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Summary

Proceedings in the CDF trial resumed this week on Wednesday, following an adjournment due to the ill health of the second accused, Moinina Fofana. Fofana attended proceedings for the first time this trial session and his Counsel informed the court that his client had fully recovered from the chickenpox. The Defence case of the second accused accordingly commenced. Six witnesses testified this week in the defence of the second accused, with the defence case now in abeyance until the arrival of their expert witness, who is scheduled to testify on 9 October 2006.

While the RUF trial is currently adjourned during the CDF trial session, the three RUF defence teams submitted outlines of their arguments for the upcoming hearing on motions to acquit under Rule 98, filed by the defence teams following the close of the Prosecution's case in August 2006. The skeleton arguments outline what the defence teams will submit during the Rule 98 oral arguments currently scheduled for 16 October 2006.¹

Witness Profiles at a Glance

¹For example, please see 'Skeleton Arguments in Support of Oral Motion for Judgement of Acquittal Pursuant to Rule 98', SCSL-04-15-645, 25 September 2006.

Morris Ngobeh, testified in Krio in open session. He works as a mobile telephone technician in Bo Town and was born in 1972. Mr. Ngobeh testified about events in Bo Town following the 1997 AFRC coup.

Mohammed Fallon testified in Mende in open session. He lives in Jembe, Bonthe district. He was born in 1978 and works as a diamond miner and farmer. The witness joined the Kamajors in 1996.

Junisa Conneh testified on the 28th of September in Mende, in open session. Mr. Conneh lives in Baoma Kpengeh, Bonthe district, where has lived since his birth. He works as a farmer and also fought as a Kamajor during the conflict.

Tommy Jabbi testified in English in open session. He was born in Baoma Kpengeh and now resides in Freetown and Gbapi Nongoba Bullom. He continues to be the town chief of Baoma after 17 years as such and works as a farmer. He denied that there had ever been a trade fair in Baoma Kpengeh and denied ever hearing that anyone had been killed in the town after 1996, as alleged by a witness for the Prosecution. There was no cross-examination by the other defence teams or by the Prosecution

Billoh Conteh testified in Mende in open session. He lives in Gbap Nongoba Bullom where he works as a farmer. He was a Kamajor and participated in fighting in various locations following the 1997 coup. He testified that as a Kamajor he travelled to Base Zero where he saw Fofana, but that he never received orders from him. He also stated that he knew Albert Nallo but had never gone on any fighting missions with him. This refutes Nallo's earlier testimony (as a prosecution witness) alleging that Fofana had directed Conteh to go on mission with Nallo, during which they killed 15 people and burnt houses in Dodo village. During the Prosecution's cross-examination of the witness, he confirmed that he has had a long standing relationship with Fofana, who is his in-law. The witness also stated that he never approached Fofana during his visits to Base Zero as he "had great power and authority"².

Joseph Lansana testified in open session. He was born in 1969 on Bonthe Island. He currently resides in Sorgia and works as a farmer. He testified about a rebel attack on Sorgia that occurred in 1995, during which he fled into the bush with his family. A subsequent attack in 1995 was carried out by the Kamajors. The witness testified that the Kamajors did not harm or torture him, that they did not drip burning plastic on his body and that both his ears were intact – contrary to the earlier 2005 testimony of Albert Nallo, witness for the Prosecution.

Defence Case Presentation

The Fofana team submitted a motion this week regarding the reduction of their proposed witness list and the changing of the witness' order of appearance. Given the limited number of witnesses and the pace of the defence case for the second accused, the Chamber indicated on Thursday that counsel for the third accused should be prepared to

² SCSL Transcript, 28 September 2006, page 50, line 5

present their case earlier than the previously indicated date of 5 October.³ However, various objections were launched by counsel for the third accused given that they had already begun contacting witnesses with the October 5th date in mind. Counsel also indicated that the witness list would be further shortened and the Chamber relented, ordering for the defence of the third accused to commence on the 5th of October.

During the course of proceedings on both the 27th and 28th, counsel for the second accused indicated that he would be dropping various witnesses from the witness list. By the end of proceedings on the 28th, counsel informed the court that that concluded the live evidence to be given in the defence case, notwithstanding the testimony of expert witness Dr. Hoffman, who arrives on October 9th 2006. Proceedings were thus adjourned until 5 October 2006, when the presentation of the defence case of the third accused will commence. The Fofana defence case will be substantially shorter than that of the first accused, taking only a number of days rather than the two trial sessions the defence of the first accused spanned.

