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Summary

The bench read its considered statement on the Defence submissions¹ regarding the comments made by the Secretary General of the UN, Kofi Annan, during his visit to the SCSL on 3 July 2006, at the beginning of proceedings on July 20th. On behalf of all three defence teams, Mr Jordash had argued that the reference made by Mr. Annan to the accused at the SCSL as criminals who had destroyed the country, was in violation of the rights of accused persons, enshrined in Article 17 of the Court's Statute. The Chamber stated that "On the substance of Mr. Jordash's submission that this Trial Chamber distances itself...from H E Kofi Annan's comments so that it might prevent the Chamber from further damage to its standing in the international community as a result of said comments we issue the statement for the record."² The Presiding Judge carried on to say that the Chamber recognized the Secretary General's authority to make political statements, however it also noted that "what is absolutely clear, is that the judges of the international judiciary are not bound by political statements made by the chief executive of the United Nations or by member states of the United Nations."³ The Chamber also reiterated various relevant articles of the Statute, elaborating on the separation of powers between the executive organ of the UN, as an agent of the international community, and the Special Court, as a judicial organ.

¹ Please see SCSL Transcript, 5 July 2006, and Special Court Monitoring Report #82a, 7 July 2006, for a summary of the Defence's submissions. Available at <<http://socrates.berkeley.edu/~warcrime/SL-archives.htm>>

² SCSL Transcript, 20 July 2006, page 2, lines 25-29

³ *Ibid*, page 3, lines 9-12

This week's proceedings also saw the testimony of several crime-base, Prosecution witnesses who testified about rebel attacks on villages in the Masimera Chiefdom, Port Loko district, in 1999. Port Loko district figures prominently in the Prosecution's Indictment, where it is alleged that RUF/AFRC forces carried out unlawful killings, committed crimes of sexual violence, utilized physical violence, recruited and used child soldiers, and committed abductions and forced labour, as they fled from Freetown in 1999.⁴ The opportunities for Defence counsel to cross-examination these crime-base witnesses were either declined outright or, when they did occur, were very brief and specific. This is in marked contrast to the often detailed and extensive questioning by Defence counsel of insider witnesses for the Prosecution (for example, the cross-examination of Witness TF1-041 was several days in length).

Witness Profiles at a Glance

Witness TF1-041 continued his testimony from the previous week in closed session. The cross-examination of the witness by counsel for the second and third accused was completed on 18 July 2006.

Witness TF1-255 testified in open session, behind a screen, thus shielding his identity from view of the public gallery. The crime-base witness testified in Temne. He is 65 years old and resides in Chendekom village, located in the Masimera Chiefdom, Port Loko district, where he works as a farmer. The witness' wife and several of his children were killed after rebels attacked his village.

Witness TF1-256 testified in open session behind a screen. He testified via *92bis* procedure, pursuant to an earlier order issued by the Trial Chamber⁵. Accordingly, the Prosecution tendered transcripts from the witness' testimony in Trial Chamber II in the AFRC case. There was no cross-examination conducted by counsel for first or third accused and the cross by the second accused was limited to a question of clarification as to the location of the alleged incidents, which the witness confirmed to be in Chendekom, Masimera Chiefdom, Port Loko district.

Witness TF1-345 testified in Temne, in open session, under normal protective measures. The witness was born in 1957 in Nonkoba village, Masimera Chiefdom, Port Loko District. The witness is a widower and testified that she has given birth to seven children, although not all have survived.

Witness TF1-371, began the examination-in-chief on Thursday under protective measures in closed session. He testified in English and represents the 84th witness for Prosecution, as well as the second to last witness in their case.

⁴ The Prosecutor v. Sesay et al., 'Corrected Amended Consolidates Indictment', SCSL-04-15-619, 2 August, 2006. Please see Counts 3-5, Counts 6-9, Count 10-11, Count 12 and Count 13 of the Indictment for details of these charges. For the specific allegations related to Port Loko district please see paragraph 53, 60, 67, 76 of the Indictment.

⁵ 'Decision on The Prosecution Notice Under Rule 92bis to Admit the Transcripts of Testimony of TF1-256', SCSL-04-15-557, 23 May 2006.

The Testimony of Witness TF1-255

The examination-in-chief of Witness TF1-255 was carried out by Mr. Bangura for the Prosecution. The witness described an attack launched by rebel forces on his town, Chendekom, in the Port Loko district, in late May 1999. He testified that while some of the rebels wore military uniforms, others wore civilian clothing. He further described some of the rebels as being children around the age of ten years old. Witness TF1-255 described events surrounding this attack on his village and alleged that after running into the bush he saw the rebels burn down all of the houses as well as the mosque in Chendekom. Eventually captured by the rebels, the witness described being forced to collect food and construct shelters for the rebels, who were operating under the command of Captain Rittin. He stated that while he was out collecting food he saw numerous corpses with their hands and feet amputated. He also alleged that he saw the dead body of his wife and their youngest child, who was three months old at the time, as well as the bodies of several of his other children. The witness alleged that a total of 47 people were killed during this attack and that during his captivity he was regularly beaten and suffered serious injury, while other prisoners were tortured. He also stated that the rebels who were guarding the surviving civilians were mandated to shoot them if they attempted to escape.

