



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

Special Court Monitoring Program Update #60
Trial Chamber II - AFRC Trial
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Summary

Witness Profiles at a Glance

Cross-examination of Witness TF1-157

Testimony of Witness TF1-156 to killing, amputations, and burning in Bornoya

Witness TF1-184: Evidence at Trial

Status Conference, 28 September 2005

Summary

The AFRC trial resumed with the cross-examination of Witness TF1-157. Although the witness had previously begun testifying in the week preceding the summer break, the Chamber had suspended the witness's testimony following translation difficulties experienced at trial.¹ A subsequent motion filed by the defense to exclude the evidence given by this witness had further delayed the continuation of his testimony.²

The Chamber also heard testimony from Witness TF1-156 and Witness TF1-184 this week, the latter giving evidence before the court as an insider witness. Other than a short status conference on Wednesday, his testimony filled the remaining two days of trial.

Absence of the accused

The third accused, Santigie Kanu, was not present in court on Friday, due to health problems. None of the accused attended the status conference.

¹ See Special Court Monitoring Program Update No.51, dated 29 July 2005.

² The defense sought to exclude evidence given by Witnesses TF1-157 and TF1-158 because of their close relationship and the fact that they had been residing together while Witness TF1-157 was giving his testimony. The Chamber subsequently dismissed this motion. See *Decision on Confidential Urgent joint Defence Motion to Exclude Evidence Given by Witness TF1-157 and Evidence to be Given by Witness TF1-158 Based on Lack of Authenticity and Violation of Rule 95*, dated 10 October 2005.

Witness Profiles at a Glance

Witness TF1-157 is a Category “B” protected witness and former child combatant. He was captured from Bornoya in the Bombali district. He testified in Mandingo via video link.

Witness TF1-156 is 88 years old. He was born in Bornoya (Bombali district) where he still resides. He is a farmer and a hunter. Witness TF1-156 testified in Mandingo through an interpreter. He speaks Limba and Krio and is able to read Mandingo.

Witness TF1-184 was called to testify as an insider witness (Group I Category “C” witness). Most of the testimony regarding his personal details was given in closed session. However, he gave evidence in open session that he was security to a member of the AFRC Council member and commander of the AFRC/RUF forces, whom he referred to using the alias Commander “C”.³ He testified in Krio, with the use of voice distortion.

Cross-examination of Witness TF1-157

Under examination-in-chief, witness TF1-157 had given evidence regarding his capture by the rebels in Bornoya and his subsequent recruitment as a child soldier. His testimony primarily centered around burning and looting activities, amputations, and killings at Camp Rosos, most of which he alleged he had experienced first hand .

Under cross-examination, defense counsel for Kamara questioned the witness on the sources of his information regarding his hearsay evidence. Doubt was cast on the strength of the evidence regarding killings at Mandaha and Mateboi and the mass grave at Robot Mess when he made statements relating to certain instances that showed he had assumed killings had been carried out by the rebels, rather than having being told about the events themselves. (In particular, relating to mass graves at Robot Mess, he stated: “Wherever we went they would kill people.”). The defense also called into question the reliability of the witness’s evidence relating to dates and the duration of events. This query seemed well founded, given the witness appeared to have difficulty recalling certain dates while testifying.

Testimony of Witness TF1-156 to killing, amputations, and burning in Bornoya:

Under the indictment against the three accused, the prosecution alleges that members of the AFRC/RUF forces unlawfully killed an unknown number of civilians in several locations in the Bombali district, including the town of Bornoya.⁴

³ The pseudonym was used to protect the witness’s identity. Accidentally, counsel for the prosecution, Witness TF1-184 and the defense counsels pronounced the commander’s name during the testimony in open session and audible for the audience in the public gallery.

⁴ Amended and Consolidated Indictment dated 18 February 2005 at paragraph 48. Available on-line at: <http://www.sc-sl.org/Documents/SCSL-04-16-PT-147.pdf>.

