



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

Special Court Monitoring Program Update #56 Trial Chamber II - AFRC Trial 23 September 2005

by Kyra Sanin, Senior Researcher

Summary Witness Profiles at a Glance Cross Examination – "Junior Lion" Insider Testimony
Direct and Cross Examination – TF1-153 Insider Testimony Points of Interest: Defense Practice

Summary

This week was mostly spent in cross-examination. While defense teams did not raise any objections to the prosecution's examination in chief of "Junior Lion" last week, they took two and half days to cross examine him. The defense teams then spent another half day cross-examining witness TF1-153, who gave insider testimony on Thursday and Friday morning. With both of these witnesses, the defense strategy seemed singularly focused on discrediting the witness, and the court spent ample time listening to defense counsel read extensive passages of allegedly inconsistent prior witness statements into the record. These tactics apparently served to test the court's patience, as objections from the prosecution and aggravated interjections and admonitions from the bench grew more frequent over the course of the week. The problematic cross examination this week brings renewed attention to concerns about the adequacy of defense representation in the AFRC trial, especially given the turnover on the defense teams towards the end of last session and the current lack of international defense counsel in the courtroom.

Witness Profiles at a Glance

Witness TF1-167 is a native of Kabala and speaks Temne, Krio, and English. The witness testified last week 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 Witness and Victims Protection. His name is George Johnson Junior, a.k.a. "Junior Lion", and he has previously served in the RUF case in Trial Chamber I as a witness for the prosecution.

Witness TF1-153 is a native of Mattru Jong, in Bonthe District, but he was raised in Wilberforce Barracks in Freetown. He speaks Krio and some English. As a Group I, Category C insider witness, he testified in Krio with voice distortion.

Cross Examination ? Junior Lion

All three defense teams focused their cross examination on discrediting this witness. Most of the questions revolved around three themes: Junior Lion's reasons or incentives for testifying at the

Special Court, inconsistencies between his testimony and statements he previously made to investigators, and his alleged unreliability or mental instability.

Alleged Incentives for Testifying

Continuing a common theme of cross-examination heard in both trial chambers thus far, the defense emphasized witness compensation as a form of incentive for testifying. In general Trial Chamber II has granted extensive leeway to the defense to cross-examine on witness allowances and transport payments.

As with many key insider witnesses, Mr. Johnson's intimate and high level involvement in AFRC operations and leadership highlights the sensitive issue of the Special Court's limited mandate to prosecute only those who bear the "greatest" responsibility. This restriction can allow certain witnesses who have been integrally involved in planning and operations during the war to escape indictment. Defense counsel for the first and third accused delved into this paradox, inquiring whether the prosecution or the government of Sierra Leone offered Junior Lion any sort of prosecutorial immunity in exchange for his testimony before the Special Court. The witness denied having received any such offer.

Alleged Prior Inconsistent Statements & General Attempts at Impeachment

A large portion of the cross examination consisted of open-ended, non-leading questions that seemed geared towards exposing damaging details that had not been revealed in direct evidence. The result was a line of questioning that took the form of an antagonistic direct examination, rather than a cross-examination of the evidence already elicited. This approach was not particularly effective, and any additional detail revealed on cross-examination tended to help, rather than harm, the prosecution's case.

Defense counsel attempted to show that the witness was not credible because he had allegedly contradicted his testimony with prior statements made either to investigators for the prosecution or in his testimony in Trial Chamber I. Many of the highlighted disparities seemed insignificant. For example, defense counsel emphasized that the witness at one point testified that 520 civilians were forcefully trained for combat at Camp Rosos, then at another point he stated that the number was 525. Similarly, defense counsel cross examined the witness on whether he had stated his birthday to be the 1st or the 4th of September.

Alleged Mental Instability

Defense counsel for the third accused attempted to call the witness's mental state into question by suggesting that he suffers lasting psychological impairments due to being raised by a single parent. The prosecution objected to the relevance of this line of questioning, and Judge Lussick observed that the court itself does not have any "special knowledge" to make any sort of psychological assessment of the witness. [1] The same defense counsel then indicated that the witness's admitted use of heroin during the war had clouded his comprehension and impeded his memory. However, the presentation of these questions allowed the witness to testify that he only took heroin or "brown-brown" during the war because the second accused supplied him with it.

