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(19161 - 19181)

SPECIAL COURT FOR SIERRA LEONE In Trial Chamber I

Before:

Justice Bankole Thompson, Presiding

Justice Pierre Boutet

Justice Benjamin Mutanga Itoe

Registrar:

Mr Lovemore Munlo, SC

Date:

8 September 2006

THE PROSECUTOR

-against-

SAMUEL HINGA NORMAN, MOININA FOFANA, and ALLIEU KONDEWA

SCSL-2004-14-T

Public

First Accused Request to Admit Certain Documents in Lieu of the Oral Testimony of Major-General Abdul-One Mohammed Pursuant To Rules 89(C) and 92bis and Request for Clarification on Procedure for Closing

For the Prosecutor:

Mr Christopher Staker Mr James Johnson Mr Joseph Kamara

GREENLEDINT FOR SIEMA LEUNE

LYECKIVED

COURT MANAGEMENT

-8 SEP 2006

MAMELITUREN COLTONDI

SIGN NELLUCIUS

TIME UT 40

For Samuel Hinga Norman:

Dr Bu-Buakei Jabbi Mr John Wesley Hall Jr. Mr Alusine Sani Sesay

For Moinina Fofana:

Mr Victor Koppe Mr Arrow Bockarie Mr Michiel Pestman

For Allieu Kondewa:

Mr Charles Margai Mr Yada Williams Mr Ansu Lansana

INTRODUCTION

- 1. The Defence for the First Accused (the "Defence") hereby submits this application and requests for certain documents to be admitted under Rule 89(C) and Rule 92bis in lieu of the oral testimony of Major-General Abdu One Mohammed who was scheduled to testify on the 13th of September 2006. The Defence submits that there are compelling new circumstances which necessitate this application.
- 2. The Defence further requests the guidance of the Trial Chamber as to the procedure for closure of the defence case for the First Accused, in light of the outstanding decision from the Appeal Chamber concerning the subpoena of H.E. Alhaji Dr. Ahmad Tejan Kabbah¹.

BACKGROUND

- 3. The Defence is requesting the Trial Chamber to admit into evidence certain documents the Defence intended to have been admitted into evidence through one of its prospective witnesses, Major-General Abdul One Mohammed. It now appears that Major-General Mohammed will not be able to attend the Special Court to give testimony.
- 4. The Defence has made two trips to Nigeria to meet the witness. On both occasions the prospective witness intimated his willingness to testify on behalf of the First Accused when the condition of his health improved. The Defence has also had various telephone conversations with this witness since the end of the May-June 2006 trial session about the possibility of him testifying as a witness for the First Accused when the trial resumes on the 13th September 2006.

¹ The Prosecutor v. Hinga Norman et al, SCSL-04-14-T-648, Fofana Notice of Appeal of the Subpoena Decision and Submissions in Support Thereof, 6 July 2006 and The Prosecutor v. Hinga Norman et al, SCSL-04-14-T-649, Norman Notice of Appeal and Submissions Against the Trial Chamber Decision on the Issuance of a Subpoena ad Testificandum to H.E. Alhaji Dr. Ahmed Tejan Kabbah, President of the Republic of Sierra Leone, 6 July 2006.

- 5. The result of these telephone conversations is that Major-General Abdu One Mohammed has said, he cannot guarantee that he will be able to attend the Special Court and testify when the trial resumes on 13 September 2006 because of continuing poor health. A follow up telephone conversation took place on 5 September 2006 wherein he further expressed his health concerns and the pain he is currently going through.
- 6. As a result of these new circumstances, the Defence seeks to admit certain documents in evidence in lieu of the General's oral testimony through Rule 89(C) and Rule 92bis. The documents have already been disclosed to the Prosecution following the Decision² of the Trial Chamber wherein the Court ordered Counsel for Norman to file the copies of the two exhibits as soon as possible but no later than 3 August 2006.
- 7. Counsel for Norman filed these exhibits as ordered by the Trial Chamber and the Prosecution presently has copies of the documents the Defence is now the Court to admit under Rule 89(C) and Rule 92bis.
- 8. Counsel is also seeking the admission of the statement of General Abdul-One Mohammed. The Defence has earlier disclosed the summary the said statement to the Prosecution and submits that it fulfils the criteria for admission under Rules 89(C) and 92bis.

