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Weekly Report

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Summary

The CDF defence case resumed on Tuesday after a two day recess was afforded by Trial Chamber I to the Norman defence team, who had requested for more time to chart out the evidence to be given by Norman himself. The former government minister is the first of a proposed total of 77 witnesses called in his defence case. Norman took the stand on Tuesday afternoon and his testimony continued throughout the week. Evidence focused on Norman's various roles and responsibilities throughout the conflict, his contact with both the President as well as the CDF fighters, and the nature and evolution of the CDF as a civil militia organization. Various legal and procedural issues also arose, particularly with respect to communication with witnesses whilst on the stand as well as to the interpretation of the amended indictment.

Legal and Procedural Issues

Communication with witnesses. According to court rules, once a witness has taken the stand all communication between that witness and either the Prosecution or the Defence is forbidden until the witness has completed his or her testimony. Trial Chamber I previously indicated that this rule also applies to a defendant testifying on his own behalf. However, an exception to the rule could be granted if a specific application was made to the court, which would be subject to objections by the Prosecution and ultimately the discretion of the bench. In an attempt to circumvent the rule, in light of the lengthy period that Norman is expected to testify, the Norman defence team made an application to the court to allow the accused to testify on alternate days. It was proposed that the intervening days would subsequently be used by defence counsel to openly interact and communicate with their client during the period of his testimony.

The Prosecution took an interesting approach in their objections to this application. They not only argued that it deviated from established rules, but that the granting of the application

would, in fact, be highly damaging to the interests of the defendant. They argued that Rule 90(f)¹ should be interpreted as establishing the importance of the counsel's non-interference with witnesses to avoid the inference that the witness has been coached and to ensure that suspicion is not cast on his/her testimony so that the witness maintains credibility. Ultimately, this non-interference facilitates the ascertainment of the truth and justice is seen to have been served. The trial chamber ultimately rejected and dismissed the application made by the Norman defence team as meretricious and counsel was asked to proceed and call his first witness. Later in the week, however, the issue re-emerged as lead counsel for Norman, Dr. Jabbi, once again brought up the matter of communicating with his client whilst on the stand. He asked the court for an exception to be granted so that he may communicate with Norman over the weekend period. The bench again rejected the application and this time Norman took the unusual step of addressing the court with respect to the motion put forward by his court appointed counsel. Norman indicated that he preferred not to be contacted over the weekend by counsel so that no suspicion may be cast on his testimony. The divergent perspectives of defence counsel and the accused on this matter raises renewed questions regarding the quality of communication and cooperation between the two parties.

Witness Protection. In the midst of Norman's testimony on the 26th of January, the Prosecution addressed the court and asked to make an application for a closed session in relation to a security matter. The hearing of the application was pushed until the afternoon session. In the interim there were communications between the Prosecution and the Defence and the prosecuting attorney subsequently notified the court that a closed session would be unnecessary as their concerns were being addressed by defence counsel. It later became clear that the security matter related to a reference which Norman had made in his testimony to a witness for the Prosecution. Norman had identified him as having previously testified for the Special Court. The Examiner in Chief reminded Norman of the sensitivity required when referring to witnesses who had previously testified as it was possible that they had testified as protected witnesses and that their identities had been concealed. As such, Norman was in danger of revealing their identity to the public by mentioning them in this manner. While Norman has not made any further mention of the identities of prosecution witnesses the incident does point to the precarious status of protected witnesses despite the court's best efforts to maintain their anonymity.

Black December. On Thursday Norman made voluntary reference in his testimony to what is known as 'Black December'², an incident contained in the original indictment. The Prosecution contends that this operation resulted in a massive loss of civilian life due to unlawful killings carried out by the CDF. However, according to Trial Chamber I's judgment on the defence's motion for acquittal, subparagraph 25(g) of the indictment, which references various locations involved in the 'Black December' operation, was effectively expunged as it was determined that there was "no evidence capable of supporting a conviction against the Accused Persons in respect of the offence of Murder as a Crime Against Humanity...".³ Judge Boutet advised Norman that he need not testify about events occurring during this period as the allegations had been effectively removed from the indictment. The following day the Prosecution intervened before witness testimony continued in order to raise the issue of the effect of the bench's decision to eliminate the number of crime bases in the indictment, specifically those surrounding 'Black December'. The Prosecution submitted that it was having an impact on the defendant's ability to testify with respect to various events in the latter part of 1997, which remained relevant to the amended indictment. The Prosecution contended that other issues, outside of the unlawful killings eliminated from the indictment, arose during the time period in December, such as the

¹ Rules of Procedure and Evidence. Rule 90(f) cites the ascertainment of the truth as central to the interrogation and presentation of witness testimony. Available at <<http://scsl-server/scsl/new/rulesofprocedureandevidence.pdf>>.

