular authority about

⁶ The bench later questioned De Silva on his perceived distinctions between the two cases

⁷ Transcript, February 14, 2006, page 74, lines 17-22

⁸ Transcript, February 14, 2006, page 76, lines 27-29, page 77, lines 1-4

the ongoing dilemma faced by courts of law between upholding the principle of legality and acting on other extraneous, often political, factors.

Following the replies of both the first and second accused to the submissions of the Prosecution and the Attorney General, the bench indicated that the motion would be considered and that a decision on the matter would be issued in due course.

Continued Testimony of Albert Demby

Dr. Demby continued his testimony in direct from the previous week and spoke about the numerous investigations that were conducted by the CDF into alleged crimes perpetrated by the Kamajors. He spoke of instances where the Kamajors were accused of burning down houses with civilians trapped inside and how subsequent investigations found that the actual perpetrators were rebels dressed in Kamajor costume. Demby himself investigated the alleged killing of civilians at CDF checkpoints. He testified that not all of those killed in such cases were civilians and many were in fact rebels who were carrying arms and ammunition under their clothing. In the process of Kamajors firing at these disguised rebels, Demby stated that civilians were sometimes, regrettably, caught in the cross fire.

The witness also elaborated on the structure of the CDF after the government's reinstatement in 1998 and the creation of the NCC. He testified that General Khobe was responsible for all military matters and that the National Coordinating Committee functioned as a purely administrative body. Demby completed his evidence in chief by noting the great lengths to which the government had gone in order to demonstrate its deep appreciation for the Kamajors and their efforts in defending the country. This tended to reinforce the defence's theory that President Kabbah approved and supported all Kamajor activity during the conflict.

Both counsel for the second and third accused took the opportunity to cross-examine Demby. However, it was the cross-examination conducted by counsel for the third accused, Charles Margai, that directly challenged Demby's evidence. Margai noted that Demby had testified during the direct that between August 1997 and February 1998 he did not travel to Conakry, which the witness confirmed. Counsel then noted that there was evidence before the court that during this period Demby was present at a meeting in Conakry with the President and Peter Penfold, the second witness called by the Norman team, amongst others, during which the President gave a considerable sum of money to Chief Norman in support of the CDF. Despite this evidence, to which Penfold had testified during his examination-in-chief, Demby maintained that he was never present at, and knew nothing about, such a meeting. The apparent discrepancy between the two men's testimony thus remains unresolved. While Margai attempted to tender a letter addressed to the President of the UN Security Council and signed by President Kabbah, dated August 2000, regarding the jurisdiction of the court, Justice Thompson claimed that the document represented the 'usurpation of court's role as sole adjudicator'. Margai withdrew the letter and concluded his cross-examination.

During its cross-examination of Demby, the Prosecution attempted to establish that the Kamajor society that developed as a national defence system was markedly different from the traditional hunting societies that existed prior to the war. Demby was thus questioned on the evolution of the initiation and immunization ceremonies and the exact role of the Kamajors in Sierra Leonean society prior to the coup. The Prosecution also questioned Demby on his knowledge of CDF activities while he was based at Lungi

following the coup. Demby maintained that he had no knowledge of when CDF attacks took place and whether ECOMOG forces were involved at this time. Demby also testified that prior to the coup it was the Paramount Chiefs who were in control of the Kamajors and that following the coup and prior to the arrival of ECOMOG forces it was General Khobe in command of the allied forces. Demby refused to elaborate on Norman's responsibilities during this time as he stated that he was not familiar with his terms of reference as National Coordinator.

At this point the Prosecution introduced the summary of the witness' evidence, provided to the court in December 2005 by the Norman defence team. Prosecuting attorney Kevin Tavener noted that the summary stated that Demby was to testify regarding "How Norman was sent to the Sierra Leone/Liberia border to help organise a Kamajor resistance..."⁹ The lead Prosecutor noted that the evidence of the witness in court was that he was unaware of the nature of Norman's activities in Sierra Leone at this time. He would therefore need to consult the witness' actual statement to the defence in order to determine whether this discrepancy could be seen to put the witness's credibility into question or whether the discrepancy arose from an omission by the defence in the summary in question.

While lead counsel for the third accused, Charles Margai, attempted to intervene repeatedly on the grounds that he was an officer of the court, the bench disallowed his involvement as they saw it as an issue between the Prosecution and counsel for the first accused, who was responsible for the summary.¹⁰ The bench asked that Jabbi make the statement in question available to the Prosecution in the spirit of the principle of equality of arms and reciprocity. However, the following morning Demby himself explained the apparent discrepancy between his statement to the Prosecution and his testimony by indicating the differences in the two questions he was responding to. The cross-examination thus continued and Demby was further questioned on the investigations he conducted into instances of alleged unlawful behaviour on the part of the CDF, as well as his findings in such cases. After a brief re-examination by Jabbi, Demby's evidence concluded and the next witness was called.

Testimony of M.T. Collier

M.T. Collier is the fourth witness called by the Norman defence team in the CDF trial. He testified in Mende. He was born in Talia, Yawbecko, where he has lived most of his life. He is currently 75 years old and is considered a respected elder of his village. The witness testified that he joined the Kamajor society in 1996 after learning that the initiation process undertaken by initiates meant that they were immune to bullets and other weapons capable of inflicting serious injury. Collier stated that his main motivation for joining the Kamajor society was one of self-defence: he did not want to engage in battle so much as to protect his own life. Collier also testified that after the government had been overthrown the people of Talia dispatched several civilians to the Liberian border in order to find Norman and inform him that the people of Talia continued to support him and would be honoured to host him. After attaining Kabbah's approval to do

⁹ Transcript, February 15th, 2006, pg 35, lines 4-6.

¹⁰ The right of defence counsel to intervene when it is not their witness on the stand has become an ongoing issue in the CDF trial. Defence counsel contend that because of the charge of Joint Criminal Enterprise their interests are nevertheless at stake however the Trial Chamber ruled that they will decide on such interventions on a case by case basis when the direct interests of counsel's client is involved. Please see Trial Monitoring Project Report No. 68, February 10, 2006.

so, Norman subsequently arrived in Talia by helicopter. He brought with him various supplies including food as well as arms and ammunition. Talia soon became known as Base Zero, the CDF base where a War Council was established. Collier testified that various Paramount Chiefs in the region relocated to the town and that Paramount Chief Quee was Chairman of the War Council. Collier further testified that while Norman was in Talia he never saw him issue orders to the Kamajors, and never knew him to be involved in payment for the initiation ceremonies.

As Collier was a common defence witness, Bockarie and Margai, respective counsel for the second and third accused, also conducted examinations-in-chief. Both lead evidence related to their clients' activities while in Talia at Base Zero. While Collier contended that he did not know what Fofana's role as Director entailed, he testified that Kondewa, the third accused, carried out the initiation and immunization processes as High Priest. Collier testified that people clamoured to be initiated and that Kondewa did not force anyone to participate in such ceremonies. Margai also questioned Collier on previous testimony given by witnesses for the Prosecution, who had alleged that Kondewa was one of those responsible for deciding how the war was to be conducted. Collier denied this and elaborated on the chain of command that existed in each chiefdom. He identified the battalion commanders as those actually issuing orders to the Kamajors and sending them into battle.

Collier also specifically addressed the testimony of Prosecution witness TF2-014, who testified in March 2005, that Kondewa had killed an initiate, burnt his body and subsequently used the ashes in initiation ceremonies. Again, Collier denied these allegations and said that as a town elder he surely would have heard about such an incident had it happened. He also denied allegations of the murder of Mustapha Fallon, which is alleged to have occurred in the presence of Kondewa and Fofana, and similarly the murder and skinning of Alpha Dauda Kanu, which is alleged to have occurred in the presence of all three accused. Collier then proceeded to provide character evidence for Kondewa. The Prosecution took issue with this¹¹, but the Trial Chamber ruled that this evidence was indeed admissible. Margai proceeded with his line of questioning and concluded his examination-in-chief shortly thereafter.

The Prosecution sought to discredit Collier's testimony in the cross by revealing the connections between the witness (and his family) and Norman and the Kamajors. Collier denied that any of his daughters were ever married to Norman and he also denied the Prosecution's allegations that his son Ibrahim was a member of the group of Kamajors known as the Death Squad, which was allegedly under the command of Norman. While Collier eventually acknowledged that he had other family members who belonged to the Death Squad, he claimed not to know what sort of activities the group was engaged in, to the visible frustration of the lead Prosecutor. Collier also denied having seen children under the age of fifteen carrying weapons around Talia and denied having seen prisoners brought back to town by the Kamajors following battle. When Collier was questioned on what exactly he saw the Kamajors doing in Talia he

¹¹ The Prosecution argued that character evidence only 'muddied the waters' at this time and that under Rule 89(c) it should not be allowed. While the Chamber allowed it the Presiding judge did caution Margai that if he led with this evidence he would be opening the door for the Prosecution to then question character, even after the close of their case.

responded that "I saw them being supplied with rice, they would cook that rice and eat and they would depart."¹²

Interpretation Issues

Throughout Collier's testimony both Jabbi and Margai intervened on numerous occasions to indicate what they considered as discrepancies between what the witness was actually saying in Mende and the English interpretation of it. While the judges initially showed frustration with Jabbi for the interruptions they too became concerned that the witness' testimony was at risk of being distorted. The interpreter's use of words such as "died" rather than "killed" or, most seriously, "fighting against" rather than "fighting for", were pointed out by defence counsel. These apparent inaccuracies were thus put to the interpreters by the bench and the interpreters were subsequently able to explain exactly what the witness had stated. The Head of the Translation Unit noted that as the interpreters are trained professionals they will not hesitate to indicate when they have made an error. Furthermore, she indicated that as all the translation that occurs in court is recorded any apparent inconsistencies can be verified and corrected, thereby ensuring a high degree of accuracy.¹³

Testimony of Osman Vandy

The final witness called by the Norman defence this week was Osman Vandy, alias Vanjawai, who testified in Mende. He was born in Levuma Bagbo and is currently 51 years of age. While he works as a diamond miner he has also been a Kamajor since 1995 and achieved the rank of task force commander. As a Kamajor fighter Vandy was sent to Bo by his chieftom authorities. Initially, he fought in cooperation with the SLA in this southern province. He subsequently worked in cooperation with ECOMOG forces after the overthrow of the Kabbah government. Vandy stated that he met Norman on the third occasion that he was summoned to Talia, at which time Vandy himself was accused of murder. He testified that his case was put before the War Council during this visit and that the elders did not allow Norman to intervene in their decisions. Vandy indicated that it was the War Council, not Norman, who made the initial decision to hang him. It was also the council that then reversed this decision and ordered an investigation into the alleged crime and found Vandy not guilty. The defence was thus able to buttress its position that Norman did not exert control over the War Council or issue orders for it to carry out. Vandy also testified that once he had been appointed as a task force commander he travelled to Lungi with other Kamajors to meet President Kabbah. During the meeting Vandy alleged that Kabbah instructed the Kamajors to work under the control of ECOMOG forces and to assist them in navigating the country's terrain. Vandy returned to Talia via helicopter with arms and ammunition. Vandy testified that he did not receive orders from anyone other than ECOMOG and SLA soldiers, nor did he receive arms or food from anyone else during the conflict. Vandy's testimony thus lent support to the defence's contention that Norman did not issue commands to the Kamajors and that Kabbah was ultimately in control.

¹² Transcript, February 17, 2005, page 67, lines 21-22

¹³ Personal communication with the Head of the Translation Unit, Rebekkah Ehret, March 2006.



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SIERRA LEONE TRIAL MONITORING PROGRAM
WEEKLY REPORT

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Summary

Witness profiles at a glance

Osman Vandy Testimony Continues

Kenneth Koker Testimony

Lieutenant-General David Richards Testimony

Ishmael Senesie Koroma Testimony

Norman Defence Case

Summary

The sixth session of the CDF trial came to a close this week following the testimony of several Kamajor fighters as well as that of Lieutenant-General Richards, a British army officer who periodically worked with Norman during the conflict. This first session of the Norman defence case saw counsel lead in evidence a total of seven witnesses, including Norman himself, as well as several high profile colleagues. There is still no decision by Trial Chamber I on the defence motion for the issuance of a subpoena to President Kabbah; a decision that will dramatically affect the number of witnesses to be called in subsequent sessions of Norman's defence case. The next CDF trial session is scheduled to begin on 2 May, 2006.

Witness profiles at a glance

Osman Vandy, a Kamajor and subsequent battalion commander, testified in Mende. He continued his evidence from the previous week, which he began on 17 February, 2006.

Kenneth Koker, who testified in Krio, has resided in Bo since his birth. He is currently 40 years of age. He became a Kamajor in 1996 and was promoted to the rank of deputy battalion commander.

Lieutenant-General Richards, a 53 year-old British national and current commander of the NATO allied rapid reaction core, testified in English. He has served with the British

army for 35 years and worked as a military trouble-shooter in Sierra Leone between January 1999 and November 2000, for periods ranging from 5 days to 7 weeks.

Ishmael Koroma, a 41 year-old Kamajor and battalion commander, testified in Mende. The witness was born in Kpetema, Small Bo Chiefdom, and lived there for most of his life.

Osman Vandy Testimony Continues

During the cross-examination for the Prosecution, led by Mr. Joseph Kamara, the witness was rigorously questioned regarding the testimony he gave during the examination-in-chief. Osman Vandy, a Kamajor and subsequent battalion commander, denied that he was part of any attack at any time on Koribundu. Kamara then pointed out that Norman had testified to the contrary as he had named Vandy as one of the first commanders in the attack on Koribundu. Vandy, however, did not waiver in his evidence even when Kamara further noted that witness TF2-082 had also testified that Vandy was present during the attack. Vandy stated that both Norman and the prosecution witness must be lying if they had testified to this effect. A further major inconsistency between Vandy and Norman's testimony was put to the witness by the Prosecution: Kamara pointed out that while Vandy had testified that Norman was not present when he met with President Kabbah at Lungi, it was Norman's evidence that he had in fact participated in this meeting. Further inconsistencies between Vandy's and Norman's testimony were indicated. This included the punishment issued by the War Council for Vandy's alleged crime, who was responsible for Vandy's appointment as battalion commander, and the timing of the entrance of ECOMOG forces. Vandy maintained that he was telling the truth in each instance and the Prosecuting attorney at one point remarked "Mr. Witness, I am under the impression that everyone is telling lies except you".¹ Although these discrepancies between the various testimonies remain unresolved, the Prosecution was able to raise serious doubts as to the credibility of Vandy's own evidence.

Kenneth Koker Testimony

Kenneth Koker's testimony focused on events following the 1997 AFRC coup. The witness's evidence supported the Defence's theory that Kabbah knew of the Kamajors' activities in Sierra Leone at all times during the conflict. In further support of the claim that Kabbah can be implicated in the war effort, Koker testified extensively about the Kamajors' alleged receipt by combatants of arms and ammunition from the War Council, which had come from President Kabbah personally. Furthermore, Koker supported the Defence's contention that the Kamajors operated under ECOMOG control once those forces entered Sierra Leone in 1998 and that prior to their arrival the Kamajors operated under the control of chiefdom authorities. He also testified about alleged incidents where rebels disguised as Kamajors attacked villages and killed civilians calling into question whether blame could be attributed to the CDF for such atrocities.

