



U.C. BERKELEY WAR CRIMES STUDIES CENTER
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WEEKLY REPORT

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Summary

The week began with the cross-examination of witness TF1-108. The witness had previously testified in closed session for security reasons, but the last part of the cross-examination was conducted in public. The next witness called was TF1-330 whose whole testimony was likewise heard in closed session. As a result, the public was excluded from Tuesday morning until Friday afternoon. Thereafter the trial week ended with the testimonies of three witnesses from the Bombali District, all of whom are either victims who were allegedly mutilated or burned by the RUF or witnessed the killings of friends and family members. The third witness, TF1-028, will continue to testify next week.

Witness Profiles at a Glance

Witness TF1-108 was called on March 7th. As he had expressed concerns for his safety, the greater part of his testimony was heard in closed session and details about his age or current residence were not revealed.

Witness TF1-330 also gave testimony in closed session therefore no further information about him or the content of his evidence is publicly available.

Witness TF1-343 is male and was born in the village of Mateboi, Bombali district. The witness is illiterate and could not specify his age. He was called as the 63rd witness for the trial and the 62nd for the Prosecution. He testified in Temne. Since he was mutilated during the war, the court allowed a staff member from the witness and victims services unit to sit next to the witness and assist him. The entire testimony was heard in open session.

Witness TF1-031 was called as the 64th witness for the trial and the 63rd Prosecution witness. She testified in open session. The witness is female, 60 years old, illiterate and a resident of a village named Karina, Bombali District. She gave her testimony in Madingo.

Witness TF1-028 was first called on late Friday afternoon as the 65th witness for the trial and the 64th for the Prosecution. Witness TF1-028 is female, 42 years old, and was born in Makeni, Bombali District. Her testimony was completed in the early afternoon of Monday, March 20th. The witness is a Madingo speaker but opted to testify in Krio. The majority of her testimony was heard in public session. On Monday the court went into closed session for a short period to elicit details that might have revealed the witness's identity. As a category A witness, Witness TF1-028 was entitled to the voice distortion mechanism. However, it is regrettable that this means of witness protection was not used during her testimony on Friday, but it was only implemented on the recommencement of her testimony on Monday.

Cross-examination of Witness TF1-108

On Monday, Counsel for the accused Augustine Gbao extensively cross-examined Witness TF1-108 about the allegation of forced labour on RUF-farms. Additionally, the witness was questioned about his knowledge of the chain of command and the status of Gbao within the RUF. Furthermore, the witness gave evidence which related to forced labour (mining), the training of child soldiers, the execution of four civilians who had tried to cross the river to Guinea and, finally, the rape and death of his wife.

In order to rebut the allegations of forced labour, defence counsel put further the theory that “any work collectively done was done by way of an agreement or an understanding between the civilian authorities and [...] RUF commanders”. He suggested that the work was part of “a consensual war effort” and that the workers were paid with food. The witness insisted that the work was done “forcefully”. Judge Thompson intervened at this stage to clarify the content of the witness's statement and it was agreed that, according to the witness, the situation could be described as a “forced consensus”.

Defence counsel then asserted that the armed guards at the RUF-farm were there not only to supervise the workers but also to protect them. The witness subsequently testified that civilian farms were taken over and, in some instances, looted by the RUF. Defence counsel's reaction to this was to assert that the witness was “making this up.” To rebut the allegation that forced labour was a daily routine at Mr. Gbao's private farm in Sandialu, counsel explained the presence of civilian workers at the farm by stating that civilians occasionally assisted Gbao and his family as a “goodwill gesture”.

Later in the afternoon the witness was cross-examined on his knowledge about the training of children the RUF training camp at Bayama /Bunumbu. He admitted that as a civilian he had never been admitted to the camp grounds, and therefore he had never actually seen children being trained. However, he testified that he had observed that children had been taken to the base and that they were armed with sticks when they left the camp. In response to his statement, the defence team offered an explanation for the presence of children at the training camp by insisting that the children had been brought to the camp by their parents who themselves had been voluntarily trained at the camp.

Testimony of Witness TF1-330

Witness TF1-330 was called on Tuesday morning. The Prosecution applied for the entirety of the testimony to be heard in closed session, arguing that the witness and his family could easily be identified by members of his community due to the anticipated content of his testimony. Counsel for the 3rd accused once again objected to a closed session application brought forward by the prosecution on the grounds that his client was entitled to a fair trial, including the right to a public hearing (as stated in Rule 78 of the Rules of Procedure and Evidence)¹. Nevertheless, the application was granted and the court went into closed session until Friday afternoon.

