

CHARLES TAYLOR TRIAL REPORT (October 1 – 31, 2008)

Overview

The trial against Charles Taylor rushed ahead in the month of October: the Prosecution called 32 witnesses in 17 days of trial, and the parties litigated several noteworthy procedural issues. The witnesses (all crime-base or victim witnesses) provided harrowing testimony about mass atrocities they claim to have experienced or witnessed in Sierra Leone. Nearly half of the witnesses testified under Rule 92*bis*, which allowed them to submit prior written statements in lieu of undergoing direct examination. Pursuant to court order, however, the Defense was granted the right to cross-examine any 92*bis* witness it wished to question in open court. After Defense made clear that it intended to call all proposed 92*bis* witnesses to The Hague for cross-examination, the Prosecution reduced the total number of witnesses it intends to call from 144 (72 *viva voce* and 72 via Rule 92*bis*), to about 95, nearly 50 witnesses fewer than originally slated. By the end of the reporting period, the Prosecution had called a total of 80 witnesses. The focus this month on victim witnesses also gave rise to litigation over several procedural issues in court, including the rescission of protective measures, the general well-being and treatment of victim witnesses, and WVS redactions of confidential information executed without a court order. There was also an unsuccessful Defense motion to disqualify the Bench from presiding over the testimony of a particular witness.

As with the previous reports, available online at <http://charlestaylortrial.org/trial-reports/>, this report summarizes witness testimony heard during this period and identifies legal and procedural issues that have arisen at trial.

All of the witnesses called during this reporting period were crime-base witnesses (victims of the atrocities allegedly committed by RUF and AFRC forces throughout Sierra Leone). A large number of the witnesses called in October were 92*bis* witnesses¹, indicated below next to the witness's name. The witnesses are as follows:

1. TF1-233, Osman Jalloh
2. TF1-279, Patrick Sheriff
3. TF1-263, Komba Sumana
4. TF1-305
5. TF1-087, James Kpumgbu (92*bis*)
6. TF1-072, Samuel Komba (92*bis*)
7. TF1-074, Sorie Kondeh (92*bis*)
8. TF1-076, Yei Sundu Maculey (92*bis*)
9. TF1-077, Tamba Yomba Ngekia (92*bis*)
10. TF1-215, Sieh Mansaray
11. TF1-218, Ruko Turay (92*bis*)
12. TF1-304, Sahr Charles (92*bis*)
13. TF1-195, Sia Kamara (92*bis*)
14. TF1-206, Alhaji Tejan Cole (92*bis*)
15. TF1-197, Sahr Bindi
16. TF1-097, Ibrahim Wai

¹ Rules of Procedure and Evidence, Rule 92*bis*.

17. TF1-314, Edna Bangura
18. TF1-158
19. TF1-023 (*92bis*)
20. TF1-029 (*92bis*)
21. TF1-331 Sarah Koroma
22. TF1-084, Mohamed Sampson Blah (*92bis*)
23. TF1-098, Alpha Jalloh (*92bis*)
24. TF1-104, Samuel Radder (*92bis*)
25. TF1-085, Akiatu Tholeey
26. TF1-227, Paul Nebieu Conteh (*92bis*)
27. TF1-216, Ibrahim Fofanah
28. TF1-217, Gibril Sesay
29. TF1-198 Kumba Bindi (*92bis*)
30. TF1-024, Abu Bakarr Mansaray (*92bis*)
31. TF1-210, Mustapha Mansaray
32. TF1-201, Sheku Bah Kuyateh

These witnesses testified about the crimes allegedly committed by RUF and AFRC forces in Sierra Leone. The witnesses included former child soldiers, as well as victims of rape, amputation, and forced labor.

Prosecution Themes and Strategies

This phase of the Prosecution's case focused on establishing the commission of crimes for which it argues Taylor is ultimately responsible. The Prosecution must prove that members of the RUF, AFRC, RUF/AFRC Junta, and/or Liberian fighters committed acts of terrorism (count 1), unlawful killings (counts 2-3), sexual violence (counts 4-5), physical violence (counts 7-8), the use of child soldiers (count 9), enslavement (count 10), and looting (count 11).² The indictment alleges that these crimes took place in various regions of Sierra Leone, including Kono District (counts 1-8, 10 - 11), Freetown and Western Area (counts 1-8, 10-11), Kenema District (counts 2-3, 10), Kailahun District (counts 2-8, 10), Bombali District (count 11), and Port Loko District (count 11).³ Therefore, this month's testimony included 32 crime-base witnesses testifying about crimes allegedly committed by AFRC/RUF forces in Sierra Leone.

Liberian English and Rebel Uniforms,

During its direct examinations, the Prosecution sought to establish that Liberians under the control of Charles Taylor fought with RUF/AFRC armed groups in Sierra Leone. In support of this theory, Prosecution attorneys questioned witnesses on the identity of the rebels or soldiers they had encountered, focusing largely on evidence that the rebels/soldiers spoke Liberian English. Witnesses who testified to having heard soldiers speak Liberian English specifically described foreign accents, poorly spoken Krio, or fighters using unfamiliar phrases such as "mah mei."

² *Prosecutor v. Charles Taylor*, SCSL-03-01-PT-263, Prosecution's Second Amended Indictment, 29 May 2007.

³ *Id.*

The Prosecution also questioned the witnesses on the types of clothing or uniforms the armed groups wore, in an effort to distinguish between RUF fighters (typically dressed in civilian clothing) and AFRC (typically dressed in fatigues or military clothing). The distinction matters because the Prosecution alleges that Taylor had direct control over the RUF and a more tenuous control over the AFRC.⁴ Evidence that the RUF were directly involved in the alleged atrocities more strongly supports the Prosecution theory that Taylor knew about the atrocities being committed by combatants and/or is responsible for their commission. The witnesses could recall the type of clothing worn by the combatants they encountered, and the testimony tended to indicate an even mix of fighters with civilian clothing and army fatigues, or combatants wearing a combination of the two.