Witness TF1-156 gave evidence related to an attack on his home town, Bornoya, and some surrounding villages (Madogbo, Dariya, Mayombo, and Karina) that took place on “the last praying day”⁵ around seven years ago.

The witness stated that he woke up in the early morning hours and heard people screaming. He recalled that a man who entered the town reported that people were being mutilated and killed. The witness fled to a nearby graveyard. From his hiding-place, he saw that houses and vehicles were set on fire. The witness named about ten persons who were killed and four who were wounded (hacked by machetes).

Throughout the days following the attack on the area, the witness went to the surrounding villages. He gave evidence that he saw people with amputated limbs, and when on to describe how he reported several killings that had taken place and houses that had been burned in his hometown.

Cross-Examination on Witness TF1-156

During cross examination, the witness admitted that he was unable to identify who had attacked his town, because it was still dark when the incident took place. Furthermore, throughout the whole attack, the witness was hiding in the graveyard. He only heard the noises coming from the town and saw burning houses. The witness also appeared unable to was clearly establish that he was able to distinguish between the AFRC forces and the Kamajors.

Remarks

During the course of his testimony, the witness accidentally disclosed the names of some family members⁶, but was not interrupted by counsel for the prosecution.

Witness TF1-184: Evidence at Trial

Witness TF1-184 was called to give evidence about various crimes allegedly committed under the AFRC indictment. He also gave evidence about the chain of command within the AFRC and the alleged common plan, purpose and design shared by the AFRC and the RUF forces to take any actions necessary to exercise political and control over the territory of Sierra Leone (which, under the indictment, the prosecution alleges constituted a “joint criminal enterprise”).⁷

As a security officer to one of the senior AFRC members, the witness was privy to a large number of operations undertaken by the AFRC during the coup and the subsequent junta period. The witness allegedly took part in operations “in the jungle” throughout the

⁵ The name of that day is “Youghbenteh” in Mandingo language.

⁶ The disclosure of names of a witness’s family members may enable individuals to determine the identity of the protected witness.

⁷ Paragraph 33 of the Amended and Consolidated Indictment, available on-line at <http://www.sc-sl.org/Documents/SCSL-04-16-PT-147.pdf>.

period from February 1998 up to January 1999 and withdrew from Freetown together with AFRC/RUF in February 1999, holding a senior position within the AFRC/RUF forces during this time.

The witness's background and career as a soldier up to the coup in 1997

Most of this witness's personal details were revealed in closed session. However, the witness did state in open session that he had joined the AFRC (as an ex-SLA soldier) during the overthrow of the Kabbah government in May 1997. He was appointed security staff member to Commander "C".

Freetown coup and withdrawal to the jungle

Under the indictment, the prosecution alleges that the AFRC withdrew to Kono after the ECOMOG invaded Freetown in February 1998, passing through the Western Area and the Bombali and Koinadugu districts.⁸

The witness reported that in February 1998, fights between the AFRC/RUF forces and the "Nigerians" (ECOMOG) eventually led the AFRC/RUF forces to withdraw from Freetown. Together with Commander "C", the witness moved to Kabala, via Tombo, Masiaka, and Makeni. According to the witness, they met Santigie Borbor Kanu (aka "Five-five"), Brima Bazy Kamara and Alex Tamba Brima (aka "Gullit") in Kurubonla. The witness alleged that when they arrived, Brima was the leader of the troops.

Following attacks on Mongo and Kabala, the AFRC/RUF forces went on to Koinadugu. The witness stated that the RUF subsequently established a camp where civilians⁹ were trained as soldiers. An incident in Koinadugu¹⁰ is alleged to have resulted in in-fighting between AFRC and RUF, evidence which the defense may use to argue suggests fractures in the command structure of the two organizations.

Camp Rosos

The witness alleged that Commander C took over the command of the troops when they arrived in Camp Rosos. Brima is alleged to have held the command in the Camp prior to Commander C's arrival. Commander C subsequently restructured the troops, divided them, and formed more battalions.