During the cross-examination by counsel for the second accused, Mr. Arrow Bockarie, Koker was questioned about his house in Bo. At this point the witness broke down while telling the court that junta soldiers had set his house on fire while his younger brother was trapped inside. His brother died in the incident and Koker mentioned other instances when junta soldiers burnt down the houses of suspected Kamajors. The Presiding judge respectfully called a recess in order to allow Koker to regain his

¹ Transcript, February 20, 2006, pg 23, lines 10-11

composure. Koker then testified that the Kamajors received orders from the War Council to mount an attack against the junta in Bo, again supporting the defence's contention that Norman himself did not issue commands to the Kamajors. Koker also denied ever having received orders from Moinina Fofana, the second accused, and testified that he had never seen him play any active role as a Director of War.

Mr. Ansu Lansana cross-examined Koker on behalf of the third accused, Allieu Kondewa. Koker identified Kondewa as the chief initiator of the Kamajors. The witness then confirmed that the initiators never went to the war front nor did they command troops. Koker further elaborated on the 'rules of engagement' taught to Kamajors during the initiation process² and also confirmed the defence's contention that not all initiates were fighters. The witness also elaborated on several instances where junta soldiers disguised themselves as Kamajors during the period of the Indictment, from 1996 to 1999.

The Prosecution's cross-examination focused on the relationship between initiators and their initiates, and the alleged loyalty it involved. Koker, however, maintained that the Kamajors relied more on their chieftom authorities than on their initiators for instruction. The prosecuting attorney, Mr. Kamara, also alleged that Koker and fellow Kamajors stormed the Bo police station armed with AK-47s in an attempt to release Kamajors who were being held on suspicion of murder. Koker initially replied that "it didn't happen that way" however subsequently clarified that at no point did he storm the Bo police station. The brief cross-examination ended after Koker testified that the only role he saw Moinina Fofana play was with respect to bringing peace to Sierra Leone

Lieutenant-General David Richards Testimony

Lieutenant-General David Julian Richards took the stand on Tuesday as the sixth witness to be called by the Norman defence. The witness is a 53 year old British national and current commander of the NATO allied rapid reaction core based in Germany. He has served with the British army for 35 years, and has principally been deployed to the Far East, Germany and Northern Ireland. He is now preparing for a mission in Afghanistan.

He spent time in Sierra Leone between January 1999 and November 2000, during which period he worked as a military trouble-shooter, monitoring unstable situations around the world. Richards' length of stays in Sierra Leone ranged from 5 day to 7 weeks.

Richards testified that during his visits to Sierra Leone in 1999 he was to establish the situation on the ground, make a military assessment of the country and determine if the UK government could ameliorate the situation. While Richards met with Norman during these visits he also testified that he consulted primarily with ECOMOG commanders, such as General Khobe, who he perceived as being in charge of the pro-government forces, as well as President Kabbah. He stated that Khobe had tactical control of the forces, whereas Norman was more in a policy position. He recalled an incident when Khobe took him to observe fighting between the rebel forces and the CDF on the Congo Cross bridge in Freetown, at which Norman was present. During the battle, Richards witnessed the mutilation and murder of prisoners by the rebel side and he testified that the pro-government forces were clearly excited and angry when they themselves, having

² The previous testimony of both Norman and Demby extensively covers the initiation process and the code of conduct that all Kamajors are taught.

also witnessed the killings, captured several of their own prisoners. Richards testified that he then observed Norman remonstrate the CDF forces who had captured the rebel prisoners. He stated that it was clear that Norman was telling them not to shoot or harm the captured rebels. Although Richards did not speak to Norman on this occasion in his mind Norman had prevented the abuse of prisoners in this instance and had managed to restore calm. This example was used to illustrate that, in Richards' own opinion, Norman obeyed the laws of war and had attempted to bring a degree of discipline to the CDF forces.

General Richards also testified that from his observations Norman was clearly devoted to defending the country's government, often at great personal risk. When asked by counsel to respond to the claim that Norman and others were inclined to overthrow the democratically-elected government they were purportedly defending, Richards stated that, based on his professional experience, he would infer that Norman lacked the intent to do so. In support of this inference he noted that during his time in Sierra Leone he had observed that Norman had the military capability of overthrowing the Kabbah government but did not do so.

The witness stated that, as a professional soldier, he perceived the CDF to be "not a very well organized force". He noted an element of chaos as different groups, while working towards a common plan, often did as they wished. He characterized the groups operating on the periphery as rogue elements and categorized the organization as a militia. At this point Chief Prosecutor, Mr. de Silva, raised an objection on the grounds that defence counsel was eliciting opinions from the witness regarding the military command structure of the CDF, a matter to be dealt with by an expert witness. He reminded the bench that when Richards had been filed as a witness there was no suggestion that he would testify as an expert witness. While the bench initially found the Prosecution's objection to be pre-emptive, after further questioning regarding the characteristics of the CDF as a fighting force, the bench sustained the objection and reprimanded Norman's counsel, Dr Jabbi, for not following the proper procedure with respect to the distinction between expert and non-expert witnesses as set down under Rule 94.³ Richards' testimony regarding the structure of the CDF is quite controversial as it goes to the core of the Prosecution's theory (supported by expert witness testimony) that the CDF operated as an organized force with a formal military structure, rather than a disorganized, undisciplined militia with a limited chain of command. The examination-in-chief ended after several attempts by Jabbi to elicit Richards' opinion on the previous testimony of expert witnesses for the Prosecution as well as on the phenomenon of child soldiers, both of which were disallowed by the judges.

The significance of Rule 94 once again became an issue during counsel for the third accused, Charles Margai's cross examination of the witness. Margai posed several questions with respect to the differences between a militia force and a conventional military force. De Silva however objected to this line of questioning, again noting that Margai was simply trying to circumvent Rule 94. He noted that evidence given by expert witnesses must be accompanied by an expert report. Furthermore, he argued that Margai was attempting to thwart the court's order of November 28th, 2005, which required that the names of expert witnesses due to testify must be submitted to the Chamber as part of an expert witness list prior to testifying. De Silva submitted that the object of these rules is not to allow one defendant to call a witness and to subsequently

³ Rules of Procedure and Evidence, available at «<http://www.sc-sl.org/rulesofprocedureandevidence.pdf>»

avoid rule 94 by having another defendant cross examine him as an expert witness. While Margai insisted that the court would not want to disallow a witness from testifying about a matter on which he is clearly knowledgeable, Justice Boutet replied that the bench would indeed disallow such evidence to be admitted when a matter of procedure is called into question.

During the cross-examination by the Prosecution, De Silva attempted to show that Norman was in fact in charge of military matters as Kabbah was himself inexperienced in this area and had delegated the role of defending the country to Norman. While Richards agreed that as Kabbah had never been a soldier and it was difficult for him to know about detailed tactical issues, he insisted that such military decision-making had been delegated not to Norman but to General Khobe, commander of the ECOMOG forces. In response to this claim, De Silva reminded Richards of his comments during to direct that Norman had been capable of taking over the government. He noted that in order to do so, Norman required the requisite military power. Richards reluctantly agreed that this power was needed if that was the way one wanted to take over government.

After answering questions regarding his observations of Norman's actions during the Congo Cross bridge battle and his efforts to secure the release of enemy combatants, De Silva noted that the defence's summary of Richards' evidence did not contain any reference to this incident, despite the fact that a charge related to unlawful killings of enemy combatants is contained in the Indictment. The Trial Chamber asked the Defence to grant the Prosecution access to Richard's full statement, which they did, and the cross continued. Richards confirmed that in his statement to the Defence he had said that President Kabbah had delegated the task of defending the country to Norman, however, he also contextualized the comment by elaborating on the situation in Sierra Leone in 2000; a time when no one else was in a position to run the defence of the country other than Norman. The issue of defence witness statement summaries has been an ongoing point of contention throughout the trial session, with the Prosecution frequently asking for leave to read the witness' statements and the defence arguing that they are not under the same disclosure requirements as the Prosecution. Trial Chamber I has repeatedly sided with the Prosecution on the matter and has issued written orders requesting that the defence witness summaries be re-filed.⁴

Testimony of Ishmael Senesie Koroma

Koroma's first day of testimony focused on events prior to 1996, and therefore incidents outside the indictment period. He spoke about the use of Kamajors under the NPRC government, his experience during the conflict as a displaced person, of the arming of the Kamajors by chieftdom authorities as well as the initiation ceremonies conducted. As the witness' testimony appeared to cover extensively a period of time and incidents not directly related to the charges Norman faces, the bench could have adopted a more interventionist approach to avoid hearing this repetitive and redundant testimony.

Koroma's second day of testimony was more relevant. He testified about the participation of ECOMOG forces and Kamajors in various battles against the rebels, particularly in Kenema, following the 1997 AFRC coup. The witness testified that the Kamajors fought battles prior to the arrival of ECOMOG forces but joined them, and

⁴ Order to the First Accused to re-file summaries of witness testimony, 2 March, 2006, SCSL-04-14-566

worked under their command, once they had entered Sierra Leone. Koroma testified that he received weapons and other fighting equipment from ECOMOG and had received some arms and ammunition from the chiefdom authorities. He also stated that he received food from civilians as well as from ECOMOG. He explicitly claimed that he had not received any of these supplies from Chief Norman at any time.

During the cross-examination by the Prosecution, Kamara introduced a previously tendered document written by Human Rights Watch in 1998, which outlines some of the alleged abuses committed by the CDF during the conflict. In the document lead counsel referred to the paragraphs which rely on eye witness accounts to describe the Kamajor practice of disemboweling the RUF/AFRC fighters they had killed and then consuming the vital organs in the belief that they bestowed strength upon those who had consumed them. The witness denied any knowledge of such practices and further stated that these allegations were untrue, as Kamajors were forbidden from touching corpses⁵. The witness also denied the Prosecution's allegations that he has been an active member of the pro-Norman campaign against the Special Court Indictment.

After the completion of Koroma's testimony the Presiding Judge asked the Norman defence team if they would be able to call a witness whose evidence would finish in the next day, prior to the end of the trial session, so as to avoid splitting the evidence of a witness between two trial sessions.⁶ Jabbi replied that he could not guarantee that the testimony of the sole witness on standby would be completed within a day. The Presiding Judge decided that there was no option but to adjourn proceedings until the next session. Before court adjourned however, Jabbi enquired as to the status of several pending decisions before the Trial Chamber, including applications for additional witnesses and exhibits, as well as the motion for the issuance of the subpoena to President Kabbah. The bench declined to give any indication of when decisions on these matters might be issued despite the importance of such decisions for the defence case. Trial was adjourned until 2 May, 2006, ending the sixth CDF trial session one day early.

Norman Defence Case

As the Norman defence case begins to take shape it is clear that counsel seeks to demonstrate that it was President Kabbah who exercised ultimate authority over the actions of the Kamajors. This gives added importance to the pending decision by the Trial Chamber regarding the motion for the issuance of the subpoena for Kabbah. Furthermore, the defence is trying to show that Norman himself did not issue orders, did not have a role in distributing arms or other supplies and did not have a role in the decision-making process of the War Council. The majority of the witnesses this session have touched on one or more of these issues and the testimony of Penfold and Richards in particular has served as character evidence in support of Norman's *bona fide* actions as a government minister during the conflict.

⁵ During the immunization process Kamajor fighters are taught certain rules of engagement. One such rule involved an interdiction against contact with corpses. The initiates allegedly believe that if they break any of these rules the protective powers bestowed on them during the immunization process no longer exist.

⁶ If a witnesses' testimony was to occur over two trial sessions they would not be permitted to speak to anyone about their evidence during the recess period. In this case the recess period will be quite lengthy as the CDF trial is currently scheduled to resume on 2 May, 2006, following the RUF trial session and the Easter recess.

It has been evident throughout this trial session that the Norman defence team has been severely disorganized. The Prosecution has complained repeatedly that they do not know which witness will be called next and several examinations-in-chief, led by the defence, have been repetitive or irrelevant. It has been rumoured that Jabbi has at times not had contact with a witness until the night before their testimony. The bench has thus far been lenient with this disorganization but the slow pace of this initial defence session perhaps signals that a more interventionist approach from the bench is needed.

Special Court Monitoring Program Update #76
Trial Chamber I - CDF Trial
19 May, 2006

by Alison Thompson
Senior Researcher

Summary

Witness Profiles at a Glance
The Continued Testimony of Haroun Aruna
Testimony of BJK Sei
Testimony of Siaka Lahai
Testimony of Keikula Amara
Quality of Defence of First Accused

Summary

A total of five witnesses for the Norman Defence testified during this third week of the current CDF trial session. Witness testimony was exclusively from the perspective of kamajor fighters, particularly battalion commanders, and centered around CDF attacks on rebel-controlled towns such as Tongo, Kenema and Bo. Questions posed addressed the planning of these attacks as well as the receipt of arms and ammunition by the kamajors. The testimony of these witnesses represented an attempt to counter the Prosecution's allegations, as contained in the Indictment, which specifically relate to Kamajor attacks on these towns and the unlawful killing of civilians accused of being rebel sympathizers, the burning and looting of property and the terrorization of the civilian population.¹ Counsel for Norman is now moving through the dwindling list of witnesses quickly and the cross-examinations by counsel for the second and third accused as well as by the Prosecution have generally been succinct. Concerns remain however about the quality of the defence mounted by the first accused, as is evident from the seeming disorganization of the defence team. Counsel for the first accused raised the issue of Norman's health and the bench noted that it was apparent

¹ The Prosecutor Vs Norman et al., Indictment, SCSL-2004-14-PT, 5 February 2004, paragraph 24(a), (b) and (c).

that Norman was having difficulty even standing up in court. Norman did not appear in court during the latter half of the week.

Witness Profiles at a Glance

Haroun Aruna Collier testified in Mende, in open session. The witness continued his testimony from the previous week and the Prosecution's cross examination was completed during Monday's proceedings.

Brima John K. Sei, the 17th witness called by the Defence, testified in Mende in open session. He resides in Panguma, Lower Bambara chiefdom, where he works as a farmer. The witness became a Kamajor in 1996 and was appointed Chiefdom Commander of the Tong field area. He is currently 60 years of age.

Siaka Lahai lives in Tongo, Peyama district and works as a farmer. After being initiated as a Kamajor in 1996 the witness was appointed as a Commanding Officer and was based in Tongo. He testified in Mende in open session.

Keikula Amara lives in Tongo, Lower Bambara Chiefdom and is 47 years old. He is a diamond miner and was formerly a Commanding Officer in the Kamajor movement, which he joined in 1996.

Mohamed Kaineh, the 20th witness called by the Norman defence team, testified in Mende. He currently resides in Kenema where he works as a farmer. The witness became involved in the war when he joined the Civil Defence Committee of his village, Yumbuma, in 1991. In 1994 Mr. Kaineh was initiated into the Kamajor society.