Direct and Cross Examination ? TF1-153

Witness TF1-153 is a native of Mattru Jong, in Bonthe District, but he was raised in Wilberforce Barracks in Freetown. He speaks Krio and some English. As a Group I, Category C insider witness, he testified in Krio with voice distortion.

Direct Examination

Relative to their approach with the prior witness, the defense teams were active during the direct examination of witness TF1-153, objecting periodically to the prosecution's questions as leading or unfounded. The prosecution struggled to control its witness, who tended to give long or tangential responses, sometimes clearly misunderstanding or ignoring the question. Three times during the examination in chief, the prosecution alluded to possible errors in interpretation, suggesting this may have been the cause of the communication difficulties.

Witness TF1-153 testified that he grew up with SAJ Musa and numerous other AFRC high commanders in Wilberforce Barracks in Freetown. The first part of his testimony concerned his voluntary involvement with the AFRC in a civilian capacity. He explained that the RUF eventually abducted him from the bush, along with other civilians. By the conclusion of his testimony, it was apparent that the witness was an AFRC combatant, but it is not clear how he came to this position. In fact, while he is afforded protection as an insider witness, the prosecution did not ask the witness about his rank or position, and it was only on cross examination that he revealed that he served as a Lieutenant in the AFRC. Moreover, given this witness's stated close friendship with SAJ Musa and his long-standing relationship with other AFRC commanders, it is not clear whether he was forcefully conscripted or whether he collaborated with the AFRC voluntarily. [2]

The witness gave testimony concerning AFRC diamond mining activities in Kono District, and claimed that he saw AFRC fighters looting a shop in Koinadugu District as part of Operation Pay Yourself. He also told the court that an AFRC soldier in Koinadugu District stole his watch and 8,000Le. At various points he testified about women who allegedly told him that AFRC fighters had raped them and/or their daughters,[3] but he himself did not witness any rapes.[4]

This witness gave testimony that would seem to support a theory of command responsibility. He described all three defendants in positions of command at points where various crimes were committed, and he specifically noted radio communications between SAJ Musa and defendants Brima and Kamara. Much of this witness's testimony about the AFRC movement and command structure followed the line of Junior Lion's testimony last week, [5] including the accuseds' alleged role in burning civilian houses, amputating hands, and killing civilians in Karina and other villages. Like Junior Lion, witness TF1-153 also told the court about the defendants' alleged involvement in the abduction and killing of young women accused of being witches and the abduction and killing of nuns. His testimony in this area may lend support to the prosecution's theory of the defendants' individual criminal and command responsibility for these crimes.

Cross Examination

As with the prior witness, all three defense counsel again focused almost exclusively on attempts to discredit Witness TF1-153. Again, these efforts largely took the form of citing prior inconsistent statements allegedly made to investigators for the prosecution. Importantly, the witness claimed that four foreigners conducted the investigations in English, with no interpreter. He also repeatedly emphasized that, while his statement was supposedly recorded, no one had read it back for him to confirm its content.

Points of Interest: Defense Practice

There were virtually no objections from the prosecution or interruptions from the bench during Junior Lion's first day of cross examination. However, by the second day this apparent reserve shifted, and objections and corrections to the cross examination were plentiful throughout the rest of the week. The following is a description of problems that arose during defense counsel's cross examination of both witnesses.

Asked and Answered

All three judges repeatedly reprimanded defense counsel for asking questions that the witness had previously answered, especially counsel for the second and third accused.

Failure to Pose a Question

Defense counsel took to asking numerous questions in a row, or making statements to the witness rather than posing a question. On occasion the bench had to instruct defense counsel to allow the witness to answer the question,^[6] or indeed to ask a question.^[7]

Improper Impeachment

Counsel for the third accused attempted to impeach the witness by paraphrasing, rather than quoting, the alleged prior inconsistent statements. His tendency to give rough estimations rather than verbatim quotations drew numerous objections from the prosecution and repeated corrections and obvious annoyance from the bench.^[8]

In an apparent effort to correct this recurring error, defense counsel for the third accused opted to read lengthy portions of prior witness statements into the record, at one point continuing for four and a half minutes.^[9] Despite these lengthy submissions, this same counsel at points failed to ask any question relating to the quoted passages, again eliciting irritated guidance from the bench.^[10]

Scope

While the Special Court Rules of Procedure do not confine the cross examiner to the scope of the examination in chief, the Trial Chamber may, in its discretion, affirmatively curb a line of questioning that strays from points that the bench considers relevant or helpful. Given the circularity and confusion of most of the cross examination, it is curious why the bench does not take a more aggressive stance.

