



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

Special Court Monitoring Program Update #51 Trial Chamber II - AFRC Trial Covering week ending July 29, 2005

by Michelle Staggs, Senior Researcher

Summary Witness profiles at a glance Evidence at trial: crime base witnesses (Bombali district) Testimony of former child combatants Testimony relating to sexual violence Testimony relating to physical violence Cross-examination: defense highlights the difficulty of determining a distinction between militia groups Legal and procedural issues

In what became its final week at trial before the summer break, the prosecution called 3 crime base witnesses in the AFRC trial, bringing the total number called thus far to forty-eight. All the witnesses gave evidence relating to events that occurred in the Bombali district in Sierra Leone's Northern Province. Two of the witnesses who testified this week (Witness TF1-157 and Witness TF1-158) are allegedly former child combatants who trained with the AFRC in 1998. A third witness, TF1-267 is a Category "A" witness (victim of sexual violence) and testified with the use of voice distortion.

A question mark hangs over the admissibility of the testimony of Witness TF1-157, after he informed the Chamber during cross-examination that the interpreter was speaking the Guinean form of his dialect (Mandingo) rather than the dialect used in Sierra Leone [1]. The continuation of the witness's testimony has been suspended pending further investigation by the head of the court's translation unit.

Further issues relating to translation arose this week, as the defense forcefully cross-examined witnesses on the terminology used in their statements in an attempt to allege that the words used had not "come from the mouth of the witness" [2]. Agreeing with the arguments asserted by the prosecution, the Chamber took the view that the differences in the terms used resulted from a divergence in the vernacular used by English and the languages being translated. In particular, Judge Sebutinde voiced her dissent to this line of questioning, arguing that the defense was effectively speaking at cross-purposes with the witness.

Finally, after much discussion on Thursday morning regarding the prosecution's core witness list, the Chamber agreed with both the defense and prosecution that the prosecution's forty-ninth witness, TF1-167 would be called next session.

Witness profiles at a glance

Witness TF1-158 was born in Bonoya in the Bombali district. He is a Category “B” protected witness and former child combatant. He testified in Krio via closed circuit television.

Witness TF1-267 was born in the Bombali district. She is a rice farmer and has not been to school. The witness is a Category “A” witness and is a victim of sexual violence. She testified in Temne with the use of voice distortion.

Witness TF1-179 was born in Batkanu in the Bombali district in 1946. He testified in Krio.

Evidence at trial: Crime base witnesses (Bombali district)

Under the indictment issued by the Prosecutor, the accused are charged with committing, commissioning or failing to prevent various atrocities that occurred between about 1 March and 31 November 1998 in the Bombali district. This week’s testimony centered around events which had occurred in and around Camp Rosos, a town in the Northern Province alleged to have been razed and subsequently occupied by junta and rebel forces during that year. All witnesses were extensively cross-examined regarding the identity of combatants as either rebels (from the RUF) or former members of the SLA (from the AFRC) in an attempt by the defense to dismantle the proposition that the three accused held positions of superior responsibility to the alleged perpetrators of the atrocities committed.

Testimony of former child combatants

Witness TF1-157 and Witness TF1-158 each testified to their capture during an attack by the rebels in Bonoya. Both alleged that they subsequently joined the combatants as children and were trained to use arms and to fight. According to Witness TF1-157, child combatants trained by the rebels were given cocaine tablets and injections during the course of their training. He was also allegedly flogged with sticks due to his Mandingo tribal origin, Mandingo being the tribe of the then ousted President Tejan Kabbah.

Witness TF1-158’s testimony directly implicated the first and the third accused in the attack on Bonoya, which he alleged occurred in May 1998. According to the hearsay evidence elicited from the witness [3], the commanders SAJ Musa, Gullit (aka Tamba Alex Brima), Five-five (aka Santigie Borbor Kanu) and 0-5 led the attack on the town. Under cross-examination, the witness admitted that he had not been personally introduced to any of the commanders. The witness was allegedly given guns by former commander Staf Alhaji at Camp Rosos. He was trained by Alhaji along with approximately three hundred boys aged 7 and above. Alhaji allegedly reported directly to Gullit at this time. After a week, the trainee combatants were sent on food finding missions and the witness successfully escaped from the rebel’s camp. He was subsequently re-captured and forced to carry food for the rebels during the time of disarmament. (An exact time frame for disarmament was not established by the prosecution). The witness also alleged that he part of a group of five hundred combatants that subsequently attacked the eastern province town of Kabala.

Both witnesses testified to being present while combatants committed several atrocities. This included burning and looting civilian property at Camp “Red Lion”, Lunsar and Mamamah, amputating and killing civilians at Camp Rosos and disguising themselves as civilians in order to target police officers in Freetown who were subsequently killed. In relation to the final allegation, Witness TF1-157 testified to seeing the first and third accused present and participating in these atrocities.

Testimony relating to sexual violence

The indictment against the accused charges them with being individually criminally responsible for acts of sexual violence committed against civilian women and girls, including brutal rapes, often by multiple rapists. In support of this allegation, the prosecution led Witness TF1-267 this week, who testified to being raped multiple times by four armed combatants in the bush surrounding Rosos in 1998 [4]. Despite the sensitive nature of her testimony, the witness's descriptions of the acts of sexual violence committed were both clear and graphic. The witness also testified that her young daughter was raped twice by different combatants from the same group of rebels who raped her.

Under cross-examination, the defense attempted to dismantle the proposition that a nexus existed between the rapes committed by the victim's assailants and the three accused. In order to show this, defense counsel asserted that the witness was unable to identify her attackers with any degree of certainty or to establish they were under the command and control of the accused persons. The witness did not name any of the combatants who raped her. She did, however, state that she had been taken by the rebels to their commander after being raped, but did not name the commander in question.