SUBMISSIONS

Application of Rules 89(C) and 92bis

9. Rule 89(C) of the Rules provides:

² The Prosecutor v. Hinga Norman et al, SCSL-04-14-T-667, Decision on the First Accused's Motion for Leave to Add two Exhibits to the Exhibits List, 18 July 2006.

- (C) The Chamber may admit any relevant evidence.
- 10. The Rule clearly stipulates the conditions for admissibility. Accordingly, Rule 89(C) vests the Trial Chamber with discretionary powers to admit any relevant evidence³. In line with international jurisprudence, the Trial Chamber has wide discretion in deciding what constitutes relevant evidence⁴. Further, the Rules favour a flexible approach to the issue of flexibility of evidence leaving the issue of weight to be determined at the end of the trial when assessing probative value of the totality of the evidence.⁵

11. Rule 92bis of the Rules provides, in part:

- (A) A Chamber may admit as evidence, in whole or in part, information in lieu of oral testimony.
- (B) The information submitted may be received in evidence, if, in the view of the Trial Chamber, it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation.
- (C) A party wishing to submit information as evidence shall give 10 days notice to the opposing party. Objections, if any, must be submitted within 5 days.
- 12. Rule 92bis of the Rules has been interpreted by the Appeals Chambers as follows:

"SCSL Rule 92*bis* is different to the equivalent Rule in the ICTY and ICTR and deliberately so. The judges of this Court, at one of their first plenary meetings, recognised a need to amend ICTR Rule 92*bis* in order to

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³ The Prosecutor v Sesay et al, SCSL-04-15-T, Ruling on Gbao Application to Exclude Evidence of Prosecution witness Mr. Koker, 23 May, 2005, para. 6.

⁴ The Prosecutor v Bagosora et al, ICTR-98-41-T, Decision on Admissibility of Proposed Testimony of witness DBY, 18 September 2003, para. 18.

⁵ The Prosecutor v Hinga Norman et al, SCSL-04-14-T-AR65, Fofana-Appeal Against Decision Refusing Bail, 11 March 2005 at paras. 22-24 and Prosecutor v. Norman et al, SCSL-04-14-T-447, Decision on the Prosecution's Request to Admit into Evidence Certain Documents Pursuant to Rules 92bis and 89(C), 14 July 2005.

simplify this provision for a court operating in what was hoped would be a short time-span in the country where the crimes had been committed and where a Truth and Reconciliation Commission and other authoritative bodies were generating testimony and other information about the recently concluded hostilities. The effect of the SCSL Rule is to permit the reception of "information" – assertions of fact (but not opinion) made in documents or electronic communications – if such facts are relevant and their reliability is "susceptible to confirmation". This phraseology was chosen to make clear that proof of reliability is not a condition of admission; all that is required in that the information be capable of corroboration in due course."

13. This Trial Chamber has also stated with respect to Rule 92bis:

"...proof of reliability is not a condition for admitting "information" under Rule 92bis and that a requirement under this Rule of such information being capable of corroboration in due course leaves open the possibility for the Chamber to determine the reliability issue at the end of the trial in light of all evidence presented in the case and decide whether the information is indeed corroborated by other evidence presented at trial, and what weight, if any, should the Chamber attach to it;"

14. Therefore, under Rule 92*bis*, it must be demonstrated that the proposed evidence is both relevant⁸ and 'capable of corroboration in due course'.

⁶Prosecutor v Norman, Fofana, Kondewa, SCSL-2004-14AR73, Decision on Appeal Against Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence, 16 May 2005 ("Decision on Judicial Notice), para. 26.

⁷ Prosecutor v. Norman, Fofana, Kondewa, SCSL-04-14-T-447, Decision on the Prosecution's Request to Admit into Evidence Certain Documents Pursuant to Rules 92 bis and 89(C), 14 July 2005.

⁸ "Relevant evidence can be defined as evidence that tends to prove or disprove a material issue; in other words, evidence is relevant 'if its effect is to make more or less probable the existence of any fact which is in issue, i.e. upon which guilt or innocence depends." Richard May and Marieka Wierda, INTERNATIONAL CRIMINAL EVIDENCE (Transnational 2002), § 4.23 (citing Richard May, CRIMINAL EVIDENCE (Sweet and Maxwell 1999), ¶ 1-13.