Two children buried alive; Gullit allegedly orders burning, hacking and killing in Karina; killings on the way to Lunsar

⁸ Amended and Consolidated Indictment, 18 February 2005, at paragraph 45. Available on-line at: <http://www.sc-sl.org/Documents/SCSL-04-16-PT-147.pdf>

⁹ The witness called the civilians "boys".

¹⁰ In an argument Commander "C" shot and killed one of Colonel Senegalese's boys. Colonel Senegalese is allegedly a member of the RUF.

According to the witness, soldiers reported that Gullit had ordered two children to be buried alive in response to rumours that “President Kabbah had sacrificed seven cows that were white and seven that were black” in order to regain power in Sierra Leone. Consistent with the testimony of previous witnesses, particularly violent acts were said to have been carried out under Gullit’s command in President Kabbah’s town, Karina. Gullit is alleged to have wanted to “set an example” in the town and to have engaged in particularly brutal acts. While carrying out Gullit’s orders, the soldiers allegedly burned children, hacked and killed women, burned a Mosque, and amputated a man’s hand, “sending him back to Kabbah to ask for a new hand” in what became a common practice allegedly used by the AFRC during the conflict to mete out punishment on Kabbah’s supporters.¹¹

After leaving Camp Rosos, Brima Bazy Kamara was appointed to command the advance troops while Alex Tamba Brima and Santigie Borbor Kanu were based at the AFRC’s headquarters.

Commander C’s death

Witness TF1-184 gave lengthy evidence about the circumstances of Commander C’s death at Benguema. He appeared convinced that Gullit had shot Commander C and described Gullit was standing close behind the commander as he fell to the ground after being wounded.¹² The witness doubted Brima’s version of the events, which he recounted as being that Commander C was hit by a bomb. After Commander C’s death, the witness was appointed as security to Brima. Following Commander C’s death, Brima was promoted to Major-General and commander in chief and is subsequently alleged to have been in command and control of the AFRC forces.

This testimony sparked a strong reaction from the accused, who shouted at the witness. The defense counsels expressed their concern that the witness was gesticulating and pointing in direction of the defendants in an aggressive and menacing way. The witness was subsequently instructed by the bench to face the bench or counsel for the prosecution while giving his testimony.

Under cross examination, defense Counsel for Alex Tamba Brima questioned the witness regarding his relationship with Commander C. The witness admitted being loyal to his commander and to his ideas and policies, and he confessed that he had never trusted Gullit (aka Brima). The defense counsel suggested that the witness had come to court to punish Gullit for the alleged murder of his commander.

Attack on Freetown 1999 and in the Western Area

¹¹ See, among others, Special Court Monitoring Program, Update No. 26 (11 March 2005), Update No. 29 (25 March 2005), Update No. 32 (22 April 2005) and Update No. 37 (20 May 2005).

¹²These details were given during cross-examination by the defense.

The prosecution alleges that, between 6 January and 28 February 1999, the AFRC/RUF conducted armed attacks on Freetown. The witness's testimony primarily described incidents related to unlawful killing, physical violence, looting and burning.¹³

Witness TF1-184 testified that Gullit ordered the killing of several civilians in Freetown and that he saw Gullit himself killing civilians at State House. He stated that cutlasses were distributed by Five-five and that a soldier called "Changabulanga"¹⁴ was appointed as commander for "short hand" and "long hand" amputations.¹⁵ Five-five allegedly defined the meaning of these terms using a civilian as an example: short hand amputations being when a civilian's arms were cut off at the elbow and long-hand amputations when his arms were cut off at the wrist. The witness further testified that he heard Gullit giving the order to kill captured nuns.