Personal Knowledge of Charles Taylor

Toward the beginning of the month, the Prosecution questioned many of the witnesses about their personal knowledge of Charles Taylor. Many witnesses reported hearing Charles Taylor say over the radio that Sierra Leone would “taste the bitterness of war.” However, the Prosecution dropped this line of questioning later in the reporting period, perhaps because many of the witnesses had failed to mention Taylor in their prior statements to investigators. The *viva voce* testimony by these witnesses linking Taylor to the conflict in Sierra Leone gave the Defense grounds to impeach them for prior inconsistent statements, and to cast any purported evidence of a linkage as the unreliable product of witness coaching.

Enduring Effects of Crimes

The Prosecution wrapped up each examination-in-chief by asking the witness to describe how the crimes committed against them had affected their lives. Witnesses testified about their inability to work, ongoing medical and psychological problems, and general stress and anxiety.

Defense Themes and Strategies

Impeachment: Prior Inconsistent Statements and Bias

The Defense made a special point to communicate to each witness that they did not contest the fact that the witness was the victim of a grave crime. They continued to focus on impeaching the Prosecution’s witnesses with prior inconsistent testimony and sworn statements. Generally focusing cross-examination on linkage testimony, the Defense would not overtly suggest that the crimes did not occur or that the witness was lying.⁵ However, the Defense would highlight differences in details of the account to demonstrate that the witnesses were not credible. For example, based on inconsistencies between the testimony and prior statements, the Defense questioned one witness on whether the crimes alleged were committed in a “house” or a “mosque”.⁶ If the Defense can show gaps or inconsistencies in the details of crime-base testimony, they can argue that the Prosecution did not present credible evidence as to responsibility

⁴ *Prosecutor v. Charles Taylor*, SCSL-03-01-PT-218, Public Rule 73bis Prosecution Pre-Trial Conference Materials, Pre-Trial Brief, 4 April 2007, para 42.

⁵ Except on one occasion, during the cross-examination of Gibril Sesay, witness TF1-217.

⁶ See *Prosecutor v. Charles Taylor*, SCSL-03-01-T, Trial Transcript, 21 October 2008.

for the commission of crimes as alleged, while not necessarily arguing the crimes themselves did not occur. The Defense also suggested on several occasions that the present testimony was embellished or altered from the original statements based on the identity of the Accused. The Defense frequently suggested to the witnesses that given the trauma of their experiences and the time lapsed between their injury and their testimony in The Hague, their memory about the details might be faulty. The witnesses consistently denied these suggestions, testifying that they were telling the truth, they remembered details accurately, and that they had noted in their testimony when they did not. Inconsistencies were explained by witnesses as the result of distress from the events, simply not being asked about certain things in earlier meetings with the Office of the Prosecutor (OTP), or mistakes in transcription in OTP interview notes.

In an attempt to suggest bias and improper motive for testifying, the Defense also rigorously questioned the witnesses about whatever payments they may have received from the OTP or the Witness and Victim Section (WVS). The Defense specifically questioned witnesses on records of payment for “lost wages,” when the witness had testified that they were unemployed.⁷ Witnesses typically responded that they had not received “payments” of any kind from the OTP, only reimbursement for travel, and that they did not know why “lost wages” would be given as the purpose for monies received.⁸ On one occasion, during the re-examination in chief of witness Sahr Bindi, the Prosecution noted that payments were always made in combined amounts not for only lost wages, but for lost wages, transportation, and meals.

Prevalence and Significance of Liberian English Allegedly Spoken by Perpetrators

Cross-examination further sought to undermine Prosecution charges that the perpetrators of the alleged atrocities were RUF or AFRC combatants under the Defendant’s control. Defense suggested, instead, that the Liberian combatants witnesses thought they encountered were either not Liberian or were, in fact, Liberians fighting with ULIMO—a force that historically fought *against* Charles Taylor in Liberia, and could be linked to the Sierra Leonean Army rather than the rebel forces in Sierra Leone.

In order to probe how sure a witness was about the nationality of the combatants they encountered, Defense questioned witnesses on their personal knowledge of Liberian English. Counsel for the Accused asked whether they had ever been to Liberia, how they knew it was Liberian English, and what specific differences the witness perceived between Sierra Leonean Krio and Liberian English. The results of this line of questioning was mixed. Witnesses tended to answer vaguely, with general observations of foreign accents or phrases and the assumption that this meant the fighters were Liberian. Very few witnesses had personal knowledge of Liberian English and several had been told by others that the language they heard was Liberian. Those witnesses who had been captured by the armed groups and kept as child soldiers or wives tended to have more personal knowledge of the nationality of fighters, as these witnesses had lived for some time amongst the combatants. The Defense established through this line of questioning that apart from the language, there was no way of distinguishing between a Liberian

⁷ See testimony of James Kpungbo, October 13, Samuel Komba, October 13, Sahr Bindi, October 16, Edna Bangura, October 20, TF1-023, October 22, Mohammed Bah, October 22 – 23, Alpha Jalloh, October 23, and Gibril Sesay, October 29.

⁸ *Id.*

and Sierra Leonean based solely on appearance. Where witnesses expressed certainty about the nationality of the combatants, Defense suggested that Liberian nationality did not necessarily indicate RUF or AFRC responsibility for atrocities. Counsel asked witnesses whether they knew about Sierra Leonean Presidents Strasser and Kabbah recruiting Liberian ULIMO fighters to combat the rebels in the early 1990s, and questioned witnesses about their knowledge of Liberian mercenaries fighting in Sierra Leone with the SLA. During the cross-examination of witness TF1-098, the Defense also read aloud certain excerpts from President Kabbah's testimony on the subject before the Sierra Leone Truth and Reconciliation Commission:

“Another group which I came to know about much later, as part of the security units utilised by the military, was the Special Task Force. I was never briefed about this when I assumed office as President in 1996. I knew about the existence of this unit only on the day of the AFRC coup d'etat, yet the army, without regard for the origin and true motive of the members of this group, had used them regularly and depended on them considerably.”⁹

[...]