- 15. The requirement of "corroborated in due course" can mean that at some point in the presentation of the Defence case, the proposed piece of evidence will be substantiated by an additional piece of evidence.9
- 16. The Defence submits that each of the proposed pieces of evidence, including the two exhibits and the statement of Major-General Abdu One Mohammed, are relevant and have been corroborated in the testimony of the Defence witnesses. On this basis, the Defence requests that the Trial Chamber admit these documents.
- 17. Annex A provides the details for relevance for each proposed document.

Closure of the Defence Case for the First Accused

18. The Defence notes that the Trial Chamber has stated that the defence case for the First Accused is to close after the testimony of Major-General Abdul-One Mohammed. 10 The Defence seeks the guidance of the Trial Chamber as to the timing and procedure for closure of its case, in light of the pending decision of the Appeals Chamber concerning the subpoena of H.E. Alhaji Dr. Ahmad Tejan Kabbah. In the event that this Trial Chamber orders the First Accused to close its case prior to the said Appeal Chamber decision, the First Accused gives notice of its intention to avail itself of the right to make an application to reopen its case, dependent on the outcome of the Appeal Chamber decision.

⁹ With respect to corroboration, an item of evidence can only be considered proved if more than one source has testified to it or substantiated it. Jones & Powles, INTERNATIONAL CRIMINAL PRACTICE, 3rd ED. (Oxford 2003) at 727, 734.

¹⁰ The Prosecutor v Hinga Norman et al, SCSL-04-14-T-619, Decision on Norman Motion to Defer Further Evidence and Closing of His Case to September-December Trial Session, 14 June 2006.

CONCLUSION

19. Based on the foregoing circumstances and submissions, and the principles laid down by both this Trial Chamber and the Appeals Chamber, the Defence respectfully requests that the Trial Chamber admit the documents catalogued in Annex A, pursuant to Rule 89(C) and Rule 92bis. The Defence further requests the guidance of this Chamber as to the timing and procedure for closing its case

Dr By-Buakei Jabbi

Index of Authorities

Case Law

- 1. The Prosecutor v. Hinga Norman et al, SCSL-04-14-T-648, Fofana Notice of Appeal of the Subpoena Decision and Submissions in Support Thereof, 6 July 2006
- 2. The Prosecutor v. Hinga Norman et al, SCSL-04-14-T-649, Norman Notice of Appeal and Submissions Against the Trial Chamber Decision on the Issuance of a Subpoena ad Testificandum to H.E. Alhaji Dr. Ahmed Tejan Kabbah, President of the Republic of Sierra Leone, 6 July 2006.
- 3. Prosecutor v Sesay, Kallon, Gbao, SCSL-04-15-T, Ruling on Gbao Application to Exclude Evidence of Prosecution Witness Mr Koker, 23 May 2005.
- 4. Prosecutor v. Norman, Fofana, Kondewa, SCSL-04-14-AR65, Fofana Appeal Against Decision Refusing Bail, 11 March 2005.
- 5. Prosecutor v. Norman, Fofana, Kondewa, SCSL-04-14-T-447, Decision on the Prosecution's Request to Admit into Evidence Certain Documents Pursuant to Rules 92 bis and 89(C), 14 July 2005.
- 6. Prosecutor v Norman, Fofana, Kondewa, SCSL-2004-14AR73, Decision on Appeal Against Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence, 16 May 2005.
- 7. Prosecutor v. Bangosora et al., ICRT-98-41-T, "Decision on Admissibility of Proposed Testimony of Witness DBY", 18 September 2003.

Other

- 8. Richard May and Marieka Wierda, INTERNATIONAL CRIMINAL EVIDENCE Transnational 2002), § 4.23 (citing Richard May, CRIMINAL EVIDENCE (Sweet and Maxwell 1999).
- 9. Jones & Powles, INTERNATIONAL CRIMINAL PRACTICE, 3rd ED. (Oxford 2003).

