



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

### Special Court Monitoring Program Update #26 Trial Chamber II - AFRC Trial 11 March 2005

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Analysis of opening statement by the prosecution Witness profiles Testimony of Witness TF1-024 regarding abduction of civilians Testimony of Witness TF1-277 regarding unlawful killing Testimony of Witness TF1-023 regarding forced marriage Conduct of proceedings in Trial Chamber II

The public gallery was full to capacity for the much-anticipated opening of the AFRC case on 7 March 2005. All three accused were present for the opening statement as the prosecution outlined the fifteen charges brought against them in their combined indictment [1]. After the Prosecutor addressed the trial chamber and a predominantly Sierra Leonean audience, the chamber heard from two witnesses and began the testimony of a third before an incident relating to the disclosure of this witness's identity led to an early adjournment of proceedings on Thursday. This incident highlighted the ongoing witness protection concerns faced by the court, and it resulted in the temporary suspension of a defense investigator, which could seriously hamper the defense's ability to cross-examine witnesses.

The first witness testified regarding atrocities allegedly committed during the January 1999 invasion of Freetown, and his evidence particularly focused on first accused Alex Tamba Brima's command over troops at the capitol State House. Under international law, commanders can be held liable for the actions of their subordinates as well as for their own direct involvement in criminal acts [2]. The RUF and CDF cases thus far have centered on crime bases and command responsibility. During the first week of the AFRC trial, in contrast, the prosecution has already presented evidence of crimes that may have been directly committed by some of the accused individuals: the second witness this week gave evidence about third accused Santigi Borbor Kanu's alleged killing of a woman in a town on the Freetown peninsula. The third witness was called by the prosecution to support the indictment's novel charge of forced marriage, and she gave additional testimony regarding civilian abductions and amputations.

#### Opening statement by the prosecution

The Special Court Prosecutor made a rare appearance in court to deliver the first part of the prosecution's opening statement, reserving the second half for a member of his team from Sierra Leone. The statement sought to establish the general crimes committed during the conflict, the individual criminal responsibility of the three accused, and the specific international criminal acts alleged in the indictment [3]. The Prosecutor drew heavily from the language of the indictment and from international humanitarian legal discourse: in particular, he emphasized the command responsibility of the three accused and alleged that they exercised "effective control" over their

subordinates. He briefly introduced the doctrine of joint criminal enterprise, which is a key principle in the prosecution's case linking the actions of the AFRC, the RUF, and Charles Taylor.

Examples culled from prosecution witnesses were woven throughout the criminal allegations, and the prosecutor described some of the atrocities that he claimed would come forward in witnesses' testimony before the trial chamber. These brief personal narratives drew from some of the prosecution's "impact witnesses," who would be brought to testify regarding particularly brutal atrocities. These examples emphasized the role of amputations, including the rebels' alleged intent to send a "message" to President Kabbah by severing the hands of his constituents, as well as sexual violence, including rape and forced marriage. The Prosecutor touched upon the accounts of one victim of forced marriage and one child soldier, who will testify in support of these two novel charges under international criminal law.

The Prosecutor stated that the AFRC case would be presented geographically rather than chronologically, opening with the January 1999 invasion of Freetown and subsequent retreat, and then moving backward to the May 1997 coup. In the second portion of the statement, trial attorney Boi-Tia Stevens claimed that the three accused had "abdicated their responsibility to the people of Sierra Leone" when, as former members of the Sierra Leone Army (SLA), they participated in the overthrow of the democratically-elected Kabbah government.

