



U.C. Berkeley War Crimes Studies Center
Sierra Leone Trial Monitoring Program
Weekly Report

Special Court Monitoring Program Update #41 Trial Chamber 1 - CDF Trial Covering week ending June 3, 2005

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This past week brought a series of controversial events in Trial Chamber I relating to evidence of sexual violence. The Chamber issued three rulings relying on an unreasoned decision delivered on 23 May 2005. The unreasoned decision denied a request from the prosecution to lead evidence of sexual violence under existing counts of the indictment; however, the ruling did not give details as to the extent of admissibility of this evidence in general [1].

A group of nine female witnesses for the prosecution arrived in Freetown to give evidence of sexual violence in the Bonthe District, among other crimes. Three of the witnesses from this group were not able to testify as a consequence of the restrictive position adopted by the Chamber regarding evidence of sexual violence. Six of the remaining women gave evidence of unlawful killings, looting and burning, and physical violence. Their testimony did not include the acts of sexual violence for which they were originally called. At the end of the week, the prosecution indicated that it would seek leave to appeal the decisions rendered this week by the Chamber [2].

The chamber heard from a total of seven witnesses this week, six of whom were called in support of the prosecution's case, and the seventh who was a prosecution investigator called at the request of defense counsel in order to clarify issues arising from witness statements. As of the close of the week, the Chamber has heard from a total of 69 witnesses in the CDF case. It is anticipated that the final prosecution witnesses will be called in the next two weeks.

Witness Profiles

Witness TF2-108. Witness TF2-108 was the 63rd witness of the prosecution. She was born in the Bonthe district, and is married with one child. She is a cassava farmer. She testified in Mende.

Witness TF2-109. Witness TF2-109 is 25 years old and was born in the village of Sogbini in the Bonthe District. She was living in Matru Jong at the time of the alleged incidents in 1998. She testified in Mende.

Tamba Gbekie. Gbekie, an investigator for the prosecution, testified regarding the statement-taking process in relation to a witness called last November.

Witness TF2-188. Witness TF2-188 was born in the Pujehun District. She is married with four children and weaves cotton cloth for a living. She testified in Mende.

Witness TF2-187. Witness TF2-187 is 28 years old and was born in the Bo District. She is married with four children and gardens for a living. She attended school through Form 1. She testified in Mende.

Witness TF2-189. Witness TF2-189 was born in the village of Malima Yawbeko in the Bonthe District. She is married, and was previously married to a man who was killed. She makes soap for a living and never attended school. She speaks Mende and Krio, and she testified in Mende.

Witness TF2-134. Witness TF2-134, the 69 th witness of the prosecution, was born in Bonthe. She is not married. She went to school through form 1, and she dyes fabric for a living. She testified in Mende.

Testimony of Witnesses TF2-108 and TF2-109 regarding unlawful killings at Talia

According to the prosecution's pre-trial brief, both of these witnesses were originally called in to testify that they were raped and forced to marry Kamajors at Talia village, the CDF "Base Zero" [3]. Witness TF2-109 was expected to lead evidence that some young girls who refused to have sex with Kamajors were killed, and women were brought to the third accused Allieu Kondewa.

The prosecution was prohibited from leading this evidence at trial, and the testimony of these two witnesses instead focused on three unlawful killings that took place at Talia. Witness TF2-108 testified that he was captured by a Kamajor and taken to "Base Zero", where she witnessed the killings of three men whom she knew by name. Witness TF2-109 corroborated her testimony, naming the same three individuals and describing their deaths. She also established that Sam Hinga Norman and Allieu Kondewa were present in the village, and Kondewa and Joe Tamiday were introduced to the captives as the "bosses" of Base Zero.

The second witness testified that two of the three men whose first and last names she had given were her brother and her uncle; these details could have led to the identification of the witness by attentive members of the public gallery. The actual risk of identifying the witness seems unlikely, as the audience member would need to be familiar with the area of the Bonthe District from which the witness came. However, in light of the substantial risk assumed by witnesses who are testifying from areas in which the Kamajors are still active, the Court needs to be mindful of limiting the exposure of such details during the trial proceedings and during the transcript redaction process.

Testimony of Witness TF2-188 regarding the killing of her mother

This witness was originally called to testify that she was abducted by Kamajors and forced to marry one of them. She was expected to give evidence that she was raped by third accused Allieu Kondewa. At the beginning of her testimony, when she was asked who the Kamajors were, she gave the name of the third accused. When asked to clarify, she responded that Kondewa "did wrong" to her. Since exploring this point further could have led to evidence of sexual violence, the

prosecution shifted focus and established that the witness and her mother were captured by Kamajors in the village of Blama.