² 'Black December' was an operation allegedly organized by Norman and carried out by the CDF in 1997, which involved blockading all major highways and roads leading to RUF-held areas in both the southern and eastern provinces.

³ Decision on Motions for Judgment of Acquittal Pursuant to Rule 98, October, 2005

issuance of orders by Norman and the use of child soldiers. The inclusion of evidence regarding a radio broadcast allegedly made by Norman during this period is of particular concern for the Prosecution. As such, it was argued that Norman's testimony cannot be completed until it is clear whether he can testify with respect to aspects of his conduct during the period in question.

While the presiding judge insisted that the initial decision taken by the Trial Chamber regarding the motion for acquittal had been coherent, and that 'Black December' had been struck out, both the Prosecution and the Defence sought further clarification on the decision. Counsel for the second accused maintained that the Chamber's decision had been adequate although he also expressed the hope that there would be a written decision on the matter handed down in the near future. Lead counsel for Norman concomitantly indicated the need for further elucidation of these matters as he was responsible for leading the witness through the incidents in question. A decision of clarification is expected to be issued by Trial Chamber I before the end of Norman's examination in chief.

Norman testimony

The first accused, Chief Sam Hinga Norman, was sworn in and took the stand on Tuesday with a large crowd in the public gallery showing their support for him. Throughout the week Norman took on a respectful and deferent attitude toward the Bench, and was generally cooperative with counsel, a marked change from his earlier often antagonistic relationship with both the court and his own counsel.⁴ Norman went so far as to apologize to those whom he may have inadvertently affronted in the course of the trial. He also expressed his gratitude to the bench for allowing him to return to court after his extended leave, to testify publicly about his involvement in the conflict and to answer to the charges brought against him. While lead counsel for Norman was cautioned by the bench on several occasions for posing leading questions during the examination in chief there was limited intervention from the Prosecution. Dr. Jabbi was given further warnings by the bench that his line of questioning often elicited speculative answers and that he might better serve the court by broaching the witness with questions that related to specific facts about the evidence in question. The testimony this week remained general in nature as it sought to elucidate the formation of the CDF, as well as Norman's changing roles and responsibilities during the conflict, including his position as Deputy Minister of Defence, National Coordinator of the CDF and Minister of the Interior.

Kamajors. Norman discussed the evolution of the traditional hunting societies, known as Kamajors in Mende, into an active part of the national defence against rebel attack during the conflict. It was while Norman was Regent Chief that he, along with other chiefs, decided to organize and employ the hunters, which have existed throughout Sierra Leone for many generations, in the defence of their communities. These young men were subsequently sent off for training and were then deployed with arms in their respective chiefdoms. As the country became increasingly insecure, Norman, in his role as Deputy Minister of Defence and with the authority of President Kabbah, sought parliamentary legitimization for the arrangement of hunter protection put in place by the Paramount Chiefs. The use of firearms by the Kamajors was unanimously supported by parliament in a decision passed in 1996, thereby affording Norman the constitutional protection he sought. The witness testified that while the Kamajors defended the country during the junta period and prior to the reinstatement of Kabbah as President, these civilian fighters were only officially referred to as the Civilian Defence Forces (CDF) in 1999, with the creation of the National Coordinating Committee (NCC).⁵ Norman noted that while the communities supported and sustained the Kamajors, the soldiers in the Sierra Leone Army felt

⁴ Norman refused to attend court proceedings for much of the Prosecution's case. He also dismissed past defence counsel and has periodically refused communication with them. He is currently represented by court appointed counsel.

⁵ The NCC was an administrative body established by the President after his reinstatement into Office. Norman was a member of the committee and held the position of National Coordinator.

that the deployment of the fighters amounted to an affront to their loyalty, thereby adding to their resentment against the government.

