



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

Special Court Monitoring Program Update #53 Trial Chamber II - AFRC Trial Covering week ending September 16, 2005

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Summary Witness profiles at a glance Procedure and Precedent: Treatment of Confidential Sources Witness Examination in Chief

Summary

Proceedings in the AFRC trial recommenced on Tuesday, September 13, 2005, after the summer recess. None of the three defendants were present in court for the first day of the new trial session.

For the first two days of trial, the chamber explored the legal question of whether a witness may be compelled to disclose the names of his/her sources, when the information has been received in confidence. On the third and fourth day, the trial chamber heard direct insider testimony from Witness TF1-167.

Witness Profiles at a Glance

Witness TF1-150 was scheduled to give expert testimony as a UN human rights monitor who worked in Sierra Leone during the war. However, because the Court ruled that it may compel disclosure of a witness's confidential sources, the prosecution refrained from calling this witness.

Witness TF1-167 is a native of Kabala and speaks Temne, Krio, and English. The witness testified in English, providing insider information in open session. Notably, this witness willingly disclosed his identity to the public, though he continues to receive support from the Witness and Victims Support Unit. His name is George Johnson Junior, a.k.a. "Junior Lion", and he has previously testified for the prosecution in the RUF case in Trial Chamber I.

Procedure and Precedent: Treatment of Confidential Sources

The prosecution had intended to call Witness TF1-150, an international witness who worked in Sierra Leone as a United Nations human rights monitor during the period relevant to the indictment. Having obtained a letter from the UN granting permission for this witness to give evidence before the Special Court in closed session, their application for closed session was unopposed by defense counsel and Trial Chamber II subsequently granted the motion per Rule

79(A)(iii). However, as a result of a majority decision issued by the Chamber requiring the witness to reveal confidential sources during the course of his testimony, the prosecution opted to forego having this witness testify.

The ambit of the Chamber's power to compel a witness to disclose the names of the confidential sources was explored by the prosecution with reference to the *Milosevic* case before the ICTY [1]. The prosecution submitted that Rules 70(B) and (D) allow Trial Chamber II the discretion to refrain from compelling a witness to name his sources [2]. The prosecution attempted to establish judicial precedent in favour of the non-disclosure of sources by arguing that the relationship between a human rights monitor and his/her confidential sources is analogous to a journalist's privilege to protect his/her sources, a privilege which the ICTY recognized in *Brdjanin and Talic* [3].

In a joint response the defense challenged the applicability of Rule 70 to the present situation, arguing that Rule 70 applies the information itself, but not its source. Moreover, they argued that the prosecution was not in possession of the information in question (*i.e.* the names of the witness's sources) and hence the relevant information was not protected under Rule 70(B). The defense argued further that, given the witness was due to testify in closed session, granting further protective measures would undermine the rights of the accused to a fair trial under Article 17(4)(e).

In a majority decision, Trial Chamber II concluded that the provisions of Rule 70(B) were not applicable to the testimony of Witness TF1-150, because the prosecution itself was not in possession of the names of the sources [4]. The majority judges reasoned that, the witness in question did not enjoy the protection of Rule 70(D) in this instance as the witness was the recipient of information which was itself external in its origin (*i.e.* not from the organization the witness represented). Thus, considering the referenced ICTY decisions to be "persuasive but distinguishable", they opted not to create a precedent of protected privilege between human rights monitors and their sources [5].

Presiding Judge Teresa Doherty dissented from the majority, disagreeing with their "purely textual interpretation of Rule 70" and arguing that a human rights monitor's need to protect his or her confidential sources is in the public interest. She noted further that the Court's failure to respect that need could have a "grave" impact on information gathering and the related international decision-making process [6].

Witness Examination in Chief

The prosecution called witness TF1-167 to give insider testimony about the AFRC's command structure, relationship with the RUF, and movements and operations before and after the attack on Freetown in 1999. Notably, this witness willingly disclosed his identity to the public; he was not shielded by the witness box while in court and he was entirely visible to the public gallery. Indeed, the witness turned to face the public gallery on numerous occasions.

The witness's name is George Johnson Junior, a.k.a. "Junior Lion", and he has previously testified in the RUF case in Trial Chamber I as a witness for the prosecution. Mr. Johnson continues to receive support from the Victim and Witness Protection unit as a Group I Category C witness (insider witness). The prosecution spent almost two full days in direct examination of Mr. Johnson. Notably, none of the defense teams raised any objections to any of the questioning, and there were only limited clarifying questions from the bench.

Witness's Background

According to Mr. Johnson, he was promoted through the AFRC ranks at various intervals by the first accused, Alex Tamba Brima, and the third accused, Ibrahim Bazy Kamara, and by AFRC High Commanders SAJ Musa and Johnny Paul Koroma [7]. Mr. Johnson stated that over the period May 1997 to February 1999, he served the AFRC as Chief Security Officer, Lieutenant, Captain, Provost Marshall, Battalion Commander, Major and Task Force Commander, Lieutenant Colonel, and ultimately Colonel and Operations Commander.

