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Weekly Report

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Trial Chamber I - CDF Trial
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by Alison Thompson
Senior Researcher

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Summary

This week's proceedings, which began on Wednesday after a two day delay, marked both the resumption of the court after its winter recess as well as the continuation of the CDF trial and the opening of the defence case. Wednesday's session consisted of the status conference, which dealt with a number of issues relating to courtroom management. On Thursday opening statements were made by the Fofana and Kondewa defence teams, although not by the Norman team as Norman himself had exercised this right earlier in the trial. A recess was ordered by Trial Chamber I until January 24th, 2006 following a request made by the Norman defence team for more time to prepare evidence in collaboration with the defendant.

Background

The defence case opened this week following the Chamber's decision to deny the joint CDF defence Motions for Judgement of Acquittal Pursuant to Rule 98.¹ The week's proceedings were marked by the presence in court of the first accused in the CDF trial, Sam Hinga Norman. This follows months during which Norman was absent after he launched a judicial protest against the court's witness protection procedures, which he argued encouraged the Prosecution's witnesses to lie.² This protest resulted in both his refusal to attend court proceedings as well as his refusal to cooperate with Court appointed counsel. Norman's presence in court remained controversial as rumours circulated that a recent unsigned press release purportedly issued by him threatened to have those associated with the Special Court 'arrested' by his supporters.³

Kabbah Subpoena

¹ The Motions for Judgement for Acquittal were made following the close of the Prosecution's case in July, 2005. See motion and decision, SCSL-14-473. See Special Court Monitoring Program, Update No.64 (25 November, 2005), available at <<http://socrates.berkeley.edu/~warcrime/SL-Reports/064.pdf>>

² See Special Court Monitoring Program, Update No.5 (24 September, 2004).

³ "Sierra Leone Government Ministers React to Hinga Norman Kidnap Threat", Awareness Times Newspaper, January 17th, 2006, available at <http://news.sl/drwebsite/publish/article_20051368.shtml>

While at the status conference Chambers indicated that the matter of the motions made by the Fofana and Norman defence teams for an issuance of a subpoena to President Ahmed Tejan Kabbah⁴ would be addressed during the following day's proceedings, developments that morning delayed the matter. Trial Chamber I was informed that the Attorney General, representing the President, had filed documentation with the Registrar on January 17th requesting that he be allowed to make a submission to the court on the motions for the issuance of a subpoena. Kabbah is currently listed by the Norman defence team as their second witness, which would have his testimony follow the testimony of Norman himself if the subpoena is granted and abided by. The court is now awaiting a further submission from the Attorney General that will effectively outline the specific arguments he wishes to raise in court. Once this documentation is received the parties will have a right to reply and a date will be fixed for oral arguments to be heard on the matter.

Opening Statements

While the first day of the defence case saw both the Fofana and Kondewa teams giving opening statements to the court, the Norman team was silent due to earlier developments in the trial. Hinga Norman, employing his qualified right to self-representation, previously exercised his right to give an opening statement, which he made at the opening of the CDF Accused case on June 15th, 2004. At the time he was informed by the court that he would forgo his right to make any subsequent opening statements and so attempts by the Norman defence team to raise this issue at both the Status Conference as well as prior to the opening statements the following day were quickly subdued by the Trial Chamber.

The Fofana team, led by Mr. Arrow Bockarie, focused their opening statement on the concept of comparative liability exemplified by the phrase 'greatest responsibility', as contained in the Statute of the Special Court. They also contested the prosecution's portrayal of Fofana as holding a top position within the CDF. Furthermore, the Fofana defence criticized the Prosecution's theory of command responsibility as being premised on vague evidence and denied the Accused's participation in any kind of joint criminal enterprise. While eschewing reference to specific evidence, counsel made statements regarding the political nature of the trial, the comparative premise of the court and the lack of credibility of the Prosecution's key witness. The judges intervened on several occasions during the half hour long statement to remind counsel of the existence of Rule 84⁵, which states that such submissions be confined to indicating the evidence that will be presented in support of the case. The bench noted that the content of this opening statement was better saved for closing remarks and that defence would serve their client well to stick to the prescribed rules of procedure.