Initiation and immunization. Membership in the traditional hunting societies involved processes of initiation and immunization, processes which continued as the Kamajors evolved into the CDF. Testimony relating to these rites is particularly important in the CDF trial as the third accused, the High Priest of the CDF who operated under the authority of Norman, is alleged to have overseen the initiation of children under the age of fifteen. Initiation into the Kamajor society forms part of the evidence relating to the recruitment and use of child combatants during the conflict, as it is seen as the entrance point from which combatants were then trained to fight. The Defence contends that fighters were taught the principles of fair combat during these rites. Norman testified that while traditionally the Kamajors used Masonic techniques so that the wild animals they were hunting would not be able to see them, the same techniques were improved upon for the context of the war. As the conflict persisted Norman spoke of the President's request for an increase in the number of Kamajors and the concomitant need for the expansion of the initiation and immunization processes. Ultimately, initiation was designed to prepare young men for the fighting. During initiation, combatants were submitted to certain conditions which would give them courage in the face of danger. In the context of the conflict, immunization, which followed initiation, was a process designed to prevent the hunters from being seen by fellow human beings or from being hit by missiles, including bullets. Norman compared it to an 'iron shield' and said that he himself had been immunized and was certain of its protective powers. He went so far as to invite the judges to test these 'bullet proof' powers, although the judges declined. Norman did not elaborate any further on the specific activities involved in these rites as he testified that he was under a traditional ban and therefore could not reveal the secrets of the hunting societies. He did however elaborate on the particular rules and regulations taught to hunters during the initiation and immunization processes, such as the interdiction against harming innocent civilians. Norman indicated that disobedient fighters would receive their punishment in the battlefield, as once the rules were breached the protective powers of the immunization process disappeared.

Base Zero. Despite Norman's warnings that disgruntled forces within the military were looking to overthrow the government, Kabbah refused to act on this information and a coup was launched by AFRC forces on May 25th, 1997. President Kabbah fled to Guinea and Norman was soon in exile himself. Norman testified that while in Conakry, Kabbah asked him to coordinate all CDF activities in the country with those of ECOMOG, based in Liberia at that point, in order to extend their presence into Sierra Leone and effectively reinstate the democratically elected government. ECOMOG was to provide logistical support to the hunters, who would in turn facilitate ECOMOG's movement due to their knowledge of the terrain as well as their familiarity with civilian populations. As the National Coordinator of the CDF, Norman travelled first to Liberia and was subsequently based in Sierra Leone after being forced to leave Monrovia under threat of arrest by Charles Taylor. Norman relocated to what was known as 'Base Zero' in Talia, Yawbecko, in September of 1997. It was from here that Norman organized the hunters and coordinated their training, and it was also the location of the War Council. Norman testified that he himself was not a member and did not exert authority over the council. He attended meetings only when invited and deferred to the advice proffered by the council in his work. The council's membership comprised chiefs involved in the war effort, each responsible for elements such as logistics, appointments and welfare.

Rebel disguise. Norman also addressed the difficulty of distinguishing between civilians and members of the RUF, who wore no distinctive military uniform and often sought to deliberately hide their identity. Norman described it as a 'difficult' and 'muddy' situation in which rebels under attack became civilians and attacking civilians were in reality rebels. In this context of genuflection Norman testified that he believed that there were no deliberate hunter attacks against known civilians. Norman described an incident where a business man in Bo was alleged to have prepared a huge quantity of netted vests commonly worn by the Kamajors and was sending these to rebel lines. This allowed rebels to disguise themselves as Kamajors and cast blame on the hunters for crimes committed by them. Furthermore, Norman alleges that when he

was informed of complaints regarding Kamajors attacking civilians, investigations were duly conducted.

Defence Strategy

Much of Norman's testimony this week sought to counter the allegations of the Prosecution, as contained in the indictment, that Norman represents "the principal force in establishing, organizing, supporting, providing logistical support, and promoting the CDF" and that he exercised "*de jure* and *de facto* command and control over the activities and operations of the Kamajors".⁶ While the specific allegations of prosecution witnesses was largely untouched during this period of the examination in chief, the issues of superior authority and command responsibility were constant themes throughout Norman's testimony this week. Norman testified that all interaction between ECOMOG forces and the Kamajors was strictly between the commanders of the hunters and senior leaders within ECOMOG in the areas where those forces were present. As such, Norman did not supervise these interaction, nor was he privy to them: the Kamajors operated under the control of the forces that were present within their vicinity and Norman did not exercise command control over these fighters. A further important element that emerged from the testimony was that Norman had the approval of the President and the war council in providing the Kamajors with supplies of food and equipment and that the President himself was involved in the procurement of arms for the fighters. Norman testified that while in exile the President expressed pleasure and gratitude for Norman's work with the CDF and even went so far as to meet personally with some of the hunters in order to show his support for their ongoing work on behalf of the country.

⁶ See *Prosecutor v. Norman et al.* Indictment, SCSL-2004-14-PT, particularly in terms of the charge of individual criminal responsibility as contained in paragraph 13.