



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

**Special Court Monitoring Program Update #16  
Trial Chamber I - CDF Trial 7 December 2004**

by Michelle Staggs, Senior Researcher

Summary Witness Profile at a Glance Examination in chief and cross examination of Witness TF2-056 Motions and Judgments

**Summary**

After five full weeks of a trial session that the Presiding Judge described in his closing remarks as both “gruesome and smooth”, the CDF trial ended with a short two-day week ahead of the court’s Christmas sojourn (during which the Chamber rests) beginning on 17 December 2004. After the continued cross-examination in closed session of Witness TF2-067 on Monday morning, the Prosecution called Witness TF2-056, the thirty-eighth and final witness in the CDF trial for 2004, who testified to events that had allegedly occurred in early 1998 in the Bo District. The week ended on Tuesday with a visit from the President of Germany, Horst Kohler, bringing a flurry of German and Sierra Leonean press to the public gallery as well as the esteemed European leader. Several motions were also heard and oral rulings given during the two-day period, Judge Itoe insisting that all parties “must pay for their sins” and wrap-up as many outstanding matters this session as possible, so as to ensure expediency and efficiency in the session to come.

**Witness profile at a glance**

**Witness TF2-056.** Witness TF2-056 is 52 years old and was born in Bombali, Bombali District. He currently resides in Bo Town. The witness is married and has 4 wives and 13 children. He has never been to school and therefore is illiterate. He works as a farmer. His testimony was given in Limba, with English translation.

**Examination in chief and cross examination of Witness TF2-056 [1]**

***Events which occurred prior to the arrival of ECOMOG***

Witness TF2-056 testified to events that occurred in Bo on or around March 1998. The witness described in detail how the Kamajors entered Bo four days after the soldiers had left, through the newly built police barracks. While the witness was not present at the barracks when the Kamajors arrived, he heard gunshots and later went to the barracks to find eight policemen dead and four houses burned. The remaining men in the barracks told the witness that the Kamajors had killed these men and set fire to these houses. During this time the witness did, however, witness the

Kamajors mutilating "as if he were a deer" a Limba man known to him, whom the Kamajors had suspected of being a junta.

The witness also recalled how the Kamajors had given the resounding call of "Allah Wacbah!"(sic) prior to beginning to slaughter him. A number of witnesses this trial session have testified to the Kamajors calling out in this manner [2]. The phrase, which in Arabic means "God is great", tends to suggest that there may have been a religious undertone to the killings. This, like the presence of secret societies, has not been explored under cross-examination by any of the defense counsels, perhaps due to the fact that neither of these issues is directly related to the counts under the indictment, even though they may be related to the rationale behind the war.

#### *Events that occurred after the arrival of ECOMOG*

The witness further described how, after the arrival of ECOMOG forces five days later, the Kamajors looted his house and took his television, refrigerator and water filter. He was also made to pay ransom moneys in a combined amount of Le 610,000 for the release of five people who were taken captive and tortured by the Kamajors. In one instance, an alleged victim's house was also looted and held by the Kamajors. Of these people, one was taken captive under the command of Kosseh Hindowah, whom the witness alleged was the leader of the Kamajors in Bo at this time and two were taken captive under the command of Commander Moses Sandy. A man named Abu Tawa also asked the witness for part of the ransom moneys. In each case, the alleged victims were suspected junta collaborators.

The tribal nature of the conflict re-emerged again as Witness TF2-056 alleged that, in one particular instance during the time when both the Kamajors and the juntas were in Bo, the Kamajors lined up people according to tribe at the check-point between Bo and Bumpeh. According to the witness, Temne, Limba and Loko peoples were all grouped together at the checkpoint. Judge Itoe cautioned the Prosecution with regards to putting forward evidence relating to charges of genocide, given this did not form part of the Indictment. The Prosecution responded stating that they thought the evidence was relevant to the count of unlawful killings. Judge Itoe allowed the questioning but reiterated that he felt it important that the Prosecution proceed with caution.

#### *Cross-examination of Witness TF2-056*

Counsel for the first accused appeared to focus his cross-examination on the relationship between the witness and each of Kosseh Hindowa, Moses Sandy and Abu Tawa. In all three instances, the witness agreed that he knew them very well and that they were all living (or, in the case of Abu Tawa, up until his death this year) in Bo Town. The witness further reiterated under cross-examination by counsel for the first accused that, while he was not at the police barracks when the Kamajors entered the town, he had heard that there had been fighting at the barracks and that the Kamajors had killed the certain of the policemen residing there. Finally, in keeping with his line of questioning to other of the Prosecution's witness, counsel for the first accused asked the witness if he had made a report regarding the events he had recounted. The witness admitted that he had not reported the events to anyone, either immediately after they had occurred or after the war.