The NPRC inherited from the APC regime the problem of ULIMO, but it too never settled or attempted to settle it. All it did was to insist on the dropping of the 'J' and the 'K' from the names of the two factions and to collectively rename them Special Task Force. The Special Task Force was then almost incorporated into the Sierra Leone Army and they received salaries, allowances and their supplies were regularly replenished.”¹⁰

President Kabbah is saying to the Truth and Reconciliation Commission that what was known as ULIMO was turned into the Special Task Force.¹¹

Witnesses generally claimed no knowledge of a collaboration between Liberian ULIMO fighters and the Government of Sierra Leone. If the Court finds the Defense theory credible, it may cast reasonable doubt on Prosecution allegations that the Liberians in question answered to Charles Taylor. This would weaken the Prosecution's case linking Taylor to the atrocities, and suggest instead that that the crimes described by Prosecution witnesses may have been attributable to militant groups connected with the Sierra Leonean government.

Commanders and ECOMOG

Defense further tried to weaken connections between Taylor and the atrocities described by asking witnesses whether they could affirmatively identify the commanders of the groups that

⁹ *Prosecutor v. Charles Taylor*, SCSL-03-01-T, Trial Transcript, October 23, 2008, page, 19136, lines 1 – 5, page 19137 lines 1 – 5.

¹⁰ *Prosecutor v. Charles Taylor*, SCSL-03-01-T, Trial Transcript, October 23, 2008, page, 19137, lines 22 - 29

¹¹ *Prosecutor v. Charles Taylor*, SCSL-03-01-T, Trial Transcript, October 23, 2008, page 19138, lines 11 – 13.

committed the alleged crimes against them. The Defense likely will use this evidence to argue that the person ultimately responsible for the particular crime the victim testified about was not related to or subordinate to Charles Taylor. To this end, Counsel for the Accused asked about commanders' names, perceived nationalities, and mode of dress. Defense also asked witnesses about their knowledge of ECOMOG mining activities, and the possibility that ECOMOG forces were responsible for the violence they described. If the Defense demonstrates that the AFRC commanders were largely responsible for the crimes testified about, this may weaken the Prosecution's argument that Taylor was responsible for those crimes since the Prosecution is stressing the link between Taylor and the RUF more so than the AFRC. This line of questioning tended to generate testimony about commanders who were AFRC soldiers, indicating that the connection between Taylor and some crimes committed in certain areas of Sierra Leone may be tenuous. Likewise, if the Defense can elicit evidence of ECOMOG responsibility for the violence described, it would tend to exculpate the Accused. However, witnesses tended to testify that they had no knowledge of ECOMOG forces committing atrocities or mining, although a few witnesses did testify that ECOMOG forces were responsible for some civilian deaths.

Legal and Procedural Issues

Rescission of Witness Protection Measures

This month saw a new trend of rescinding protective measures for witnesses. As noted above, the witnesses testifying during October were predominantly crime-base or victim witnesses. Under a 5 July 2004 decision from Trial Chamber I, these witnesses are afforded certain protective measures depending on applicable witness categories: Category 1 includes "witnesses of fact," and Category 2 includes witnesses who had waived their right to protection or expert witnesses.¹²

Within Category 1, the protective measures vary depending on whether the witness is a victim of sexual violence (Category A), a child witness (Category B), or an insider witness (Category C). All witnesses falling into Category 1 receive protective measures including a pseudonym, confidentiality of identifying information, and the right to testify behind a screening device that shields their identity from the public.¹³ Victims of sexual violence (Category A) and insider witnesses (Category C) are additionally entitled to voice distortion. Child witnesses (Category B) are entitled to testify by closed-circuit television, with facial distortion on public monitors.¹⁴

The Prosecution made an application for the vast majority of this month's witnesses to rescind these protective measures on the basis that they simply fall into Category 1, without specifying a sub-category A, B, or C. The Prosecution argued that the 5 July 2004 decision applied *mutatis mutandis* to the present case by virtue of Rule 75(F)(i).¹⁵ The Defense did not object to these

¹² *Prosecution v. Sesay et al.*, SCSL-04-15-PT-180, Decision on Protection Motion for Modifications of Protective Measures for Witnesses, 5 July 2004.

¹³ *Id.*, pages 15 – 16. Referring to measures (a), (b), and (e).

¹⁴ *Id.*, page 16, referring to measures G, H, and I.

¹⁵ Rules of Procedure and Evidence, Rule 75(F)(i). This rule states that "Once protective measures have been ordered in respect of a witness or victim in any proceedings before the Special Court (the "first proceedings"), such protective measures: (i) shall continue to have effect *mutatis mutandis* in any other proceedings before the Special Court (the "second proceedings") unless and until they are rescinded, varied or augmented [...]."

applications to rescind protective measures, maintaining that these measures should not apply to witnesses who were not specifically listed in the Annexes to the 2004 decision. The Chamber dismissed each application as redundant. The Chamber maintained that simple “Category 1” witnesses who were not also a Category A, B or C witness were not entitled to protective measures under the 5 July 2004 decision. The witness would testify without protective measures. These arguments were the subject of a pending motion in the Appeals Chamber until the witness in question agreed to testify openly.¹⁶ Therefore, the Prosecution maintained the position it took in its Appeals Chamber motion and continued to go through the formality of presenting oral recession motions to the Court despite the Bench’s clear opinion that such motions were redundant.