The Kondewa team, led by Mr. Yada Williams, focused their statement on discrediting the Prosecution's attempt to portray their client as a high ranking member of the CDF with command control over other members. The nature of the Kamajors hunting society itself will also be explored as Mr. Williams stated that evidence will be presented which supports their claim that, contrary to the Prosecution's position, membership within the Kamajors and the CDF were not necessarily synonymous. Accordingly, it will be argued that Kondewa performed initiation rites for a traditional hunting society rather than for a military organization. The Kondewa defence will also call insider witnesses who will testify that these rites taught participants the rules of principled combat, which explicitly forbade the harming of civilians, and that after such customary rites were performed initiates were effectively placed under the control of the chiefs. Evidence of the hierarchical structure of the CDF will be introduced along with testimony that denies Kondewa's ability to exercise superior authority as High Priest. Defence will advance the argument that ECOMOG and the War Council were in effective control of the CDF, organizations with which Kondewa did not have a relationship. Williams pointed to the arrest of Kondewa by

⁴Fofana Motion for Issuance of a Subpoena Ad Testificandum to President Ahmad Tejan Kabbah, SCSL-14-522, and Norman Motion for Issuance of a Subpoena Ad Testificandum to H.E. Alhaji Dr. President Ahmad Tejan Kabbah, SCSL-14-533.

⁵ Rules of Procedure and Evidence, <<http://scsl-server/sc-sl/new/rulesofprocedureandevidence.pdf>>

ECOMOG forces as indicative of his inability to even “help or save himself”⁶, let alone to stop and punish crimes committed by others. Furthermore, the Kondewa defence submits that the alleged atrocities were actually committed by RUF and AFRC members disguised as Kamajors. Reference was made to the well documented war-time phenomenon of “sobels”⁷ as Williams suggested that the term “Kamabel” also be included in the war lexicon of Sierra Leone. The term refers to rebels who disguised themselves as Kamajors in order to surprise the enemy as well as to commit atrocities unrecognized, thereby wrongfully attributing the guilt for such acts on the CDF.

Rights of the Accused

The rights of the Accused became an issue at this week’s proceedings as the Defence team for Norman requested more time to prepare its case and chart out the evidence to be presented in cooperation with their client. The court appointed counsel for Norman, Dr. Jabbi, argued that as a result of the delay in Norman’s confirmation as to whether he would testify or not, as well as due to his absence from court during the bulk of the time that the evidence against him has been presented, more time was required to review his proposed testimony. In addition, the Accused’s previously uncooperative attitude was said to have hindered communication and interaction between counsel and client regarding the evidence to be presented. In response to the Prosecution’s objections Dr. Jabbi argued that “the demands of justice, whether in the international field or not, require that more emphasis be given to the rights of the accused”⁸ While the Prosecution argued that ongoing delays could bring the administration of international criminal justice into disrepute, Judge Thompson countered that the legitimacy of the Court also depended on the principle of equality of arms - that is, the human rights principle that adversarial trials manifest a reasonable equivalence in ability and resources between the Prosecution and the Defence. A decision was handed down shortly thereafter which granted the Defence’s request for more time, although the Bench scheduled a recess until Tuesday rather than the end of the week as had been applied.

Principal Defender and the Defence Teams

Apparent tensions between one of the defence teams and the Principal Defender, Mr. Nmehielle, arose during the status conference. This was brought to light when Mr. Dumbuya, duty counsel for the CDF, asked the court on behalf of the Principal Defender for permission to make a statement at the opening of the defence case. The defence team for Fofana raised an objection to this request and emphasized the team’s unwillingness to have him speak on behalf of their client. The two other defence teams declined to comment on the Principal Defender’s request to address the court and the Prosecution sided with the Fofana team, noting that nothing in the rules provided for such an intervention. Chambers did not issue a final statement regarding this request and although the Principal Defender appeared in court the following day he did not actually address the court. The apparent lack of communication between the Defence Office and at least one of the defence teams has come to light previously.⁹

⁶ Mr. Yada Williams, counsel for Kondewa, quoted from the Special Court for Sierra Leone transcript dated January 19th, 2006, pg. 37, line 37

⁷ The term ‘sobels’ refers to the phenomenon of ‘soldiers by day, rebels by night’ during the conflict in Sierra Leone which allowed disaffected combatants to disguise themselves and engage in lucrative criminal activity, including looting, without fear of being identified.

⁸ Dr. Bu-Bakei Jabbi, counsel for Norman, quoted from Special Court for Sierra Leone transcript dated January 19th, 2006, pg. 13, lines 10-12

⁹ The Special Court Monitoring Program, Update No.64 (25 November, 2005) touches on this issue and is available at <<http://socrates.berkeley.edu/~warcrime/SL-Reports/064.pdf>>