



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

Special Court Monitoring Program Update # 67
Trial Chamber I - CDF Trial
3 February, 2006

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Summary

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Summary

This week marks the second week of Norman's testimony in the CDF trial. The examination-in-chief moved from general topics to more specific issues as Norman responded to particular allegations made by the Prosecution. In particular, the use of child soldiers was extensively addressed as were events surrounding CDF attacks in several towns included as crime bases in the Indictment, such as Koribundu, Tongo Field and Bonthe. Defence counsel for the third accused led a controversial cross-examination of Norman, which focused not only on the role of his client, Allieu Kondewa, within the CDF, but also on the relationship between Norman and Kabbah and the internal politics of the ruling SLPP party. The Trial Chamber issued a decision clarifying their previous judgment regarding the Defence motion to acquit¹, specifically with reference to Operation Black December. The Chamber ruled that, as the effect of their previous decision was to strike the paragraph related to the incident of Black December from the Indictment, the accused were acquitted of any crimes relating to this particular crime base. As a result, Norman did not need to testify about the incident.

Black December Decision

The much awaited decision on the Joint Motion of the First and Second Accused to Clarify the Decision on Motions for Judgment of Acquittal Pursuant to Rule 98 was issued on Friday. This decision followed requests for clarification made by defence counsel regarding alleged crimes committed by the accused during "Operation Black

¹ Decision on Motions for Judgment of Acquittal Pursuant to Rule 98, SCSL-04-14-T, October, 2005.

December”², an operation referred to under sub-paragraph 25(g) of the Indictment. The request was made in order to determine whether the paragraph in question remains in effect following the decision on the Defence motion to acquit and consequently, whether the Defence needs to address the charges that relate to this incident during the presentation of their case. A previous joint motion to clarify this same decision was submitted by the First and Second Accused in October 2005, however a written decision on the matter had not yet been issued by the trial chamber.

Norman precipitated the request for clarification regarding the admissibility of evidence relating to Operation Black December when, during the course of his testimony last week, he voluntarily testified about the incident. He was reminded by the Presiding Judge that he need not discuss the incident itself, or the time period within which it had occurred, as all references to this operation had been struck from the original Indictment following Trial Chamber I’s decision on acquittal of October 2005. Following Judge Boutet’s intervention, the Prosecution argued that references to the operation should not be excluded from testimony as relevant information relating to crime base evidence other than evidence of unlawful killings committed during the time period and in the specific locations relating to Operation Black December should still be admissible.³ It was argued that issues such as the command structure and the use of child soldiers in the CDF still remain part of the Indictment and are therefore admissible as they relate to this operation and this time period. The Defence conversely maintained that the judgment of acquittal should be interpreted as effectively excluding all references to this time period from the proceedings.

The trial chamber reaffirmed that the paragraph related to Black December in the indictment is no longer operative in its decision of clarification, reasoning that “there is no evidence capable of supporting a conviction against the Accused Persons in respect of the offence of Murder as a Crime Against Humanity...and Murder as a Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II”⁴ in respect of the four locations specified by the prosecution in the Indictment. As this was the only count under which the Prosecution specifically charged the accused with regards to this operation, any evidence relating to Black December would therefore be excluded.

As a result, lead counsel for Norman was able to promptly complete the examination in chief without further reference to the events of Black December. The decision represents a set back for the Prosecution as it severely circumscribes their ability to include evidence related to important locations within a two-month period of the conflict. Despite generally purporting to adhere to a principle of flexible admissibility, Trial Chamber I has, on occasion, followed a similarly restrictive principle in terms of the admissibility of evidence. This was most controversially demonstrated by their decision

² The Prosecution alleges that Operation Black December was an operation organized by Norman and carried out by the CDF in 1997, which involved blockading all major highways and roads leading to towns in both the southern and eastern provinces and resulted in an unknown number of civilian deaths.

³ The original indictment contained general references to the incident of Black December, however, as per the order of chambers the prosecution was obliged to particularize the exact locations of the alleged crimes. Operation Black December subsequently came to involve four locations in the indictment, those of Jembbeh, Gumahun, Gerihun and Bo-Matotoka Highway. See Decision on Motions for Judgment of Acquittal Pursuant to Rule 98, SCSL-04-14-T, October, 2005.