Crime-base Witnesses Testifying under Rule 92bis

Bringing crime-base witnesses to testify in this trial has been contentious from the beginning. The Prosecution initially requested that crime-base witnesses be allowed to testify under Rule 85(D) via closed-circuit video sessions in Sierra Leone, to avoid difficult, stressful, and costly travel.¹⁷ This motion was denied, and in order to prevent the stress of testifying and make the trial more expeditious, the Prosecution sought to have the prior testimony of many witnesses be included in the record under Rule 92bis. Rule 92bis provides that

1. [...] [A] Chamber may, in lieu of oral testimony, admit as evidence in whole or in part, information including written statements and transcripts, that do not go to proof of the acts and conduct of the Accused.
2. 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.¹⁸

A significant portion of the Prosecution’s crime-base witnesses are 92bis witnesses, who have testified in previous cases and can thus have their prior transcripts introduced as evidence, as opposed to repeating their testimony in court. However, the Defense objected to admission of most of these written statements on the grounds that the testimony sought to prove conduct of the Accused and were therefore inadmissible under rule 92bis.¹⁹

The Court held that although Rule 92bis does not explicitly provide for cross-examination, it is within its inherent powers under Rules 26bis and 54 to order “that information ‘going to a critical element of the Prosecution’s case’ is proximate enough to the Accused so as to require cross-

¹⁶ *Prosecutor v. Taylor*, SCSL-03-01-T-637, Decision on Prosecution Appeal Regarding the Decision Concerning Protective Measures of Witness TF1-215, 17 October 2008; *Prosecutor v. Taylor*, SCSL-03-01-T, Public Prosecution Request to Withdraw Notice of Appeal and Submission Regarding the Decision Concerning Protective Measures for Witness TF1-215, 7 October 2008; *Prosecutor v. Taylor*, SCSL-03-01-T, Public With Confidential Authorities Prosecution Notice of Appeal and Submissions Regarding the Decision Concerning Protective Measures for Witness TF1-215, 23 September 2008.

¹⁷ Rules of Procedure and Evidence, Rule 85(D).

¹⁸ Rules of Procedure and Evidence, Rule 92bis.

¹⁹ See, e.g., *Prosecutor v. Taylor*, SCSL-03-01-T-598, Defence Objection to “Prosecution Notice Under Rule 92bis For The Admission of Evidence Related to Inter Alia Kono District – TF1-195, TF1-197, TF1-198 & TF1-206 and Other Ancillary Relief, 17 September 2008.

examination.”²⁰ The Court also noted that where evidence included in the transcripts under application refers to “subordinates who are in close proximity to the Accused,” the Court can either declare the transcripts inadmissible or grant the opportunity to cross-examine.²¹ Based on this reasoning, the Court has consistently held that the witnesses the Prosecution seeks to introduce via Rule 92bis must be made available for cross-examination by the Defense.²² Exercising this right to cross-examination, the Defense has required the Prosecution’s 92bis witnesses to be brought to The Hague for cross-examination. As such, when a witness testified under Rule 92bis, the witness was not lead by the Prosecution through an examination in-chief, but instead began directly with cross-examination by the Defense.

Rule 92bis Consequences: Witness Well-Being and Treatment

On several occasions this month, witnesses broke down crying during their testimony. In reaction, the Chamber would generally ask the witness if they would like to continue, or if they would like a break in their testimony. Several times, testimony was halted for a short period for the witness to recover. During the testimony of Osman Jalloh, the Prosecution requested that a member from WVS be present in the court to assist the witness. The application was granted by the court, a departure from their September decision in which it refused to allow a member of the WVS to be present in court seated next to the witness.²³ There were several other emotional pleas from witnesses, including this statement from Mohammed Bah that asked the Court to protect him and his family and help other amputees in Sierra Leone:

I would like the Court to protect me and my family because if anything happens to me that would endanger my life and my family’s that would be the responsibility of the Court [...] I would like to thank everybody and I also want to tell the Court that all of us who have been amputated, we are no longer useful in life. It’s only God who is protecting us. We’ve lost a lot of things and I would like to appeal to the Court to tell us how they should guide us, the country, that such a thing will not be repeated in the country any more. Now I am talking on behalf of the others who were also amputated and going over those terrific

²⁰ *Prosecutor v. Taylor*, SCSL-03-1-T-556, Decision on Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to *Inter Alia* Kenema District and on Prosecution Notice Under Rule 92bis for the Admission of the Prior Testimony of TF1-036 into Evidence, 15 July 2008, page 4, internal citations omitted. Rules of Procedure and Evidence, Rules 26bis and 54. Rule 26bis provides that “The Trial Chamber and Appeals Chamber shall ensure that a trial is fair and expeditious and that proceedings before the Special Court are conducted in accordance with [...] full respect for the rights of the accused and due regard for the protection of victims and witnesses.” Rule 54 provides that “[...] of its own motion, a Judge or Trial Chamber may issue such orders [...] as may be necessary for the [...] conduct of a the trial.”

²¹ *Prosecutor v. Taylor*, SCSL-03-1-T-556, Decision on Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to *Inter Alia* Kenema District and on Prosecution Notice Under Rule 92bis for the Admission of the Prior Testimony of TF1-036 into Evidence, 15 July 2008, page 4.

²² SCSL-03-1-556 page 6; *Prosecutor v. Taylor*, SCSL-03-01-T-644, Decision on Public with Confidential Annexes A to D & F to G Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to *Inter Alia* Freetown & Western Area – TF1-098, TF1-104 and TF1-227.

