



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

Special Court Monitoring Program Update #6 Trial Chamber I - CDF Trial 1 October 2004

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Summary Witness statements, *viva voce* testimony and issues relating to the temporality and semantics of witness testimony Tribal Nature of the Conflict and Further Evidence Regarding “Junta Collaborators” Trial Chamber’s Decision with regards to Hand-written Notes of Witness Statements Public Perception of Closed Sessions

Summary

This week marked the final week in the CDF trial before a month-long adjournment and the continuation of the RUF hearings throughout October. The prosecution continued to call witnesses in open session that testified to events which took place in Kenema and Blama in February 1998, during the period in which the *de facto* control of those towns was seized by the CDF from RUF and AFRC juntas [1]. The week ended with the Chamber issuing its ruling (delivered by Judge Thompson) on the motion filed by the defense to have all hand-written notes from OTP witness interviews submitted as evidence to the court. This was followed by a short status conference for the RUF trial attended by Judge Thompson, counsel for each of the first and second accused, the Principal Defender and members of the prosecution who discussed the outstanding matters from the RUF trial’s previous session and eschewed in certain issues that would be dealt with during the month ahead [2].

The main issues that emerged during the CDF trial this week were: (i) the continuing issue of the credibility of witness testimony as well as certain issues relating to the temporal and semantic nature of the evidence given under cross-examination, (ii) the underlying tribal nature of the conflict and the attempts by the defense to frame witnesses through the prism of “junta collaborators” and (iii) the implications of the Trial Chamber’s ruling with regards to interview notes for the defense and the prosecution. Due to the continued featuring of closed sessions in the CDF trial, this report also includes a brief summary of the public perception in Sierra Leone of the necessity and desirousness of closed sessions, based on an interview conducted with a senior representative of the Special Court to Sierra Leone’s Outreach Section [3].

Witness statements, *viva voce* testimony and issues relating to the temporality and semantics of witness testimony

Examination in chief of the witnesses called by the prosecution this week centered on the murder of eight civilians in Kenema and a further two civilians in Blama. Witness TF2-154, a woman aged 29, recounted how she watched from across the street as the Kamajors threw a grenade into her father’s house and two men, brothers who were tenants at the house, were subsequently killed in its vicinity. The witness recalled seeing the older brother (aged 23) shot and then thrown into the house, burning from the grenade’s explosion and the younger brother (aged 19) mutilated with a cutlass, doused with petrol and subsequently set alight.

Under cross-examination, counsel for the first accused attempted to discredit this witness by citing from the witness's statements to the prosecution dated 7 November 2003, 16 May 2004 and 31 May 2004 [4] and pointing to the discrepancies between those statements and the witness's *viva voce* testimony, again calling into question the credibility of a witness called by the prosecution [5]. While responding to the defense's claims with regards to the discrepancies in her statements, the witness claimed that she had never made certain of the written statements documented by the prosecution. The prosecution did not respond to this claim during trial, leaving a question mark over whether, at the heart of the matter, the difficulties relating to proving the veracity of this witness's statements lay in the translation of her testimony or the credibility of the witness herself.

Further issues relating to the credibility of witness testimony arose when the defense attempted to establish the exact timing of certain events described by Witness TF2-152, a man aged 34. Witness TF2-152 recalled a time known as the junta time (when "the juntas were in power") and a time when the juntas left Kenema, but could not determine the month or the year during which their departure and the subsequent arrival of the CDF had taken place. Counsel for the third accused asked the witness several times to provide the defense with this information, during which the prosecution interjected, stating that the witness clearly was "not good with dates" and could not provide it.

The judges overruled this objection, although to no avail, as the witness was subsequently unable to provide the defense with the answer it had requested. The witness's inability to testify under cross examination as to the timing of certain events displayed a palpable tension between the desire of the court, on the one hand, to determine precisely and exactly the timing as to when events had occurred, and the difficulty, on the other hand, of determining to what extent this should be insisted upon when assessing the value of a witness's testimony. The trial chamber did not make any conclusive statements as to what extent it would allow for these issues to affect its determination with regards to a witness's credibility and as such the resolution of this issue remains unclear.