The witness gave evidence that there was a meeting at the State House attended by Brima, Bazy, Five-five, Bio, and Gibril Massaquoi. The witness himself heard Brima give the order to burn the town. Five-five distributed petrol and machetes under the unarmed soldiers and instructed them to burn the Parliament, Income Tax and the Criminal Investigation Department. The witness saw that the buildings were set on fire, and during the course of cross-examination, he admitted to participating in the burning of buildings himself.

Remarkably, throughout the cross-examination, the witness was given the opportunity to reaffirm what he had already stated in examination-in-chief. The line of questioning allowed the witness even to go into more detail of the incidents in Freetown to make the events more lucid to the court, but did not appear to challenge the alleged guilt of the accused.

Command structure

In the AFRC indictment, the prosecution alleges that all three accused – Alex Tamba Brima (aka "Gullit"), Brima Bazy Kamara, and Santigie Borbor Kanu (aka "Five-five") – held senior positions within the AFRC, the junta, and within AFRC/RUF forces, and that they therefore are individually criminally responsible for the crimes described in the indictment pursuant to Article 6 (3) of the Statutes of the Special Court.¹⁶

As has been previously stated, the witness gave evidence that Alex Tamba Brima held the highest position in Camp Rosos before Commander C arrived. He described the

¹³ See counts 3-5, 10-12 and 14 of the Amended and Consolidated Indictment dated 18 February 2005.

¹⁴ The witness did not mention this soldier's other aliases. In previous weekly updates "Changabulanga" is also referred to as Captain Mohamed Savage; see Special Court Monitoring Program Update No. 38, dated 20 May 2005.

¹⁵ The witness explained that "short hand" and "long hand" were two different ways of amputating arms. Short hand meant the amputation in the middle upper arm, while long hand stood for hacking the hand from the forearm. The witness explained those terms by imitating the hacking against the arm. However, it was not established who appointed "Changabulanga" as commander for those amputations.

¹⁶ Amended and Consolidated Indictment dated, at paragraph 32 dated 18 February 2005. Available on-line at: <http://www.sc-sl.org/Documents/SCSL-04-16-PT-147.pdf>.

hierarchy as follows: Commander C maintained command and control of the troops, deputy to Commander C was Brima, the third in command position was held by Bazzy, followed by Five-five, Bomb Blast, F.A.T Sesay, Junior Lion, Junior Sheriff, and Coachy Gborno.

After Commander C's death, Brima allegedly became commander in chief of the AFRC forces and Major General in rank. The second accused, Ibrahim Bazzy Kamara was allegedly deputy to Brima and Five-five became a Brigadier and Army Chief-of-Staff. Furthermore, and as has been previously discussed, Witness TF1-184 gave extensive evidence about crimes committed in Freetown in 1999. According to his testimony, Gullit (as commander-in-chief) ordered killings, amputations and burnings throughout that attack.

Evidence regarding disputes between Commander C and Alex Tamba Brima also emerged during the course of the witness's testimony. Given Commander "C" is alleged to have been Brima's superior, this may weaken the hypothesis of a strictly organized and well defined command structure during the course of the conflict. As a former security to Commander "C", the witness was able to give evidence that primarily centered on the command and control that his commander exercised, which limited, to some extent, the evidence the witness could give in support the prosecution's allegation of the accused's command responsibility under Article 6(3) of the Statute.

Joint criminal enterprise AFRC/RUF; disagreements between the two factions

The Prosecution alleges that the AFRC, including the three accused Brima, Kamara, and Kanu acted in concert with RUF in order to gain political power and control over the territory of Sierra Leone.¹⁷

The witness gave evidence that the RUF and the AFRC collaborated during the junta period and later in the jungle. He explained that there were three different factions that he referred to as (1) "the loyal soldiers", (2) "the council members", and (3) RUF¹⁸, who all were working towards a common goal. According to the witness, they all wore similar uniforms. He further reported about frequently held radio communications between "Gullit" an "Mosquito" (aka Sam Bockarie, an RUF commander).

