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Summary

This week's proceedings saw the closed session testimony of two protected witnesses for the Prosecution. Various concerns regarding the protection system offered to witnesses by the Court was thrown into question after Witness TF1-334 expressed fear that his identity would be revealed and recalled earlier intimidation he had experienced by investigators. While defence counsel contended that this represented a ruse by the witness to extract greater benefit from the Witness and Victims Services (WVS) Unit, given that his identity was already well known prior to his testimony, the Chamber took the witness' fears very seriously and indicated their deep concern that the protection system was failing.

Wednesday's proceedings saw complaints launched by the Defence regarding comments made by the Secretary General of the United Nations with respect to the alleged criminal actions of the accused being tried at the Special Court. These comments were part of a speech delivered on the Court premises the preceding week. Defence counsel claimed that the statement prejudiced the rights of the accused and called for the President of the Court as well as the Judges to distance themselves publicly from such comments in order to maintain the necessary independence and impartiality of the Court. The Trial Chamber noted the gravity of the Defence submissions and indicated that they needed more time to deliberate on the matter.

Witness Profiles at a Glance

Witness TF1-117, a protected witness whose testimony was heard in closed session in its entirety, continued to be submitted to cross-examination following the previous week's proceedings.

Witness TF1-334, the 78th witness for the Prosecution, testified in Krio in both closed and open session beginning on July 5th. The Prosecution submitted SCSL transcripts from the Witness' testimony in the AFRC trial into evidence under Rule 92*bis* in lieu of conducting a direct examination of the witness. The cross-examinations carried out by the three defence teams ended on July 7th.

The Continued Cross-Examination of Witness TF1-117

The cross-examination of Witness TF1-117 continued from where proceedings ended the previous week. Counsel for the first accused, Mr. Jordash, made constant comparisons between the witness' current testimony in court and the statements that he had given to the Prosecution prior to standing as a witness in court. The cross by the first accused lasted for the full day of proceedings on Monday as counsel meticulously reviewed the witness' evidence-in-chief and systematically pointed out discrepancies, contradictions, the belated divulgence of certain facts and points of contention in his testimony.

The cross-examination by counsel for the second accused also focused on comparing the witness' previous statements to the Prosecution to his current testimony. Mr. Touray noted that the witness had failed to mention Morris Kallon's name in many of the statements made to the Prosecution in 2003 and 2004 and that he had only mentioned him in relation to the abduction of UNAMSIL personnel in 2006. Counsel also suggested that the witness' real association was with SLA forces rather than with the RUF, as the witness had claimed. While the witness acknowledged that he had indeed worked with the SLA, he stated that he was with RUF forces for a longer period.

During the cross-examination of Witness TF1-117 by counsel for the third accused, O'Shea suggested that there was no village called Gboajibu, located near the highway in between Kenema and Tongo, from where the witness testified he had been captured by the RUF as a child. O'Shea also asked the witness to describe Camp Zagoda, the RUF base where he allegedly stayed after attacking Koidu Town, Kono district, under the command of Gbao. While the witness described the camp as undivided, O'Shea argued that if the witness had actually been there as a member of the RUF he would know that the camp had been partitioned into sections. The witness also described the rules that governed life at Camp Zagoda after prompting from counsel and he noted that the proper procedure prior entering the camp was to first obtain permission from the top commanders and to subsequently enter without arms. O'Shea seemed unsatisfied with these responses and continued to suggest that the witness had not actually ever been to Camp Zagoda.

Witness Protection Issues

Shortly after Witness TF1-334 began testifying, with documentary evidence submitted under Rule 92*bis* in lieu of an oral examination-in-chief, he indicated that he had personal security concerns related to the possible revelation of his identity. The witness stated that one of the investigators for the RUF defence was aware of his identity, and that this was of particular concern given that he alleged he was previously subjected to intimidation by an investigator from the AFRC, who had discovered his name and identification number.

Counsel for the first accused, Mr. Jordash, stated that he wished to cross-examine the witness on this matter, to which the Bench indicated its surprise. In the absence of the witness Jordash justified his wish to cross-examine the witness on his claims as follows: “The position is this: That whilst I have every respect for the special measures protection in this Court and I, of course, recognize the importance of it in relation to many witnesses, it is common knowledge amongst the rebel contingent...that this witness has given evidence in the AFRC trial and the RUF trial.”¹

Jordash continued on to suggest that it was a fallacy that the witness’ present testimony in trial represented a new threat to his security and suggested that the witness’ apprehensions were unfounded as his identity was already known by many. Jordash described the flow of information within Sierra Leone as “a huge grapevine”², with family members and friends of witnesses often discussing their testimony at the Special Court. Jordash argued that protective measures afforded to some witnesses were thus of limited practical value. Furthermore, he alleged that the claims made by Witness TF1-334 were simply an attempt to extract further assistance from the WVS Unit.