Counsel the second and third accused seemed to be suggesting during their line of questioning that the witness was a junta collaborator. Counsel for the second accused specifically asked the witness if he had been harbouring an AK47 and a LNG at his house in Bo. The witness denied having had either of these weapons. He further asked the witness whether he had been harbouring property for the juntas, which the witness again denied. Each of counsel for the second and third accused also launched the argument that the witness' houses in Bo did not have electricity. This argument seemed to be launched on the basis that, given the witness did

not have electricity, he could not have had use for a refrigerator or a television. Counsel for the third accused further put it to the witness that he had never paid ransom moneys to Kosseh Hindowa, Moses Sandy and Abu Tawa, which the witness vehemently refuted.

#### *Re-examination of Witness TF2-056*

Under re-examination, the witness confirmed that, while he heard there was fighting at the police barracks when the Kamajors entered the town in March 1998, the Kamajors were the only fighting group present at the barracks at that time.

#### Motions and judgments

As the trial session drew to a close, the court dealt with a number of oral and written submissions raised by the Defense, which were as follows:

##### *Application to allow for defense investigators to be present during closed sessions (Kondewa)*

Further to the Trial Chamber's request, counsel for the third accused submitted a written application regarding its oral motion to permit investigators working for the Defense to be allowed to attend closed sessions [3]. The issues surrounding the application were then further argued by both sides of the bar in court this week. The Defense submitted that, in light of the principle of equality of arms, the defense investigators should be allowed to attend closed sessions in the same manner that investigators for the Prosecution, acting in a dual capacity of investigator and prosecutor, were able to do so. Judge Boutet questioned counsel for the third accused with regards to the nature of the relationship of an investigator to the court, asking defense counsel to consider specifically (i) how an action for contempt of court would be brought against an investigator and (ii) what grounds the court would have for ruling that an investigator had acted in contempt, given at present, there was no written contractual arrangement between the investigators and the Defense regarding the confidentiality of information disclosed to them during court proceedings. Defense counsel responded by stating that an analogous fact situation to consider and to which to compare this scenario would be that of journalists who attended court had no contractual relationship with the court and yet, were able to be held in contempt of the proceedings for disclosing the identity of witnesses in the press. Counsel therefore noted there would be a strong basis for asserting, in the absence of a written contractual relationship, that (i) an oral contract existed between the investigators and members of the defense team which precluded them from disclosing the information (ii) the investigators held a fiduciary relationship to the witnesses as officers serving the court and (iii) the investigators were bound to act in the best interests of the proceedings. The bench seemed somewhat satisfied with this argument.

The Prosecution responded to the Defense's motion by stating that, while in principle, the Prosecution had no objection to the application, the court needed to be mindful as to how it would be applied. The Prosecution therefore suggested that, given the grave nature of a breach of confidentiality and the effect it may have on witnesses and their families, lead defense counsel for each team should accept direct responsibility for the actions of an investigator. The Defense retorted that this level of responsibility would not be acceptable and that "there was no way" that a defense lawyer should have to "go to jail" for the actions of an investigator. Judge Itoe interjected that no one would like to see counsel for the third accused "behind bars". Judge Thompson asked the Prosecution to further elaborate on what role they perceived prosecutors to be performing when taking witness statements and, in particular, whether prosecutors in this instance were acting in their capacity as lawyers or as investigators. The Prosecution responded by stating that (i) there was no definitional lacuna between the role of a prosecutor as a lawyer and that of a prosecutor taking witness statements ? a prosecutor was simply acting in her capacity as a prosecutor engaged in the activity of taking that statement.

The bench did not deliver its ruling with regards to this motion this trial session, reserving judgment for when the CDF trial resumes in February 2005.

*Application to recall Witness TF2-057 and Witness TF2-067 (Kondewa)*

Pursuant to Rule 90(f) of the Rules, counsel for the third accused also applied to the court to recall Witness TF2-057 and to withhold the release of witness TF2-067 until such time as Witness TF2-057 had been recalled [4]. The basis of the application was founded upon the fact that, during the course of testifying, Witness TF2-057 had been asked by counsel for the second accused to confirm the relationship he held with Witness TF2-067 by identifying who he was from a name written on a piece of paper. Witness TF2-057 had responded by denying that he held any relationship to Witness TF2-067. Counsel for the third accused argued in open session that it had become abundantly clear during the course of Witness TF2-057 held a paternal relationship with Witness TF2-067 and counsel therefore requested that he be recalled to be questioned regarding his original denial of this. He further added that the substratum of the application hinged upon the credibility of the witness, whose act was tantamount to an act of perjury in this instance, which was clearly an important factor for the Chamber to consider before pronouncing the guilt or otherwise of the accused.