Without revealing details of the testimony, it is worth mentioning that the defence teams followed a strategy similar to the one that they had previously adopted during the cross-examination of witness TF1-108 to rebut the allegations extracted under examination in-chief.

Witness credibility

The cross-examination of witness TF1-330 appeared lengthy and repetitive at times. Even though occasionally counsel for the third accused was encouraged by the Presiding Judge to proceed more quickly, the witness's entire testimony seemed to be characterized by imprecise and reluctant answers, and, in response to this, defence counsel for Gbao expressed his frustration with this particular witness more than once.

The witness appeared to hesitate to answer certain questions, either to obfuscate his own role in the conflict or to avoid subjects that appeared to cause him embarrassment. In relation to the latter, the witness appeared to become particularly uncomfortable when asked to discuss certain tribal activities relating to women. The defence was thus able to attack the credibility of the witness and frequently accused him of lying to the court. However, at least in instances relating to these activities, the defence may have benefited from adopting a more culturally sensitive approach.

In a final attempt to discredit the witness and attack his credibility, counsel for the 1st accused suggested that the witness was hoping to receive assistance by the prosecution in obtaining medical treatment "in exchange" for his testimony. This strategy of questioning a witness's motives for coming to the court has been used throughout the trial. However, it remains to be seen if the bench will take these considerations into account when deciding upon the relevance of the evidence given by this witness.

Testimony of Witness TF1-343

During the examination-in-chief Witness TF1-343 described how the civil war in Sierra Leone had first reached Mateboi. He reported that approximately 30 houses there were burned by "the rebels". Around the same time the villagers found two corpses who turned out to be relatives of the witness who had been stabbed and beaten to death with sticks.

About a year later a second group of rebels came to Mateboi. The villagers had heard that the rebels had started burning houses in Mateti and Ma-Almikukuna, where several people had reportedly been killed and others mutilated or captured. The witness stated that the rebels allegedly killed around 20 people in Mateboi. He himself did not observe the killing since he had escaped into the bush at this time.

Witness TF1-343 further testified that after their attacks on the villages in the area the rebels returned to a place called Rosos. He was told about three different rebel groups settling there, led

¹ For more information on closed sessions see Special Court Monitoring Program, Update # 62 by Kyra Sanin.

by Saj Musa, Five-Five and Adama Cut Hand. The witness further reported that he and other people from the surrounding villages had fled to the bush where the rebels finally found them. He alleged that this particular rebel group consisted of five adults and three children aged around 10-14 years. They captured the witness and two other people and cut off their hands. (Here, the witness displayed to the court that both of his hands are cut). As a result, one man died, and the witness and another victim were taken to the government hospital in Makeni. During the month that he spent there he met other victims whose limbs had been amputated

The cross-examination of Witness TF1-343 began after the lunch recess in absence of the 1st accused. The defence teams for the 1st and the 3rd accused had no questions, but counsel for the 2nd accused cross-examined the witness briefly on the location of the Mateboi village, the rebel base Rosos and the names of the rebel leaders there. The witness admitted that he had never met the leaders in person and that he just knew their names because of rumors carried to Mateboi from the nearby rebel base. No re-examination took place.

Testimony of Witness TF1-031

Witness TF1-031 reported that eight years ago on a Thursday during the rainy season a group of rebels attacked Karina who described themselves as “Foday Sankoh’s people”. The witness was brought out of her house, stripped naked, and a rope was tied around her waist while her house was burnt. She further stated that the same had happened to other villagers of Karina and that she saw people from nearby villages, also naked and with ropes around their waists.

The witness then testified that, after houses had been burnt and people were captured, stripped naked or killed at the villages of Bornoya, Daraya and Mayombo, “they” came to Karina where they continued killing people. The witness stated that “there were corpses, like chickens...all over the place.” The witness was captured and taken to a village called Mayayi where she saw two female captives being killed, one who was struck on the head, the other whose throat was slit. She further reported that she witnessed the mutilation of three men, whose hands were cut off. Then the rebels forced her and other civilians to move with them to Mambala and from there to Mandaha where the group stayed for two weeks. The witness told the court that their group consisted of about 100 civilians, that there were other groups but that she could not give the number.

According to the witness, her left hand and left leg were burned by the rebels in Mandaha. While giving her testimony about this disturbing incident, Witness TF1-031 began to cry and needed psychological assistance. After a short break, the witness indicated that she wanted to continue with her testimony.

During their captivity in Mandaha the witness’s 10-year old daughter told her mother that she had been raped by the rebels. Witness TF1-031 further testified that the rebels used to take young girls from their group into the bush from where the witness and other members of the group could hear them screaming at night. When being questioned if she recognized any of the rebels, the witness gave the names “Abu” Bockarie, Woyoh and “Five-Five” (aka Santigie Borbor Kanu, the third accused in the AFRC trial).

