



U.C. BERKELEY WAR CRIMES STUDIES CENTER
SIERRA LEONE TRIAL MONITORING PROGRAM
WEEKLY REPORT

Special Court Monitoring Program Update # 83
Trial Chamber II – AFRC Trial

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SUMMARY

This week saw the continuation of the Defence case with 12 crime-base witnesses testifying. The witnesses all testified as common witnesses and the Prosecution conducted little cross-examination, allowing the proceedings to progress at a steady pace. However, the Defence still appears to be having difficulty organising for witnesses to be available to testify before the Court.

Also this week the first status conference in the Charles Taylor case was held in the Hague before Judge Lussick. Proceedings in the AFRC trial were therefore adjourned on Friday morning until the following week.

LATE NOTICE OF DEFENCE WITNESSES TO BE CALLED

This week started with an application by the Prosecution for an order requiring Defence counsel to provide, by 5pm each Friday, a list of all witnesses that would be called the next week. Prosecution had complained the previous week that the late notice with which they received the number and the names of defence witnesses to be called, and the order in which they would give evidence, was prejudicing the Prosecution's ability to prepare for cross-examination.

Defence counsel responded by stating that they had no objection in principle to providing such a list but due to the practical difficulties they were experiencing with getting witnesses before the Court, it may not be possible to follow the list. When asked by the Bench, what exactly the difficulties were, Defence responded that it was mostly due to commitments the witnesses had at home, which made them unwilling or unable to stay in Freetown outside of the time they were required to give evidence. The Court

acknowledged the difficulties identified by the Defence but made the order sought by the Prosecution.

On Wednesday the Prosecution also made an application that the identities of the remaining Defence witnesses be made available to them by the end of the week, along with revised summaries of the witnesses' intended testimony. The Prosecution noted that the identities of a number of witnesses have only been provided to the Prosecution 8 days prior to the witnesses being called which, aside from being in breach of the Court order requiring disclosure by the Defence 21 days prior to the witness testifying, was posing problems for Prosecution investigations. Counsel for the Prosecution indicated that if this matter was not resolved they may be seeking adjournments so as not to be prejudiced by the lack of time to prepare their cross-examination. Counsel for the Defence did not object to the Prosecution's applications and the Court made the orders.

DEFENCE DIFFICULTIES REGARDING WITNESSES

On Monday counsel for the First Accused requested a status conference after reiterating to the Court the practical difficulties defence teams were experiencing in arranging for witnesses to testify. Counsel told the Court that the Defence were experiencing both practical and cultural difficulties with witnesses found during early investigations. Many of these witnesses wanted either to speak to members of earlier investigations teams who were no longer working for the Defence or to the accused prior to testifying. Some witnesses who had been identified as common witnesses were also now expressing a preference to give evidence as individual witnesses. Counsel also told the Court that Defence were experiencing problems verifying witness statements taken during early investigations.

The Presiding Judge stated that in his view Defence had been given ample time to make arrangements for its witnesses to testify and that if there were any further issues, the Court would be willing to issue subpoenas but so far no applications for subpoenas had been made.

On Tuesday morning, Defence informed the Court that two of the witnesses that had testified the previous day, having been promised that they would be able to return home the same day, had not been provided with court transport. Instead they had been given money to take private transport and had been involved in an accident. The Presiding Judge stated that assurances should not be made to witnesses regarding how soon they would be able to return home, as it was dependent on how long their evidence took. The Bench therefore requested that counsel refrain from making such assurances in future. The Bench also noted that these were issues for the Defence and did not strictly speaking concern the Bench.

LEADING OF DEFENCE WITNESSES

The Prosecution has objected frequently to leading questions being used throughout the evidence-in-chief of Defence witnesses. On Tuesday, the Prosecution made an

observation to the Court that, while the Prosecution had no objection to evidence being led on preliminary and non-contentious aspects of a witness's testimony, where the witnesses were illiterate the leading nature of some of Defence counsels' questions was creating a situation in which the witness accepted certain information as "taken for granted".