Counsel for the third accused then submitted that Witness TF2-067 should be asked to be confronted with Witness TF2-057 and should be made to identify Witness TF2-067 in court to prove further the identity of Witness TF2-057. Defense relied in particular on the English decision of *R v Sullivan* when making this argument [5].

The Prosecution rebutted defense counsel's argument by counter arguing that the probative value of the evidence sought by the defense had not been shown. The Prosecution denied that the witness's misstatement was not a material matter that affected the credibility of the evidence, given Witness TF2-057 had been identified by Witness TF2-067 and that witness credibility was, in any event, a collateral issue for the court to consider when determining when the Prosecution had proved the elements of the offences for which the accused was being tried. The Prosecution argued further and in the alternative that, should the bench decide to recall Witness TF2-057 that (i) his continued cross examination be limited only to the matter at hand and (ii) that Witness TF2-067 be released under all circumstances, given there was no established process through which this witness could identify Witness TF2-057 in court.

Judge Boutet delivered the unanimous decision of the Trial Chamber, which, the Presiding Judge noted, would be followed by a reasoned written decision in due course. According to Judge Boutet's oral judgment, after careful consideration, the Trial Chamber granted the application to recall Witness TF2-057. Witness TF2-067 was, however, denied from being recalled, on the basis that the evidence sought by the Defense could be adduced from the recall of Witness TF2-057.

*Application to submit documentary evidence relating to Witness TF2-057 as an Exhibit (Fofana)*

Counsel for the second accused submitted instead that, for strategic reasons, they did not wish to recall Witness TF2-057 to the court. They did, however, wish to have the piece of paper revealing Witness TF2-067's name to Witness TF2-057 be submitted into evidence as an exhibit. The Prosecution had no objection to this motion. The bench agreed that this document could be submitted as exhibit but asked that counsel submit such evidence at the time when Witness TF2-057 was recalled and in an appropriate manner.

*Ruling of the Trial Chamber regarding the application by the Defense to order that the Prosecution call as witnesses the two investigators that took down the statements of Witness TF2-021*

Finally, Judge Thompson delivered the Trial Chamber's ruling on the application by defense counsels for the second and third accuseds for an order that the Prosecution call as witnesses the two investigators who respectfully took down the statements of Witness TF2-021 on the 13 January 2003 and 4 February 2003, to explain the discrepancies between the witness's written statements and his *viva voce* testimony. The Chamber found that, given the gravity of the discrepancies between the witness's written statements and that of his oral testimony, the application should be granted in this instance, but that each of the investigators should be called "at the appropriate time and as witnesses for the defense", given the inclusion into evidence of their testimony was for the defense's case. Judge Thompson was careful to note, however, that applications of this nature would be heard by the Chamber on a case-by-case basis and the Defense should not assume that the granting of this application would ensure any general application of calling investigators in this manner. He noted further that, in this instance, the witness was a child soldier who had repudiated large portions of his previous statements under cross examination, hence making it a particularly sensitive case for the Chamber to be dealing with.

The delivery of this judgment concluded the CDF trial session as well as the court's proceedings for 2004. In his usual candour, Judge Itoe wished all those in court who were travelling over the break a "safe journey to where they were going" and a happy holiday season, ending proceedings on a bright note. The Trial Chamber will resume proceedings for the RUF trial on 10 January 2005.

- 1.) Prior to beginning examination in chief of Witness TF2-056, the Prosecution tendered into evidence a document containing an agreed fact concerning the position of the witness within Sierra Leonean society. Due to the fact that the witness has the benefit of various protective measures, the Prosecution was unable to disclose any further information relating to the nature of the agreed fact.
- 2.) See, in particular, *Special Court Monitoring Program - Update No.12 (5 November 2004) and Update No.14 (26 November 2004)*.
- 3.) See in particular *Special Court Monitoring Program Update No.14 (26 November 2004)*, at paragraph (v)(c)*Procedural and case management issues - oral motion by counsel for the third accused*.
- 4.) The initial motion was submitted to the court on 3 December 2004, to which the Prosecution filed its response on 6 December 2004. Counsel for the third accused then submitted a second motion on 6 December 2004, substantially in the form of the original motion but including further case law to support its argument. The Prosecution orally agreed to the amended motion in court on Tuesday and each of the Defense and Prosecution then proceeded to submit their oral arguments as to the legitimacy of the application.
- 5.) 16 Crim. App. Rep. at page 121 in the 2004 reports of Archibald Criminal Pleadings.



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