²³ *Prosecutor v. Charles Taylor*, SCSL-03-01-T, Trial Transcript, September 30, 2008, pages 17650 – 17651. The witness herself requested the representative, and neither the Defense nor the Prosecution objected. The Court cited anxiety about the WVS representative sitting next to the witness on the stand, and the fact that this person might hear confidential testimony in closed session.

experiences, it's not anything anybody would want to do. You know, we know what we went through [...] and coming back to [...] relive those things is not anything simple.²⁴

Tensions between the Prosecution and the Defense over witness well-being and the consequences of *92bis* cross-examination did not remain inside the courtroom. Tensions spilled over this month into a public exchange of recriminating statements between Chief Prosecutor Stephen Rapp and Lead Defense Counsel Courtenay Griffiths. Each side made clear that it feels the other is primarily responsible for putting witnesses through an unnecessary courtroom ordeal. In an interview on October 17, 2008 Defense counsel Courtenay Griffiths blamed the Prosecution's handling of Rule *92bis* witnesses for the victims' harrowing experiences of testifying in The Hague. Griffiths argued that in its *92bis* submissions, the Prosecution indiscriminately provided entire transcripts which included cross-examination from Defense attorneys in the prior trials. This, Griffiths maintained, meant that if he agreed to the inclusion of these transcripts as evidence, he would be agreeing to linkage based testimony raised during those prior cross-examinations. Therefore, the Taylor Defense team requested that these victims be brought to The Hague for their own cross-examination. As a consequence, he argues, unnecessary funds have been spent on transport for the victims, and he says:

[W]e have this sad spectacle of agitated individuals and rape victims, being transported to The Hague to give evidence and the core aspects of their evidence are not being challenged by us [...] Because we defend Mr. Taylor and declare him innocent of these charges, it doesn't mean that we are somehow insensitive to the suffering which actually took place in Sierra Leone. We are human too. We don't enjoy the spectacle of people breaking down on the witness stand, because they are having to relive the most horrific experiences. We don't enjoy that. It's an emotional roller coaster for us as well. And anything which could have avoided that spectacle, we were willing to agree to.²⁵

Lead Prosecutor Stephen Rapp promptly replied to these allegations in a press release on October 20, 2008. He accused the Defense of causing hardship to victims whose testimony is not in dispute, by requiring them to come to The Hague to testify. Rapp said:

Victims of the atrocities are being forced to relive their horrors on the stand for one reason only—because, contrary to their public statements, the Defence is unwilling to agree that these crimes happened [...] For months, the Defence has been saying publicly they did not dispute that these terrible crimes took place, only that their client was not responsible [...] They claimed they were quite happy for the statements of the victims to be submitted as evidence without any challenge. But in Court they've done just the opposite.²⁶

²⁴ *Prosecutor v. Charles Taylor*, SCSL-03-01-T, Trial Transcript, 23 October 2008, pages 19111 – 19112.

²⁵ “Interview: Lead Defense Counsel Courtenay Griffiths Confirms Taylor Himself will Testify” October 17, 2008, available at www.charlestaylortrial.org, posted October 20, 2008.

²⁶ Press Release by the Office of the Prosecutor, Prosecutor Accuses Taylor Defence of Causing Hardship for Victim Witnesses, October 20, 2008, available at <http://www.sc-sl.org/Press/prosecutor-102008.pdf>.

The Prosecution originally sought to have 72 witnesses submit their testimony under Rule 92*bis*. As of October 20, the Prosecution had applied for 22 such witnesses. However, the Trial Chamber ruled that the Defense can require their presence in court for cross-examination, and the Defense had objected to all 22. As a consequence, the Prosecution has reduced the total number of witnesses it intends to call, including both linkage and crime-base witnesses, to ensure a timely and efficient closure of the trial. According to the press release, the total number of witnesses the Prosecution will call will be about 95, nearly 50 witnesses fewer than originally predicted.²⁷

On balance, the two sides both present credible claims about the difficulties of having victims testify in The Hague. However, the Defense tended to keep its cross-examination narrowly tailored to impeaching the witnesses and to eliciting evidence on the issues of linkage and responsibility for the crimes the victims allegedly witnessed. It did not appear as though the Defense is attempting to demonstrate that the crimes themselves did not occur. This gives some merit to the arguments of the Defense for why they insisted on bringing victims to The Hague for cross-examination: to disprove the allegation that Taylor is linked to these crimes. Furthermore, the drastic reduction in witnesses called by the Prosecution under Rule 92*bis* lends weight to the suggestion that the initial list of witnesses was unnecessarily high. This reduction begs the question of why the Prosecution would have initially sought to introduce unnecessary accounts of crimes committed in Sierra Leone, and indicates that the Defense may be accurate in its allegation that this was intended to introduce subtle linkage testimony without the opportunity to cross-examine.

Motion to Disqualify the Bench

Before the testimony of witness TF1-098, the Defense moved to disqualify the judges based on Rule 15(A) of the Rules of Procedure and Evidence, which states that “a Judge may not sit at a trial or appeal in any case in which his impartiality might reasonably be doubted on any substantial ground.” Applying for reconsideration of a motion on the same grounds in January, regarding witness TF1-114, the Defense argued that because witness TF1-098 had given testimony before this Trial Chamber in the AFRC case, and had been subsequently determined a credible witness, the judges were biased as to his credibility. The Prosecution responded that there was no sufficient basis for disqualification, and noted that the witness had not been cross-examined in the AFRC trial. The Court ruled that there can not be an application for reconsideration: the January application had been decided, on the basis that the testimony was about a different accused in a different trial, and that in this trial he will be cross-examined and will testify under Rule 92*bis*. However, the Court concluded that the Defense could make a new application if it wished to do so. The Defense declined to make a new application.

WVS Redaction

When discussing protective measures granted to witness TF1-076, the Court took issue with the Witness and Victims Support unit’s (WVS) practice of redacting transcripts that would reveal identifying information of protected witnesses. The Court argued that transcript redaction can only take place after both parties have agreed and a Court Order has been issued. None of the judges were aware that WVS was making redactions without Court Orders. Therefore, the Court ordered that the head of the WVS provide a report to the Bench that detailed how the WVS

²⁷ *Id.*

obtained authority to make such redactions. The Court further requested a list of all witnesses whose testimony the WVS had redacted without a Court Order.

Witness Testimony

Given the large number of witnesses called before the court this month, below is a very brief summary of the testimony heard during October. For full witness summaries, please see www.charlestaylortrial.org.