The witness stated that the Kamajors demolished their home in Blama, and they were forced to carry loads for the Kamajors to their base in Talia village. At Base Zero, the witness stated that third accused Kondewa ordered the death of her mother, which was carried out in front of the witness. The witness became distressed while describing how her mother's throat was slit with a machete, and the chamber adjourned to permit psychosocial support staff to attend to the witness.

Expunged evidence of forced marriage

When the proceedings resumed, the prosecution asked the witness what happened after her mother was killed; the witness responded that "Kondewa made me into his wife." In light of the Chamber's indication that it would not hear any evidence of forced marriage, counsel for the third accused immediately objected to the question and asked for the evidence to be expunged from the record. The bench granted this request, and Judge Itoe instructed the prosecutor that he should have withdrawn the question and apologized. The prosecutor surprisingly conceded despite the fact that his question was not structured to lead evidence of sexual violence [4].

Defence counsel implicates his client

Counsel for the first and second accused did not cross-examine the witness. Counsel for the third accused asked questions relating to the character of his client, including "you would agree with me that [Kondewa] must have been a very terrible and wicked person; is that correct?" The judges intervened on behalf of the accused in order to prevent his own counsel from eliciting evidence that could jeopardize his rights. Kondewa's counsel was interrupted again when he asked the witness whether she had seen his client again after her mother was killed, and the Presiding Judge pointed out that this question could lead to the very evidence that he had previously objected to. After further questioning, the witness established that she had seen Kondewa again in the village of Gambia after she saw him in Talia, a point which contributed more to the prosecution's case against the third accused than to his defence.

Perhaps presuming that the witness would have identified his client under direct examination, Kondewa's counsel asked whether the witness would be able to identify Kondewa if he were present in court, which she affirmed. He then proceeded on the basis that the witness could not see Kondewa; however, the prosecution objected that the witness would need to be given the opportunity to examine the courtroom. Kondewa's counsel then requested to have his question and the witness's answer expunged, but the bench refused his request. As the Presiding Judge stated that the witness's testimony had concluded, she interrupted to claim that she could see Kondewa, and she asked to point him out. The bench granted her request, and she identified third accused Allieu Kondewa for the court records.

Testimony of Witness TF2-187 regarding unlawful killings and human sacrifices

Witness TF2-187 was intended to testify regarding the miscarriage she suffered after she was raped by third accused Allieu Kondewa. Before the witness was called, the prosecution announced that she would give evidence relating to a physical injury, but that the injury formed part of a "transaction" including sexual violence. The bench considered this a contentious proposal in light of its recent majority ruling, and proceedings were suspended three hours early in order to allow the bench time to deliberate on whether the evidence could be led.

Majority rules against hearing evidence of a miscarriage

When proceedings resumed the following morning, the majority of the bench announced its majority ruling prohibiting the evidence from being admitted on the grounds that it constituted “forbidden evidentiary territory.” The ruling was based on an unreasoned decision issued on 23 May. The majority found that it had not found any “new and convincing legal logic” to change its previous position, although the reasoning for that original position had not been made available. Presiding Judge Boutet dissented, claiming that the evidence was admissible on the grounds that it was both relevant to counts of the indictment and consistent with the Chamber’s flexible approach to admitting evidence. The witness was restricted to giving evidence of other acts that were unrelated to her rape or miscarriage.

Testimony regarding witness’s capture and human sacrifices

The witness testified that she and her husband were captured by RUF rebels in 1991, and she left the rebels in 1998 after her husband was killed. When she arrived in the village of Gambia, she alleged that third accused Kondewa was initiating Kamajors there. The witness lived in Gambia with her uncle, who complained to the third accused that his “boys” were looting his crops. After complaining several times, her uncle was subsequently arrested. The witness testified that “Kondewa’s boys” tortured and killed her uncle. She further testified that Kamajors captured three pregnant women and sacrificed them by slitting open their stomachs and decapitating their fetuses. The heads of the fetuses were placed on sticks, which the witness alleged was in preparation for the arrival of first accused Sam Hinga Norman in Talia.

The witness further testified that the first accused delivered guns, ammunition and supplies to Talia by helicopter. After he arrived, the witness stated that Kamajors smeared blood from the sacrificed women on themselves and sang a song in Mende, which was roughly translated to mean that they received medicine and strength through pregnant women. Under cross-examination, counsel for the third accused claimed that the killing of the pregnant women was a “figment of [the witness’s] imagination”; he further contended that her uncle had not been killed and was still living in the village of Gambia. The witness became clearly distressed as a result of these allegations.