Yet despite this evidence supporting the coherence of the goals of the factions within the RUF/AFRC forces, the witness also went on to describe a splintering of the armed groups. In support of this, he stated that Commander "C" had not accepted being controlled by the RUF. He described how arguments between JP Koroma and Commander "C" had

¹⁷ Ibid., at paragraph 33.

¹⁸ During cross-examination, defense counsel for Alex Tamba Brima referred to the three factions as "SLA", "RUF", and "STF" which the witness confirmed. The prosecution alleges that the AFRC was formed to a certain extent by former SLA soldiers. The indictment states that the AFRC was also referred to as "SLA" or "Ex-SLA". "STF" stands presumably for Special Task Force, a force who came from Liberia and allegedly fought alongside with SLA (see also Special Court Monitoring Program Update No. 39, dated 27 May 2005). The witness was not asked to explain this term, and therefore it is not clear what groups the defense counsel was referring.

resulted in the split of the troops into one faction under the command of JP Koroma and another under Commander “C”. The witness further described in-fighting between the troops under his own and Superman’s (aka Dennis Mingo’s) command.

Lengthy passages of the witness’s testimony were centered on the dissent regarding the primacy of commanders within the AFRC/RUF forces, perhaps contradicting, to some extent, the *actus reus* element of the prosecution’s theory that a joint criminal enterprise existed between the AFRC and the RUF. However, his testimony regarding the continued radio conversations between Brima and leaders of the RUF tends to suggest that the AFRC and the RUF were in communication about their operations. This in turn may lead to a determination that the RUF and the AFRC were acting in concert, as is alleged by the prosecution.

Remarks

The witness was often cautioned by the interpreters for speaking too quickly and had to repeat his testimony to ensure accurate translation. The prosecution appeared, at times, to allow the witness to give extensive answers to the questions being asked and to elicit excessive information from the witness, but this did not raise objections from the defense or reprimands from the bench.

Status Conference, 28 September 2005

The issues raised during the status conference included questions relating to evidence, scheduling matters, and the intended defense motion for judgment on acquittal.

The status conference began with the prosecution declaring that they were getting very close to the end of the presentation of their case. The matter that impacted most on the timing of this closure was a pending order granting it leave to appeal a decision issued by the Chamber regarding the admissibility of evidence given during the testimony of Witness TF1-150.¹⁹ The prosecution announced that they would be seeking to tender further evidence and that, in this regard, wished to call an additional witness from their back-up witness list. Nevertheless, it was estimated that the prosecution will be closing their case in October.

Defense counsel for Brima expressed the wish to recall Witness TF1-023 for cross-examination.²⁰ The prosecution announced that they would oppose the application, and therefore the Presiding Judge ordered that defense counsel submit his application in writing.

¹⁹ The prosecution filed (in accordance with Rule 73 (B) of the Rules) an application for leave to appeal the Chamber’s decision on oral application for Witness TF1-150 to testify without being compelled to answer questions on grounds of confidentiality. If Trial Chamber II determines that leave should be granted, the prosecution intends to enter an interlocutory appeal against the above-mentioned decision.

²⁰ The testimony of that witness was being suspended while she was involved in contempt proceedings before the Special Court.

Concerning their motion for judgement on acquittal²¹, the defense sought clarification on the form the motion should take and the timing for its submission. With regards to the timing of submissions, the defense proposed a minimum period of eight weeks for the preparation of the motion for acquittal, meaning motions would not be submitted before the second week of December. They further suggested that a six to eight week time frame be granted the prosecution for its response. Both these suggested time periods are far in excess of the time periods allotted to the defense and the prosecution in Trial Chamber I, who ruled that the defense should be allocated three weeks to make its submission and the prosecution two weeks to respond. The prosecution considered the time frame of eight weeks as being excessive and stated that its would not need six weeks to submit its response.

The Presiding Judge declared that the bench would reserve judgment on this particular application for the time being and would hand down a decision on the matter in due course.

²¹ Pursuant to Rule 98 of the Rules.