ANNEX A

Title of Document	Relevance	Corroboration
Periodic Report, Civil Defence Force	This document is relevant with respect to the	Hinga Norman, Joe Demby,
'Kamajors' dated August 97 from AO	Prosecution's theory of command	Peter Penfold, Mohammed
Mohammed	responsibility and individual criminal	Kinneh Swaray, Arthur
	responsibility	Koroma
To CSO Mustapha dated 13th August 1997	This document is relevant because it is	Hinga Norman, Joe Demby,
and Action plan captioned Operation	poking holes in the Prosecution's theory of	Arthur Koroma
Athens	command responsibility	
The Sierra Leone Crisis Ecomog and the	This document is the statement of Major-	Hinga Norman, Arthur
Civil Defence Forces (Kamajors) dated 2nd	General Abdu One Mohammed and is	Koroma, Peter Penfold, Joe
March, 2006, from Major-General Abdu	relevant in the sense that it lays down how	Demby, Ishmael Senesie
One Mohammed.	Ecomog was in command and Control of the	Koroma, Lansana Bockarie
	CDF during the conflict.	

9

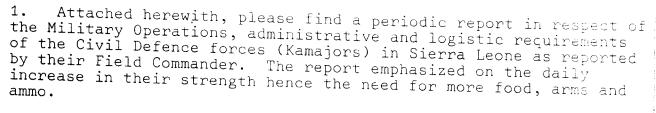


Aug 97

Ref NIGCON/ECOMOG/6/G

See Distribution

PERIODIC REPORT CIVIL DEFENCE FORCE KAMAJORS'



2. In response to this front line request, HQ NIGCON has immediately provided the following to the Kamajors:

a.	Arms				:
	(1)	G3	_	quantity	- 250
	(2)	FN	_	11	- 150
	(3)	RPG Launchers	_	11	- 25
	(4)	GPMG	-	11	- 5
b.	Ammo				
	(1)	7.62mm <u>Ball</u>		11	- 25,000
	(2)	RPG Bombs	_	11	- 400
	(3)	Hand · Grenades	-	11	- 25 Boxes
	(4)	Shot guns	-	11	- AA/SG 200 Cartons

c. Funds. The sum of Ten thousand US Dollars (US\$10,086.00) only for ration and condiments and miscellaneous expenses.

- 2. The Kamajors are now deployed about 6km short of Zimmi and are planning to re-capture the town before the end of Aug 97. Zimmi is a District Headquarters and is strategic if troops are to advance to Bo or Kenema.
- 4. The CDS will be duly informed of any further development.

FINA

fer

AO MOHAMMED Brig Gen Comd

SECRET

Enclosure:

1. Periodic Report of Civil Defence force (Kamajors).

Distribution:

File

External:
Action: Copy No:

CDS 1

Information:

COAS 2

CSO To C-in-C
FC, ECOMOG 3

Internal:
Information:

Comd's file 5

13th, August 1997.

To CSO Mustapha

In my many discussions with General Abacha, he stressed the need to upgrade the Kamajors and increase their numbers. The numbers have already been attained and the action plan is attached herewith.

1

It will be appreciated if this plan is studied carefully by the ECOMOG Commander and his team with my Deputy Minister of Defence, Captain Hinga Norman to ensure that there is some coordinated action between ECOMOG and our Civil Defence forces.

Alternatively, I could send two people including Captain Norman to discuss with your Planners.

Thanks for your continued cooperation.

Ahmed Tejan Kabbah

TOP SECRET

STRICTLY RESTRICTED TO PERSON BELOW

OPERATION ATHENS

DISTRIBUTION:

- 1. H. E. THE PRESIDENT
- 2. MR. R. E. S. LAGAWO CO-ORDINATOR
- 3 S. D. MUSA

SUGGESTED OPERATIONAL ORDERS FOR REINSTATING THE LEGITIMATE GOVERNMENT OF THE REPUBLIC OF SIERRA LEONE IN THE SHORTEST POSSIBLE TIME.

INFORMATION /PREAMBLE

On the 25th May, 1997 a group of military personnel of the Republic of Sierra Leone Military Forces, assisted by the R.U.F. overthrew the democratically elected Government of President Ahmed Tejan Kabbah in a very bloody Coup D'etat.

- 2. During the execution of this coup, the Government Treasury and the Bank of Sierra Leone buildings were destroyed by the coup makers. In addition, private property worth millions of Leones were looted, not to mention the destruction of almost all industrial complexes in the country.
- 3. The atrocities continue up till now and the people of Sierra Leone live in perpetual fear for their lives and property.
- 4. The junta was rejected by the whole nation and the people resorted to Civil Disobedience.
- 5. Important personalities, such as civil servants, Heads of Parastatals, Medical Practitioners, High Court Judges, Law Enforcement Officers etc have fled the country because of the present anarchy
- 6. The International Community has condemned the coup and have asked the junta to return the country to the democratically elected Government of Dr. Ahmed Tejan Kabba.