The bar and the bench also engaged in a detailed discussion with regards to the use of the word "gut" or "guts" during the course of this witness's testimony. The discussion arose when Witness TF2-152 described how he and a friend were taken to the base of a senior Kamajor officer and his friend's gut was removed from his body and used as a road block. The witness further described how he was asked to hold a plastic bag which contained his friend's heart [6]. Under cross-examination, counsel for the first accused continually referred to his friend's "guts", causing Judge Thompson to enquire as to whether learned counsel was referring to the "gut" or "guts", as he believed using the word "guts" invoked a metaphorical meaning from American English that changed the sentiments of the witness's testimony and that it may or may not be the witness's intention to imply. These comments, which clearly put semantics before substance, appeared misplaced in the context of the witness's testimony, given the very graphic description of the events which took place and the witness's clear desire to communicate the atrocities he had experienced.

Witness TF2-154 also recounted seeing a further five people killed by the Kamajors, two of whom had tyres hung around their necks which were doused with petrol and set alight and three who were burned with petrol-soaked thatch.

Tribal Nature of the Conflict and Further Evidence Regarding "Junta Collaborators"

Certain statements made during the testimony given by Witness TF2-154, relating to the death of two civilians in Blama, alluded to an undercurrent tribal conflict in the attacks made by the Kamajors on civilians. The witness described how, upon leaving Kenema and arriving in Blama, she and other civilians were made to form lines based on their tribal origin.

According to the witness, the Kamajors stated that members of the Temne tribe were “all relatives of Sankoh” and that Temne people were “RUF civilians”. She then recounted seeing a boy from the Temne line being beheaded by the Kamajors. His head was subsequently placed on a stick and a cigarette placed in his mouth, the head then paraded the length of the lines while the Kamajors danced and sang. Another man at the start of the Temne line was also alleged to have been killed, although the witness did not see the killing. Counsel for the third accused attempted to discredit the witness’s testimony by putting it to the witness that the man she had seen beheaded was “a figment of her imagination”. He pointed to the fact that the witness had not reported this death to the police in Blama, the government of Sierra Leone or the ECOMOG forces [7] that subsequently took control as further evidence of the illegitimacy of her statements [8]. This was the first time during witness testimony that any reference to the association between a particular tribe and the juntas has been alluded to.

Under cross examination, Witness TF2-154 and Witness TF2-152 were questioned about their association with Sam “Mosquito” Bockarie, a former battlefield commander of the RUF. Counsel for the second accused put it to Witness TF2-152 that Sam Bockarie was his brother-in-law and subsequently (and in the alternative) that Sam Bockarie had married the witness’s mother at a mosque in Kenema. The witness denied each of these statements. Similarly, counsel for the second accused asserted that Witness TF2-154’s father and Sam Bockarie were close friends and that they fled from Kenema together. In what appeared to proceed from their line of questioning regarding police collaboration with juntas the week before, the defense seemed to be pointing to the association of these civilian witnesses with the juntas as evidence of their collaboration with the RUF/AFRC regime and reason for the attacks made upon those associated with them.

Trial Chamber’s Decision with regards to Hand-written Notes of Witness Statements

The issue of the reliability of the witness statements themselves was raised during the court’s motion session in the first week after its summer recess, when the then stand-by counsel for the first accused put forward a motion to have the hand-written notes of the interviewers from the OTP submitted as evidence to the court. Judge Thompson delivered the judgment of the Trial Chamber on Friday, noting that (i) the defense had shown *prima facie* that hand-written notes were taken during the interviews between the prosecution and Witness TF2-162 (ii) the hand-written notes taken by the prosecution during this interview constituted interview statements within the meaning of Rule 66(A)(i) of the Rules of Procedure and (iii) the prosecution should therefore submit all such evidence to the court and to the defense by no later than 15 October 2004.