Two of the witness' daughters were also captured by the rebels, along with numerous other children from the village. The witness testified that his daughters described being raped by their captors and forced to cook for them – with the rebels calling them their 'wives'.

The captured civilians were eventually told to go to Lunsar where upon entering they were registered by soldiers working for the RUF commander, Superman. The witness also stated that he could not distinguish between soldiers and rebels during this period as they were all working together. While at Lunsar the witness described being subjected to more forced labour and also stated that Superman arrived at Lunsar from Makeni with Issa Sesay, the first accused.

The cross-examination conducted by counsel for the first accused, Mr. Jordash, was very succinct and was limited to clarifying that Captain Rittin was part of the SLA and to questions on how the witness knew the identity of Sesay, when he allegedly arrived in Lunsar in June 1999.

Mr. Touray, counsel for the second accused, led a similarly short cross-examination. The witness denied Touray's suggestion that what had happened in Chendekom in 1999 had nothing to do with the war as at that time there was a cease fire in place in preparation for the Lome Peace Accord.

During the re-examination conducted by Bangura, he asked the witness to clarify the exact composition of the group that had attacked the witness' village, as the witness had previously stated that some members wore uniforms while others were dressed in civilian clothing. Under questioning by the judges, given the strict parameters of re-examination,

Bangura elaborated that it was the Prosecution's interpretation that the members who were wearing civilian clothing who had attacked the village were members of the RUF, and that during the cross-examination this evidence had become confused. However, after some deliberation, the Presiding Judge stated that he failed to see how there was any damage done to the Prosecution's case through the alleged ambiguity between the witness' testimony during the examination-in-chief and the cross. As such it was decided that there was no need for the clarification sought by the Prosecution

The Testimony of Witness TF1-345

Witness TF1-345, a crime-base witness for the Prosecution, testified that she was in her village, Nonkoba, in February 1999, at the time of ECOMOG's intervention in Freetown. Shortly after the intervention, the witness stated that she heard that the rebels were approaching her village from the direction of Lunsar. She subsequently fled into the bush with five of her children, her husband and others from the village. The witness testified that she was eventually captured by a group of rebels who were operating under the command of SAJ Musa, an AFRC commander. She described some of them as wearing a uniform and others as dressed in civilian clothing, many with red bands tied around their heads or wrists.⁶ She testified that she and fellow civilians were forced to work for their rebel captors and were often denied food and water. She also described female civilians as being regularly raped and beaten. After several days in captivity the witness stated that the rebels forced the civilians to form a queue. While the witness managed to slip away into the bush she testified that all of the 40 or so villagers in the queue were subsequently killed by the rebels, including four of her own children. Witness TF1-345 stated that she later saw many of these same rebels at Lunsar, where she identified their commander as Superman, a senior ranking member of the RUF.

No cross-examination was conducted by counsel for the first or third accused. Counsel for the second accused had the witness confirm that one of the commanders of the rebels was Abu Kanu, however the witness denied any knowledge of this commander having been born in Masimera Chiefdom, as suggested.

Defence Difficulties with Witness TF1-371

Witness TF1-371 is the second to last witness for the Prosecution, with one expert witness remaining, whose testimony will be interposed due to the expert witness' limited availability to testify in front of the Trial Chamber.

Prior to the Witness TF1-371 commencing his testimony, the Defence made several submissions indicating its concerns with respect to the witness and the Prosecution's disclosure obligations. Mr. Cammegh, counsel for the third accused, contended that it was not without reason that the Prosecution had left this witness to last given that the "ambit of his evidence encompasses the whole case involving the RUF"⁷. As such, he stated that the witness would be a particularly difficult one to deal with from the defence perspective. Proceedings continued in closed session as counsel elaborated on the exact

⁶ Red is the colour that became associated with RUF forces during the Sierra Leone conflict.

⁷ SCSL Transcript, 20 July 2006, page 5, line 22-23

reasons for the difficulty this particular witness posed to counsel for the third accused, which involved the alleged late disclosure by the Prosecution of key witness statements and additional information, which he contended may be in breach of Rule 66.⁸ Counsel indicated that his submission did not represent a formal objection but rather it was a preliminary exercise that would enable counsel to formulate an objection at a later stage if it became necessary, depending on the witness' oral testimony. Cammegh spoke of his fear that his team was currently being "ambushed" by the Prosecution with respect to the testimony of this witness.

Counsel for the first accused also emphasized their concern regarding the late disclosure of various witness statements and additional information of Witness TF1-371. Mr. Jordash also indicated his team's concern that this witness would be used to introduce new evidence in the Prosecution's case, as well as used to continue to mould the evidence against the accused, which has allegedly been introduced as the Prosecution case has unfolded. He stated that he wished to put these views on record for any subsequent appeal as well as for the potential future purpose of a recall of certain Prosecution witnesses.

The Trial Chamber noted these submissions made by the Defence and Witness TF1-371 proceeded with his testimony. The examination-in-chief, conducted by Prosecuting attorney Mr. Harrison, will continue next week.

⁸ Please see SCSL Rules of Evidence and Procedure. Rule 66, entitled 'Disclosure of materials by the Prosecutor', identifies the specific disclosure requirements of the Prosecution.