This witness's intimate and high level involvement in AFRC operations and leadership lends support to allegations that the three defendants engaged in a concerted effort to overthrow the Sierra Leone government and gain control of the country. His testimony also supports charges that the accused persons collaborated with the RUF to carry out attacks against the civilian population, as well as allegations that they are responsible for those attacks as both individuals and superior commanders.

This testimony also highlights the sensitive issue of the Special Court's limited mandate to prosecute only those "who bear the greatest responsibility", allowing individuals such as Mr. Johnson who claim to have been integrally involved in planning and operations during the war to escape indictment.

Command Structure and Links between AFRC and RUF

The Prosecution began its direct examination by focusing on the AFRC's command structure, and the relationship between RUF and AFRC commanders. Mr. Johnson testified that on 25 May 1997, 16 members of the Sierra Leone Army (SLA) staged a coup d'etat and a jail break at the Pademba Road Prison in Freetown. The witness was amongst those released from Pademba Road Prison, and he joined the SLA splinter group in what became the Armed Forces Revolutionary Council (AFRC).

Mr. Johnson testified that on the day of the coup he witnessed Johnny Paul Koroma, President of the AFRC, radio a message to Sam Bockarie (a.k.a. "Mosquito"), an RUF high commander, advising him that the AFRC had taken Freetown and the RUF should join in their rule. This coup commenced the phase known as the "junta period" when President Kabbah's government was forced into exile in Guinea, and Sierra Leone was ruled by the AFRC. Mr. Johnson testified that at this time defendants Ibrahim Bazy Kamara and Alex Tamba Brima were both Principle Liaison Officers, and that they had been amongst the 16 SLA who staged the coup in Freetown.

Over the course of his testimony, Mr. Johnson described numerous instances where RUF and AFRC leaders (including the three accused) jointly planned and carried out attacks on civilian populations in Bo, Bombali, Kono, Koinadugu, and Port Loko districts, as well as in Freetown. For instance, the witness described a meeting in Koidu (Kono District) where RUF/AFRC commanders established Dennis Mingo aka "Superman" (RUF) as highest in command of Koidu, with Ibrahim Bazy Kamara and Alex Tamba Brima alternately serving as his deputy. Dennis Mingo reported back to Sam Bockarie (RUF High Commander) in Kailahun. Mr. Johnson explained that at this stage, defendant Kamara was in charge of all arms and ammunition for the AFRC/RUF in Koidu, and defendant Kanu was charged with management of "civilians and abductees".

Moreover, the witness claimed that he traveled to Liberia in 1999 along with defendant Kamara, and other AFRC commanders and securities to meet Charles Taylor, who gave them \$15,000 USD and instructed them to work together with the RUF in Sierra Leone. All of this testimony is likely to support allegations of the defendants' involvement in a "joint criminal enterprise", which the prosecution claims was characterized by a common plan or purpose between the RUF and the AFRC factions "to take any actions necessary to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas" [8].

Crime-Based Testimony

Mr. Johnson gave detailed testimony of the RUF and AFRC's retreat from Freetown after the coup, noting the various villages through which the combatants allegedly passed on their route through the diamond mining district of Kono, on to the AFRC headquarters at Camp Rosos, then back to Freetown for the 1999 attack and finally in retreat from that attack. Throughout his testimony, the prosecution asked the witness to mark the various towns and villages he mentioned on a map that was eventually entered into evidence as Exhibit P30(a)-(c) [9].

The following paragraphs describe some of the crimes Mr. Johnson claims to have witnessed. His testimony on these points lends support to allegations of individual or command responsibility for the following crimes: terrorizing the civilian population and collective punishments (Counts 1 and 2), unlawful killings (Counts 3, 4 and 5), physical violence, including mutilations (Counts 10 and 11), use of child soldiers (Count 12), abductions and forced labor (Count 13), and looting and burning (Count 14).

Operation Pay Yourself and Crimes on Route to Camp Rosos

Among other crimes he personally witnessed, Mr. Johnson described Operation "Pay Yourself", where AFRC and RUF troops looted villages and civilian homes. He described a mass grave of roughly 150 civilians that AFRC fighters dumped in a pit in Tombudu en route to Masofinia, a mid-point between Koidu and Camp Rosos. He stated that defendants Kamara, Brima and Kanu were all in command as the AFRC/RUF headed to the AFRC headquarters at Camp Rosos, thus lending possible support to allegations of their command responsibility for looting and unlawful killings.