The Continued Testimony of Haroun Aruna

The examination-in-chief, continuing from the previous week, focused on the CDF militia group known as the Death Squad. Mr. Aruna testified that as the front line commander of the Death Squad he was responsible for leading the kamajor fighters into battle. He identified himself as second-in-command to Bob Tucker, the top commander of the Death Squad. He also indicated that he received his orders from the War Council and that the Death Squad reported to the Council as well as to the people of the chiefdom. He explicitly stated that he never communicated situation reports to Norman himself nor did the Death Squad work from Base Zero, where Norman was based.

Counsel for the third accused, Mr. Yada Williams, took the opportunity to cross-examine the witness on various aspects of his evidence-in-chief and had him elaborate on his contact with Kondewa. The witness stated that he had seen Kondewa in Talia Yawbecko, at Base Zero, however he also maintained that Kondewa was not actually based there. The witness stated that Kondewa was not a member of the War Council of Talia nor was he a commander of the notorious Death Squad. Mr. Williams proceeded to read out specific allegations from the past testimony of Albert Nallo, an insider witness for the Prosecution.

The witness categorically denied Nallo's allegations, including the killing and burning of initiates and the use of human ashes in initiation ceremonies. He however stated that the incidents in question never happened at any time, wording which the Prosecution took issue with given the lack of a specific time frame and thus the uncertainty of the presence of the witness. Counsel for the third accused also questioned the witness on his client's authority to punish Kamajor fighters who disobeyed orders. Mr. Aruna maintained that Kondewa did not exercise sufficient power to be able to met out such punishments and that it was up to the War Council to take punitive action against Kamajors. The witness also denied that anyone ever reported atrocities committed by Kamajors to Kondewa, however, as the Prosecution noted in a gesture of fairness, the question presupposed that there were atrocities committed.

Throughout the Prosecution's cross-examination the witness adopted a rather circular and convoluted way of answering questions. A frustrated Chief Prosecutor asked the witness: "Can you tell us why you take so long to answer simple questions?"² As the Prosecution continued its attempts to elicit direct answers from the witness de Silva confirmed that Aruna was widely known to be the second-in-command of the death squad and that at Base Zero the militia's existence was common knowledge. De Silva then noted the prior testimony of Chief Norman, who had lived at Base Zero but had denied any knowledge of the Death Squad. The Prosecution then introduced into evidence a letter allegedly written by members of the Death Squad to Norman and the Prosecution suggested that Norman was in fact the head of the Death Squad, which the witness denied. Furthermore, Aruna alleged that the document in question was in fact a forgery. The witness indicated that the previous testimony of Prosecution witnesses, who had identified the three accused as being in charge of the Death Squad, was false and that Bob Tucker's testimony alleging that he had received direct orders from Norman was also untrue. The witness maintained that the Death Squad had never committed any atrocities and had never done anything wrong.

De Silva then took the unusual step of introducing to the witness two shotgun cartridges, one with a lead shot in it and the other without. He then referred to Norman's previous testimony that shotguns were fired at Kamajors in order to test the immunization process and insinuated that blank cartridges were used. During the re-examination by Dr. Jabbi the witness indicated that the shotgun cartridge without a shot which had been entered into evidence was not in fact the kind used to test the immunization process.

Testimony of BJK Sei

BJK Sei lives in Panguma, Lower Bambara chiefdom, where he works as a farmer. He became a Kamajor in 1996 and stated that he was appointed a Chiefdom Commander by the people of his chiefdom. He testified about the planning of the attack on Tongo by the Kamajors and stated that a message was

² Transcript, 15 May 2006, page 37, lines 15-16

sent to the civilian population regarding the imminent attack and the need to evacuate the town. He corroborated past testimony regarding the carrying out of the first two attacks on Tongo, followed by a third, successful, attack. The witness maintained that he was not a direct participant in the actual battle but he testified that upon his arrival in Tongo, following the third attack, he did not see any corpses nor hear about any civilian deaths.

After the brief examination-in-chief, counsel for the second accused, Moinina Fofana, began his cross-examination of the witness. BJK Sei stated that as a Chiefdom Commander he never discussed matters of policy or strategy for prosecuting the war with Fofana. He also testified that he never communicated, coordinated or liaised with Fofana, nor did he receive orders from him during this period. Mr. Pestman then introduced Exhibit 112, the CDF calendar which describes the various positions held within the CDF hierarchy. When questioned about the paragraph describing Fofana's duties within the organization, the witness replied that he was not aware of any of those listed, nor was he aware of Fofana's duties at Base Zero. BJK Sei also denied that Fofana was in charge of all CDF fighting groups and that he appointed the commanders, as alleged by Prosecution Witness TF2-008.

The cross-examination by the Prosecution focused on the alleged receipt of arms and ammunition sent from Base Zero for, amongst other things, the attack on Tongo. Mr. Sei maintained that the Kamajors under his control were already in possession of their weapons and that he was not aware how other chiefdoms who participated in the attacks got their supplies. The Prosecution referenced the testimony of witness TF2-222, who had alleged that Chief Norman issued instructions to Kamajors regarding the attack on Tongo. It was also suggested by the Prosecution that as Tongo is a densely populated town there must have been extensive casualties on all sides. The witness however maintained that he was unaware of civilian casualties and that he did not see any corpses when he walked around Tongo following the battle. After BJK Sei denied any knowledge of the death of Chief Brima Conteh, who was allegedly killed by one of the witness' commanders, the Prosecution introduced into evidence a previous statement the witness had given to the Prosecution during an interview from 2004. In the statement Sei referred to the killing of Conteh, thereby directly contradicting his claims of ignorance regarding the Chief's death. The witness similarly denied the suggestion that Alpha Koroma, a CDF commander, had directly reported to Norman. Again, he was confronted with his previous statement to the Prosecution in which he stated that Koroma did in fact report to Norman. The Prosecution also contended that, despite his evidence to the contrary, BJK Sei was directly involved in the attack on Tongo. The Prosecution referred to the past testimony of witnesses who had identified Sei as present during the battle. The cross-examination ended as the Prosecution suggested that the witness had extensively lied during his examination-in-chief. The witness' credibility was effectively questioned as the Prosecution was able to indicate the contradictions of his testimony with earlier statements.

Testimony of Siaka Lahai

Siaka Lahai testified about the attacks on Tongo that were carried out by the Kamajors in an effort to regain control of the town from the rebel forces. The witness testified that BJK Sei, commander for the Lower Bambara chiefdom, only arrived in Tongo seven days after the town had been captured. He also stated that he never received orders from Sei to bury corpses, which he indicated as an impossibility given that there were not any corpses after the attack. His evidence in chief largely corroborated the testimony of BJK Sei.

During the cross-examination of Lahai, the Prosecution began reading from the summary of the witness' statement to the Defence. The statement indicated that the witness had seen retreating junta forces moving from house to house in Tongo and killing civilians, especially those suspected of having associated with the Kamajors. Lahai confirmed that this is what he had told the defence team, thereby contradicting earlier testimony of defence witnesses who claimed that there were no corpses in Tongo after the attacks.

Testimony of Keikula Amara

Kekula Amara, who goes by the alias 'Kamabootie', joined the Kamajors in 1996 after being selected by the leaders of his Chiefdom. He eventually held the position of Commanding Officer with the Kamajor movement and he continues to live in Tongo, Lower Bambara chiefdom, where he was based during the conflict. Amara testified about the attacks carried out by the Kamajors on the town of Tongo. He iterated that during the attacks on Tongo, as the rebels retreated, they burnt and looted houses and indiscriminately killed civilians. He also testified that the rebel forces established checkpoints from Kenema to Manu junction and began arresting and killing relatives of the Kamajors. Eddie Masalay was identified by Amara as the leader of the Kamajors in the area who led the fighters in battle. The witness also described the ongoing and large presence of civilians in Tongo during the multiple attacks by the Kamajors. Dr. Jabbi then posed a series of questions to the witness corresponding to the previous testimony of Prosecution witnesses regarding the battle for Tongo. Amara denied that children were ordered to bury corpses in Tongo, as alleged, and he similarly denied allegations that he himself had chopped off the head of a female civilian for cooking food for the rebels. He said that testimony about Kamajors killing civilians, mutilating bodies and burying corpses was untrue.

During the cross-examination conducted by counsel for the second accused, Amara elaborated on his knowledge of Fofana's involvement in the conflict. He denied that Fofana had ever given him orders, even indirectly, and he stated that, contrary to previous testimony by prosecution witnesses, Fofana was not responsible for the planning of the war. Amara denied the allegations of Witness TF2-008, who had identified Fofana as being in charge of all CDF fighting groups and noted that he was not aware that Fofana had been involved with the

appointment of commanders. After Pestman introduced the CDF calendar³ to the witness, Amara disagreed with the description of Fofana contained within the calendar. The cross-examination by counsel for the third accused was similarly succinct and related to the initiation process of the Kamajors. The witness confirmed that he had combat experience prior to being initiated and was of the opinion that many other Kamaaors had similar experience prior to being initiated. Amara also indicated that the Prosecution's suggestion that Kamajors desecrated and mutilated corpses was false as the Kamajors, following the rules taught during initiation, did not touch corpses.

The cross-examination by the Prosecution took on an accusatory tone as de Silva questioned the witness on his own alleged involvement in atrocities against civilians. The Chief Prosecutor suggested that Amara had in fact kidnapped civilians, stolen their property and then ordered for 150 people to be killed based on their tribe. The incident in question, which Amara denied, relates to the witness having transported 500 civilians from Tongo, with only 175 arriving at Talama. Amara also denied being arrested on the orders of BJK Sei and taken to CDF headquarters in Kenema due to his looting of civilian property. These allegations of the Prosecution raise serious questions about the witness' credibility.

The Quality of the Defence of the First Accused

This weeks proceedings highlighted an ongoing issue in the CDF trial. The seeming disorganization of the Norman defence team is increasingly apparent as the defence phase of the trial progresses and more witness are examined. This week it became clear that counsel for the first accused was not aware of certain documents that had been disclosed by the Prosecution following an interview the party had conducted with BJK Sei. The Prosecution had interviewed him during investigations conducted in 2004, with the intention of calling him as a witness in their case. While the Prosecution decided against calling him as a witness the statement they took contained information that was contradictory to the defence witness' evidence-in-chief and was thus used in the cross-examination by the Prosecution to diminish the witness' credibility. The fact that counsel for the first accused was not aware of this document, which had been handed over to the Defence, shows a worrying degree of un-professionalism. Furthermore, much of the information extracted by defence counsel during the cross-examination of witnesses called by the first accused pointed to the poor quality of the examination-in- chief. Counsel repeatedly failed to elicit basic information during the direct, such as the witness' relationship with Norman during the conflict. This reflects insufficient preparation and planning on the part of counsel, a crucial aspect of the effective use of witnesses. The quality of the defence mounted is a crucial aspect of the rights of the accused to a fair trial, as enshrined in Article 17 of the Special Court's Statute⁴.

³ The CDF Calendar was previously tendered as Exhibit 112.

⁴ Statute of the Special Court for Sierra Leone, available at <<http://www.sc-sl.org/scsl-statute.html>>



U.C. BERKELEY WAR CRIMES STUDIES CENTER
SIERRA LEONE TRIAL MONITORING PROGRAM
WEEKLY REPORT

Special Court Monitoring Program Update # 76a
Trial Chamber I - CDF Trial
May 26, 2006

by Alison Thompson
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Summary

Witness Profiles at a Glance

Testimony of Mohamed Bonie Koroma

Testimony of Brima Moriba

Testimony of Chief Lahai Koroma

Testimony of Mohamed Kineh Swaray

Norman's Health

Norman Witness List

Summary

During this fourth week of the current CDF trial session, testimony predominantly centered around two alleged attacks by the CDF: that on the town of Kenema and that on the nearby location known as SS camp. The Prosecution has alleged that in February of 1998 Kamajors attacked and gained control of these two locations, which involved the identification of suspected 'collaborators' and the unlawful killing and infliction of physical suffering on civilians and captured enemy combatants.¹ The testimony of this week's defence witnesses, all Kamajors, thus addressed these allegations and narrated events around these attacks, indicating the actors involved in the context of the command structure of the CDF.

The first accused, Chief Norman, was not present in court for the better part of the week. Norman has had ongoing problems with his hip and his council indicated to Trial Chamber I that he wished to excuse himself from proceedings. The Prosecution, concerned about the potential implication of his absence in the appeals phase, insisted that defence council produce a written document from Norman indicating that he is waiving his right to attend trial.

Trial was adjourned at midday on Friday due to the lack of witnesses ready to testify. The Trial Chamber voiced their concern that trial not be unduly delayed and insisted that the Norman team be prepared to call their next witness on Monday morning. The Norman team cited difficulty in locating some of their witnesses as the cause for delay, however the Chamber invoked the procedural directive that the team should always have at least two witnesses on stand-by.

Witness Profiles at a Glance

Mohammed Bonie Koroma testified in Mende in open session on May 22, 2006. He is the 20th witness called in the Norman defence case. The witness resides in Gbeorbu, a town located in

¹ Indictment, paragraph 24(b)

Gaura Chiefdom. The 55 year old farmer is also a Kamajor and was initiated in Kenema in 1996. He testified primarily about attacks on SS camp.

Brima Moriba testified in open session. The 37 year old was born in the town of Majihun, Nongowa chiefdom, in the Kenema district and became a Kamajor in January of 1997. He testified in Krio on his involvement in attacks on Kenema under the command of Eddie Masalay.

Fallah Bindi testified without protective measures on the 23rd and 24th of May 2006. The 55 year old witness resides in Kenema where he works as a farmer. He became a Kamajor in 1991 and initially fought alongside soldiers in the SLA. He was later appointed as a Commanding Officer by an initiator in the Kamajor movement.

Chief Lahai Koroma, Regent Chief of Tiloma town, testified in Mende in open session. He testified that he was selected by the people of his chiefdom to become a Kamajor and was initiated in 1996 in Kenema by Kamoh Brima Bangura.

Mohammed K Swarey testified in Mende without protective measures over the course of proceedings on the 25th and 26th of May. Mr. Swarey is 46 years old and lives in Boabu Nongowa. He became a Kamajor in 1991 and the witness participated in the Kamajor attack on SS Camp, operating under the command of Mohamed Bhonie Koroma. He also participated in the Kamajor attack on the town of Kenema.

Testimony of Mohammed Bonie Koroma

Mohammed Bonie Koroma testified about his time as a Kamajor, fighting against the RUF rebels in conjunction with SLA soldiers and then eventually in partnership with ECOMOG forces. He testified that he fought under the command of Eddie Masalay, who iterated to the Kamajors that they were fighting as a result of explicit instructions from President Kabbah. The witness contended that he did not see any Kamajor fighter engaging in the looting of property or the burning of houses during the conflict. He also alleged that the population of Kenema was extremely grateful to the Kamajors after they had captured the town from rebel control and that civilians were dancing in the streets. As a battalion commander the witness testified that he had received orders only from Masalay himself. Counsel also asked the witness about previous testimony from Prosecution witnesses who alleged that acts of cannibalism had been carried out in Kenema. The witness flatly denied all such allegations.