⁴ Decision on Joint Motion of the First and Second Accused to Clarify the Decision on Motions for Judgment of Acquittal Pursuant to Rule 98, SCSL-04-14-T, Feb 3, 2006

on the exclusion of evidence related to allegations of sexual violence in the CDF case last year.⁵

Norman Examination in Chief

Greatest Responsibility

The beginning of the week was marked by testimony regarding the ongoing cooperation between the Kamajor forces and ECOMOG. Norman testified that he received a satellite phone through the Minister of Finance while at Base Zero in order to facilitate regular communication with the President with respect to this cooperation of forces.

Conversations with the President are alleged to have involved updates on CDF activities as well the CDF's ongoing logistical needs, including supplies of arms and ammunitions. Norman testified that there was no satellite phone communication between himself and senior CDF commanders in the field, who were usually working under the command of ECOMOG forces. Norman made it clear during his testimony that he occupied a position as the President's non-military subordinate. He did so in order to clarify an earlier statement he made describing himself as the President's military inferior, a mistake which Norman blamed on his history with the defence forces. He testified that as he did not wear a uniform, and was not involved in a military structure, it was more appropriate to call himself a civilian subordinate to the President. Whatever instructions he received from the President he considered them to be orders and carried them out as such.

Norman testified that in his role as National Coordinator he was responsible for coordinating the Kamajors in their assistance of superior forces, including ECOMOG. He asserted that the ultimate goal of these military operations was to reinstate the president and the democratically elected government in Sierra Leone. Norman testified that the CDF's objective was to support the superior forces in order to achieve this goal, but declined to characterize these efforts as including 'any means necessary', as has been alleged by the Prosecution under the Indictment. According to Norman, the War Council advised him on decisions regarding Kamajor operations. He also testified that decisions and directives about activities in the battlefield and planned actions against enemy forces were taken during War Council meetings, both at Base Zero and in Conakry. The War Council was operational until March 1998, after which time authority on such matters reverted to a separate body known as the Defence Council.

Highlighting the command and control relationship held by ECOMOG over the CDF, Norman testified that he was aware of disciplinary action taken against CDF personnel under their command in several different instances. This included instances that occurred at Bo Waterside, Kenema and Freetown. Norman elaborated on one specific disciplinary measure taken against a senior battalion commander stationed in Koribundu, Mr. Joe Tamidey, which occurred in 1998. The commander was arrested, physically beaten and locked up in a military cell in Bo town by ECOMOG forces. Norman subsequently conducted an investigation into his alleged misdemeanor and a

⁵ http://socrates.berkeley.edu/~warcrime/Papers/Silencing_Sexual_Violence.pdf

report was submitted to the Minister of Defence, President Kabbah. He did not elaborate further on the incident in question as it involved sensitive information with respect to the relationship between the ECOWAS governments and ECOMOG forces. No other examples were offered.

The prosecuting attorney introduced into evidence a copy of the National Coordinating Committee's (NCC) organogram, a diagram indicating the hierarchical organization of the committee, which became effective at some point between February and March 1999. Norman testified that the purpose of such an instrument was for the effective administration of various hunter groups and for the distribution of the supplies provided for the hunters by the government of Sierra Leone. Norman indicated that the President was, and still is, the National Commander of the CDF and hence holds the top position on the organogram. Norman further indicated that the document also contained a reference to the National Coordinator, Norman's own position within the organization. Norman interpreted the document as indicating that this position would fall into sixth place in hierarchical relation to the National Commander. It is clear that the intent of the introduction of this organogram into evidence by the Norman defence team is to show that Norman did not in fact exercise the 'greatest responsibility'⁶, as is set out in the Special Court's Statute. Similarly the time spent elaborating on the details of the operation of CDF forces under the command of ECOMOG forces, the satellite phone communication between the President and Norman while at Base Zero and the narration of events that show the responsibility of ECOMOG forces for disciplinary measures also form part of attempts by the Norman defence team to counter the Prosecution's allegations that the Accused exercised the 'greatest responsibility' for the crimes contained in the Indictment.

Use of child soldiers

The historic decision by the Appeals Chamber of the Special Court in 2004, which recognized the recruitment and use of child soldiers as a crime under customary international law came to the forefront of proceedings this week. The Indictment alleges individual criminal responsibility on the part of the three accused for the use of child soldiers under Count 8, which contends that the CDF did "initiate or enlist children under the age of 15 years into armed forces or groups, and in addition, or in the alternative, use them to participate actively in hostilities."⁷ Norman testified extensively about his knowledge (or lack thereof) of the use of children under the age of 15 by the CDF throughout the conflict. Norman admitted that he was aware of the involvement of children in the conflict. However, he stated that it was common knowledge amongst Sierra Leoneans that children were involved. He denied that he ever saw children used by the CDF or that there were any present at Base Zero. He also denied that he enlisted or recruited children under the age of fifteen and testified that it was the individual chiefs who chose whom would be initiated in to the Kamajor society. He explained that the use of children in the fighting on the part of civilians came about whenever a community was attacked, as children naturally assisted their families and neighbours with the defence of their community. He defended this position by saying that the oath he took to hold office involved a pledge to uphold the constitution of Sierra Leone and that the constitution gives every Sierra Leonean, regardless of age, the right of self-defence.