1. TF1-233, Osman Jalloh: Testified in Temne. Prosecution applied for and was granted rescission of protective measures originally granted in a 5 July 2004 decision by Trial Chamber 1 in the RUF case.²⁸ Witness testified about crimes allegedly committed in January 1999, Freetown/Western Area. Testimony included evidence of looting, burning, forced labor, amputation, unlawful killing, and child soldiers. The Defense made an observation that information in the witness's testimony concerning the rebels' movement through Calaba Town was not included in the documents disclosed to the Defense. The Defense said it will make an application to the court when it feels it is being prejudiced. Before the witness's testimony about his own amputation, the Prosecution applied to have a member from the WVS to sit with the witness and assist him in case he has difficulty with his testimony. The witness had both arms amputated and thus was physically incapable of using a tissue or drinking water if he became emotional during his testimony. The court granted this application, in a departure from its decision last month denying Prosecution's similar application for a rape victim.
2. TF1-279, Patrick Sheriff: Testified in Krio. Prosecution applied for and was granted rescission of protective measures granted in 5 July 2004 decision. Witness testified about crimes allegedly committed in December 1998 and in 1999 in a village near Waterloo, Western Area. Testimony included evidence of burning, unlawful killing, physical violence, forced labor, and amputation.
3. TF1-263, Komba Sumana: Testified in Kono. Prosecution applied for rescission of protective measures granted in 5 July 2004 decision, except the witness's address and information concerning his current whereabouts. The Chamber considered the application for rescission redundant, and instead viewed it as a fresh application for protective measures protecting identifying information of the witness. The Chamber granted this application. Witness testified about crimes allegedly committed in 1998 in Kono District (Koidu Town, Yekeyor, Pakidu, Tombodu, Kurubonla, Mongo Bendugu), Western Area (Kissi Town, Calaba) and Bombali District (Makeni). Testimony included evidence of burning, physical violence, amputation, looting, unlawful killing, abduction, child soldiers, forced labor, and rape. The witness was a former child soldier, and also provided testimony about the RUF/AFRC command structure, infighting between the RUF/AFRC junta forces, and evidence that weapons were provided to the rebels by Charles Taylor. The witness also testified that his commander, Major Wallace, was a

²⁸ *Prosecution v. Sesay et al.*, SCSL-04-15-PT-180, Decision on Protection Motion for Modifications of Protective Measures for Witnesses, 5 July 2004.

Liberian who used to be a ULIMO soldier under Alhaji Kromah. During cross-examination, the witness testified that the three rebels who captured him were former ULIMO fighters that had joined the STF (Special Task Force).

4. TF1-305: Testified in Kono. Witness testified with the protective measures of a pseudonym, image distortion, voice distortion, and a screen. The witness's testimony included evidence of rape and looting in Kono District, in 1998. There was no cross-examination of this witness.
5. TF1-087, James Kpumgbu (92bis): Testified in Krio. The Prosecution applied for rescission of protective measures granted in the 5 July 2004 decision. The Chamber noted that this application was redundant as it had previously held that the witness was not entitled to protective measures under the 5 July 2004 decision. The witness provided evidence of burning and amputation in Kissi Town, Western Area, in 1999.
6. TF1-072, Samuel Komba (92bis): Testified in Kono. The Prosecution applied for rescission of protective measures granted in the 5 July 2004 decision. The Chamber again held that the application was redundant and that the witness was not covered by the protective measures granted in the 5 July 2004 decision. The witness testified about amputation and beating occurring in Tombodu, Kono District, in 1998.
7. TF1-074, Sorie Kondeh (92bis): Testified in Krio. The Prosecution applied for rescission of protective measures granted in the 5 July 2004 decision; this application was again viewed as redundant by the Court under its decision that this category of witness was not covered by the 5 July 2004 decision. Testimony included evidence of recruitment of child soldiers, abduction, and forced labor in Kono District in 1998.
8. TF1-076, Yei Sundu Maculey (92bis): Testified in Kono. Prosecution applied for and was granted rescission of protective measures with the exception of identifying information. Testified about events occurring in Tombodu, Kono District. Details of the alleged crimes were not raised during cross-examination.
9. TF1-077, Tamba Yomba Ngekia (92bis): Testified in Kono. The Prosecution applied for rescission of protective measures granted in the 5 July 2004 decision; this application was viewed as redundant by the Court under its decision that this witness was not covered by the 5 July 2004 decision. The witness testified about burning, forced labor, and unlawful killings that allegedly occurred in Kono District in 1999.
10. TF1-215, Sieh Mansaray: This witness was originally presented for testimony in May. At that time, the court stripped the witness of protective measures based on a Defense objection that the witness had appeared in a public video and therefore was not entitled to protection. At that time, the witness was not prepared to testify in open court. The Prosecution appealed this decision, but pending a decision by the Appeals Chamber, the witness agreed to testify in open court. The witness testified in Krio. His testimony included evidence of child soldiers, abduction, forced labor, burning, amputation, and

forcing civilians to drink human blood. These crimes allegedly took place in 1998 in Kondembaia village and other villages in Koinadugu District.