After the brief examination-in-chief, counsel for the second accused, Michiel Pestman, began the cross-examination. While the examination started well, with the witness confirming that he had never received orders from Fofana, the witness then elaborated on what he saw as Fofana's official role within the CDF, which involved organizing operations on a national level. The impact of the testimony became ambiguous as the witness gave the impression that Fofana held a high ranking position within the CDF as he referred to him as a 'head man'. However, Koroma also denied that Fofana had had any direct involvement in the war. During the cross-examination by counsel for the third accused the witness confirmed that initiators did not take part in any of the fighting nor in any of the planning of the war.

The Prosecution subsequently began its cross-examination of the witness. After several questions regarding the different commanders present in Kenema at the time of the attacks, the Prosecution suggested that the witness was actually the only battalion commander to have been appointed by Masalay. Koroma confirmed this proposition and in effect highlighted the tenuousness of his testimony in terms of demonstrating who within the CDF hierarchy was responsible for appointments. The witness also conceded that other commanders received instructions from people other than Masalay. He went on to describe Norman as the Deputy Minister of Defence as well as the National Coordinator of the CDF, a position he described as the liaison between the government and the Kamajors. He also named Fofana, the second accused, as the Director of War within the CDF. The Prosecuting attorney carried on to question the witness about specific events around both the attacks on Kenema and SS Camp. Koroma

denied that SS Camp was where captured combatants were executed and similarly denied allegations that Kamajors engaged in the burning of houses and the killing of suspected rebel collaborators in Kenema prior to the arrival of ECOMOG forces. The witness' answers during the cross-examination became increasingly convoluted and he himself became visibly impatient with the process.

Testimony of Brima Moriba

Mr. Moriba is the 22nd witness to testify in the Norman defence case. The 37 year old was born in the town of Majihun, Nongowa chiefdom, in the Kenema district and became a Kamajor in January of 1997. Moriba also alleged that it was the Section Chief who approved of his membership in the group and he was subsequently initiated shortly before the AFRC junta overthrew the Kabbah government. The witness testified that he fought under the command of Eddie Masalay, who had issued instructions to the Kamajors ordering them to remove junta forces from wherever they may be. He participated in the attack on Kenema and contended that the ECOMOG forces arrived shortly after the Kamajors had captured the town and ordered that no houses be burnt. He did not testify explicitly in Norman's involvement in the conflict nor was he asked about it.

The cross-examination for the second accused, conducted by Pestman, was brief but cogent. The witness confirmed that he had never received orders from Fofana nor had he ever reported to him either directly or indirectly, as far as he was aware. The cross-examination by Ansu Lansana for the third accused focused on the initiation process the witness had been through. Moriba reiterated that he joined the Kamajors society in order to protect himself and his family from harassment and extortion. He also elaborated on his belief in the efficacy of the immunization he received and cited that fact that no bullet has ever pierced his body by way of proof of the protection offered. Mr. Lansana asked a series of questions relating to the role of initiators in the conflict and Mr. Moriba alleged that he never saw any of the initiators engaged in battle, nor did they supply any logistics or supplies to the fighters. The witness then denied allegations made by prosecution witnesses regarding atrocities committed by Kamajors against the civilian population and ended his testimony in the cross by stating that he was proud of the role he played in the conflict.

The Prosecution began their cross-examination with the contention that they were not disputing most of what Moriba had stated in court. They made it clear however that they were disputing the witness' testimony regarding the Kamajor attack on Kenema and what happened there. The Prosecution produced a letter allegedly indicating that the superior of the witness' commander, George Jambawaye, was actually appointed by Norman himself. Moriba denied any knowledge of this. The witness was also questioned about the deaths of police officers in Kenema. He however denied that any police officers had been killed there. Moriba conceded that he could not definitively say that no Kamajor had ever broken one of the rules governing the Kamajor movement. Mr. Margai's objections to this line of questioning were not allowed to be heard as it remains at the discretion of the Bench when interventions by defence counsel can be heard on the grounds that they have already had the opportunity to cross-examine the witness. Much of Margai's defence strategy for the third accused, Allieu Kondewa, rests on the fact that as an initiator Kondewa taught various rules of engagement to the Kamajors, including those prohibiting the abuse and killing of civilians.

Testimony of Chief Lahai Koroma

Lahai Koroma was been appointed Regent Chief of Tiloma town subsequent to his membership in the Kamajor society. He was initiated in 1996 in Kenema after being chosen by the people of his Chiefdom. During the examination-in-chief conducted by Dr. Jabbi, the witness contended that he did not hear of or see any atrocities or crimes committed at SS Camp, where he was based from the time of the camp's capture by the Kamajors up until disarmament, several years later. Koroma also contended that although he knew Norman by name he had never actually seen him at SS Camp.

The cross-examination by the Prosecution focused on the witness' activities in Kenema and the commanders under which he fought during attacks. The witness stated CO Sahr was his commander during the attack on SS Camp as well as on Kenema. Although he noted that there were other commanders involved, he alleged that he was unable to name any of them. The witness maintained that he did not see any corpses in Kenema during the ongoing Kamajor attacks. He alleged that he saw one house that had been burnt but did not cede to the Prosecution's insistence that he must have necessarily seen more. The witness was also questioned on specific events that occurred on the first and second day of the town's capture, prior to the arrival of ECOMOG forces. The Prosecution alleged that during this time Kamajor combatants went to the Kenema police barracks and killed seven police officers suspected of having collaborated with the rebels. The witness denied any knowledge of such an incident and went so far as to deny even knowing the meaning of the word 'collaborator'. The witness similarly denied any knowledge of complaints launched by ECOMOG against the Kamajors' behaviour at SS camp. His denial continued, despite the Prosecution's mention of a previous exhibit - that is, a letter of complaint submitted by ECOMOG against the Kamajor KBK Magonna, who was stationed at SS Camp and purportedly killed several civilians.

The Testimony of Mohamed Kineh Swaray

Mr. Swaray is 46 years old and lives in Boabu Nongowa. He became a Kamajor in 1991 and initially worked alongside SLA soldiers under the NPRC government. Once the government was overthrown and the soldiers joined RUF forces in 1996, the witness and other Kamajors retreated into the bush for several months. Subsequently, Swaray participated in the attack launched by Kamajors on SS Camp, operating under the command of Mohamed Bonie Koroma. He also narrated events related to his participation in the Kamajor attack on the town of Kenema, although he was unable to provide any dates for these incidents. He alleged that once the Kamajors had captured Kenema the combatants "danced together with the civilians". The witness also testified that initially, rebels had burnt down the homes of those thought to be relatives of the Kamajors. Once Kenema was controlled by the Kamajors, civilians allegedly burnt down several houses in the town which belonged to those suspected of collaborating with the rebel forces. Dr. Jabbi, counsel for the first accused, ended the examination-in-chief at this point, having excluded any specific information about his client or his actions during the Indictment period from the direct.²

During the cross-examination the witness denied that there were a significant number of civilian casualties at the SS Camp following the Kamajor attack, as alleged in the testimony of Prosecution witness TF2-223.³ The witness also stated that Fofana's position as Director of War had no impact on his activities during the conflict as he never received any orders from him and was not in the same location as him. Counsel for the third accused asked the witness whether it was possible that the Kamajors fired on the police barracks because they were under attack. The witness confirmed this and stated that firing was coming from the barracks and so they defended themselves by shooting in that direction. Counsel asked the witness whether the police officers could have been shot during the course of this firing however Justice Thompson immediately intervened and complained that the question was much too speculative to be allowed. The witness alleged that he did not see any corpses of police officers on the day in question nor had police officers ever been targeted by the Kamajors. The witness subsequently relayed an alleged instance where he discovered Kamajors who were actually disguised rebels who were wearing the traditional Kamajor uniform. He stated that this was a widespread occurrence.

Mr. Bangura, prosecuting attorney, established that it was Arthur Koroma who was in charge of the Kamajors during the attacks on Kenema and SS Camp, however the witness denied any knowledge of who had appointed Koroma despite the Prosecution's suggestion that he had been

² See Berkeley Monitoring Project, Special Court Weekly Monitoring Update #76 weekly summary of May 19th for a discussion on the quality of the defence of the first accused, Norman. Available at <http://socrates.berkeley.edu/~warcrime/SL-archives.htm>.

³ Witness TF2-223 testified in September 2004, this particular allegation was given on the 20th.

appointed by Norman. Counsel also extensively questioned the witness on the three day period between the Kamajors' capture of Kenema town and the arrival of ECOMOG forces, during which the Prosecution claimed that the Kamajors were not subject to any sort of control. The witness categorically denied that he had seen any corpses in the town, that he had seen houses being burnt down or that he had heard about the unlawful killing of police officers during this period. The witness also alleged that the Kamajors did not use any weapons during the attack on SS Camp, rather they relied on the powers received through the immunization process to protect them. Bangura alleged that ECOMOG had made specific complaints about the behaviour of Kamajors in relation to atrocities committed against civilians at SS Camp and within Kenema. He backed up the allegation with reference to Exhibit 89, a letter of complaint written by an ECOMOG Commander to the Vice-President about alleged killings meted out by the Kamajors at SS Camp. The Prosecution also contended that the letter indicated the lack of control that ECOMOG forces were able to exercise over the Kamajors. The witness however denied all knowledge of both such acts as well as of such complaints.

Norman's Health

Norman was not present in Court during the first part of the week but did appear during both Thursday morning and Friday's proceedings. Dr. Jabbi, lead counsel for Norman, indicated that his non-appearance was a conscious decision taken by the first accused. It was subsequently discussed in open session that his absence was due to certain health problems, particularly with respect to a slipped disc in his right hip.⁴ A report was filed with the Trial Chamber by the Chief of detention on the status of Norman's health and the reasons behind his non-attendance in court.⁵ In addition, the Presiding Judge indicated that Norman could be excused from the normal procedure of standing up every time the judges entered and exited the courtroom if this eased the pain in his hip. A request has been made by Norman's counsel to both the Registrar as well as the Chief of Detention for Norman to receive medical treatment for his condition outside of Sierra Leone during the Court recess.

The Prosecution is, however, particularly concerned that a ground for appeal not be filed on the basis that the accused was not present for proceedings. They have therefore been quite insistent that the accused should let it be known in writing the reasons for his non-appearance in court and his acknowledgement that he is waiving his right, in accordance with Rule 66⁶, to be present at his own trial. The Prosecution referred to the jurisprudence established by the *Krstic* case at the ICTY, which maintained that the right to waive the attendance of trial is that of the accused, not any other officer of the court.

Jabbi also proposed the need for an independent medical report to be issued due to the increasing amount of speculation, particularly in the media, about the state of Norman's health. Local newspapers have recently caught on to rumours, purportedly spread by Norman's family, that Norman had actually died in the detention center at the Special Court. The rumours had gotten so out of control that Doctor Harding, the Special Court in-house doctor, issued a statement in which he insisted "Sam Hinga Norman is in good health, he is not dead." The Outreach section of the court has travelled around the country showing recent video footage of Norman to the population in order to dispel increasing speculation as to his condition.

Norman Witness List

Early in the week the Presiding Judge of Trial Chamber I indicated his concern regarding the diminishing list of witnesses in the Norman defence case.⁷ He noted that there remained only a handful of witnesses on that list who are still to testify, there remain however several weeks of

⁴ Details of Norman's medical condition were discussed in open session on 16 June, 2006.

⁵ Report by Chief of Detention of non-attendance in Court of Samuel Hinga Norman, 24 May 2006, SCSL-04-14-599

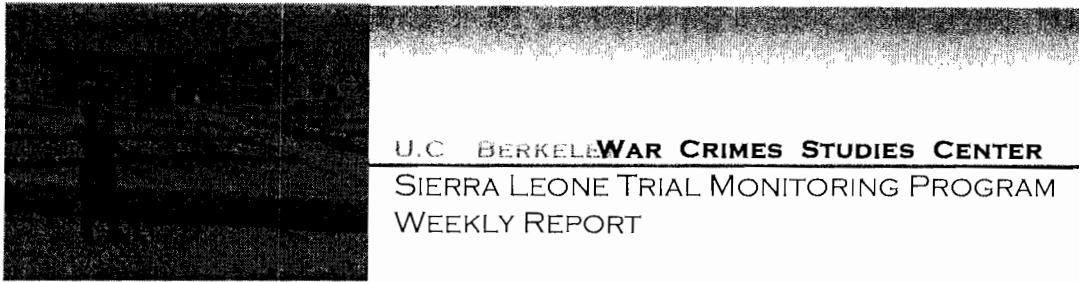
⁶ Rules of Procedure and Evidence, <http://www.sc-sl.org/rulesofprocedureandevidence.pdf>

⁷ The witness list referred to is the following: Norman Further Filing Following Consequential Order to the Status Conference of 22 March 2006 and the Status Conference of 5 April 2006

trial session to complete. The Fofana defence case is not expected to commence until September 2006. Justice Boutet made it clear that the bench will not be inclined to grant any adjournment of the trial for witnesses who are unavailable at the time as there has been plenty of notice. The Trial Chamber reiterated its position that Dr. Jabbi, lead counsel for Norman, and his team are expected to close their case by the end of the current trial session.

On Friday, following the completion of Mohammed Swaray's testimony, the Norman team was unable to produce a subsequent witness nor did they have either of the two required back-up witnesses prepared to testify. The Trial Chamber admonished Dr. Jabbi for not following proper procedure in terms of always having several witnesses on stand-by, ready to testify. Proceedings were thus adjourned until Monday and Jabbi indicated that he was 'hopeful' that he would have witnesses ready for proceedings then. No decision has been issued as of yet by the Trial Chamber regarding the defence Motion for Issuance of a Subpoena ad Testificandum to President Ahmed Tejan Kabbah.⁸ President Kabbah however remains listed as the Norman defence team's first witness.

⁸ Norman Motion for Issuance of a Subpoena ad Testificandum to President Ahmed Tejan Kabbah, 16 December 2005, SCSL-04-14-T-523.



U.C. BERKELEY **WAR CRIMES STUDIES CENTER**
SIERRA LEONE TRIAL MONITORING PROGRAM
WEEKLY REPORT

Special Court Monitoring Program Update #77a
Trial Chamber I - CDF Trial
June 2, 2006

by Alison Thompson
Senior Researcher

Summary
Witness Profiles at a Glance
Testimony of Lansana Bockarie
Testimony of Chief Joseph Ali-Kavura Kongomoh II
WVS Dispute

Summary

This week's proceedings in Trial Chamber I were delayed due to the unavailability of witnesses for the Norman defence case. The defence team for the first accused called three witnesses starting from Wednesday. Chief Joseph Ali-Kavura Kongomoh, the Paramount Chief in the Fakunya district, represents the first witness to testify about the Moyamba crime base. Kenei Torma Kenei also gave evidence with respect to Moyamba and Lansana Bockarie corroborated previous testimony concerning the planning and organization of various attacks by the Kamajors.