The Prosecutor complemented his factual and legal allegations with a figurative style. Sierra Leone was characterized as a "small and hapless nation, cursed with mineral wealth" and its capitol during the 1999 invasion was depicted as an "oozing grave." Combatants were "cold-blooded" and witnesses were "broken in body or mind, but not in spirit": by listening closely to their testimony, the Prosecutor alleged, "you can almost hear the screaming, the rattle of gun fire, and the crying of infants being thrown into fires." [4]

This style has engendered some criticism, particularly in relation to the first two opening statements by the Prosecutor last summer for the RUF and CDF trials [5]. During the pre-trial AFRC status conference held the previous week, lead counsel for the first accused noted that some of the statements made by the Prosecutor seemed "boxed and ready for media attention," and he requested for the Prosecutor to restrict his use of allegorical language [6]. Without commenting directly on this criticism, the Presiding Judge remarked that opening statements should be confined to the evidence to be brought in the case [7]. In a separate interview, however, Prosecutor Crane expressed his view that the purpose of an opening statement was primarily symbolic in the context of an international tribunal. The Prosecutor considered himself to be speaking both to and for the people of Sierra Leone, and he noted that his statement employed religious symbolism as a mode of addressing his primarily Sierra Leonean audience [8]. Reactions in the public gallery appeared to be mixed: some felt that the prosecution's statement was effective and well-delivered, and many people were impressed by the performance of trial counsel Stevens, while others felt that lines such as "we cry out loud for justice" privileged melodrama over the appropriate solemnity befitting a war crimes trial.

#### Witness profiles

*Witness TF1-024.* Witness TF1-024 is a mechanic residing in Freetown. His age was not established. The witness stated that he could read and write. He delivered his testimony under direct examination in English, and he switched to Krio for cross-examination.

*Witness TF1-277.* Witness TF1-277 was born in Freetown and is 43 years old. He was educated through secondary school and is currently unemployed, though he worked before as a court clerk and for a tobacco company. He is married with five children. He testified in Krio.

*Witness TF1-023.* Witness TF1-023 is currently a student. Her age was not given. She was born in Freetown and is Mende by tribe, though she does not speak Mende. She testified in English. She appeared as a category “A” witness, a victim of sexual violence, and thus testified with voice distortion measures in place.

#### Testimony of Witness TF1-024

The first witness was referenced in the prosecution’s opening statement, and through his testimony the prosecution sought to directly implicate first accused Alex Tamba Brima (aka “Gullit”) for issuing orders to force civilians to join his troops under threat of death. The witness testified that he was personally beaten by the rebels, and he claimed that he observed rapes, looting, and burning of property by troops under Brima’s control.

The witness testified that he was instructed to join the rebels by three boys wearing ECOMOG uniforms [9]; when he refused, he was taken to the Freetown State House and beaten. The witness was then locked in the kitchen at State House with approximately 50 other people and kept without food and water for four days, during which time he claimed that women were being raped by rebel forces each night. Cross-examination focused on the basis of this allegation, as it was unclear whether the witness actually saw the rapes taking place from where he was held captive or whether he inferred that they were happening because he had heard women screaming. The witness clarified that he saw the rapes take place, though there was subsequent confusion as to whether the women were paid by the rebels; the witness first said that they were not paid, but later added that they were given Le5,000 (less than US\$2), which he did not consider proper payment.

The witness’s evidence places first accused Brima at the State House commanding troops during the rebel occupation of Freetown in January 1999. The witness claimed he had seen Brima before, and he knew that “Gullit’s boys” killed people when they refused to join the rebels. Under cross-examination the witness claimed that out of the group of fifty locked in the kitchen, approximately thirty refused to join the rebel troops; five of these individuals were killed in the witness’s presence, and those who continued to refuse were killed after they were let out of the kitchen. As ECOMOG advanced to the landmark cotton tree in the center of Freetown, the witness alleged that Brima ordered his men to burn down the State House. He stated that he was forced to carry a bomb for the rebels during their subsequent retreat, when the rebels allegedly burned houses as well as the vice president’s office, and he accompanied them as far as Calaba town outside of the capitol.

#### Testimony of Witness TF1-277

Testimony of the second witness sought to establish the direct liability of the third accused, Santigi Kanu, who the prosecution alleges bore the alias “Brigadier 55” (“five-five”), for the death of a woman in a small village outside of Freetown. In their pre-trial filings, defense counsel for Kanu have claimed that they will use the defense of “mistake of identity,” alleging that the alias “55” has not consistently been used in reference to their client [10]. The witness claimed that he had known who “55” was because he had heard him referred to under that alias when he saw him at the Benguema barracks. However, in light of the “mistake of identity” claim made by the Kanu defense team, the witness was not asked whether “55” was present in the trial chamber.