7. INTENTION

Inorder to stop the further destruction of the economy and to put an end to the suffering of our people, it is the intention for the S.L.P.P. led Government in exile to forcefully remove the RUF led junta in Freetown through a carefully planned and executed military action with minimum loss of life and property.

8. **METHOD**

Our sources disclose that there are about 3,000 Kamajor fighters based at Zimmi. It is suggested that immediate arrangements be made with

ECOMOG to airlift 500 trained men to Jui Camp, which should serve as both base and Training Centre.

- ii) The troops should be moved from Jui, to attack Freetown as follows:-
 - (a) State House
 - (b) F.M. Station
 - (c) F.B.C.
 - (d) Aberdeen
 - (e) Benguema
 - (f) Waterloo junction
 - (g) 7th Battalion
 - (h) S.S. Camp
- 9. ECOMOG should takeover the whole country after the capture of Freetown. They should continue to man air, sea and land ports while the SSD personnel protect personalities and important installations
- 10. The Kamajors must be reinforceed by ECOMOG in the Provinces inorder to stop any attempt by RUF to return to the bush.
- 11. The Kenema Bo and Bo Moyamba highways to be blockaded immediately to allow only civilian vehicles.
- 12. The Kamajors who are already deployed to take care of CAMP CHALIE must stay put.

13. **UNIFORMS**

It is suggested that the normal combat uniforms be replaced by plain green uniforms for this operation.

- 14.A reliable SSD Officer preferably Superintendent Vandi should be informed about this planned action, so that he could secretly alert loyal SSD personnel to take cover at ECOMOG bases in the Provinces, to join the battle on the D-Day.
- 15.C.P.O Dumbuya to be informed about this plan so as to enable him and his group to fit in.
- 16. The personal security of the family of the SSD personnel in Freetown taking part in this operation should be guaranteed. It is recommended that those

involved in the operations ask their families to report at the nearest ECOMOG base in Freetown.

17. Vehicles, arms and ammunition and other materials captured from the enemy should serve as additional logistics.

18. COMMAND STRUCTURE

It is suggested that Chief Hinga Norman, in collaboration with the existing WAR COUNCIL, be in overall command.

19. LOGISTICS

Please find attached logistical need for this operation in Appendix 'A'.

20. RULE OF ENGAGEMENT (R. O. E.)

This should be determined by the Field Commander and must be strictly adhered to by all combatants, inorder to avoid the operation losing credibility to the populace and the International Community.

20. TIME FOR ECECUTION

Due to information gathered about the low morale of the Sierra Leone soldiers, coupled with the disgruntlement of the general populace, it is suggested that the modalities be worked out not later than the 18th August 1997. Any further delay would give time to consolidate themselves.

(S. D. MUSA) C.S.P.

11-8-97

APPENDIX 'A'

LOGISTICS NEEDED ARE AS FOLLOWS

- (1) 30 FLAME THROWERS AND 100 BOXES OF BOMBS
- (2) 24 ANTI AIR CRAFT GUNS (AA) AND 200 BOXES OF AMMUNITION
- (3) 82MM MORTAR 10
- (4) 60MM MORTAR 10
- (5) R..P.G. 7 TUBES AND A LARGE QUANTITY OF AMMUNITION 400 R.P.G.7
- (6) 30 H.M.G. AND A LARGE QUANTITY OF AMMUNITION
- (7) 30 G.P.M.G. AND A LARGE QUANTITY OF AMMUNITION
- (8) 30 L.M.G. AND A LARGE QUANTITY OF AMMUNITION
- (9) 30 GRENADE LAUNCHERS AND A LARGE QUANTITY OF BOMBS
- (10) 100 BOXES OF HAND GRENADES
- (11) 3000 AK 47 WITH 2 PISTOL GRIPS AND A LARGE QUANTITY OF 7.62MM X 39MM.
- (12) 300 PISTOLS AND A LARGE QUANTITY OF AMMUNITION
- (13) 12000 OF BANDOLIER
- (14) A LARGE QUANTITY OF EAR PROTECTION
- (15) 20 FIELD GLASSES (BINOCULARS)
- (16) 20 SILENCED PISTOLS
- (17) 10 CANNONS 75MM PLUS BOMBS
- (18) COMPO RATION FOR 20,000 MEN FOR SEVEN DAYS