In his cross-examination, counsel for the 1st accused attempted to highlight contradictions in the statements that the witness had given to the Prosecution in 2003, 2004 and February 2006. It turned out that the first meeting in 2003 was mainly conducted in Krio; as a native Madingo speaker, the witness could not understand every question properly. Furthermore it was revealed that the first time the witness ever mentioned the name Foday Sankoh was only two days before her testimony in court.

During his cross-examination, counsel for the 2nd accused suggested that the burns the witness suffered were in fact caused by bombs dropped by ECOMOG jets. He indicated that the witness was merely told by other people what had happened to her, i.e. being burnt by the rebels. Being

confronted with the this argument the witness admitted that she thinks she was unconscious as a result of her injuries and for that reason she cannot tell what exactly was happening around her at that time.

Finally, the defence team for the 3rd accused attempted to question the identity of the rebels who abducted the witness from her village. She admitted that it was dark the night she was captured and therefore she could not recognize any faces. Counsel continued to raise doubts in this respect by suggesting that it was impossible for the witness to determine if it was in fact one of the rebels who called his group “Foday Sankoh’s people” or if the name was instead given by other villagers who were present at the time.

Witness responds well to female lawyers

It is a notable fact that the examination-in chief as and the cross-examination on behalf of the 1st accused were conducted by female attorneys. The victim witness seemed to respond very positively to the questions asked by them. Even though counsel for the 3rd accused expressed a certain amount of sympathy to the witness in light of her suffering, her interaction with the two women lawyers appeared, at times, to be more cooperative than with their male counterparts. This practice not only constitutes a sign of goodwill to female witnesses, who are likely to feel more comfortable being examined by women on gender specific issues, but is also likely to be beneficial for the content and accuracy of their testimony in general in several instances.

Testimony of Witness TF1-028

Witness TF1-028 testified to incidents during the so-called ECOMOG “intervention” in April 1998, when President Kabbah’s government was reinstated in office. At that time, the witness lived in Karina, Bombali District. She reported that her village was looted by “soldiers” (presumably referring to members of the AFRC) on three different days, and added that some of the inhabitants were beaten on these occasions. When the rebels once again returned to Karina in the early morning of 6 April, the witness observed a mixed group of people passing by that consisted of men in combat uniforms and civilians, some of whom were naked and bleeding. The witness gathered her family and they fled into the bush. She returned to her home later in the day, since she had left two of her nephews sleeping in the house. She took one of the children with her and returned to the bush, but on the way there she was discovered by a group of rebels who held her at gunpoint. One of them tore her clothes and told another man to “chop” her. Suddenly a second group of “combat men” appeared and saved her from being killed. She was then taken back into the town by the first group of rebels. She was naked and tied up at the time. Back in Karina the rebels tied her together with her sister-in-law and a suckling mother whose child had been removed from her. The three naked women were led to the mosque where the witness saw the body one of her uncles who had been chopped to death. Another uncle had been chopped on his shoulder and was about to die. Then the women were taken to a building where the witness found one of her brothers dying on the floor and a second brother struck on the forehead. According to Witness TF1-028, both of her brothers died.

While recalling this incident, the witness started crying and could not continue giving evidence. The Presiding Judge asked the witness service unit for assistance and the court adjourned for the weekend.

Procedural Issues: Clarifying the role of Re-examination

Instead of re-examining Witness TF1-108, the Prosecution tried to tender highlighted portions of out-of-court-statements as exhibits that were consistent with the witness’s oral testimony. However, in accordance with the procedure which had been adopted earlier in the trial, the Bench insisted on following the tripartite procedure as stated under Rule 85 of the Special Court Rules of Procedure and Evidence, “in order not to fall outside the recognised way of presenting evidence

before the Court". The Chamber directed that the Prosecution is at liberty to tender the statements in question, but only through the means of re-examination "in purported rebuttal of defence allegations of inconsistencies or contradictions". The Presiding Judge further clarified that the statements the Prosecution wishes to tender as evidence should clearly relate to matters raised by the defence during cross-examination. The significance of this remark lies in the fact that the Prosecution is strictly limited with respect to the scope of their re-examination, i.e. the opportunity to re-examine their witness is restricted to the rebuttal of matters raised during cross-examination. Put simply, the process of re-examination is merely meant to be a means of reaction rather than action. As such, the Prosecution is not allowed make "new" allegations at this stage of the proceedings, because this would enable it to admit into evidence allegations or statements that the defence would not be given the chance to rebut.