The Trial Chamber reiterated its desire that this seventh session of the CDF trial mark the end of the Norman defence case. The presiding judge stated that it would be only under very exceptional circumstances that the defence case for the first accused would continue into the next trial session. The trial session is currently scheduled to finish on June 16, 2006. However, despite the Trial Chamber's explicit wishes that the Norman defence close, there have been an increasing number of problems related to the availability of the remaining witnesses. While the bench indicated its impatience with the absence of a key witness due to medical problems, counsel for Norman argued that much of their strategy and ability to plan is dependent on knowing whether they will be able to call their primary witness, President Kabbah, this trial session. The Trial Chamber is currently

deliberating on the defence motion for the issuance of a subpoena for Kabbah¹ and has indicated that a decision is imminent.

Witness Summaries at a Glance

Lansana Bockarie is the 26th witness called in the Norman defence case. Mr. Bockarie testified in open session in Mende. He was born in Tongo and currently lives in Kenema, where he works as a farmer. He is also a Kamajor and held the position of battalion commander in the Kenema district during the conflict.

Chief Joseph Ali-Kavura Kongomoh II testified in English in open session. He has been a Paramount Chief of Fakunya District, Moyamba Chiefdom since 1994. He represents the first witness called by the defence who can address the Moyamba crime base.

Kenei Torma Kenei testified in Mende in open session. The witness was born in Pujehun district and now resides in Mogbeh town, Bontho district. He is currently working as a farmer. He was initiated by the third accused, Allieu Kondewa, and fought as a Kamajor during the conflict. Kanneh testified about the recruitment of Kamajor fighters and gave evidence concerning Moyamba town, where he acted as battalion commander.

Testimony of Lansana Bockarie

The Norman defence team called Mr. Lansana Bockarie as their next witness in the CDF trial. The witness was listed on the defence team's back-up witness list and was called following a delay in trial due to the team's inability to locate the remaining witnesses on its core list. The Presiding Judge indicated the Trial Chamber's displeasure with the fact that the summary of the witness' statement was only disclosed the previous day. However, as this is the first of the defence cases at trial, the judges appear wary of penalizing Norman for the behaviour of his court appointed counsel. The team was thus allowed to proceed with the testimony of this unscheduled witness.

Lansana Bockarie narrated events surrounding his initiation into the Kamajor society in Kenema, as well as his participation in the Kamajor attack on the town of Zagoda, in conjunction with Executive Outcomes. The witness also described the capture of Kailahun district as well as a trip to Conakry. He alleged that he traveled to Conakry in order to meet with President Kabbah to discuss what should be done in terms of defending Sierra Leone against rebel attack. At this time the AFRC and the RUF combatants had joined forces. This alleged consultation with the President while he was in exile in Conakry reinforces the linkage the defence wishes to establish between the subsequent actions of the Kamajors and the President's knowledge and authorization of such actions. Bockarie also testified that he had participated in the attack on Tongo and that during such battles the Kamajors adhered to a strict hierarchy allowing for control and command. He also testified about the interaction between ECOMOG forces and the

¹ See *The Prosecutor v Samuel Hinga Norman, Moinina Fofana and Allieu Kondewa* (SCSL-04-14-T) "Norman Motion for an Issuance of a Subpoena *Ad Testificandum* to President Ahmed Tejan Kabbah", 15 December 2005 and "Fofana Motion for an Issuance of a Subpoena *Ad Testificandum* to President Ahmed Tejan Kabbah", 15 December 2005.

Kamajors, indicating that the forces exerted control over the Kamajor fighters and organized battles the witness participated in, such as that at Kono. He also gave evidence that he had been appointed as a battalion commander by Alpha Koroma, whom he identified as the CDF co-ordinator for the Kenema district. Bockarie was unable to provide the court with any sort of time-frame for the events he was narrating, which meant that testimony was often confusing and unclear.

The cross-examination by counsel for the third accused, Mr. Ansu Lansana, focused on the witness' experience with the initiation process. Bockarie maintained that after a Kamajor had undergone the initiation process he was effectively protected by bullets, had an increased degree of bravery and, as a whole, the Kamajors were no longer suffering significant fatalities. He again indicated that he met the third accused only once ECOMOG forces were in control of the country. The witness reiterated what previous defence witnesses have stated, which is that the initiators did not participate in combat nor did they distribute weapons or organize attacks, although he noted one or two exceptional cases.

The cross-examination by the Prosecution focused on the disputed event of the Kamajors' attack on Tongo. The Prosecution noted that a previous defence witness had testified that he had entered Tongo together with Bockarie, however Bockarie denied this evidence and continued to deny ever participating in the attack. Bockarie also maintained that he had not seen any corpses in Tongo nor had he lead a group of Kamajors in an attack on the town of Buema, as alleged by a previous defence witness. The Prosecution has consistently highlighted contradictions between various defence witnesses' testimony during cross-examination.

The Prosecution dealt a major blow to the value of Bockarie's testimony for the defence when the witness admitted that he did not actually meet President Kabbah when he traveled to Conakry. Rather, the witness met with a messenger for the government. The Defence's attempt to establish a direct link between the President and his authorization of Kamajor activities was thus thwarted.

The remainder of the cross-examination involved the Prosecution putting various allegations to the witness regarding the behaviour of Kamajors towards civilians during the conflict. Questions focused on the specific period between the overthrow of the government and the arrival of ECOMOG forces. Bockarie flatly denied all such allegations involving the unlawful killing of civilians, looting, the use of child soldiers and the treatment of captured enemy combatants. The witness did however admit that he had heard about the perpetration of killing and looting by Kamajors, however he denied ever having seen such acts.

Chief Joseph Ali-Kavura Kongomoh II

The paramount chief of the Fakunya district, Moyamba Chiefdom, began his testimony by describing the requirements of membership in the Kamajor society. This supposed recruitment criteria required that the candidate be a citizen of the chiefdom, be 18 years of age or older, have no criminal record and in addition the potential recruits must exhibit

respect for elders and colleagues. He testified that prior to his departure from the country in 1997 he saw that these requirements were being observed in the recruitment process. Upon his return to Sierra Leone from the United States a year later the witness testified that he met with Vice-President Demby in late 1998. At this time the witness testified that Demby called on all Kamajors to assist in the defence of Freetown, which was predicted soon to come under rebel attack. Kongomoh alleged that he subsequently formed a committee and received money from the government in order to facilitate the mobilization of Kamajors in the defence of the city.

Counsel for the first accused then led evidence on the difference between initiation and recruitment. The witness confirmed that not all initiates were subsequently recruited as some utilized the initiation process simply as a form of protection. He also maintained that initiates below the age of 18 were not allowed to be recruited into fighting forces. Kongomoh also testified that the command structure that existed with the Kamajors operating in the Fakunya district was fully entrenched in the chieftdom hierarchy and that it was the Chiefs who provided food and logistics to the fighters.

Initially, the Prosecution's cross-examination focused on the witness' reasons for his prolonged stay in the United States during the conflict. However, this was dropped after the defence made several objections as to its relevance and appropriateness. The Prosecution's cross-examination then centered on the activities of a member of the witness' extended family, whom the witness referred to as his "grandson", in an ongoing attempt to assert the prevalence of child soldiers during the conflict. The Prosecution noted that his grandson had been immunized and initiated as a Kamajor when he was 15 years old. The witness continued to maintain that he had not been recruited into a fighting force and that he had actually been 17 years old at the time of his initiation. The Prosecution however contended that the witness' grandson had participated in fighting activities on behalf of the Kamajors and referred to interview notes they had collected when investigators previously interviewed the witness as a potential Prosecution witness. The witness acknowledged that he had heard about the incident involving his grandson acting with Kamajors against rebel forces, but stated that at the time in question his grandson was 17 years and 4 months of age.

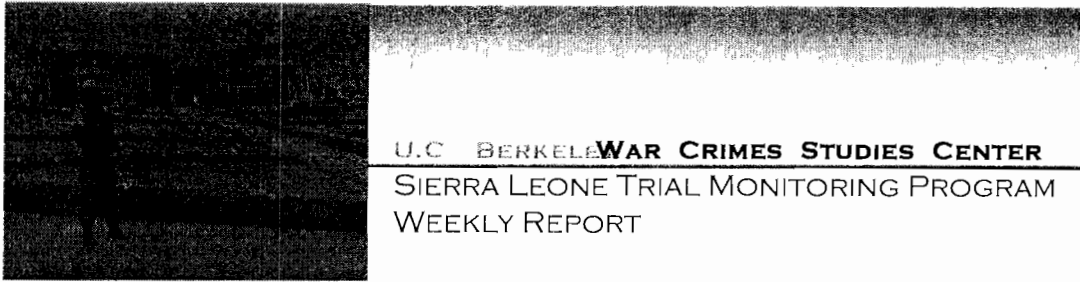
During the re-examination by counsel for the first accused, lead counsel attempted to clarify the witness' testimony regarding the age of his grandson. The witness stated that he had meant that his grandson was 17 years and 4 months old at the time of his initiation, and not at the time of the incident with the rebels. The Prosecution objected however and argued that it was clear during the cross-examination that the age of the grandson was related to the time of the incident and did not warrant any questions of clarification in the re-examination. Justice Boutet voiced his agreement with the Prosecution and counsel finished the re-examination.

WVS Dispute

During Friday's proceedings the Trial Chamber indicated that it would like to hear Dr. Jabbi's comments on the documents submitted by Witness and Victims Support Unit (WVS), regarding comments made by Jabbi to the Trial Chamber on Monday. The

document submitted by WVS concerns Jabbi's comments about the unit's work in locating witnesses and bringing them to Freetown. The WVS felt that Jabbi was unfairly blaming them for the unavailability of certain witnesses and felt the need to bring the disputed information to the Trial Chamber's attention. The presiding judge, Justice Boutet, was particularly concerned about the inaccuracies the court may have received from Jabbi's account of events, especially considering his role as an officer of the court. Justice Boutet noted that the WVS documents show that most of the fifteen witnesses being held for the Norman defence were allowed to return to their respective homes with the consent of counsel.

Dr. Jabbi, however, was apparently reluctant to address the issues and insisted that the WVS be given copies of the transcripts from Monday's proceedings so that they have an accurate account of what exactly was said. Justice Boutet consented and stated that a WVS representative would be in court on Monday, when the matter would be taken up.



Special Court Monitoring Program Update #78a
Trial Chamber I - CDF Trial
9 June, 2006

by Alison Thompson
Senior Researcher

Summary

No witnesses testified during this, the sixth, week of the CDF trial session. The court reconvened proceedings from the previous week on Wednesday. Proceedings were again adjourned until the following Wednesday, June 14, 2006, as the Norman defence team was unable to arrange for the appearance of any of their remaining witnesses, the two remaining key witnesses to be called being President Kabbah and Major General Abdul-One Mohammed.

A decision on the defence motion for the issuance of a subpoena for President Kabbah¹ is still pending and the Presiding judge indicated that it would not be available before Tuesday of next week. The defence team has informed the court that the Major General is not currently able to travel from Nigeria, where he resides, in order to testify in the current trial session. This is due to his ill health. The team filed a report on the status of this witness with the Trial Chamber.² Dr. Jabbi, lead counsel, indicated that his team was in the process of deciding whether the evidence of Witness 26 (from the team's core list of witnesses) could be submitted under the 92bis rule, which allows the 'Chamber to admit as evidence, in whole or in part, information *in lieu* of oral testimony'.³

Related to these witness issues, the Norman team filed a motion on the sixth of June asking to defer any further evidence and postpone the closure of the Norman defence case to the following trial session, which will commence in September 2006.⁴ The Trial Chamber has repeatedly voiced its desire to have the Norman defence case completed by

¹See *The Prosecutor v Samuel Hinga Norman, Moinina Fofana and Allieu Kondewa* (SCSL-04-14-T) "Norman Motion for an Issuance of a Subpoena *Ad Testificandum* to President Ahmed Tejan Kabbah", 15 December 2005 and "Fofana Motion for an Issuance of a Subpoena *Ad Testificandum* to President Ahmed Tejan Kabbah", 15 December 2005.

² Report About Prospective Defence Witness Major General Abdu-One Mohammed of Nigeria

³ Rules of Procedure and Evidence, Rule 92bis: Alternative Proof of Facts, amended 14 May 2005.

Available at <http://www.sc-sl.org/documents.html>.

⁴ Norman Motion to Defer Further Evidence and Closing of his Case to September-December 2006 Trial Session, SCSL-04-14-608, 6 June, 2006.

the end of the current trial session and, subsequently, to have the Fofana defence case commence in September.

The Trial Chamber issued a decision this week related to the requests by the second and third accused for leave to raise evidentiary objections. Defence counsel have repeatedly attempted to intervene during the Prosecution's cross-examination of witnesses that have been called by other Accused (after the completion of their own cross-examination).⁵ The Trial Chamber has indicated that they will assess such interventions in a contingent, context-specific manner. In response to the most recent defence application the Trial Chamber acknowledged that, in such multi-Accused trials, cross-examination may not be strictly limited only to those issues that arise from the direct examination of a witness.⁶ However, the Chamber opined that in such situations, where objections during the cross-examination by the Prosecution were to be raised, counsel can consult with counsel who did call the witness and raise objections through them. In specific cases counsel can seek leave to object to questions raised by the Prosecution in cross-examination and the Chamber would assess such applications on a case-by-case basis, in the interests of justice. The Chamber stated that such a practice was in line with that of other international criminal tribunals and reiterated its earlier, oral rulings of February 9th and 20th, 2006. The procedural aspects of such a joint trial have become major points of controversy in the Trial Chamber I courtroom, with defence counsel feeling increasingly frustrated that they are unable to address issues that they perceive as being in the interests of their client.

⁵ Counsel for the third accused has been a strong advocate in favour of the allowance of such objections. In addition to an oral application made February 9th, 2006, please see "Third Accused's Request for Leave to be at Liberty to Raise Evidentiary Objections During Prosecution's Cross-Examination of Witnesses Not Called by Him", 24 February 2006.

⁶ Decision on the Third and Second Accused's Request for Leave to Raise Evidentiary Objections, SCSL-04-14-T-613, 8 June 2006.

Special Court Monitoring Program Update #79a
Trial Chamber I - CDF Trial
16 June, 2006

by Alison Thompson
Senior Researcher

Summary
Kabbah Subpoena Decision

Summary

This final week of the CDF trial session saw proceedings reconvene on June 15th, due to difficulty in locating the few remaining witnesses in the Norman defence case. Upon recommencement of the trial, the Trial Chamber issued its long awaited decision on the Fofana and Norman joint Defence motion to issue a subpoena to President Kabbah.¹ Kabbah is currently listed as the first witness in the Norman defence case. In the majority decision (Thompson J dissenting) the Trial Chamber dismissed the Defence's motion, representing a major setback for the defence of the first and second accused. It is rumoured that Chief Norman, the first accused, maintained President Kabbah's supreme importance as a witness by saying that if he testified there would be no need to call any other witnesses in his defence case.