The witness claimed that he was in Lumpa, a small village on the Freetown peninsula, in late December of 1998, and he left for the larger town of Waterloo after he heard that the rebels were coming. He watched through a window as rebels invaded the town and burned houses that night, and he identified the combatants as SLAs, members of the Sierra Leonean Army, as opposed to RUF rebels. This distinction is significant for both the prosecution and the defense in the RUF and AFRC cases, as SLAs were generally affiliated with the AFRC at the time of the alleged events.

The witness testified that he heard a gunshot, and approximately ten minutes later a neighbor arrived and told him that his girlfriend had been shot by "Brigadier 55." The neighbor was an SLA soldier, and he told the witness that "55" stated that he had killed his girlfriend because fighting men were reluctant to leave their women and go to the warfront. The witness contended that he saw "55" leave the man's house and walk up the street with something silver in his hands; the woman was brought to the witness's house and died shortly thereafter.

Under cross-examination, the witness acknowledged that a representative from the prosecution had read his statement back to him in English, but he noted that he does not understand English. This highlights an ongoing issue emerging in witness testimony: many of the witnesses heard thus far have disputed the content of statements that they had purportedly made to the prosecution, and it appears that the process of statement-taking in the early stages of prosecution investigations was neither uniform nor particularly attentive to translation issues.

### Testimony of Witness TF1-023

This witness stated that she was sixteen years old at the time of the alleged events, and she was called primarily to present evidence supporting sexual violence charges. Her evidence also addressed the use of child soldiers in the conflict as well as the abduction and mutilation of civilians. This testimony was interrupted after the witness expressed that she believed her identity had been disclosed: despite the use of voice distortion measures and submitting names into the record through written documents, it appears that some members of the public gallery were able to determine the witness's name.

The witness testified that she was captured by a young boy in combat fatigues in a large group of rebels while she was hiding in Calaba town, located on the outskirts of the capitol. The rebels allegedly told her and the other captured civilians that they would be used as human shields, and the group was taken to Allen town, where they were supervised by a Small Boys' Unit (SBU). While there, a rebel forced her to watch another rebel cut out the tongue and amputate the hands of a young boy who was accused of being a Kamajor fighter, a member of the rival CDF forces. They then tied a threatening letter directed to ECOMOG soldiers around his neck and sent him away.

Several days later a rebel took her back to Calaba town, where she was given to a rebel commander as his wife. The witness stated that she was a virgin at the time, and although there was no formal ceremony, she was forced to act as the commander's wife and have sexual intercourse with him. The witness and commander moved around frequently with other rebels in order to avoid ECOMOG troops, and during this time the witness spoke with several other women who had been given away as wives.

Several family members of the accused individuals were present throughout this witness's testimony. In the morning of her second day of testimony the witness addressed the trial chamber directly, and she stated that she had been threatened by some members of the public gallery. She described an incident that had taken place in the court complex following her testimony the previous day: some women shouted the witness's name at the vehicle she was being transported in as they were walking through the court compound. After indicating that her identity had been disclosed, the women allegedly shouted a Krio phrase that was translated into English as "we are now at daggers drawn."

Immediately following the witness's address, the prosecution stated that they had received two separate security reports pertaining to this witness. The court proceeded in closed session in order to address these matters. Proceedings resumed in open session later that day, and it became apparent that an investigator for one of the defense teams had been suspended in relation to this incident. Defense counsel for the first accused brought an application for an

adjournment of proceedings, arguing that he was unable to cross-examine the witness in light of his investigator's suspension. The bench's ruling on the application made certain facts a matter of public record: it appeared that the investigator had allegedly disclosed the name of the witness to certain people in the public gallery. The trial chamber ordered to refer the matter to the Registrar, and the investigator would remain suspended pending the outcome of the Registrar's investigation. The chamber adjourned proceedings until the following week.