11. TF1-218, Ruko Turay (92*bis*): Testified in Limba. Prosecution applied for and was granted rescission of protective measures, except the witness's address and information concerning his current whereabouts. The witness testified about her rape in 1998, in Bumpe, Kono District.
12. TF1-304, Sahr Charles (92*bis*): Testified in Kono. The Prosecution applied for rescission of protective measures. The Court dismissed this application as redundant as this witness is not covered by the 5 July 2004 decision. The witness testified about forced labor (mining), and unlawful killing of civilians allegedly occurring in 1998 and afterwards in Tombodu, Kono District. The Defense also elicited testimony about the AFRC/RUF disciplinary system and the "two-pile" system of mining.
13. TF1-195, Sia Kamara (92*bis*): Testified in Kono. The Prosecution applied for and was granted rescission of protective measures granted in the 5 July 2004 decision, with the exception of identifying information. On cross-examination, the witness provided testimony about abduction and amputation in Tongo Fields, Kenema District, in 1999.
14. TF1-206, Alhaji Tejan Cole (92*bis*): Testified in Krio. Prosecution applied for rescission of protective measures granted in the 5 July 2004 decision; the Chamber stated that they had already handed down a decision dismissing the application as it was redundant. Upon cross-examination, the Defense elicited testimony about the witness's knowledge of President Strasser calling for Liberian soldiers to form the STF to help him fight the rebel forces in 1993. The witness testified that he was not aware of this, but he was aware of Liberian mercenaries fighting in Sierra Leone during the mid-1990s.
15. TF1-197, Sahr Bindi: Testified in Kono. The Prosecution applied for rescission of protective measures granted by the 5 July 2004 decision. The court dismissed the application as redundant as it did not consider that the witness was entitled to any protective measures. The witness provided testimony about unlawful killing, looting, physical violence, rape, abduction, forced labor, burning, and amputation allegedly taking place in 1998 in Kono District (Tombodu and Yardu).
16. TF1-097, Ibrahim Wai: Testified in Krio. The Prosecution applied for rescission of protective measures granted in the 5 July 2004 decision; the application was again dismissed as redundant. The witness testified about forced labor, looting, burning, unlawful killing, rape, and amputations he claims were carried about by RUF/AFRC forces in Tumbo and Kissi Town, Western Area, in 1998 – 1999. At the end of this witness's examination in chief, Justice Sebutinde noted that the Court had not seen the witness's amputation and it had not be described for the record. The witness apparently misunderstood the nature of her comment and became distraught, showing his amputated arm to the Court and pointing at Taylor, accusing "the children of Charles Taylor" for causing his injuries. Upon cross-examination, the Defense seized upon this statement, asking the witness whether he was repeating what other people had told him. The

witness responded yes, but when asked who had been the last person who told him it was Taylor's fault, the witness responded that nobody had told him that.

17. TF1-314, Edna Bangura: Testified in Krio. The Prosecution applied for and was granted partial rescission of protective measures granted by Trial Chamber I in a 24 November 2004 order of protective measures. The witness testified about rape, abduction, forced labor, child soldiers, forced military training, looting and forced marriage allegedly occurring between 1994 and 1998 in Bombali and Kailahun Districts. The witness also testified about various commanders in the AFRC/RUF, and witnessing a truck that came into an AFRC/RUF camp with arms, which the witness was told came from Liberia.
18. TF1-158: Testified in Krio. This witness testified with the protective measure of a pseudonym. The Prosecution applied for rescission of protective measures granted to child witnesses in the 5 July 2004 decision, stating that the witness was willing to waive the video link and would instead testify with a pseudonym and screen. The Defense raised an objection to these protective measures on the basis that the witness was no longer a child, and therefore not covered by the order. The Prosecution responded that in its view the decision had been litigated and interpreted previously, when, at the age of 18, the witness testified in the AFRC trial, and the issue of his age of majority was not raised. The Bench claimed it could not rule on this controversy without first receiving written motions from the parties.²⁹ The Prosecution responded that it wished to find a practical solution to the matter without formal litigation so as to avoid inconveniencing the witness with a series of motions, responses and replies. The Chamber adjourned for a brief time to allow the parties to reach an agreement independently. The parties agreed that the witness would testify with a pseudonym, and the Defense noted it would submit a motion on the issue of continued protective measures for child witnesses who reach the age of majority. The witness provided testimony about physical violence, unlawful killing, abduction, forced labor, forced military training, child soldiers, forced consumption of narcotics, and looting taking place in 1997 in Bonoya, Bombali District, and Calaba Town, Western Area.
19. TF1-023 (92bis): Testified in Krio. The Prosecution applied for rescission of the voice distortion protective measure granted to Category A (rape victims) witnesses in the 5 July 2004 decision. The Court granted the application. The witness testified about abduction, physical violence and amputation allegedly committed by the AFRC/RUF in Freetown and Western Area in 1999.
20. TF1-029 (92bis): Testified in Krio. The Prosecution applied for and was granted rescission of some protective measures granted to Category A (rape victims) witnesses in the 5 July 2004 decision, retaining the use of a pseudonym. The witness testified that she was abducted in Freetown in 1999.

²⁹ The Chamber, noting an Appeals Chamber decision from 17 October 2008 which said, *inter alia*, "the Trial Chamber must give a reasoned opinion that amongst other things indicated its view on all of those relevant factors that a reasonable Trial Chamber would have been expected to take into account become coming to a Decision," and that they had not heard enough argument to come to such a reasoned decision.