Mr. Johnson further testified that the defendant Brima gave the order for an attack on Karina [10], telling troops to burn the town and kill everyone in it. Mr. Johnson said that defendants Kamara and Kanu were also present when Brima gave this order. Mr. Johnson claims to have watched as AFRC fighters in Karina wrapped an unknown number of civilians in a carpet inside a house and set the house on fire. He also witnessed Kamara's Chief Security Officer carrying small children to the second story of a house and throwing them to the ground below. This point addresses allegations of Brima's individual responsibility for unlawful killings, physical violence, looting and burning, as well as all three defendants' command responsibility for these same acts.

Crimes at AFRC Headquarters: Amputations, Abductions, Forced Labor, Child Soldiers

According to the witness, once the AFRC troops reached their headquarters in Camp Rosos, they launched an operation to Mateboi, a neighboring village. As part of this attack, a fighter named Adama Cut-Hand returned with a necklace made of human hands, and the decapitated head of the Mateboi village chief. The witness stated that he saw Adama Cut-Hand present the chief's head to defendants Brima and Kamara, and that both of these alleged commanders saw her wearing the necklace of human hands. This testimony supports allegations of command responsibility on the part of all three Accused for unlawful killings, terrorizing the civilian population, collective punishments, physical violence and mutilation.

Mr. Johnson also described the training camp at Rosos for abducted civilians. Civilians, including children, were allegedly abducted and then trained to fight for the AFRC at Camp Rosos. The witness described an incident wherein a civilian abductee attempted to escape and was publicly executed by machete as an example to others.

Mr. Johnson testified that there were roughly 520 civilians trained at Camp Rosos, and he noted that he himself had about 13 "Small Boys Units" (SBU) under his command. He described the

SBU as boys between the ages of 10 to 15 whom AFRC soldiers had abducted and trained to fight.

Crimes at "Major Eddie Town"

The witness explained the AFRC movement from Camp Rosos to Major Eddie Town, where he claimed defendant Brima was the most senior Commander, with defendants Kamara and Kanu following in rank. At Major Eddie Town, the AFRC captured seven women whom they believed to be witches. According to the witness, Brima ordered that all seven women be impaled and publicly displayed. The witness claims this order was carried out, and three of the women were subsequently killed as well. Again, this testimony lends support to allegations of Brima's individual responsibility, as well as command responsibility on the part of all three defendants.

Points of Interest

Mr. Johnson's testimony was particularly notable for its exactitude. He was able to describe particular incidents in great detail, though he generally refrained from giving any numerical estimations. When asked how many bodies, civilians, soldiers, etc. were involved in a given incident, he most often replied "plenty" or "few", with no further elaboration. Neither the prosecution nor the defense pushed to understand what range or quantity he might have had in mind. Presumably, defense counsel will explore the clarity of Mr. Johnson's memory on cross examination.

1.) *The Prosecutor v. Slobodan Milosevic*, Case No. IT-02-54-AR108bis & AR 73.3, Public Version of the Confidential Decision on the Interpretation and Application of Rule 70, 23 October 2002.

2.) Rule 70(B) protects the prosecution from having to disclose the sources of confidential information, when the Prosecutor is in possession of that information and it has been used solely for the purpose of generating new evidence. Rule 70(D) extends that protection to witnesses testifying for the prosecution under these same circumstances.

3.) *The Prosecutor v. Radoslav Brdjanin and Momir Talic*, Case No. IT-99-36-AR73.9, Decision on Interlocutory Appeal, 11 December 2002.

4.) Decision on the Prosecution's Oral Application for Leave to be Granted to Witness TF1-150 to Testify Without Being Compelled to Answer Any Questions in Cross-Examination that the Witness Declines to Answer on Grounds of Confidentiality Pursuant to Rule 70 (B) and (D) of the Rules, 16 September 2005.

5.) Ibid.

6.) Dissenting Opinion of Justice Doherty on the Prosecution's Oral Application for Leave to be Granted to Witness TF1-150 to Testify Without Being Compelled to Answer Any Questions in Cross-Examination that the Witness Declines to Answer on Grounds of Confidentiality Pursuant to Rule 70 (B) and (D) of the Rules, 22 September 2005.

7.) SAJ Musa was allegedly killed in an AFRC operation at Newton in later 1998. Johnny Paul Koroma has been indicted by the Prosecution for his alleged involvement in the Sierra Leone civil war, but his whereabouts are unknown.

8.) Further Amended Consolidated Indictment dated 18 February 2005, at paragraph 33.

9.) Each of the parties, including the Prosecution, all three Defense Counsel, and all three Judges, copied the witness's markings onto their own maps. It seems it would be beneficial to the Court to have a central board where large-scale exhibits could be easily displayed for the convenience of all parties.

10.) Karina is a village near Masofinia, and it is President Kabbah's hometown.