In particular, this incident illustrates the tensions faced by the court in allowing broad public access to its proceedings while attempting to keep the identities of witnesses out of the public domain. This incident revealed that members of the public might understand some of the logistics surrounding witness movements and the identity of witness vehicles from what they have observed in the court compound. Furthermore, communication between accused individuals, members of the court, and the general public might be more porous than the court's binding witness protective measures would indicate. These appear to be ongoing issues for court security and witness protection, and they highlight the additional challenges brought by holding trial proceedings in the country where the atrocities took place.

### Conduct of proceedings in Trial Chamber II

Unlike the first trial chamber, judges in Trial Chamber II have adopted a more aggressive approach to curtailing repetitive questioning by defense counsel. The bench frequently requests to have questions re-phrased, and it appears that ungrounded allegations that the witness is lying will not be permitted in this trial chamber. When Brima's counsel asked "are you lying, Mr. Witness?", the Presiding Judge claimed it was not the terminology usually allowed in court, and statements by Kamara's counsel alleging that "the truth of the matter is this: you aren't here to tell the truth at all" and "are you just here to get money from the prosecution?" were deemed improper questions.

Some antagonism appeared to develop between the defense and the bench during this first week at trial. The Presiding Judge attempted to enforce respectful modes of addressing the two female judges, which included objecting to a defense counsel's use of the term "housekeeping" to describe courtroom management issues. One defense team member's efforts to raise a number of matters relating to disclosure and trial management at the opening of trial was considered a challenge to the bench's authority, and some members of the defense continued to approach the bench antagonistically throughout the remainder of the week. An ongoing strained relationship between the judges and some members of the defense teams could negatively impact the public perception of the court. Thus far, the bench of Trial Chamber I maintained a neutral approach to both the prosecution and the defense. Although Trial Chamber II does not seem to be privileging the prosecution, its volatile reactions to the defense may lead some members of the public to mistakenly assume that it is one of the adversarial parties rather than a neutral adjudicator.

1.) The three accused in the combined trial referred to as the "AFRC case" are Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu. The prosecution alleges that all three were participants in the 1997 coup, part of the subsequent junta governing body, and in direct command of forces in various parts of Sierra Leone, which included commanding the 1999 invasion of Freetown. *Further Amended Consolidated Indictment*, SCSL-2004-16, 18 February 2005.

2.) Article 6 of the Statute of the Special Court addresses individual responsibility; 6(1) establishes that those who "planned, instigated, ordered, committed, or otherwise aided or abetted in the planning, preparation, or execution of a crime" shall be held liable; 6(3) establishes command responsibility for a superior's failure "to take the necessary and reasonable measures to prevent such [criminal] acts or to punish the perpetrators thereof." The cases thus far have focused primarily on evidence under Article 6(3); the prosecution's case in the AFRC trial has already brought evidence under Article 6(1).

- 3.) Opening Statement of the Prosecutor delivered on 7 March 2005, available online at sc-sl.org.
- 4.) Opening statement, page 17.
- 5.) See Trial Chamber I Reports 1 and 2 from the War Crimes Studies Center. The prosecutor used phrases such as “the hounds of hell,” “the dogs of war,” and “slaying the beast of impunity” to describe aspects and actors from the conflict.
- 6.) Kevin Metzger, counsel for first accused Alex Tamba Brima, on 7 March 2005.
- 7.) Presiding Judge Doherty, AFRC Status Conference, 7 March 2005.
- 8.) Interview with David Crane, Freetown, 10 March 2005.
- 9.) ECOMOG designates the Economic Community of West African States Cease-Fire Monitoring Group, who were fighting in support of the Kabbah government to expel the rebels from the capitol. Much testimony and cross-examination has focused on the composition of fighting forces, and rebels allegedly used ECOMOG uniforms that they obtained from soldiers who had been captured or killed.
- 10.) In their pre-trial brief, defense counsel for Kanu allege that “the name 55 was used or misused by several other persons, individuals or organizations”, and in particular, they note that one witness statement refers to “55” in the context of the RUF. *Kanu Defence Pre-Trial Brief and Notification of Defenses Pursuant to Rule 67(a)(ii)(a) and (b)*, SCSL-2004-16, 22 May 2004, para. 29.