⁶ This phrase is contained in the Statute for the Special Court, available at <http://www.sc-sl.org/scsl-statute.html>

⁷ See *Prosecutor v. Norman et al.* Indictment, SCSL-2004-14-PT, Count 8

Norman testified that he did not receive any specific instructions as National Coordinator to use children, although he spoke of a radio broadcast made by Kabbah during which the President asked all Sierra Leoneans to assist in every possible way in reinstating the democratically elected government. He cited this call to Sierra Leoneans, which did not any make specific reference to age, as perhaps one factor that showed the government's tacit support for the involvement of children in the conflict. While Norman admitted that he did not actively prevent their involvement during the initial stage of the war, he spoke about his own personal efforts after the reinstatement of the President to rehabilitate child soldiers. These child soldiers are alleged to have been captured by the CDF from rebel lines during the conflict. He testified that he initially accommodated these child combatants in his own house and that he continues to pay school fees for them to this day.

Koribundu

Norman's testimony this week about events related to the town of Koribundu, as well as his testimony regarding Bonthe town and several other villages, reflects the specific allegations of the Prosecution as laid out in the Indictment and supported by witness testimony during the presentation of their case. The Indictment focuses on CDF attacks in the towns of Tongo Field, Kenema, Bo and Koribundu, amongst others, and the alleged crimes that occurred there, which include attacks against civilians, the looting and destruction of property, unlawful killings and terrorism.⁸ The defence team for Norman took the opportunity of having Norman on the stand to allow him reply to many of the specific allegations made against him in both the Indictment and earlier witness testimony. In some instances Norman simply denied knowledge of the events in question while in other cases he narrated lengthy examples which he said demonstrated the impossibility of the accusations.

A significant amount of time was focused on the three attacks launched by the CDF on the town of Koribundu, which Norman knew about, before the CDF was able to regain control of the town from rebel forces. Norman was stationed at Base Zero for the two latter attacks. Located at an important intersection of major roads, Koribundu held strategic importance even before the AFRC coup. An attack was ordered after the rebels gained control of the town in 1997, so that ECOMOG forces could establish a military base there. By capturing the town the forces were able to cross the Moa river and travel by road through Koribundu and on to Bo, an important transportation axis. The first two attacks failed but a subsequent successful attempt was mounted in January of 1998. Norman testified that the attack was ordered against strictly military targets. While there were no deliberate attacks against civilians Norman maintained that the complete avoidance of civilian fatalities was impossible. The attacks were discussed and directed by the War Council at Base Zero, and as such, Norman alleged that he never personally issued orders to either the commanders or the fighters. Furthermore, apart from the discussions held at the War Council meetings Norman testified that he did not discuss the planned battle with any other participants before the attack.

Norman visited Koribundu after the successful January 1998 battle and he claimed that during this visit he expressed annoyance with some of the elders of the township as he believed they had caused the stalemate in the fight to retake Koribundu from under rebel

⁸ See *Prosecutor v. Norman et al.* Indictment, SCSL-2004-14-PT

control. Norman continued that he told the civilians that shame fell on all of them for not assisting in the restoration of democracy, as Norman felt that the civilians resented the actions of the CDF, and sympathized with the rebels. The Examiner in Chief recalled evidence presented by Prosecution witness TF2-032, who claimed that 161 houses had been burnt in Koribundu. Norman countered the allegation by testifying that as Regent Chief of the area he knew Koribundu well. He claimed that the testimony must be untrue as the town did not even have 161 houses to begin with. He claimed that contrary to the Prosecution's allegations of extensive damage caused by the CDF within the town, which was allegedly ordered by Norman due to the town's collaboration with rebel forces, not even fifteen houses had been destroyed during the fighting.