SUMMARY OF WITNESS TESTIMONY

Witness DBK-100

This witness is a woman from the Biriwa Chiefdom in Bombali district. She gave evidence regarding events in May 1998 in Kamagbengbah village where she had fled to with her husband. She described the village being ransacked and the houses looted and burnt. She testified that she had not seen any killings or amputations but she had been shown Adama Cut-hand and told that Adama Cut-hand was responsible for some amputations performed in the village. Finally she testified about a celebration, which she witnessed in the village involving individuals she described as having "dreadlocks", dressed as civilians and wearing red bandanas around their heads. She testified about a song that she heard sung, in which the name "Savage" was mentioned. She was unable to provide any names or other means of identification for any of the individuals she witnessed. Prosecution did not cross-examine this witness.

DBK-090

After providing his age, marital status and place of birth, this witness provided the first part of his evidence in closed session due to concerns regarding his safety. In open session he gave evidence about being attacked outside of Makeni by two men who attempted to amputate his hands and feet. He testified that they were not wearing soldiers' uniforms but were carrying guns. He also testified that after he had been attacked and lay in the road, he had seen a group of approximately 500 people, including women and children, dressed in a mixture of civilian and Kamajor attire march past, led by "Major Adama". He testified that he was found by a soldier who wore the rank of lieutenant who moved him into the shade where he was found by his brother and taken to hospital. He stated that when he returned home from hospital his village was attacked by people dressed in civilian or tattered combat clothes who robbed, killed and raped members of his village. He and others went in search of the commander to complain and he testified the commander had been "Adama", who had told him that what her forces had done was wrong and against her orders. He testified that he had not seen or heard of the three accused being connected with any of the attacks he had witnessed.

In cross-examination counsel for the Prosecution asked the witness about the people he had described as "children" in the group he saw march past him on the road to Makeni. The witness stated these children looked between 10 and 15 years old and some carried guns, some luggage. When asked the name of the village where he had met "Adama", he

refused to say, stating that he was afraid. The hearing was therefore moved back to closed session.

DBK-095

This witness is a Madingo, born in 1919. He completed some schooling at a Methodist school in Bonthe before moving to Wilberforce and later to Karina. He testified that on 8 May 1998 when Karina was attacked, he was in Freetown seeking medical treatment. He stated that, after hearing about the attack, the next day he began his return trip and en route was told that “rebels” had attacked Karina. He testified that he met his family at Port Loko junction and from there continued to Makeni. He told the Court that he spent the next two years in Freetown before returning to Karina. When asked by Defence counsel if the mosque in Karina was the only one and whether it had been damaged during the attack on Karina, the witness testified that there was only one mosque and it had not been entered by the rebels.

Cross-examination of this witness was conducted in closed session.

DBK-105

This witness is a Mansaray who comes from Mandaha. He is a farmer and a Muslim and speaks Krio and Loko. He testified that he was in Mandaha in May 1998 and that a woman came from Kambia to warn the village that the “rebels” were coming. He told the Court that he and fellow villagers fled when they saw people, dressed in civilian clothing, arriving on foot and they hid for 9 days near the river a few kilometres outside of the village. During his time in hiding he stated he had seen jets overhead and seen and heard explosions. He testified that he went in search of food and was captured by four men and taken to the village of Machogo and then on to Kambia. He also testified that he and the three other men he had been captured with were stabbed. He showed the Court a scar at the back of his neck. He told the Court that he did not know who was leading the people who attacked his village, nor could he identify the men who stabbed him and his fellow captives.

During cross-examination he stated that the people at the front of the group who attacked his village were dressed in civilian clothing but he was not able to say whether it was the Sierra Leonean army who entered his village. Counsel for the Prosecution also brought to the witness’ attention a number of inconsistencies between his oral evidence and what was contained in his original statement, including the reference to there being four men who captured him (in the original statement he stated 20) and his fellow captives being hacked to death (not shot as in his original statement). He was also forced to concede that he could not say what had been the actions of Kamajor and what had been the actions of the people he described as “rebels”.