Testimony of Morris Ngobeh

Mr. Arrow Bockarie conducted the examination-in-chief of Morris Ngobeh, the first witness called in the Fofana defence case. Mr. Ngobeh's testimony was both temporally and thematically contained, the witnesses testifying exclusively about events in Bo during and immediately after the 1997 coup carried out by AFRC forces in Sierra Leone. Ngobeh testified that following the coup, the Kamajors fled Bo and AFRC soldiers looted the main shops in town. He stated that the following day many of the residents of Bo, particularly the youth, demonstrated in the streets, in protest over the actions of the soldiers. The demonstrating youths also retrieved the looted properties and stored them in a government compound. However, according to Ngobeh, the AFRC forces soon regained control of Bo and subsequently sought out those residents who had participated in the demonstration, beating and detaining many of them. The witness noted that at the time of the coup many of the youths in Bo were strong supporters of the SLPP government, and thus represented enemies to the junta forces.

The witness was also questioned about events in Bo in February of 1998, when ECOMOG forces entered and captured Freetown from rebel control. At that time, the witness testified, that the AFRC forces pulled out of Bo Town and many of the youths began searching out those they deemed to have collaborated with the junta. He stated that the youths then committed reprisal killings against those who had collaborated and often burnt their houses. After being asked by counsel, the witness listed the names of some of those he knew who had been killed by the youths, giving the specific details of their affiliation with the AFRC and the specific location of their houses in Bo. This included an explicit reference to a hotel owner, Dr. MB Sesay, who had allegedly distributed Kamajor disguises to AFRC soldiers, and whose hotel was subsequently looted and burnt. Ngobeh further testified that at this time, when the AFRC had withdrawn from Bo Town, there were no Kamajors present and that the town was effectively controlled by the civilians. He described groups of youths carrying out

³ SCSL Transcript, 28 September 2006

looting and burning throughout the town.⁴ The Kamajors entered Bo a few days later and the witness stated: “When they came, the burning stopped. Everybody received them joyously. The people were dancing for the rest of the day...”⁵

The prosecuting attorney, Mr. Kamara, questioned the witness in the cross-examination about his affiliation with the youths he alleged took control of Bo Town once the AFRC forces had retreated. Mr. Kamara noted that the witness would have been a youth himself at this time and implied that he must have been involved in the burning and looting that took place. However, once Ngobeh adamantly denied any participation in these activities, Kamara changed the angle of his line of questioning. He proceeded to question the witness on how he purported to know about these events in detail if he was not there himself. Kamara also questioned the witness on how he could have known whether Kamajors were operational or not in other parts of town, given that the witness alleged he was in his house during these events. The witness replied by indicating the small size of Bo Town, the way news travelled quickly within the township and also the well-known nature of the youth’s activities, given that they had taken to the streets and were broadcasting their actions. However, Kamara insisted that the witness did not know who actually burnt down many of the houses, given that he saw them only in the following days and not at the exact time. The witness insisted that he knew who had burnt these houses as it was common knowledge. Several Prosecution witnesses had previously testified that it was the Kamajors who were involved in the burning and looting in Bo Town during this period.

Testimony of Mohammed Fallon

Mr. Powles conducted the examination-in-chief of Mohammed Fallon, who joined the Kamajors in 1996. Fallon testified that he joined the Kamajors in order to defend his country and bring peace to its people and that two of his brothers, Mustapha Fallon and Alia Fallon, also joined the Kamajors. Powles questioned the witness on his visits to his brother Mustapha whilst they were both Kamajors. Mr. Fallon identified his brother as having been recruited by Borbor Tucker, a member of the Death Squad⁶, to be a part of the Kamajor attack on Koribundu, which was controlled by the AFRC at the time. Fallon stated that during this period, the latter half of 1997, he operated under the command of Vanje and he spoke of how they blocked the road from Gbaama to Koribundu, in support of the attack on Koribundu. He testified that they heard gunshots coming from Koribundu. A young man subsequently approached them from that direction with a message that the Kamajors were now in Koribundu and that the AFRC forces were no longer there. However, the witness stated that they subsequently spoke with an injured woman from Koribundu who claimed that the messenger had in fact been an AFRC soldier. She further alleged that the Kamajors had not captured Koribundu and that many had been killed by the AFRC.

⁴ This testimony in contrast to Prosecution witness testimony, for example TF2-017, who testified in November 2004 about the role of Kamajors in the burning and looting that occurred in Bo town during the period in question.