21. TF1-331 Sarah Koroma: Testified in Krio. The Prosecution applied for rescission of protective measures granted to Category 1 (crime-base) witnesses in the 5 July 2004 decision. The court dismissed the application as redundant. The witness testified about abduction, unlawful killing, amputations, and physical violence occurring in Loko Town and Wellington, Western Area, in 1999.
22. TF1-084, Mohamed Sampson Blah (*92bis*): Testified in Krio. The Prosecution applied for rescission of protective measures granted to Category 1 (crime-base) witnesses in the 5 July 2004 decision. The court dismissed the application as redundant. The Defense did not elicit any testimony pertaining to specific acts or crimes allegedly committed in Sierra Leone. Instead, the Defense attempted to impeach the witness with prior inconsistent statements and questions about payments received by the OTP. At the end of his testimony, the witness made an emotional appeal to the court to protect him and his family and help the victims of amputation in Sierra Leone.
23. TF1-098, Alpha Jalloh (*92bis*): The Prosecution applied for rescission of protective measures granted in the 5 July 2004 decision. The court dismissed the application as redundant. Before the witness took the stand, the Defense sought to disqualify the Bench from presiding over this witness testimony on the grounds that the witness had previously testified before the same judges in the AFRC trial. Defense counsel argued, unsuccessfully, that the Bench was prejudiced as to the credibility of the witness. This application is discussed more thoroughly above, in the section entitled “Legal and Procedural Issues.” The witness testified about alleged amputations by AFRC/RUF soldiers in Freetown in 1999. The Defense also questioned the witness’s personal knowledge of Liberian soldiers, recruited by President Kabbah, fighting with the Sierra Leonean Army (SLA) and Special Task Force (STF). The witness testified that he had heard that a faction of Liberians was fighting with the SLA, but that he had not heard that members of the STF were part of the SLA. The Defense read portions of President Kabbah’s statements made before the Sierra Leone Truth and Reconciliation Commission about the involvement of the STF and ULIMO with the SLA.
24. TF1-104, Samuel Radder (*92bis*): Testified in English. The Prosecution applied for rescission of protective measures granted in the 5 July 2004 decision; again, the Chamber held that this application was redundant and dismissed it. The witness testified about amputations and other physical violence allegedly committed by AFRC/RUF junta forces in Freetown, January 1999. The Defense also asked the witness about his knowledge of Strasser bringing Liberian ULIMO soldiers to Sierra Leone to fight with the STF. The witness said that he had heard about ULIMO militias and that they were fighting with the SLA, but did not know about connections between the STF and ULIMO. The witness also testified that he was not aware of Liberian mercenaries fighting in the Sierra Leone war.
25. TF1-085, Akiatu Tholeey: Testified in Krio. The Prosecution applied to have this Category A (rape victim) witness’s protective measures rescinded from the 5 July 2004 decision, except the protection of information regarding her whereabouts. The application was granted. This witness’s testimony concerned events she claimed took

place in Wellington, Allen Town, and Waterloo, Western District, in January 1999. She provided evidence about alleged AFRC/RUF atrocities including physical violence, amputation, forced labor, abduction, burning, rape, looting, forced cannibalism, forced marriage, forced use of narcotics, and child soldiers.

26. TF1-227, Paul Nebieu Conteh (*92bis*): Testified in English. Prosecution made an application for rescission of protective measures granted in the 5 July 2004 decision, which was dismissed as redundant by the court. The witness testified about unlawful killings and abductions he maintains took place in Freetown in 1999.
27. TF1-216, Ibrahim Fofanah: Testified in Krio. Prosecution made an application for rescission of protective measures granted in the 5 July 2004 decision, which was dismissed as redundant by the court. The witness's testimony provided evidence about looting, unlawful killing, burning, and amputations occurring in Paema Town, Kono District, in 1998.
28. TF1-217, Gibril Sesay: Testified in Krio. Prosecution made an application for rescission of protective measures granted in the 5 July 2004 decision, which was dismissed as redundant by the court. The witness testified about alleged crimes committed by the AFRC/RUF forces in 1998 in Koidu Town, Wendadu, and Penduma, Kono District. His testimony included descriptions of rape, looting, unlawful killing, burning, abduction, and amputations.
29. TF1-198 Kumba Bindi (*92bis*): Testified in Kono. The Prosecution sought partial rescission of this Category A (rape victim) witness's protective measures granted in the 5 July 2004 decision. The Chamber granted the application. The witness testified about events allegedly occurring in Tombodu, Kono District, but details were not elicited on cross-examination.
30. TF1-024, Abu Bakarr Mansaray (*92bis*): Testified in Krio. The Prosecution applied for rescission of protective measures granted in the 5 July 2004 decision to Category B witnesses (child soldiers); the Chamber granted the application. When the Prosecution asked the witness to adopt his prior testimony from the AFRC trial, the witness denied testifying against Brima, saying that he had testified against "Gullit." The witness denied that the transcript had been read back to him, and claimed he had not spoken with the Prosecutor leading him through his testimony, only that he had "seen" him. The witness further said that he had met with a woman who had read portions of the testimony to him in English, and that he had not fully understood what she said (although the witness said he speaks some English). The Prosecution applied to have the witness stand down so that his testimony could be read to him in a language he clearly understood. The Defense noted that the witness had already been sworn in and was under oath, and argued that if the Prosecution were to meet with the witness outside of court, then the Defense should be present. The Chamber held that in its view the witness had already adopted his prior testimony, pointing to sections from the present transcript to support its decision. Therefore, the application to stand down the witness was denied, and the transcript was accepted into evidence. The witness provided evidence about abduction, unlawful

killings and forced labor allegedly committed by AFRC/RUF soldiers in Freetown in 1999.

31. TF1-210, Mustapha Mansaray: Testified in Mende. Prosecution made an application for rescission of protective measures granted in the 5 July 2004 decision, which was dismissed as redundant by the court. The witness testified about events he claimed occurred in Wordu, Kono District in 1998, and in Freetown/Western Area in 1999. The witness gave evidence about abduction, forced labor, amputation, unlawful killing, and burning allegedly committed by AFRC/RUF soldiers in Kono District, and burning and unlawful killings perpetrated by the rebels in Freetown. The Defense made an objection that certain portions of this witness's testimony had not been disclosed to them; the Prosecution answered that the event in question was included in several statements disclosed by the Prosecution. The Chamber acknowledged that the Accused has a right to full disclosure that had not been met by the Prosecution in this instance. However, the Chamber held that it will not strike the evidence from the record, but noted that the Defense could apply for more time to investigate if it so wished. The Defense declined to make such an application.
32. TF1-201, Sheku Bah Kuyateh: Testified in Krio. The Prosecution applied for rescission of protective measures granted in a decision from the current case on 10 October 2008. The Defense argued that the matter was *sub judice*, but that although it did not concede that the decision applied to this witness, it in principle did not oppose the application. The Chamber held by a majority, Justice Sebutinde dissenting, that the application was granted, noting that the issue could be *sub judice* and noting the Defense's submission. The witness testified about crimes allegedly committed by the AFRC/RUF soldiers in 1997 and 1998 in Koidu Town, Kono District. His evidence included descriptions of looting, forced labor, burning, and amputation.



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