DBK-104

This witness is also from Mandaha and a Loko. He testified that he was in his village when a group of people dressed in a mixture of civilian and military clothing entered at which time he fled into the bush for 10 days. He testified that after being in hiding he went to Makeni and then back to Mandaha where he witnessed dead bodies. He testified that he had been told ECOMOG had driven the “rebels” from the village. After this time he testified he left Mandaha and returned to live in Makeni. He told the Court that the village had been burnt and villagers, including his brother, had been cut and killed by the “rebels”. He stated that he did not recognise the names of any of the accused as being associated with the attack on his village.

During cross-examination, he stated he did not know if soldiers from the Sierra Leonean Army entered his village. He also conceded that he had not personally seen anyone being killed or raped nor had he seen houses being burnt. He had witnessed the bodies of those already killed and the remains of the burnt houses.

DBK-086

This witness comes from Kamadogbo village in Bombali district. He speaks Limba, is illiterate and a farmer. He gave evidence about an attack on his village in May 1998 during which his property was burnt and his childrens’ hands were amputated. He referred to the attackers as “soldiers”, however upon clarification by counsel for the Third Accused he stated that he had been told they were soldiers and that they wore combat clothing but that he did not think they were really soldiers. He stated that he had not heard of any of the three accused being associated with the attack on his village or on Mandaha village.

DBK-102

This witness is from the Yalunka tribe. He is a Muslim and able to read and write Arabic as well as Krio. He testified that he was lived in Makeni during the conflict. He testified that in December 1998 the RUF entered Makeni. Counsel for the Third Accused led evidence from this witness about events he witnessed during this time at the Konso bridge, including the rape of his daughter and the amputation of the hands of his other daughter. The Prosecution objected on the basis that the evidence was irrelevant as it referred to events outside the time period for which the accused were being charged – in the Bombali district the accused are charged only for events prior to November 1998. However counsel for the Third Accused noted that charges such as the recruitment and use of child soldiers did not have a limited time period and on this basis the evidence was allowed. The witness testified that he had been told by one of the children captured that Superman was responsible for the capture of the children and the rapes, including that of his daughter. He also testified that he had been told Augustine Gbao was the leader of the rebel group he witnessed.

The witness testified that he had seen SAJ Musa’s wife address people in Makeni, telling them that the SLA were attempting to talk to the RUF and that there would be no further looting, raping or harassment. He also testified that he had heard Superman and

Augustine Gbao refused to accept the SLA's requests. He testified that he did not believe the SLA worked with the RUF in Makeni, nor did he believe that the SLA captured any children. He told the Court that there had been a few SLA in Makeni, under ECOMOG control but that they left when the RUF arrived and began looting and raping. He stated that at one stage Foday Sankoh had come to Makeni and ordered an end to this "bad behaviour" but that it had not stopped until disarmament.

The witness began to give evidence regarding attacks on UN peacekeepers but was stopped on the basis that this was irrelevant. The indictment for the three accused does not contain any charges relating to attacks on UN peacekeepers.

During cross-examination the witness stated that he did not know whether the accused were members of the RUF or AFRC, nor did he know whether he had been called as a Defence or Prosecution witness. He also reiterated that he believed it was only the RUF that had attacked Makeni in 1998 and that he did not know anything about AFRC involvement in the attack on Freetown in January 1999.

DAB-077

All background and personal information led from this witness was done in closed session to protect his identity. He subsequently testified in open session but using voice distortion equipment. The Bench expressed some reservations about using voice distortion, noting that this had not been part of the original order for protective measures, that voice distortion was usually only employed for survivors of gender crimes and that it was a time-consuming process. However Defence counsel stated that such a measure was necessary due to the fact that the witness still resided at the crime base and had been attacked after he had provided an initial statement to Special Court investigators. Defence counsel also submitted that the witness's voice was connected with his profession and this would therefore compromise his anonymity. The Prosecution did not object and the Court ordered voice distortion equipment be used.