⁵ SCSL Transcript, 27 September 2006, page 9, lines 14-16

⁶ The Death Squad is a group the Prosecution has alleged was part of the CDF, which carried out particularly violent acts from its base at ‘Base Zero’ in Talia Yawbecko.

Mr. Fallon testified that he then took the decision to go to Koribundu himself as he knew his brother was there as well as numerous colleagues. Once he entered Koribundu he testified that he went to the roundabout, where he saw a crowd of civilians, many of them dancing, around six corpses. He stated that Kamajors' clothing was hanging on a stick nearby and that there was another person sitting, covered in blood. The witness testified that when this person lifted his head, he saw that it was in fact his brother, Mustapha Fallon, who allegedly shook his head upon sight of the witness, in what the witness took to be a sign of hopelessness. The witness then testified that he next saw a man in military uniform approach his brother and slit open his stomach, taking out his intestine. His brother was then beaten by others, all of whom he identified as AFRC, and died. Fallon subsequently left Koribundu and reported the death of his brother back to his commanders.

Powles then questioned the witness on his awareness of a different explanation regarding his brother's death. The witness confirmed that he had heard that Albert Nallo, an insider witness for the Prosecution, had testified that the three accused, Norman, Fofana and Kondewa, had killed his brother during an initiation ceremony in the bush. Fallon stated that there was no truth to this story and the examination-in-chief ended there.⁷

The cross-examination commenced with Kamara, prosecuting attorney, asking the witness to confirm his age and that of his brother, Mustapha Fallon. The witness stated that he believed himself to be 27 years old, and that his deceased brother was two years his junior. Kamara then suggested that according to his calculations, Mustapha Fallon was initiated into the Kamajor society and deployed in various locations as a fighter when he was fifteen years old. Justice Itoe indicated that there may be a more appropriate time to make these submissions and Kamara changed the direction of his questions.

Kamara asked the witness to clarify the date of the Kamajor attack on Koribundu, when he saw his brother killed, as well as the date of when he last saw his brother alive. The Prosecution asked for the witness' statement given perceived discrepancy between his oral testimony and what was contained in the witness summary provided by the Fofana defence team. This was done and the Prosecution, apparently satisfied with the information it contained, moved on and began asking the witness about details of his arrival at the roundabout in Koribundu. The Prosecution suggested that the crowd gathered there was huge, numbering 500 people, although the witness refused to confirm this approximation. Kamara further described Fallon's position from his brother as necessarily far away, demonstrating different distances in the court room and finally establishing that the witness would have been about 20 feet away. The witness also stated that when he identified his brother there was no crowd in front of him, despite the Prosecutions suggestions otherwise. Kamara then asked "I am suggesting to you that that individual that you saw covered in blood, it was difficult for you to identify?", to which

⁷ This negates the testimony of Albert Nallo, witness for the prosecution, in which he alleged that Mustapha Fallon was ritually killed by the Kamajors, who subsequently ate his liver. See Special Court Monitoring Program, Update No. 25, at page 4.

the witness simply responded “I knew”, referring to the fact that he knew this man to be his brother.⁸

Kamara then proceeded to question the witness on the version of events surrounding Mustapha Fallon’s death given by the Prosecution witness, Albert Nallo, in March 2005. The witness stated that he did not believe Nallo’s version, in which Nallo alleged that the three accused had killed Mustapha at the Poro bush at Base Zero and that other eye witnesses had been paid off by Norman to keep silent and publicly say that Mustapha had been killed in Koribundu.⁹

Proceedings then became focused on the obligation of the Prosecution to disclose all exculpatory evidence. Kamara had begun to question the witness on information the Prosecution had obtained in investigative reports regarding the statements of eyewitnesses to the killing in the Poro bush. The defence objected, asserting that there was no evidence before the court that indicated that these eyewitnesses’ statements verified Nallo’s version of events. While the Prosecution maintained that it was acting in accordance with Rule 68, regarding the disclosure of evidence, the Presiding judge noted that “as a matter of law, if there is information in your possession, which you intend to use in cross-examination for tactical advantage, the law frowns upon this approach if it’s not disclosed to the other side.”¹⁰ The Prosecution maintained it would do so if it decided to tender the statements. Both the bench and the Defence consistently objected to Kamara’s questions. After finally managing to pose his question regarding the suggestion that an eyewitness confirmed Nallo’s testimony, the witness replied that this was a lie. Furthermore, the witness disagreed with the Prosecution’s suggestion that it was not his brother whom he saw at the roundabout in Koribundu and he reiterated his certainty that it was his brother. The Prosecution then proceeded to suggest that the corpses the witness had seen in Koribundu were those of civilians killed by Kamajors and not AFRC soldiers. Kamara’s continued questioning of the witness was subject to an increasing number of objections from the defence and interventions from the bench – with his questions being labelled as ‘argumentative’, ‘unfair’ and ‘vague’. Kamara subsequently ended his cross-examination of the witness, seemingly unable to reformulate his remaining questions so as to accord with the bench’s wishes.