Recommencement on Thursday was somewhat short-lived as Dr. Jabbi, lead counsel for the first accused, requested that the Trial Chamber adjourn until the following morning to give the judges time to discuss certain outstanding issues of concern regarding Norman's health, a point of major speculation within the local media. Jabbi indicated that the Court's doctor had examined Norman and that he was now in a position to recommend immediate action for his client's condition. According to counsel, Norman requires a hip replacement operation, a form of surgery that is only available outside of Sierra Leone. Jabbi further indicated that, thus far, the team had not received a satisfactory response from either the detention facility officials or the Registrar with respect to organizing proper arrangements for the necessary treatment. Counsel again indicated that if the surgery were organized in an expedient fashion, disruptions to future trial sessions could

¹ 'Decision on Motions by Moinina Fofana and Sam Hinga Norman for the Issuance of a Subpoena *Ad Testificandum* to H.E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone', SCSL-04-14-T, 13 June 2006

be avoided by having the procedure performed during the upcoming summer recess. The Presiding Judge reminded Jabbi that, given the accused's detention, there were administrative as well as legal obstacles to counsel's recommended course of action. The Chamber also noted that they would prefer for Jabbi to outline a specific, feasible judicial action he desired from the bench as recourse to the difficulties he faces in arranging for his clients proper medical treatment.

Justice Boutet did, however, issue the following statement from the Trial Chamber:

“The Chamber, while recognizing that the Registrar in the discharge of his duties and responsibilities to oversee and supervise the administration of the detention centre and the detainees of the Special Court, do urge the Registrar to intensify the action that he has already undertaken to provide remedial solution to the medical problems of the first accused, Mr. Sam Hinga Norman.”

Counsel for Norman seemed satisfied with this intervention and promised to pursue the matter.

The Presiding Judge then adjourned the CDF case until after the summer recess, due to the unavailability of the Norman team's remaining witness², when the trial will reconvene in September 2006 with a status conference scheduled for the 12th of that month.

Kabbah Subpoena Decision

The initial written motions requesting the issuance of the subpoena were filed with the Trial Chamber by the Fofana and Norman defence teams on December 15 and 16, 2005, respectively.³ Both the Prosecution and the Attorney General of Sierra Leone submitted that the application should be denied and the motions dismissed. After hearing oral arguments from the Norman and Fofana defence teams, as well as from the Attorney General and the Prosecution in February, the Trial Chamber took approximately four months before it issued its decision on Tuesday of this week.

The Trial Chamber's 'Decision on Motions of Issuance of a Subpoena to President Kabbah'⁴ was issued much later than expected, considering the first accused has the President listed as the first witness to be called in his defence. As the Norman defence case is in its final stages the possibility of closing the case this session, as planned, has been in question as all parties awaited the issuance of this critical decision by the Trial Chamber.

² With the Kabbah subpoena motion denied, the Norman team's remaining witness continues to be unable to travel to Sierra Leone from Nigeria at this time due to ill health.

³ 'Fofana Motion for Issuance of a Subpoena *Ad Testificandum* to President Ahmad Tejan Kabbah', 15 December 2006, and 'Norman Motion for Issuance of a Subpoena *Ad Testificandum* to H.E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone', 16 December 2006

⁴ 'Decision on Motions by Moinina Fofana and Sam Hinga Norman for the Issuance of a Subpoena *Ad Testificandum* to H.E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone', SCSL-04-14-T, 13 June 2006

In the majority decision, with Justice Thompson dissenting, Justice Boutet and Justice Itoe went through the various submissions made by all parties, focusing on arguments related to the ‘purpose’ requirement and the ‘necessity’ requirement contained within the advanced legal standard for the issuance of a subpoena, Rule 54.

The Rule⁵ stipulates the following:

‘At the request of either party or of its own Motion, a Judge or a Trial Chamber may issue such Orders, Summonses, Subpoenas, Warrants and Transfer Orders as may be necessary for purposes of an investigation or for the preparation or conduct of a trial.’

The Chamber stated that it found that the defence’s submissions, which maintained that President Kabbah is in possession of information highly relevant to the Consolidated Indictment and that his failure to testify would effectively deprive the Chamber of important evidence, did not manage to meet the threshold set forth in Rule 54. The Chamber reasoned that the arguments advanced either failed to “demonstrate that the proposed testimony would materially assist the case of the First or Second Accused”, as dictated by the purpose requirement, or failed to “show that the proposed testimony is necessary for the preparation or conduct of the trial”, as stipulated by the necessity requirement.⁶ The Chamber specifically referred to the fact that by adopting each others submissions, the two defence teams failed to show the materiality of the evidence for the team adopting the other parties’ arguments.

In the decision, the Chamber rejected the argument that President Kabbah was in a unique position to offer exclusive insights into determining who bears the ‘greatest responsibility’ and noted that the President is not the sole source of pertinent information as the Fofana team had itself cited the former Vice President, former members of the CDF National Coordinating Committee and former members of the War Council, amongst others, as offering potential insight into the relative culpability of the three accused. As the Chamber considered that this information could be obtained by other means (that is, through the testimony of other figures of authority) the ‘necessity’ criteria was not fulfilled. Furthermore, the Trial Chamber reasoned that the argument that Kabbah could be one of the persons who bears the greatest responsibility does not absolve the other accused of their own individual criminal responsibility. Accordingly, the testimony of Kabbah would not materially assist the case and he should, as such, not be compelled to testify. While the Chamber acknowledged the difficulty for the defence teams to provide very specific aspects of Kabbah’s potential testimony given his refusal to meet with the teams and provide a pre-testimony interview, the majority decision did state that “an applicant is not allowed for that purpose to embark on a ‘fishing expedition’.”⁷ The decision also lamented the lack of specificity of the application with respect to indictment-related issues and cited the general assertions it contained,

⁵ Rules of Procedure and Evidence, Rule 54, available at <<http://scsl-server/scsl/new/rulesofprocedureandevidence.pdf>>

⁶ ‘Decision on Motions by Moinina Fofana and Sam Hinga Norman for the Issuance of a Subpoena *Ad Testificandum* to H.E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone’, SCSL-04-14-T, 13 June 2006, paragraph 32

⁷ *Ibid.*, paragraph 47

regarding the potential impact of the testimony on the process of deliberation with respect to any of the crimes or modes of liability, as insufficient to substantiate the arguments advanced in the motions.

Justice Itoe's separate concurring opinion was of a substantially different nature than the majority decision.⁸ Justice Itoe focused on his view of the "legal impossibility and impermissibility" for the Trial Chamber to issue the requested subpoena. He contended that President Kabbah, as sitting head of state, enjoys immunity from process under Sierra Leonean law, particularly Article 48(4) of the Constitution of Sierra Leone. Furthermore, the subpoena's illegality also made it unenforceable, implying that a court should not act in vain. The separate concurring opinion also supported the Prosecution's submitted jurisprudence from the Appeals Chamber at the ICTY of the *Kristic* case, which noted that there exist some categories of Government Officials who do enjoy immunity. He subsequently referred to heads of state as "The Princes who govern us"⁹, revealing a rather elitist perspective on modern democratic government. Itoe also noted the consequences of the issuance of the subpoena and argued that by issuing the order the "interests of peace, law and order and the stability of the Country and of its Institutions"¹⁰ may be put in jeopardy. He contended that the subpoena should accordingly not be issued.

The dissenting opinion in this majority decision came, somewhat surprisingly, from Justice Thompson, the one Sierra Leonean member of the Chamber.¹¹ It was widely speculated that he would deny the motion due to the difficult political position the issuance of the subpoena could potentially place him in. However, in his ten page opinion, Thompson J. stated that his disagreement with the majority stems from "reasons anchored in the nature, scope, meaning and application of the Rule..." used as the legal standard to be met by the application. He stated his opinion that it is of paramount importance that the Chamber remain flexible in their process of receptivity of evidence in order to assist in the ascertainment of the truth of the events and allegations laid out in the Indictment. He also argued that this was a fundamental requirement of the doctrine of equality of arms and the principle of fairness, and that it is particularly relevant to Article 17(4) of the SCSL Statute, that ensures that accused persons are entitled to have witnesses testify on their behalf.

Justice Thompson advanced the argument that the injunction of Rule 89 is that the reliability of evidence should not be assessed at this stage of the admission of evidence, but only once all evidence has been heard, thereby making the tests of 'forensic purpose'

⁸ Separate Concurring Opinion of Hon. Justice Benjamin Mutanga Itoe on the Chamber Majority Decision on Motions By Moinina Fofana and Sam Hinga Norman for the Issuance of a Subpoena *Ad Testificandum* to H.E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone, SCSL-04-14-T, 13 June 2006

⁹ *Ibid.*, paragraph 132

¹⁰ *Ibid.*

¹¹ 'Dissenting Opinion of Hon. Justice Bankole Thompson on Decision on Motions By Moinina Fofana and Sam Hinga Norman for the Issuance of a Subpoena *Ad Testificandum* to H.E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone', SCSL-04-14-T, 13 June 2006

and 'last resort' logically flawed. The present assessment of the potential evidence would amount to the "predetermination of its probative value".¹² Having dismissed the debate over whether the submissions meet the standard, Thompson locates the crux of the debate around whether the SCSL has jurisdiction to issue subpoenas to any person in Sierra Leone. The immunity argument advanced by the Attorney General was rejected by Justice Thompson on the grounds of major legal differences between the case at hand and the ICTY *Milosevic* case cited by the Prosecution and Attorney General in their submissions. He also rejected the idea, advanced by the Attorney General, that a court should base its determinations of the merit of such matters according to whether or not such an order will be complied with and noted it to be in opposition to the principle of legality. In citing Cassese, Thompson argued that the protection of human dignity requires that state agents acting in their official capacity no longer enjoy protection from legal process. He argued that the language of Rule 54 represented a clear directive that must be read plainly and unambiguously and stated the following: "The Rule does not require the Defence to show by clear and convincing evidence or on a preponderance of evidence that the issuing of the subpoena is necessary for the purpose of investigation or for the preparation or conduct of the trial. Any such requirement would be unduly burdensome and exacting."¹³ Thompson concluded by arguing that the Defence had demonstrated by *prima facie* evidence that the issue of the subpoena is necessary for the investigation, preparation and conduct of the trial for the defence case.

With the application dismissed, counsel for the second accused indicated that they would immediately file a motion requesting leave to seek an appeal to the Trial Chamber's decision. Both the first and second accused have indicated that Kabbah, a common witness, would give key evidence in their respective cases.

¹² *Ibid.*

¹³ *Ibid.*, paragraph 23

Special Court Monitoring Program Update #90a
Trial Chamber I - CDF Trial
6 October, 2006

by Alison Thompson
Senior Researcher

Summary

Witness Profiles at a Glance

The Testimony of Brima Tarawally

The Cross-Examination of Tarawally

Debate: Joint Criminal Enterprise and Article 17(4)

Summary

With the commencement of trial on Thursday, Justice Thompson asked that the court proceed with the presentation of the defence case for the third accused. Counsel for the third accused obliged and opened its case, calling its first witness, Mr. Brima Tarawally. The presentation of the case for the second accused is currently being held in abeyance, awaiting the availability of their final witness, an expert scheduled to testify on the 9th of October.

The witness list for the third accused was recently reduced to 12 and the presentation of the defence case is expected to last approximately one week.

The first witness called by the Kondewa team proved to be a controversial one, with proceedings moving into closed session almost immediately, given the witness' desire to address the court regarding a series of incidents that occurred prior to his testimony. The cross-examination of the witness was lengthy and subject to numerous interruptions, given ongoing objections by the defence, continuous interjections by the bench and the seeming unwillingness of the witness to answer directly the questions posed to him.

Witness Profiles at a Glance

Brima Tarawally testified in English in both open and closed session. Mr. Tarawally lives in Telu, Jiama Bongor Chiefdom, Bo district and estimated his age to be just over 60 years old. He is a member of the Kamajor society and became Chiefdom Field Supervisor after being initiated in 1997.

The Testimony of Brima Tarawally

The presentation of the case of the third accused began with the examination-in-chief of the first witness, Brima Tarawally, however after an initial question posed by counsel, Yada Williams, regarding the 1997 coup, the witness took control of proceedings. He stated to counsel: "Before proceeding with any testimony in respect of the statements in your possession, I had insisted, during arguments and counter-arguments between

yourself and I...”¹, with counsel interdicting him from continuing, saying “Mr. Witness, there will be no time for that”², alluding to the statement the witness wished to make to the court. The Presiding Judge ordered a brief stand-down in order to allow counsel and the witness to repair any apparent miscommunication between them, despite counsel’s insistence that no such miscommunication existed and that this had been previously discussed between counsel and witness, with a decision made that the witness would address the chamber at the end of his testimony in order to air his concerns. Out of an abundance of caution, the Presiding Judge indicated that he preferred for the matter to be sorted out sooner rather than later.

Once proceedings had reconvened, Williams made an application for the witness’ concerns to be immediately heard in closed session. With proceedings in closed session counsel stated how the witness had disclosed certain things to him that could potentially bring these proceedings into disrepute. After hearing the witness’ narration of events leading up to his testimony as a witness at the Special Court the trial chamber indicated that it had taken the matter under advisement and that it would issue an appropriate ruling shortly. Proceedings resumed in open session.

The witness testified that he was in Liberia at the time of the 1997 coup and returned to Sierra Leone in order to verify his family’s safety. He subsequently returned to Liberia where he sought out Chief Hinga Norman, who was located outside of Monrovia at that time. The witness requested arms and ammunition from Norman so that the Kamajors could better defend the Jiama Bongor Chiefdom, where his family was located. Norman allegedly replied that ECOMOG forces would be the appropriate channel for such requests, given that he and the Kamajors operated under its command. According to the witness, Norman indicated that supplies were low as ECOMOG had recently delivered an arms shipment to the CDF forces in Gendema.

The witness stated that he knew the third accused, Allieu Kondewa, and that he had met him during his first visit to Talia Yawbecko, where Base Zero was located. He was not, however, initiated as a Kamajor by Kondewa, but rather by Kamoh Lahai Bangura. The initiation was performed in order to “render (him) invulnerable to gunshots”³ as well as to ensure the protection of the people of his chiefdom. He also stated that upon initiation he was taught the rules by which a Kamajor must abide, including the interdiction against the killing of civilians. The witness described Kondewa’s activities at Base Zero during his time there from 1997 through to 1998 as ‘cultural activities’ and he further indicated that he was uncertain whether Kondewa was a member of the War Council⁴ or not. He characterized Kondewa’s role as completely separate from the trainings and combat activities associated with Base Zero.

¹ SCSL Transcript, 5 October 2006, page 4, lines 16-18

² *Ibid.*, line 20

³ *Ibid.*, page 36, lines 3-4

⁴ The CDF War Council was convened at Base Zero and constituted one of the highest decision-making bodies in the CDF and was also responsible for disciplinary matters.

The witness also confirmed that the Death Squad, led by Borbor Tucker, was based out of Base Zero – a group witnesses for the first accused had denied existed. However, he also refuted the testimony of Prosecution witness TF2-008, who testified in November 2005 that Kondewa was in charge of the Death Squad. Tarawally referred to this allegation as ‘ridiculous’.