Witness TF2-135 not permitted to give evidence of command responsibility

The prosecution intended to call Witness TF2-135 to testify regarding a complaint she had made to the second accused about sexual offences committed against her. According to the pre-trial brief, the second accused responded that it was happening to many women, and he did nothing about it. The prosecution stated that it did not intend to lead this witness to support rape charges, but rather to demonstrate the command responsibility of the second accused as charged in the indictment. Judge Itoe expressed his view that the bench did not want to continue “revisiting and revisiting an issue which should be laid to rest”, linking this evidence of command responsibility with the proposed evidence of a miscarriage which had been previously excluded by the Chamber.

The prosecution contended that while the crime of rape may not be in the indictment, it is still an unlawful act under the Statute; the evidence would be led to establish the accused’s control, his knowledge, and his response to the complaint. The witness allegedly complained to the accused because of his position as CDF Director of War, and he failed to prevent the rapes or punish the perpetrators. The prosecution argued that the content of the complaint was only necessary for putting the evidence in context. The defense responded that the act complained of is a prohibited act in the framework of the indictment.

The majority of the bench ruled that the evidence must be excluded for the same reasons articulated in its previous ruling, in which the prosecution was prohibited from leading evidence of a miscarriage because of the rape which caused it. Once again the Presiding Judge dissented,

noting that the three accused are charged with command responsibility, and the evidence they intended to lead would show knowledge of acts of subordinates rather than proving those acts. Because this was the only evidence the prosecution sought to lead from this witness, she was not called to testify.

Testimony of Witness TF2-189 regarding the death of her husband

According to the prosecution's pre-trial brief, Witness TF-189 would have testified regarding her forced marriage to a Kamajor in the village of Talia. Although she was not permitted to establish that she had been forced into marriage, some evidence of forced marriage was presumed and implied in the Trial Chamber. The witness established that she was captured by Kamajors and taken to Talia, where she was held captive and prevented from returning to her husband. When her husband came to find her, he was captured by Kamajors and decapitated while she watched with a group of civilians. The witness's evidence skirted the issue of her forced marriage: she later established that her "husband" had informed that Hinga Norman was bringing supplies to the Kamajors and that Kondewa was training people.

In order to clarify that this was not the same husband who had been killed by Kamajors, the witness stated that this was a second Kamajor husband. The witness was asked if she had suffered any injury while with this Kamajor. Counsel for the third accused objected that the prosecution had already implied "some sort of marriage" between the witness and the Kamajor, and she should not be permitted to testify about what she had suffered while with the Kamajor. The prosecution clarified that there was no suggestion that she would talk about sexual violence; she had been specifically asked whether she suffered any physical injury. Kondewa's counsel argued that since the prosecution was prohibited from establishing that the relationship was forced, it was therefore a consensual relationship, which the court was not in a position to examine.

The defence objection was sustained by the majority of the bench, and the evidence was deemed inadmissible. Presiding Judge Boutet dissented once again, arguing that the evidence relates to physical violence this witness would have sustained as a civilian. It appears that if the witness had not established that the Kamajor was her "husband," the evidence would have been considered admissible.

Testimony of TF2-134 regarding abduction and physical violence at Talia

According to the prosecution's pre-trial brief, Witness TF2-134 was intended to testify that she was raped by Kamajors on a daily basis, and on one occasion third accused Kondewa witnessed her rape and did nothing. While testifying, the witness established that she had been abducted by Kamajors and taken to Talia. After attempting to escape, she was recaptured, beaten, and imprisoned. Her testimony sought to establish that Kondewa and Fofana were among the commanders at Talia; however, she had not seen Fofana during her captivity.

Shifts in the Trial Chamber

The prosecution has indicated that it will seek leave to appeal the decisions issued by the majority of the Chamber this week. In light of these recent developments at trial, it appears that the Chamber has shifted from a broad and flexible approach to admitting evidence to a more restricted and indictment-centered view. The majority of the bench adopted a firm line this past week regarding evidence of sexual violence, which was not allowed to be heard in the trial chamber in any form. The three justices intervened more actively on a number of issues this week, including an intervention on behalf of the third accused when it appeared that his counsel risked eliciting evidence against him.

1.) *Decision on the Urgent Prosecution Motion filed on the 15 th of February 2005 for a Ruling on the Admissibility of Evidence, 23 May 2005.*

2.) Because the rulings this week were based on an original decision of 23 May whose reasoning had not yet been issued by the Chamber, the prosecution sought an extension of time to seek leave to appeal the two decisions this week. The prosecution argued that the three day deadline for appealing the 23 May decision had passed before the prosecution could file an appeal, given that the grounds upon which an appeal could be based were still not available without the reasoned decision.

3.) *Prosecution Supplemental Pre-Trial Brief Pursuant to Order to the Prosecution to File a Supplemental Pre-Trial Brief of 1 April 2004 , 22 April 2004.*

4.) Testimony of Witness TF2-188 on 31 May 2005. The prosecutor's question was "after that incident, did anything happen?" When the witness answered in the affirmative, he asked "what happened?"