The Trial Chamber was not, however, of the opinion that the defense had established conclusively that the prosecution had in its possession handwritten notes from each of the witnesses’ interviews and that it should submit such handwritten notes in all instances. The decision implied that the defense will be required to submit further motions for each interview for which it either knew or suspected that the prosecution has withheld handwritten notes, a standard which may prove onerous, given the number of witnesses as yet to testify is in its hundreds.

Public Perception of Closed Sessions

The Trial Chamber held the majority of this week’s trial in closed session, with only one full day and two half-days of the trial being opened to the public. During open sessions there appeared to be a significant decrease in the number of attendees in the gallery, though this may be largely attributed to the absence of the family and friends of the first and second accused following Hinga Norman’s judicial protest and each of their subsequent non-attendance at trial [9].

According to a senior representative of the Special Court to Sierra Leone's Outreach Section, while members of the public are often disappointed when trial sessions are closed, they have also expressed concern at the level of witness protection afforded to the witnesses. During the initial stages of trial, members of the public and certain community groups expressed concern that witness protection measures at the court had not gone far enough, with some parties requesting that, as well as using screens to shield the witnesses from the public and entering into closed sessions when necessary, the witnesses' voices should be dubbed to avoid them being identified. While many people had expressed disappointment when they had been denied the right to view the proceedings, they were usually understanding of the need to protect witnesses and were concerned that those testifying were given all the protection they required to act in the interests of justice.

A representative of the Outreach Section stated that it was the section's responsibility to explain to the public the importance of adhering to the rule of law at every stage of the proceedings. To this end, the Outreach Section has issued information pamphlets to the public with regards to the necessity of closed sessions. These pamphlets list: (i) National Security (ii) Protecting the privacy of persons, as in cases of sexual offences or cases involving minors and (iii) Protecting the interest of justice from prejudicial publicity as the three main reasons why the judges may use their discretion to order that the press and public be excluded from all or part of the proceedings.

1.) The trial chamber is still considering the request for court monitors to attend closed sessions in accordance with Rule 79(C) of the Rules of Procedure. The Chamber asked us this week to submit to it the names of both the international and national monitors attending the trial sessions. We were later informed by the legal assistant to the CDF trial that the trial chamber would let us know shortly as to its decision on the matter.

2.) The Principal Defender attended the trial in the absence of counsel for the second accused, Augustine Gbao.

3.) The trial chamber conducted its proceedings in closed sessions on two full days and two half days out of the five trial days that the court was in session this week.

4.) The relevant sections of these statements were then tendered into evidence as Exhibits 15(A) (Statement dated 7 November 2003), 15(B) (Statement dated 16 January 2004) and 15(C) (Statement dated 31 May 2004).

5.) For further information with regards to this issue, see Special Court Monitoring Program Update No.4, also posted on this web site.

6.) Court appointed counsel for the first accused noted that there were certain discrepancies between the witness's statements with regards to the nature of which the guts were strewn across the road and the contents of the plastic bag. Accordingly, the relevant sections of the witness's statements from 9 November 2003 were marked and submitted into evidence as Exhibit 16.

7.) The Economic Community of West African State (ECOWAS) Cease-Fire Observer Group (ECOMOG) is a regional organization comprising 15 member States, including Sierra Leone. ECOMOG was formed in accordance with article 58(2)(f) of the Treaty of the Economic Community of West African States (ECOWAS' founding treaty), which allows for ECOWAS to "establish a regional peace and security observation system and peace-keeping forces where appropriate".

8.) ECOMOG forces commenced a military intervention in Sierra Leone on 6 February 1998 that led to their capture of Freetown and the Western Area on 12 February 1998 and , following the

success of their Freetown intervention, ECOMOG forces commenced provincial operations in March.

9.) It was noted, however, that a group of approximately 25 women from Beaconsville Institute, a technical college located in Freetown, attended one of the afternoon sessions of the trial early in the week.



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