Despite having to undergo fairly lengthy cross-examination, the witness appeared to have had a positive experience from testifying. Upon completion of her testimony, she thanked the Chamber, saying that she wanted to "Bless [you] people a little" so that "war will not happen in this country anymore" and to say "thanks for having helped us and [we] pray that God will help you".

Testimony relating to physical violence

The week ended with the prosecution calling Witness TF1-179, whose testimony centered on acts of physical violence allegedly committed by members of the AFRC in the bush surrounding Batkanu. In particular, the witness testified that he was one of several victims whose limbs were amputated by seven armed soldiers dressed in military attire. The prosecution also elicited hearsay evidence regarding several civilians alleged to have been killed during an attack on Batkanu.

Cross-examination: defense highlights the difficulty of determining a distinction between the militia groups

In order to show that a relationship of effective command and control existed between the three accused and other combatants who committed atrocities, the prosecution must prove the existence of a superior/subordinate relationship between the accused and those combatants. While the prosecution argues that a joint criminal enterprise existed between the armed forces of the RUF and AFRC, they have attempted to distinguish superior/subordinate relationships between RUF commanders and combatants on the one hand and between AFRC commanders and combatants on the other to establish the command structure of the individual militia groups. One significant factor alleged to demonstrate this distinction has been the attire used by the combatants: the RUF combatants (or rebels) allegedly wore plain clothes, whereas the AFRC combatants (or junta) were more often than not clothed in full military attire or a mixture of civilian and military clothing.

During the course of cross-examination throughout the week, defense counsel argued that the prosecution had not established a nexus between the three accused and the combatants committing the alleged atrocities because, in several instances, witnesses were unable to clearly identify the perpetrators as dressed in combat uniforms. This became particularly significant for the testimony of Witness TF1-267, who was unable to name any of the perpetrators of the attack she described and whose recollections of the clothes worn by those perpetrators were somewhat vague. It became apparent this week that relying on the attire of the soldiers as proof of a nexus between superior commanders and subordinate combatants could prove tenuous in some

instances. However, in contrast to this, the certainty with which Witness TF1-179 detailed the uniforms worn by the soldiers who attacked him under cross-examination seemed only to prove that the alleged combatants were former SLA soldiers and hence, likely to have been members of the AFRC.

Legal and procedural issues

Defense challenge witness's right to testify

Following the Chamber's ruling to suspend hearing the evidence of Witness TF1-157 (due to translation difficulties related to his testimony), the defense filed an urgent motion this week to prohibit Witness TF1-158 from testifying. Counsel for the third accused, Santigie Borbor Kanu, argued on behalf of the defense at trial that the combined circumstances of Witness TF1-157 and Witness TF1-158 being housed in the same place over the course of the weekend and them having a close relationship to one another was likely to mean they had communicated about the proceedings. He argued this was sufficient grounds to establish that the administration of justice may have been brought into disrepute and hence, that the rights of the accused would be fundamentally prejudiced if Witness TF1-158 were allowed to testify. Drawing from a decision at the ICTY in the *Kupreskic* case, the defense argued that the mere fact that a witness may have the opportunity to communicate with another party after giving a solemn declaration to the Chamber is likely to mean that the evidence in question should not be admitted [5].

The prosecution argued that the defense had not established the proper foundation upon which to challenge the evidence of Witness TF1-158, which it noted, had not yet been brought. According to the prosecution, defense counsel had had ample opportunity to cross-examine Witness TF1-157 on his conversations with Witness TF1-158 and had failed to do so. As a result, the defense was using "smoke and mirror" tactics (or mere speculation) to prohibit Witness TF1-158 from testifying. The Chamber ruled in favor of the prosecution, stating that the defense had not laid sufficient grounds for the stay of the witness's testimony.

A matter of interpretation: cross-examining across linguistic boundaries

The defense attempted to challenge the veracity of witness statements this week by alleging that certain words in the statements were not used by the witnesses in question. Witness TF1-157, a witness testifying in Mandingo, was cross-examined on his use of the word "coalition" in reference to the combined forces of SLA soldiers and the People's Army. When asked what the word "coalition" meant, the witness responded that he did not understand the term, and the court's interpreters noted that there was no clear translation for "coalition" in Mandingo. Similarly, Witness TF1-179 was extensively cross-examined on the meaning of the phrase "military fatigues" in his statement. The witness responded that he had referred to men dressed in "soldierman uniform" when referring to his attackers, a term which the prosecution argued, is likely to be the equivalent term when translated into Krio. The prosecution further alleged that in certain instances, cross-examining witnesses in this manner was tantamount to witness harassment: in its opinion, the distinction between the two terms related to their translation and not to the witness's ability to verify his or her statement. In both instances, the defense were encouraged by the Chamber to cease pursuing this line of enquiry, Judge Sebutinde in particular seeing the process as only leading to a "dead-end".

Prosecution likely to cut its "core" witness list even further

Shortly before the close of proceedings on Thursday, the prosecution announced that it would be issuing a new core witness list reducing further the number of witnesses it is due to call. The prosecution's current witness list comprises sixty-three witnesses, forty-eight of which have already been called. While the prosecution has stated that it is still to call a number of key

witnesses whose testimony may span a large amount of trial time, it seems likely that the prosecution will close its case by the end of the next session.

The next session of the AFRC trial is currently slated to begin on 13 September 2005.

- 1.) Mandingo, a tribal language that is said to have originated in Mali, has several dialects.
- 2.) The witness described being introduced to the commanders by a boy who was part of the group that attacked Bonoya. At the time, the witness had been captured by the rebels and had been taken to Karina.
- 3.) The month or day the rapes occurred was not established by the prosecution.
- 4.) The motion file by defense counsel is confidential and therefore cannot be reviewed by court monitors.