The witness gave various detailed examples of disciplinary action taken by the War Council against Kamajors who had broken the rules of the Kamajor society and behaved inappropriately towards civilians. This included the punishment issued to Vanjawai, a commander in Jiama Bongor.⁵ Tarawally also testified that according to the information he had received Mustapha Fallon, whose brother had recently testified on behalf of the second accused, had died at the hands of the AFRC in Koribundu, following the CDF attack there, thus contradicting the testimony of the Prosecution’s key insider witness, Albert Nallo. Counsel proceeded to put various allegations made by witnesses for the prosecution over the course of its case, which Tarawally either denied and contradicted with different evidence or simply denied, saying that to his knowledge these incidents did not happen. The witness seemingly possessed detailed knowledge of CDF operations at Base Zero and provided specific information in his testimony with respect to the roles and responsibilities of the various CDF commanders and leaders. He often refuted the Prosecution’s theory presented during its case, particularly with respect to the role of the third accused.

The Cross-Examination of Tarawally

The cross-examination, conducted by Prosecuting attorney Kamara, initially focused on the witness’ relationship with Chief Norman, who had been Regent Chief of Jiama Bongor Chiefdom beginning in 1994. Despite Tarawally’s attempts to portray his relationship with Norman as neutral, the witness confirmed Kamara’s supposition that he was a member of the group Concerned Kamajors, which supports the defence of Norman. The alleged bias of the witness was emphasized by Kamara, who characterized the witness as having a personal stake in Norman’s defence. Tarawally denied having made a statement that he believed that only the defence teams of the second and third accused could clear Norman of the charges he faces at the Special Court. Kamara then suggested that the witness was here to testify in order to bring this belief into a reality and suggested that he was here “in a political crusade, and not to volunteer the truth”⁶. Tarawally adamantly denied the latter assertion.

On Friday Kamara continued his cross-examination, questioning the witness on various meetings he had observed during his time at Base Zero. He also posed questions related to the Koribundu attack and Operation Black December, in which the witness had been involved, as well as the CDF’s use of child soldiers. Tarawally maintained that his involvement in CDF attacks was solely in an administrative capacity and that, despite the

⁵ The punishment of Vanjawai was continuously brought up during the defence of the first accused, as after the War Council issued a death sentence on Vanjawai for his crimes, Chief Norman allegedly intervened and cautioned the Council against using the death penalty. Vanjawai was subsequently imprisoned at Base Zero. The current witness confirmed this version of events.

⁶ SCSL Transcript, 5 October 2006, page 82, line 12

Prosecution suggesting otherwise, he did not directly engage in combat operations. The witness also stated that he could not remember what he had said in his statement to the defence in 2005 regarding the relationship between the AFRC forces and the civilians in Koribundu. The witness was uncooperative with the Prosecuting attorney, making for a slow and tedious cross as every question had to be re-phrased several times before a proper answer was given by the witness. The bench also consistently intervened during the cross, given the often ambiguous and argumentative nature of the questions being posed. Proceedings were adjourned until Monday, with the continued cross-examination of Tarawally expected to be brief, followed by the testimony of expert witness Dr. Hoffman for the second accused.

Debate: Joint Criminal Enterprise and Article 17(4)

During Thursday's proceedings, the Prosecution's line of questioning shifted to the witness' knowledge of Fofana's responsibilities at Base Zero. Counsel for the second accused interjected immediately however, arguing that there was no evidence related to the second accused during the witness' examination-in-chief and that consequently no issues were explored by the defence team of the second accused in cross-examination, thereby making it inappropriate for the Prosecution to elicit evidence with respect to the second accused during the cross. Kamara responded that it was the Prosecution's theory of joint criminal enterprise that enabled them to question this witness on Fofana's activities as they were not limited in establishing its case through defence witnesses to any particular Defence. The bench allowed the Prosecution to continue, however it noted that it would regard such testimony with great circumspection recalling that the three accused are being tried separately.

Tarawally stated that the second accused was the key-holder to the arms and ammunition storage space at Base Zero when the Logistics Officer was not present, but refused to confirm the Prosecution's suggestion that Fofana was in charge of these supplies. The witness also refused to confirm that the second accused worked closely with Norman while at Base Zero, as suggested by Kamara. With further objections by counsel for the second accused, given their inability to re-examine the witness, the bench asked the Prosecution to clarify the exact purpose of their line of questioning, given that the doctrine of fundamental fairness was given utmost importance in the trial. Kamara confirmed that his questions were not meant to discredit the witness but rather to establish substantial support for the form of liability embedded in the charge of joint criminal enterprise. A decision on the permissibility of such questioning was delayed until the following day's proceedings however and trial was adjourned.

On Friday morning, counsel for the second accused submitted a document related to their objection with the relevant Rules of Procedure and Evidence, as related to the SCSL Statute, in further support of their position. Powles argued that the cross-examination of this witness, called by another accused, on matter related to the second accused was a violation of Article 17(4)(b) of the Statute as the lack of notice precluded the defence from the possibility of having adequate time and facilities to prepare. Powles also argued that Fofana had been denied the right, enshrined in Article 17(4), to examine all witnesses against him (given that they declined to cross-examine the witness based as

he had not testified in the examination-in-chief about Fofana). He also noted the possibility that there may be exculpatory evidence in the possession of the co-accused that has not been disclosed to any of the parties. As a further point, Powles noted that there was also evidence in the possession of the Prosecution that may affect the credibility of Prosecution evidence, and that they were thus possibly in breach of Rule 68(B). Powles restated that his ideal remedy to the situation would be to have the line of cross-inquiry deemed impermissible and the evidence as inadmissible.

The Prosecution, in comparison to the organized and researched submissions made by the defence, seemed ill-prepared. The bench noted that it would be prepared to hear relevant case law authorities on the matter but the Prosecution had none to seemingly offer. They made little reference to the Rules of Procedure and Evidence and simply reiterated that given the charge of joint criminal enterprise they were afforded the opportunity to elicit evidence from defence witnesses on the other accused. Kamara went so far as to say that “in a charge of conspiracy, the Prosecution is at liberty to bring in evidence of the conspiracy to any particular charge and to any particular witness.”⁷ The bench constantly interrupted Kamara, seeking clarification and asking him to address different points than the ones he was attempting to. Following two hours of debate on the matter, the bench withdrew in order to deliberate. It returned shortly thereafter and pronounced its determination that the Prosecution’s line of cross-examination and eliciting of evidence involving the second accused from the witness for the third accused purportedly to contradict the Defence theory was impermissible given their grave doubts as to its fairness. The Chamber indicated that a written decision was to follow shortly.

⁷ SCSL Transcript, 6 October 2006, page 28, lines 22-24

Part Three:

A Brief of the Decision by
the Special Court on the
Issuance of Subpoena Ad
Testificandum To The
President of Sierra Leone

From SLCMP

COMMENTARIES

A Brief of the Decision by the Special Court on the Issuance of Subpoena Ad Testificandum to the President of Sierra Leone

By Krishanu Sengupta

Jun 15, 2006 - 11:34:48 AM

The Facts

A. Material: Moinina Fofana and Sam Hinga Norman of the Civil Defense Forces (CDF) filed separate motions with The Trial Chamber I of the Special Court on 15 and 16 December 2005 respectively for the issuance of a subpoena *ad testificandum* to H.E. Alhaj Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone. Maintaining that President Kabbah met with CDF officials but refused to testify, the motions filed were intended for the Chamber to compel the President to testify after he earlier refused to do so. After receiving responses from the Prosecutor and Attorney General, who represent the interests of the President and would deliver the subpoena to him if it was issued, the Special Court announced its decision.

Moinina Fofanah and Sam Hinga Norman, were charged by the Special Court of Sierra Leone with war crimes, crimes against humanity, other serious offences of international humanitarian law, and violations of Articles 2, 3, and 4 of the Statute of the Special Court for Sierra Leone (SCSL).

B. Legal and Procedures: Moinina Fofana and Sam Hinga Norman were top military commanders of the CDF. Fofana stated that President Kabbah, as Minister of Defence and commander and supporter of the CDF, has information that could clarify Fofana's charges of involvement in planning war crimes and engaging in a joint criminal enterprise. The President's knowledge of the command structure of the CDF would identify who bore the greatest responsibility. Hinga Norman similarly stated that President Kabbah supported and instructed CDF commanders and specifically appointed him Coordinator of the CDF, so the President could testify to the innocence of the CDF. The accused stated that subpoenaing the President to testify was the only way for the information he has to be revealed.

The applicants based their right to issue a subpoena to the President on Rule 54 of the Rules of Procedure and Evidence of the Special Court. According to the Defence, the rule has two tests which must be passed for a subpoena to be granted: 1. A court-ordered subpoena must be the necessary means for the defendants to obtain the information they want. This means the voluntary cooperation of the subject of the subpoena must have already been pursued. The Prosecution referred to the International Criminal Tribunal for Yugoslavia's (ICTY) standards and identified this requirement as the 'last resort' test used in the case against ICTY's *Krstic* case-- the Defence must have attempted to acquire the information in other ways and thus the subpoena is the last resort. 2. The information requested must also be relevant to the case. The Defence's preparation for their case must be aided by the requested information. The Prosecution again referred to the *Krstic* case's standards and stated that the 'legitimate forensic purpose requirement' test must be passed, which requires the evidence to be of "substantial or considerable assistance" to the Defence with respect to a "clearly identified issue that is relevant to the trial." The Attorney General of Sierra Leone adopted the Prosecution's standards for these two tests as well.

With respect to the first test, the defendants believed their efforts to enlist the President's

testimony had been rejected at first and then ignored. Thus, they were forced to resort to subpoenaing him. The Prosecution stated that the Defence's ambiguity as to which specific issues the President's testimony would clarify meant that the Court could not determine if the 'last resort' standard had been met and if his testimony was necessary. The Attorney General added that the relevance of the information the Defence hoped to acquire had not been stated and, furthermore, the subpoena was meant only to embarrass the President.

Regarding the second test, the defendants referred to the President's control and support of the CDF leadership during the time period the accused were charged with perpetrating crimes as evidence of his ability to clarify their degrees of liability. President Kabbah's knowledge of who bore the greatest responsibility for the crimes in question was central to the charges [Article 1(1) of the SCSL's Statute] leveled at the accused by the Special Court. The Prosecution responded that the Defence did not specify how the information given by the President would affect the Court's ruling on their guilt, while the Attorney General stated that the President was outside of the country during the time period in question and thus his testimony would have no relevance to the guilt of the accused.

Finally, the Defence, Prosecution, and Attorney General differed on the ability of the Court to even subpoena the President. The Defence submitted that Section 20 and Rule 8 of the Ratification Act of the SCSL allowed the Court to enforce its orders just as the domestic courts would. Thus, if an individual failed to heed the Court's request, he would be in contempt of the Court. Additionally, the *Krstic* Appeal Decision of the ICTY stated that a Head of State subpoenaed to give evidence before an international criminal tribunal enjoyed no immunity. The Sierra Leone Constitution did not grant the President immunity from testifying and, even if it did, Section 29 of the SCSL's Ratification Act waived that immunity clause of the Sierra Leone Constitution for its purposes. The Prosecution responded that the Court could use its discretion on the matter just as the ICTY did, but the issue was a moot one since the two aforementioned standards under Rule 54 were not satisfied. The Attorney General cited the *Blaskic* Appeal Decision of the ICTY to show that the President could not be compelled to testify since no penalties could be enforced against him as Head of State if he refused the subpoena's orders. The Constitution for Sierra Leone also forbids the President from being brought before a Sierra Leonean court unless charged with an offence; however, if the Court decided to issue the subpoena, he would deliver it to the President.

Legal Issues

The important legal questions involved in the Defence's request for a subpoena *a testificandum* are: 1. What standards need to be met for the Court to issue a subpoena? 2. Can the Special Court compel a head of state to testify?

III. The Holding

The Court dismissed the motions of both defendants and found that President Kabbah did not have to meet with the Defence for a pre-testimony interview and then testify at the trials.

IV. Legal Rationale

Regarding the relevant standards for assessing the Defence's motion for a subpoena, the Court used Rule 54, guided by the provisions and decisions of the two ad hoc international criminal tribunals. Because of the ICTY and International Criminal Tribunal for Rwanda' (ICTR) similar provisions to Rule 54, the two tribunals' decisions and Appeals Chamber rulings, specifically the *Krstic* and *Halilovic* cases of the ICTY, would guide the Court's decisions. Thus, the relevant standards would be: 1. the necessity of the Defence's request.

2. The subpoena must help the Defence in its investigation of preparation for trial. The 'legitimate forensic purpose' the Prosecution referred to must be met, so the information requested must be in relation to "clearly identified issues" in the upcoming trial.

The Court found that the two standards were not met by the Defence. 1. The necessity of issuing a subpoena to the President to obtain information on who bore the greatest

responsibility for the crimes of the accused was found to be lacking. Specifically, the President's knowledge of the command structure of the CDF could be ascertained in other ways. 2. The relevance of the President himself bearing the greatest responsibility would not clear Fofana of also bearing the greatest responsibility. Also, though the President did meet with the CDF leaders, he did not know what was going on "on the ground" and so could not verify or negate the charges against the accused. The specifics of how the President could absolve Fofana of being involved in planning the crimes or engaging in a joint criminal enterprise were not provided by the Defence. Fofana alluded to being given direct orders by the President but did not expressly state it; even if the President was found to have given these orders, that evidence would only be mitigating evidence at the sentencing stage. Even if the CDF was fighting to restore President Kabbah, Fofana's extreme measures in achieving that ends would still find him guilty of the Court's charges.

The ambiguity of the information Fofana hoped to acquire by the President's testimony indicated that his request was tantamount to being enabled to engage in a 'fishing expedition', as the Attorney General warned.

The same lack of specificity in how the President's testimony would rebut the Consolidated Indictment against Norman was stated by the Court. Even if the President and Norman were in contact and the President in charge of the CDF during the period of the accused's charges, this would not clear Norman of the crimes he was charged with. The Consolidated Indictment's charges of Norman's knowledge of his subordinates intention to commit crimes was not shown to be affected by the President's testimony, since Norman did not accuse the President of notifying or failing to notify him that these crimes were about to be committed. Lastly, the President's supposed knowledge of the command structure of the CDF was itself negated by Norman's testimony that the CDF was under the control of a "coalition of organizations."

Significantly, the Court stated that both defendants seemed to desire the President to testify so the Court could rectify its decision of not charging him with any crimes. This indirect goal of both defendants was found to be irrelevant to clearing them of any liability for their crimes and, coupled with the ambiguity of the relevance of the President's testimony to clearing them of their charges, a possible ulterior motive for their issuances for subpoena.

V. Questions

One question that the dissenting opinion written by Justice Bankole Thompson posed was whether Rule 89 of the Special Court governing the admission of evidence allowed an assessment—here the legitimate forensic purpose and last resort standards presented by the Prosecution and used by the Court—until all of the evidence had been presented. The relevant question and standards were whether the Special Court was allowed to issue subpoenas to anyone in Sierra Leone, and then if the subpoena would help the investigation or conduct of the Court's trial. Determining whether or not the testimony of the subject of the subpoena would help or hurt the Defence's case would be premature at this stage. Since the testimony of President Kabbah is necessary for the purposes of an investigation or trial, he should be subpoenaed. The Majority Decision has confused the distinction between admissibility of evidence and the probative value of the evidence. Rule 54, as the controlling principle in determining who can be subpoenaed, does not require overwhelming or convincing evidence that the subpoena is necessary for the trial. As long as the Defence has given *prima facie* evidence that the subpoena is necessary for the trial or an investigation, the subpoena should be issued.

