



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

Special Court Monitoring Program Update #37 Trial Chamber 1 - RUF Trial Covering week ending May 20, 2005

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Continued cross-examination of Witness TF1-125 Witness profile Testimony of Witness TF1-172 regarding looting, burning, and amputations

Trial Chamber I only heard evidence for half of the week in order to allow time before the shift to the CDF case next week. Proceedings began with the continued cross-examination of a witness who was called last week, though much of his evidence in both direct and cross examination was heard in closed session. In concluding the fourth trial session of the RUF case, the prosecution heard testimony from its 34th witness, who gave evidence in support of allegations of looting, burning, and amputations in the Koinadugu district in 1998. In his concluding remarks, the Presiding Judge thanked both sides for “getting so far this session” despite the fact that the chamber only heard evidence from nine witnesses in a six week period. RUF trial proceedings will resume in the beginning of July.

Continued cross-examination of Witness TF1-125

This witness testified in English, and some of the examination in chief and cross-examination took place in closed session in order to protect his identity. In open session, counsel for the first accused questioned the foundation of the witness’s assertions that Issa Sesay was a general on the sole occasion the witness claimed to have seen Sesay, which he alleged took place in January 1998 in Kenema. There was no direct evidence led against the other two accused, and their cross-examination of the witness was brief. However, counsel for the first accused was given extensive leeway by the bench to cross-examine the witness for nearly the full day of trial.

Trial management

Continued cross-examination by counsel for the first accused began with counsel stating that he had “just a few more questions” on Monday morning, and he repeated several times mid-morning that he was about to finish. When he finally stated that he had completed his cross-examination, counsel for the first accused was encouraged by one of the judges to continue to pursue a line of questioning. This eventually led the witness into an area where he became increasingly uncomfortable about the possibility that his identity could be disclosed, which he expressed multiple times, and the court decided to move into closed session in order to consider the merits of his concerns. Although counsel offered to move on from this area, Judge Thompson stated that “the interests of justice demand that we sacrifice nothing”, and at the judge’s insistence the witness was removed while the court dealt with the closed session application. The court then lost half an hour by adjourning early for lunch, and it reconvened twenty minutes later than its slated start

time. Counsel for the first accused continued his cross-examination of the witness for nearly an hour and a half in closed session. The shift from closed to open session itself took half an hour, and the court rose half an hour early. Between the extensive cross-examination that was encouraged by the bench, the adjournments, and the long breaks, the chamber did not seem to be acting consistently with its expressed interests in judicial economy.

Closed session and written rulings

Counsel for the first accused argued that closed session should not be granted simply because the witness expressed some fear of further discussion on a particular topic, and he claimed that witnesses themselves should not be considered to be in the best position to evaluate what details might reveal their identity. Counsel later conceded that it would be best to hear this particular matter in closed session, but as a general policy he did not agree that it should be left up to the witnesses to decide. In granting the application for closed session, the bench indicated that it would issue a reasoned decision; however, the published decision merely granted the application rather than taking the opportunity to address some of the more complex and ongoing issues raised by defense counsel concerning subjective assessments of witness risk [1]. Given that they did not address any broader issues in the ruling, the written ruling appeared to be an unnecessary use of the chamber's time.

Witness profile

Witness TF1-172. Witness TF1-172 was born in the Koinadugu district. He is 48 years old. He is a farmer, and he did not attend school. He was the first witness to testify in Kuranko at the Special Court.

Testimony of Witness TF1-172 regarding looting, burning, and amputations

Witness TF1-172 gave evidence in support of atrocities that were allegedly committed in the Koinadugu district in 1998. He described two attacks on the village of Seraduya: in the first attack during the rainy season of 1998, rebels stole livestock and burned down half of the houses in the village. Later that season the witness was captured by rebels in the course of a second attack outside the village, and he was tied up and struck with a gun. The captives were asked if they were collaborating with the Kamajors and other groups, and the witness had a large sum of money stolen from him. The rebels took the captives to town and used the witness's own cutlass to chop off his right hand. The witness was told to pick up his own fallen hand and stand aside while the rebels chopped off the hand of his child. Another captive villager and his son had their hands chopped, and they were told to take the hands to president Tejan Kabbah. The witness stated that he did not receive any medical attention for over a week, and when he was finally taken to a hospital in Freetown he saw a number of other people there whose hands had also been amputated. The rebels burned down the remainder of the town in the second attack.

Treatment of victim witness

The chamber has attempted to be mindful of the needs of victim witnesses. In this instance defense counsel for the first accused began his cross-examination by telling the witness that he was not seeking to challenge anything the witness had said, but rather to ask about some details of his testimony. Counsel for the second accused sought to clarify how many rebels were present, and counsel for the third accused had no questions for the witness. Through deciding not to cross-examine a witness whose evidence did not directly implicate the accused individuals or through asking only a few clarifying questions, the defense this week seemed particularly sensitive to the witness's circumstances. However, during direct examination the Presiding Judge asked the witness to hold up his hand to "see the hand which he's talking about" for the court

records. The “hand” referred to by the judge had been allegedly amputated and was therefore not there to see, and nothing was described or noted by the bench for the court records.

Although a number of amputees have appeared in this trial chamber in both the CDF and RUF cases, it has not consistently been the chamber’s practice to ask to see amputated limbs. One such instance at the beginning of the trials was noted with concern by a Human Rights Watch observer [2]. In this recent case, given that nothing was entered into the court records, the judge’s request to see the amputation did not appear to serve any evidentiary purpose.

1.) *Ruling on the First Accused’s application for portions of the testimony of Witness TF1-125 to be heard in closed session* , 16 May 2005.

2.) Human Rights Watch, *Bringing Justice: the Special Court for Sierra Leone*, Human Rights Watch Vol. 16, No. 8(a), September 2004.