This witness testified that he had seen SLA soldiers leaving Freetown with their wives and families and they had been in a state of disarray, "fleeing for their lives". He also testified that he had witnessed the killing of civilians by ECOMOG and Civil Defence Force (CDF) forces. He named an ECOMOG officer called "Peter Mala" as being in command. While the Prosecution objected to this evidence on the basis that it lacked relevance, the Court overruled the objection. The Court accepted that the evidence might assist the Defence argument that the crimes for which the accused have been charged may in fact have been committed by others involved in the conflict.

The witness also testified about mass graves in Koinadugu district, stating that the bodies were those of SLA soldiers who had surrendered and were killed by ECOMOG troops. Counsel for the Prosecution objected to this evidence, stating that he did not believe the Prosecution had led any evidence relating to mass graves in Koinadugu district but as no one was able to verify this, the evidence was allowed.

The witness also gave evidence of an attack on his town in May 1998 by RUF forces. He testified about damage to the town caused by ECOMOG bombardments and told the Court that the ECOMOG forces withdrew to Kabala leaving the town as a “no-man’s land” until RUF forces occupied it following another attack in September 1998. He also told the Court that he had heard members of the RUF, including a commander “Colonel Stone”, admit to killing the Paramount Chief for allowing ECOMOG to deploy. He stated that he had seen members of the RUF kill two other civilians and burn and loot properties but that he had never seen or heard of the three accused being associated with these activities. He named Colonel Stone, Colonel Bayoh and a Liberian called Colonel Marvy as being the RUF commanders in charge during the RUF attacks and occupation of his town.

In cross-examination the Prosecution elicited from the witness that he had not personally witnessed the ECOMOG bombardments of his town, nor had he been present during the May 1998 attack. It was put to the witness that the May and September attacks had been conducted by a mixture of RUF and SLA forces. The witness however stated that he had been told only that it was RUF forces, the attack in May being led by an individual called “Komba Gbundema”. He testified that he knew the name SAJ Musa but did not know anything further about SAJ Musa’s role or whereabouts during 1998. He also testified that he had never heard the name “Five-Five” (the Third Accused) before his involvement with the Special Court.

DAB-081

This witness testified about an attack on his village, near Kabala, in 1998. In particular he testified about SAJ Musa’s presence in his village and about the recruitment of young boys and girls aged between 14 and 18 by both the SLA and the RUF but told the Court that he had never seen the three accused in his village nor heard of their involvement with the attacks.

During cross-examination he stated that the SLA and RUF had co-existed in his village but that he did not know the level of cooperation that existed between them.

DAB-083

The preliminary evidence led from this witness was done in closed session to protect his identity. He testified about attacks in the Koinadugu District by “soldiers and RUF” in 1998. He identified SAJ Musa and Superman as the people he understood to be the leaders in charge and stated that they had been based in Koinadugu I. He also testified that he was told the “former soldiers” and the RUF began ‘in-fighting’ around September or October 1998 and separated. He stated that he went to Koinadugu and was involved in fighting against the RUF with ECOMOG, SLA soldiers and the CDF.

In cross-examination he stated he had heard the names of the three accused on the radio but had not seen or heard of them being in Koinadugu District during the time of the

attacks. He also confirmed that the SLA soldiers and the RUF had been working together prior to their split in September/October 1998.

DAB-082

This witness testified in Koranko. Background information was led from him in closed session due to the fact that he is illiterate and therefore could not write down places or names that needed to remain confidential to protect his identity. In open session he testified that “rebels” had entered his town in 1998, wearing civilian clothing. He and his family had fled but were subsequently captured by “the rebels” and taken to “their boss” who he named as SAJ Musa. He testified that SAJ Musa ordered that no civilians were to be beaten and that they were to be taken to the “MP” who he recognised because they wore red hats. When asked if there were any other leaders he could name, he stated Superman was also present and was a leader alongside SAJ Musa. He testified that he heard SAJ Musa and Superman had fought and SAJ Musa left the village after which time “the rebels” led by Superman did “bad things” including cutting and killing people.