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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>>