



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

Special Court Monitoring Program Update # 70
Trial Chamber I - CDF Trial
24 February, 2006

by Alison Thompson
Senior Researcher

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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 chieftom 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 witness' 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.