Following counsel for the second accused’s re-examination of the witness, the Prosecution added what they termed a ‘post-script’ to the witness’ testimony in relation to the summary that they had been provided with by the defence. The Prosecution alleged that while in the statement the witness had made no reference to a time frame in the summary it was stated that the events in Koribundu had occurred in October 1997. The Prosecution indicated that such dates were crucial for the conduct of proper investigations. Powles responded by saying “I don’t know if my learned friend is seriously suggesting that the Prosecution have been misled in any way... The witness summaries that were provided to the Prosecution and the Court of course don’t form evidence... as I understand it, the principle of orality is the guiding principle of this

⁸ SCSL Transcript, 27 September 2006, page 47, lines 7-9

⁹ SCSL Transcript, 10 March 2005

¹⁰ SCSL Transcript, 27 September 2006, page 54, lines 22-26

Court”.¹¹ Justice Itoe noted however that these summaries must at least be reflective of the statements given by the witnesses. While Powles conceded that this was certainly true, he also maintained that they had done just that and that “there is no material difference between what was contained in the summary, the evidence this witness gave, and what is contained in his statement.”¹² With the defence refusing to concede any error or inaccuracy on its part in terms of the summaries it had provided to the Prosecution, and with the bench noting that the whole debate had become entirely argumentative, proceedings were adjourned until the following morning with the Prosecution’s concerns seemingly dismissed.

Testimony of Junisa Conneh

Junisa Conneh testified that his town of Baoma Kpengeh was attacked once by the rebels in 1995. According to Conneh, these rebels were expelled by Kamajors some days later. He further alleged that the town was never subsequently attacked. Arrow Bockarie, counsel for the second accused, then questioned the witness on the presence of trade fairs, which were described as a sort of market day, with people buying and selling various things, in the town. The witness replied that there had never been a trade fair in Baoma Kpengeh. The witness also stated that there was a trade fair regularly held at the nearby town of Gbap. Defence counsel proceeded to question the witness on his knowledge of Albert Nallo, a fellow resident of Baoma Kpengeh and a witness for the Prosecution. The witness stated that he had met Nallo at Talia and subsequently saw him in Baoma Kpengah although he stated that he had never gone on any sort of operation with him. Counsel then read out a passage of Nallo’s testimony from March 2005, in which he stated that he travelled to Baoma on the orders of Norman and Fofana, where he met Junisa Conneh on the day of the trade fair. Nallo testified about killing those identified as rebels or collaborators with the witness during the trade fair in Baoma. The witness categorically denied that this had not happened.

During the cross-examination by the Prosecution, counsel prodded the witness as to his activities at Base Zero and his contact with other Kamajors there. Conneh confirmed that he had taken orders from these Kamajors, particularly from Moinina Fofana, the second accused, who he named as Director of War. The witness elaborated that the instructions he received from Fofana had to do with collecting salt rather than combat. Conneh also testified that he was the leader of the Kamajors in his town and that his superior, Morie Jusu, reported to Fofana. While he maintained that his relationship with Nallo was limited to courteous greetings, the witness did confirm that the Kamajors in his area had set up check points where people were screened as they came to and from trade fairs, given their security concerns. He also stated that people were detained if they did not have the appropriate pass upon suspicion of being a rebel or collaborator. Conneh confirmed that once someone had been identified as a rebel during the screening process they would be killed. According to the witness’ testimony, the instructions to screen all persons coming into town came from ‘Base Zero’. The prosecution then closed its cross. The potential impact of this testimony on the defence is not favourable, the combined effect of the witness’ testimony under cross-examination confirmed the prosecution’s

¹¹ *Ibid.*, page 85, lines 17-28

¹² *Ibid.*, page 87, lines

theory that: (i) instructions to Kamajors came from Base Zero (alleged to be the headquarters of the CDF high command, where Fofana was allegedly based) (ii) Kamajors killed suspected rebels at checkpoints and (iii) Conneh's commander reported directly to Fofana, hence placing Fofana in a position of *de facto* command and control authority.