Accusations of Lies

When defense counsel are unsuccessful in forcing an admission, they simply preface the point they want to make with the prefix, "I put it to you". This tactic sets up a time-consuming, argumentative dynamic whereby defense counsel insists on a given statement and the witness simply responds, "I do not agree" or "you are wrong".

Moreover, defense counsel frequently bolster their efforts to discredit the witness by "putting it to" the witness that he is lying. At the initiation of AFRC proceedings, it appeared that the judges in Trial Chamber II would not permit ungrounded allegations of a witness's dishonesty.^[11] However, it appears that this stricture has shifted. Trial Chamber II is now permitting defense counsel to accuse the witness of lying with no foundation at all. For example, in response to Junior Lion's assertion that defendant Brima issued orders to impale and flog the women suspected of being witches, counsel stated simply, "I put it to you that you are lying." ^[12] Moreover, the bench has allowed defense counsel to make blatant declarations such as, "...that is why you have come to this Court today, to tell a pack of lies",^[13] and "...what you have told this Court is merely a pack of lies." ^[14] Notably, the prosecution did not object to any of these statements.

1.) An expert witness may have the "special knowledge" required for making a psychological assessment, but the Trial Chamber is of course charged with making legal ? not psychological ? determinations.

- 2.) Over the course of proceedings in both trial chambers, various witnesses have testified that one of the armed factions initially abducted them and forced them into combat, but that they later received commendations for their fighting and promotions in rank.
- 3.) The witness testified that a number of women in Yirayie village (Koinadugu District) told him they had been raped. The prosecution did not inquire how many women claimed to have been raped, or by whom they claimed to have been raped. Yirayie was allegedly controlled by both AFRC and RUF forces.
- 4.) This evidence would likely be characterized as “hearsay”, given that the witness himself did not witness the rapes and the women who told him about them are not subject to cross-examination. Hearsay is admissible at the Special Court, though the judges may decide to give it less evidentiary weight than eyewitness testimony.
- 5.) See Special Court Monitoring Report #53.
- 6.) “You’ve been told to let the witness answer before, Mr Koroma, and I’m telling you again and this is the last time I’m going to tell you.” Presiding Judge, Official Transcript, 21 September 2005, p. 50, lines 3-6.
- 7.) “Mr Koroma, would you refrain from commenting and instead ask questions?”, Presiding Judge, Official Transcript, 21 September 2005, p. 27, lines 25-26.
- 8.) Presiding Judge: “Mr Koroma, as has already been pointed out, if you are putting a prior inconsistent statement, you should put what did he say...What did he say? Mr. Koroma: “Like I said, Your Honor ? “ Presiding Judge: “Quote it.” Mr. Koroma: “Your Honor, I cannot at the moment locate it in the statement.” Official Transcript, 21 September 2005, p. 66, lines 21- 29 and p. 67, lines 1-11.
- 9.) Mr. Koroma, quoting from witness statement dated 6 May 2004, Official Transcript, 21 September 2005, p. 41, line 26 ? p. 45, line 21.
- 10.) “It serves absolutely no purposes simply reading from [a prior statement] if you are not going to challenge that prior statement...” Judge Sebutinde, Official Transcript, 21 September 2005, p. 63, lines 26-28. “Now you have read a passage, Mr Koroma. Do you have a question relating to what you have just read?” Judge Lussick, Official Transcript, 21 September 2005, p. 66, line 12-13.
- 11.) When Brima’s counsel had asked, “Are you lying, Mr. Witness?”, the Presiding Judge claimed it was not the terminology usually allowed in court. Similarly, 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. See Special Court Monitoring Report, #26.
- 12.) Ms. Thompson, Official Transcript, 19 September 2005, p. 78, line 28.
- 13.) Ms. Thompson, Official Transcript, 23 September 2005, p. 58, lines 19-20.
- 14.) Ms. Thompson, Official Transcript, 23 September 2005, p. 72, lines 19-20. Mr. Koroma made a similar comment on 23 September 2005, Official Transcript, p. 104, lines 7-8.