- (19) TEN BASE RADIO STATIONS
- (20) VHF–HAND SETS AND EXTRA BTYS STATIONS (WALKIE TALKIES
- (21) SIX REPEATER STATIONS

LOGISTICS NEEDED ARE AS FOLLOWS

- (a) 20 FLAME THROWERS 100 BOXES OF BOMBS
- (b) ARMOURED PERSONNEL CARRIERS
- (c) 4 TWIN BARREL ANTI AIRCRAFT GUNS(AA)
- (d) MORTAR GUNS
 - (1) 60MM 20 500 BOMBS
 - (2) 82MM 20 500 BOMBS
 - (3) 120MM 4 500 BOMBS
- (e) 10 BARRELS ANTI AIRCRAFT GUNS(AA) ENOUGH AMMUNITION
- (f) ROCKET PROPELLED GRENADE R.P.G. 24 TUBES
- (g) H.M.G. GUNS 24 (100 BOXES OF AMMUNITION)
- (h) G.P.M.G. 24 (100 BOXES OF AMMUNITION)
- (i) LIGHT MACHINE GUNS 24 (100 BOXES OF AMMUNITION)
- (j) GRENADE LAUNCHER 8 (100 BOXES OF AMMUNITION) 4 VEHICLES
- (k) HAND GRENADE 100 BOXES
- (l) AK 47 WITH 2 PISTOL GRIP 2000 GUNS 200 BOXES OF AMMUNITION (7.62MM X 39MM)

BY A. O. KAMARA O/C (ALIAS YETY YETY)

The Sierra Leonian Crises ECOMOG and the Civil Defence Forces (Kamanjos).

The crisis started at about 0730 hours when junior Army Officers led by Major Jonny Paul Koroma seized power on Sunday 25 May 1997, thus ousting the elected president Ahmed Tijan Kabah. It was a coup detat by junior officers of the Sierra Leonean Army.

By about 1400 hours. The chief of staff Nigerian Army instructed me to mobilise and equip a task Force of a Battalion Battle group to move to Freetown to crush the coup and re-instate President Tijan Kabah.

By about 2200 hours, we have assembled about 1000 troops with support weapons, vehicles, food, POL and other logistic necessities ready for Freetown using the troop carrier NNS AMBE.

Already a Nigerian Training Team based in Freetown have swiftly arranged and evacuated President Kabah to Conakry in Guinea. So right from the beginning, ECOMOG and indeed the Nigerian contingent have been directly involved with the Sierra Leonean crisis.

Collaboration with Civil Defence Force (Kamanjos)

Nigerian contingent under ECOMOG collaborated with the Civil Defence Forces in the following areas:

- (1) Operationally especially in the Bo-Kenema axis.
- (2) Nigerian contingent supplied arms and ammunition, Fuel, Food staff and cash in hard currency.
- (3) Sharing intelligence.
- (4) Medicare.

Nigerian contingent in ECOMOG came first in contact with CDF leadership through Hon Hinger Norman who was the Deputy Minister of Defence of Sierra Leone under President Tijan Kabah. The

Nigerian contingent had been directed to cooperate with the Kamanjos and also take care of the Sierra Leonean.

Battalion which was based in Monrovia.

Our first contact with Chief Hinger Norman was on 12 June 1997 when I had to arrange an aircraft from Nigeria to pick him (Mr Hinger Norman) from Conakry to Monrovia to discuss with Nigerian contingent commanders.

On arrival Chief Hinger Norman came straight to my office in Monrovia. We held various discussions on how our forces would collaborate in order to crush the coup and return president Tijan Kabah to power. Later on we held a very useful meeting with some leaders of the Kamanjos and came up with an operational plan of action. Most of the logistics were to be provided by the Nigerian contingent.

We fully cooperated with Chief Hinger Norman based on the fact that he was an official of the Government of Sierra Leone and a close and loyal associate of President Tijan Kabah.

Abdu One Mohammed mai

Maj-Gen (rtd)

fomer Chief of staff ECOMOG and Commander Nigerian Contingent in both Liberia and Sierra Leone.