Much of Norman's testimony this week followed a similar pattern as it was predominantly directed at countering the specific claims made by prosecution witnesses. He denied the claims of prosecution witnesses that he commanded the group of Kamajors known as the 'Death Squad', as well as claims of murder, torture and pillaging on the part of Norman himself as well as by the CDF. He also addressed the testimony of Albert Nallo, TF2-014, a former Kamajor fighter who had been present at Base Zero. As an insider witness, Nallo gave evidence that Norman issued commands to the Kamajors, directed battle, controlled the War Council and ordered all rebel sympathizers and collaborators killed, amongst other crimes. Norman denied many of the witness' allegations outright and elaborated on the impossibility of others, such as the accusation that he directed the War Council by invoking examples of his deference to the council's authority in disciplinary matters.

In addition to his lengthy testimony regarding attacks on Koribundu and Bonthe, Norman denied different reports by Prosecution witnesses that he received messages regarding the capture and murder of rebel supporters in the Tongo area. Norman also adamantly denied allegations made regarding his command over Kamajors in Bradford: any knowledge about the atrocities committed or any communication with the fighters in this operation were vigorously refuted.

Norman Cross-Examination

Cross-examination by counsel for the second and third accused commenced immediately after Norman's counsel completed examination-in-chief following the decision issued by the Chamber which clarified its ruling on the defence's no case motions. While counsel for the second accused simply confirmed some points made by Norman during his examination-in-chief, counsel for the third accused, Mr. Charles Margai, engaged in an extensive cross-examination on several new issues, many which had overtly political implications.

The cross-examination began uncontroversially, with counsel seeking information regarding the third accused's role in the conflict. Norman testified that when he arrived at Base Zero, he observed that Kondewa was head of the initiators and was known as High Priest. Norman identified the High Priest as holding the ninth position in the NCC hierarchy, as indicated by the organogram submitted into evidence during the examination-in-chief. Norman reiterated the 'rules of engagement' of the Kamajors, rules passed on to the fighters by the initiators (including Kondewa), which acted as a check on their behaviour in the battlefield.

Much of the remaining cross, however, addressed the 'luke warm' relationship that existed between President Kabbah and Norman after the coup, the rumours that Norman had planned to launch a coup along with Demby, the then Vice President, and the events surrounding Norman's arrest by the Special Court. The judges interrupted the cross with constant concerns regarding the relevance of Mr. Margai's line of questioning and continued to state their concerns that these were political issues, existing outside the scope of the Indictment, rather than key elements of the defence of the third accused. Counsel insisted that the relevance of these events was critical to the charge of joint criminal enterprise and that it would become very clear in due course. He repeatedly asked the Trial Chamber to be patient. Any attempt to argue that there was no political undercurrent to his line of enquiry seemed dubious, given Mr. Margai's own involvement in Sierra Leonean politics.⁹ He questioned Norman regarding the constitutional situation of the SLPP's leadership structure as well as the nature of the relationship that existed between Kabbah and Norman. Norman testified about Kabbah's reluctance to ever take advice from anyone, including Norman's own with respect to the imminent coup he had predicted, Kabbah's initial refusal to see Norman in Conakry and the President's fears and suspicions's regarding Norman as a challenge to his own power. Margai also questioned Norman with respect to the discord between the President and Norman over his choice of running mate and the events surrounding his arrest by the Special Court. Norman told the court that shortly before his arrest in his office on March 10th, 2003 he received a phone call from the President asking Norman whether he was in his office at that time. Norman replied that he was and within minutes police had burst in and handcuffed him to his chair. Norman also testified that while he was being transported to a waiting helicopter he fell inside the van, his hands still handcuffed, and suffered the leg injury for which he now uses a cane.

Mr. Margai's cross examination covered new material from the examination in chief specifically related to the role his defendant, Kondewa, played as High Priest. However, the overtly political tones of the cross were apparent as well, with Kabbah and the SLPP representing Margai's political opponents it was difficult not to see how the court was being used to pursue other agendas. The judges were apparently aware of this danger and repeatedly indicated their impatience with the political angle of the cross-examination. Margai was however given a large degree of latitude and finished his controversial cross-examination by the end of the day. The Prosecution's cross-examination of Norman is scheduled to commence on Monday.

⁹ Mr. Margai has recently founded his own political party and will be running against the SLPP, Kabbah's party, in the upcoming elections scheduled for 2007. Notwithstanding the judges' misgivings, Margai was allowed to proceed.



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This publication was originally produced pursuant to a project supported by the War Crimes Studies Center (WCSC), which was founded at the University of California, Berkeley in 2000. In 2014, the WCSC re-located to Stanford University and adopted a new name: the WSD Handa Center for Human Rights and International Justice. The Handa Center succeeds and carries on all the work of the WCSC, including all trial monitoring programs, as well as partnerships such as the Asian International Justice Initiative (AIJI).

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