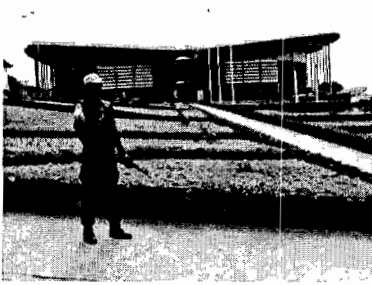
What was troubling about the concurring opinion of Justice Benjamin Mutanga Itoe was the use of the 'absurdity' principle to come to the decision that the President was immune to be subpoenaed to testify. This conclusion was reached not through interpreting any statutory language, but instead by reasoning that because the President is immune under the Sierra Leone Constitution from prosecution, it should follow that he is immune from the less powerful force of a subpoena to testify. Justice Itoe went on to say the basis of

Presidential immunity was that the State would be interested in protecting itself and its Head of State from information damaging to its foreign policy, domestic interests, or national security. Further, stating that the President's testimony may reveal classified foreign policy information, Justice Itoe ruled that President Kabbah should be granted a plea of privilege if he were called to testify. As "The Princes' who govern us", Heads of States are given immunity because they occupy the highest position in their country and need to preserve the dignity of the nation.

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Part Four:

Special Report on the Death
of Chief Samuel Hinga
Norman (First Accused in the
CDF Case)



U.C. BERKELEY WAR CRIMES STUDIES CENTER
SIERRA LEONE TRIAL MONITORING PROGRAM
WEEKLY REPORT

Special Court Monitoring Program Update Trial Chamber I – CDF Trial

The following is a brief report from Thea Wauters Thyness, Senior Researcher based in Freetown regarding local reaction in the media to the death of Samuel Hinga Norman, indictee at the Special Court.

Special Report: Samuel Hinga Norman Dies, 22 February 2007

Thea Wauters Thyness
Senior Researcher

On 22 February 2007 the First Accused in the CDF Case, Samuel Hinga Norman, passed away at a military hospital in Dakar, Senegal. Mr Norman was flown to Senegal on 17 January for medical treatment, and had undergone a successful surgical procedure on 8 February 2007. It is reported that Mr Norman suddenly collapsed in the morning hours of 22 February, and the Registrar of the Special Court for Sierra Leone has ordered an independent investigation by medical experts to ascertain the cause of death.¹ Mr Norman is indicted before the Special Court on eight counts of war crimes and crimes against humanity and has maintained his innocence throughout the proceedings.

Norman's popularity

Mr Norman, the alleged leader of the Civil Defence Forces and commander of the Kamajors during the Sierra Leonian civil war, is still a popular figure among many. He commands a great deal of support, particularly in the southern and eastern regions of the country, and is viewed by many as a war hero who protected civilians from attacks by RUF and AFRC rebels. The coverage in the local media reflects this view. *The Exclusive* reports of 'The Death of a Hero' and refers to Mr Norman as 'the great son of Sierra Leone' who will 'always be remembered by patriotic Sierra Leonians²'. Mr William Juana Smith, National Publicity Secretary of the opposition party the All Peoples Congress (APC) 'regrets that a hero in the person of Chief Norman should die in another

¹ 'Special Court Indictee Sam Hinga Norman Dies in Dakar' Press Release, Office of Press and Public Affairs, Special Court for Sierra Leone (22 February 2007), paragraph 4.

² *The Exclusive*, 'The Death of a Hero!', 23 February 2007

man's land other than his own mother land, for which he had sacrificed so much.³ *Concord Times* maintains that Mr Norman 'is today considered to be a hero by a majority of his countrymen.'⁴

Speculations about Norman's mistreatment at the hands of the Special Court

The death of Mr Norman while in the custody of the Special Court has led to speculation in the local media. Mr Norman has repeatedly complained about his health to Court Officials and has maintained that his health concerns were not seriously addressed⁵. On the day of his travel to Senegal, Mr Norman's daughter told the BBC that her father was gravely ill and was not receiving the medical care he required. Media outlets in Sierra Leone have also reported that Mr Norman found the medical facilities in Dakar 'very much unsatisfactory and not conducive to human living'⁶. Mr Norman reportedly stated that 'I am very much afraid for my life as it is put in the hands of people I do not trust to administer any form of medical treatment'. *Concord Times*' front page on the day following news of Mr Norman's death reads 'I Won't Come Back Alive'⁷ – the sentiment Mr Norman reportedly expressed to his long time cleaner at the Detention Facility at the Special Court before departing for Senegal. The report seems to suggest that the Special Court has not taken Mr Norman's health concerns seriously and that the Special Court is therefore responsible for Mr Norman's death. *Awareness Times* reports that they have had contact with Mr Norman's adopted son Mr Lansana Jawara who was at his father's bedside in Dakar⁸. Mr Jawara reportedly told the newspaper that 'Chief [Norman] did not die of any heart failure as the people of Sierra Leone are made to understand by the Special Court. Chief [Norman] died because of lack of adequate post operative care'. Mr Jawara further claimed that the treatment Mr Norman received in Dakar was sub-standard and that the Special Court is misinforming the public about the circumstances of Mr Norman's death because it 'is trying to play down the neglect [Mr Norman] suffered at the hands of the so-called doctors in whose care he was'. Mr Jawara also claims that security personnel from the Court denied nurses access to Mr Norman.

These allegations are at this stage entirely speculative and have not been substantiated by any concrete evidence of misconduct on the part of the Special Court. The Court has acted quickly and has, pursuant to Rule 22 of the Rules of Detention, ordered an inquiry into the circumstances surrounding Mr Norman's death. Appeals Chamber Justice Renate Winter of Austria will head the inquiry.⁹

Local media speculation about political involvement in Mr Norman's death

³ *Awareness Times*, 'Death of Hinga Norman; Reactions to his Death', 23 February 2007

⁴ *Concord Times*, 'Chief Norman Died a Martyr, a Hero?', 23 February 2007

⁵ See for example Berkeley weekly monitoring report #94 available on-line at <http://socrates.berkeley.edu/~warcrime/SL-archives.htm>

⁶ *Awareness Times*, 'Chief Hingha [sic] Norman Brasts Special Court for Sierra Leone', 18 January 2007

⁷ *Concord Times*, 'I Won't Come Back Alive', 23 February 2007

⁸ *Awareness Times*, 'Hinga Norman Bled to Death', 23 February 2007

⁹ 'Special Court Orders Inquiry into Death of Hinga Norman' Office of Press and Public Affairs, Special Court for Sierra Leone (23 February 2007), paragraphs 2 and 3.

Mr Norman, who has served as Deputy Minister of Defence and Minister for Interior Affairs in President Alhaji Tejan Kabbah's Government, has remained engaged in politics also while detained at the Special Court. President Kabbah has been a supporter of the Special Court for Sierra Leone and local media has earlier reported that Mr Norman felt betrayed by his former colleagues. There have even been rumours that Mr Norman planned to hunger strike in protest of Mr Kabbah's support for his continued incarceration¹⁰. Until very recently, however, Mr Norman has thrown his weight behind the ruling Sierra Leone Peoples Party (SLPP) of president Kabbah. With elections scheduled for July 2007 Mr Norman has been reported to urge support for the SLPP – most likely for fear that his supporters would disturb the election process. In what appears a sudden change of heart, however, Mr Norman recently joined Charles Francis Margai's opposition party, the Peoples Movement for Democratic Change (PMDC), and thus disassociated himself from the party of the President.

The change in party loyalties has given rise to speculations about political involvement in Mr Norman's death. *The African Champion* reports that many of Mr Norman's supporters believe that sitting Vice President Solomon Berewa was implicated in Mr Norman's death as the SLPP wanted to 'see that Chief Norman dies in jail because he is popular among the people'¹¹. *Awareness Times* prints the reaction of the SLPP's National Secretary General and their National Publicity Secretary who both question the veracity of reports of Norman's death but stress that 'whatever may have happened to Chief Norman as a result of his handling at the Special Court was not the fault of the SLPP'¹². Mr Smith of the APC reportedly expressed sadness at Mr Norman's death and stated that he believed Mr Norman 'was used as a sacrificial lamb and offered to the Special Court as a way of eliminating him from the Presidential race'¹³. Again, these allegations have not at this stage been substantiated with evidence of misconduct.

Consequences for the conduct of proceedings at the Special Court

The judgement in Mr Norman's case has not yet been delivered by Trial Chamber I. It has been the custom in international criminal tribunals not to issue judgements posthumously. This is congruent with Common Law principles where the role of criminal law is limited to producing pronouncements on case-specific issues as they relate to a particular defendant. It is likely that the Special Court will follow this precedent and not deliver a judgement pertaining to Mr Norman.

At a press conference on 22 February Mr Stephen Rapp, Chief Prosecutor at the Special Court, expressed his frustration at the state of affairs. He stated that Mr Norman's death had deprived the people of Sierra Leone of their right to see justice done¹⁴ as the claims against Mr Norman raised in the course of the trial will now not be adjudicated on. An

¹⁰ *The Exclusive*, 'The Death of a Hero!', 23 February 2007

¹¹ *The African Champion*, 'Hinga Norman's Death is Disaster for SLPP', 23 February 2007.

¹² *Awareness Times*, 'Death of Hinga Norman; Reactions to his Death', 23 February 2007

¹³ *Awareness Times*, 'Death of Hinga Norman; Reactions to his Death', 23 February 2007

¹⁴ *The Spark*, 'He is Dead!!!', 23 February 2007 and *Concord Times*, 'Chief Norman Died a Martyr, a Hero?', 23 February 2007

opportunity to clarify Mr Norman's role in the civil war in Sierra Leone has thus been missed.

It is important to remember, however, that as an accused before the Special Court Mr Norman is presumed innocent until any would-be guilty verdict is passed.

Part Five:

Briefing on Trial Chamber I's
Judgment in the case of *The
Prosecutor vs Moinina
Fofana and Allieu Kondewa*

From SLCMP

REPORTS**Special Court for Sierra Leone delivers judgments on the CDF Trial**

By Joseph A.K Sesay and Zoila Hinson

Aug 2, 2007 - 12:56:08 PM

2 July 2007

This morning, 2 August 2007, Trial Chamber I of the Special Court for Sierra Leone (SCSL) issued its judgement in the joint trial of Moinina Fofana and Allieu Kondewa, the alleged former leaders of the Civil Defense Force. Presiding Justice Benjamin Mutanga Itoe delivered the Chamber's judgement that convicted Fofana on four counts comprising war crimes and Kondewa guilty of five counts including war crimes and other serious violations of international law. The Chamber found the Prosecution did not prove Count 6, Acts of terrorism, beyond a reasonable doubt, but did not explain this finding. It also found that the Prosecution had not proven that the acts charged under Counts 1 and 3 were directed against a civilian population, a requirement for all crimes against humanity. It therefore issued not guilty findings on those charges. The charges and findings for each Accused are summarized below:

Summary of Charges and Findings

Count	Substantive Charge	Article of the Statute of the SCSL under which the charge was brought	Source of Law	Finding of Guilt
1	Murder	Art. 2(a)	Crime Against Humanity	Both Accused not guilty
2	Violence to life, health and physical or mental well-being of persons, in particular murder	Art. 3(a)	Violation of Common Article 3 or Optional Protocol II	Both Accused guilty
3	Inhumane Acts	Art. 2(i)	Crime Against Humanity	Both Accused not guilty
4	Violence to life, health and physical or mental well-being of persons, in particular cruel treatment	Art. 3(a)	Violation of Common Article 3 or Optional Protocol II	Both Accused guilty
5	Pillage	Art. 3(f)	Violation of Common Article 3 or Optional Protocol II	Both Accused guilty
6	Acts of Terrorism	Art. 3(d)	Violation of Common Article 3 or Optional Protocol II	Both Accused not guilty
7	Collective Punishments	Art. 3(b)	Violation of Common Article	Both Accused guilty

			3 or Optional Protocol II	
8	Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities	Art. 2(i)	Crime Against Humanity	Fofanah found not guilty. Kondewa found guilty.

Like Trial Chamber II’s decision in the AFRC judgement, Trial Chamber I did not find the Accused guilty via joint criminal responsibility (JCE). While Trial Chamber II, however, found JCE had been mispleaded, Trial Chamber I simply stated that the Prosecution had not lead sufficient evidence to prove JCE as a mode of criminal responsibility beyond a reasonable doubt. Indeed, the Chamber rejected all Defence claims that the Prosecution had not pleaded the indictment with sufficient specificity.

Unlike the near unanimity among the justices of Trial Chamber II in the AFRC judgement, the justices of Trial Chamber I differed significantly in their findings. Most notable, Justice Bankole Thompson entered a dissenting finding on all guilty judgements, and would have acquitted both Accused on all charges. Thus the Accused were convicted only by a majority of the Trial Chamber. Justice Itoe also entered a dissenting opinion regarding Fofanah’s not guilty finding under Count 8, and would have convicted him. Justice Boutet concurred with the Chamber’s findings, but has entered a separate and concurring written judgement. After the judgement had been read, he also voice his disagreement with the prominence Justice Itoe’s summary gave to the Defence submission that President Tejan Kabbah’s role in forming and supporting the CDF relieved the Accused of criminal responsibility. While he agreed with the Chamber’s rejection of that argument as invalid, he considered it a collateral issue that should not have received such attention.

The judgement further noted that the original First Accused Sam Hinga Norman died on 22 February 2007, and the Trial Chamber would therefore not offer any findings about his guilt or innocence. It would, however, consider all the evidence on the official record, including Norman’s testimony in his own defence, cross-examination and re-examination. It would not draw any adverse conclusions from the decision by the remaining Accused not to testify.

Justice Itoe did not confirm a date for the sentencing hearing, but stated that a scheduling order containing the date would be issued shortly. Pursuant to Rule 100 of the Rules of Evidence and Procedure, all parties must present evidence at the sentencing hearing.

All parties are likely to appeal parts of the judgement. Pursuant to both Art. 20 of the Statute and Rule 106, both the Prosecution and Defence may appeal the judgment on the basis of procedural error, an error in a question of law invalidating the decision, or an error of fact that has occasioned a miscarriage of justice. By Rule 108, a party seeking to appeal a judgment must file an appeal with the registrar and serve a written notice of appeal upon the other party within fourteen days of the judgment.

The Prosecution indicted Fofanah and Kondewa in June 2003, after Norman’s March 2003 indictment. On 31 May 2004, the Appeals Chamber ruled that the recruitment of child soldiers had reified as a crime under customary international law before the beginning of the period covered by the Special Court’s mandate, a key decision allowing the recruitment

of child soldiers to be charged as a crime by the Special Court. In June 2004 the Chamber joined the three trials. The Prosecution presented 75 Prosecution witnesses over 131 trial days, and the Defence teams collectively presented 44 Defence Witnesses over 112 trial days. After Norman's death in February 2007, the Trial Chamber terminated proceedings against him, over the objections of his counsel.

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