The Trial Chamber expressed particular concern at the possibility that the protective measures afforded to certain witnesses were failing and suggested that the entire witness protection process might need to be revisited. The Presiding Judge, Justice Thompson, agreed with Jordash’s characterization of the country as a grapevine and noted that, given the *in situ* nature of the Court, there was an increased potential for intimidation and retaliation against witnesses. The judge came to a different conclusion to Jordash, however, noting that the witness was not being unreasonable by raising concerns for his safety.

Counsel for the second accused offered his ‘candid opinion’ and stated that he believed the protective measures to be working effectively but found that witnesses often created the impression that they were not working in the hopes of increasing their chances of being relocated to another country.³ Counsel for the third accused argued that the protective measures do not represent a guarantee to witnesses that their identities would not be disclosed: ultimately, individuals associated with the court have to ensure that the measures are respected in order for them to be effective. Again, the judges questioned what channels of communication were available to the accused and expressed deep concern that witnesses should be rigorously protected given they are coming forward to

¹ SCSL Transcript, Trial Chamber I, 5 July 2006, Page 35, lines 10-15

² *Ibid.*, page 36, line 14

³ In certain extreme cases, where witnesses suffer ongoing threats to their safety, the WVS Unit may attempt to relocate the witness to another country, either in Africa or elsewhere depending on the situation.

testify because of the trust and confidence they have established with the Court's staff and the trial process.

Following the suggestions that many witnesses, including the witness in question, attempted to exploit the protection system and extract certain advantages from the WVS Unit, Jordash directly questioned the witness as to whether he would like the WVS to assist him in relocating to another country. Witness TF1-334 replied that he would, in order to protect his own life.

The debate about the security provided by the Court's protective measures and the credibility of alleged threats regarding the revelation of witness' identity, concluded with comments related to the ability of the Defence to question the integrity of the judicial process. Jordash maintained that it was a fundamental aspect of a Defence advocate's job to examine the integrity of the process. However, in response the Presiding Judge opined that it was difficult to determine how Jordash could examine the integrity of the proceedings when he himself was a part of them. The Chamber reiterated its position that counsel was permitted to question witnesses on any financial compensation they had received and on other relevant issues of motivation, but that they should reserve broader pronouncements, which implied the judicial process to be tainted by these issues, for closing arguments.

Reaction to UN Secretary General's Speech

At the onset of proceedings on Wednesday, Counsel for the first accused brought to the attention of the Court the text of a speech given by the Secretary General of the United Nations, Kofi Annan, which was delivered within the confines of the Special Court on 3 July 2006. Jordash proceeded to note that there were matters of great concern that arose from the speech and that he wished to issue the strongest protest against the content of the speech. He outlined several paragraphs of particular concern, with reference to statements describing the Court as "a court that is putting on trial criminals who have done lots of damage to this country, criminals who have terrorized the population and destroyed the economy and the social fabric of this country...It is also important that it was this Court that indicted Charles Taylor, who was a powerful warlord in the region..."⁴ Counsel for the first accused characterized these comments as deeply offensive and contended that they completely ignored due legal process and the importance of the rule of law, thereby prejudicing all the accused at the Special Court. He characterized the comments as a violation of Article 17 of the Statute, which protects the rights of the accused, and touched on the ability of the Court to deliver verdicts that both are fair and appear to be fair. It was suggested that as a minimal remedy the President and the Judges of the Special Court should issue a public statement distancing themselves from the Secretary General's comments, in an attempt to reassure all parties that the Court is acting independently.

Counsel for the third accused further indicated that in order to maintain the integrity of the process the public is entitled to know the importance of the presumption of innocence, which he characterized as forming part of the very foundation of human rights

⁴ SCSL Transcript, Trial Chamber I, 5 July 2006, page 4, lines 15-21

and of thus the United Nations itself. He added that there was a heavy onus on the UN to show an appearance of unquestionable impartiality.

The Presiding Judge acknowledged the complaints launched and the gravity of the positions advanced by the Defence with respect to the comments made by Mr. Annan. The Trial Chamber briefly adjourned in order to deliberate on the matter but returned only to indicate that they required more time before issuing a reaction, which they would do shortly.