



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

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Summary Testimony of Witness TF2-008 Cross-Examination of Witness TF2-008 Closed session testimony of Witnesses TF2-068 and TF2-017

Summary

The Prosecution called three further witnesses this week, bringing the total number of witnesses called thus far in the CDF trial to 29. Witness TF2-008 was heard in partial closed session on the first day, but the remainder of his testimony was given in open session. The witness testified for two days, at which point he fell ill and his testimony was postponed. The chamber then heard from two witnesses, TF2-068 and TF2-017, who testified in closed session for the remainder of the week. The testimony of TF2-017 will continue into the next week of court proceedings, and TF2-008 will be called again to continue his cross-examination.

Unlike the previous week's "crime base" witnesses, whose testimony focused on alleged atrocities falling under specific counts of the indictment, Witness TF2-008 gave insider testimony centered on the CDF command structure. The witness's testimony highlighted the role of the CDF War Council and its relationship to the three accused individuals. In particular, the witness discussed a command meeting that transpired in Talia, the CDF "Base Zero," following the AFRC coup in 1997, in addition to a CDF attack on Bo in February of 1998. The witness claimed that all three accused parties were members of the leadership structure of the CDF, and they served as the final authorities in sending Kamajors to war.

Despite various attempts by the defense to establish a command and control relationship of the War Council over the Kamajors, the witness insisted that the Council served the three accused in an advisory relationship rather than as a final authority on planning and staging attacks. This testimony was brought in support of the prosecution's case that the three accused individuals fall among those who bear the greatest responsibility for the alleged crimes of the CDF. Although all three accused persons were implicated by the witness as members of the command structure, his testimony appeared to be most significant for the prosecution's case against Sam Hinga Norman, the first accused, who served as the National Coordinator of the CDF. Testimony of Witness TF2-008

The prosecution first brought an application for partial closed session to cover testimony concerning the witness's position within the Kamajor society. Grounds for partial closed session were offered on the basis that the witness's identity could be revealed, and the application was undisputed by the defense. In granting the application, Judge Boutet emphasized that closed session will only be used in exceptional circumstances. Closed session proceedings lasted for

less than an hour, and the rest of the witness's testimony was heard in open session with voice distortion measures in place.

The prosecution first established that the witness had been in Jaiama Bongor chiefdom at the time of the AFRC coup in May of 1997. At the advice of friends, who informed him that the AFRC might be retaliating against stakeholders in the overthrown party, he departed for Koribondo and stayed there for a week. He then left for Bo, but he was told that the AFRC/RUF junta had gained control of the area.

The "concerned group" and the Kamajors

The witness then testified to the formation of what he referred to as the "concerned group," which was set up with the objective of reversing the coup and reinstalling the overthrown Kabbah government. According to the witness, the group thought it should locate Kamajors within the area in order to facilitate an organized resistance to the coup. Hinga Norman had been a coordinator of the Kamajors before the time of the coup, and the group attempted to make contact with him by sending a delegation to Conakry, Guinea. The delegation eventually returned without locating Norman, but they later met with him in the village of Talia.

The witness went on to describe the meeting with all three accused parties which allegedly took place in Talia in 1997. The "concerned group" first established contact with Hinga Norman at this meeting: a delegation of the group was escorted to the village by the second accused, Moinina Fofana. Upon arrival they were taken to the third accused, High Priest Allieu Kondewa. Chief Hinga Norman arrived by helicopter two days later, and Moinina Fofana introduced him to the delegation.

The meeting was allegedly convened by Norman, and it was attended by CDF commanders as well as the delegation from the "concerned group." Norman announced that he had received arms and ammunition from General Abdul Mohammed Wan, an ECOMOG commander from Nigeria. Norman told the group that he was happy to hear that they were willing to support Kamajor efforts to free the country. He instructed the delegation to return to Bo, and some members of the group would stay behind in Talia. The witness was among those who stayed in the village, and he remained there for approximately four months.

Command structure at Base Zero

The witness testified that the leadership structure at Base Zero at the time of the meeting consisted of all three accused parties. Chief Hinga Norman was the National Coordinator of the Civilian Defense Forces. Moinina Fofana was the Director of War, and his role included planning and assisting the war effort as well as supplying arms and ammunition to the Kamajor commanders. Allieu Kondewa was the High Priest and initiator for the Kamajor society, and he was believed to have authority over all of the initiators and Kamajors. The witness claimed that no Kamajor would go to the war front without Kondewa's blessing, and he noted that Kondewa was thought to have mystical powers. According to the witness, Sam Hinga Norman, Moinina Fofana, and Allieu Kondewa functioned as the final authorities on who could go to war.

The witness used a model of the base at Talia to point out areas where Kamajors were trained, and the prosecution tendered the witness's training certificate signed by Hinga Norman into evidence. The witness further discussed the supply and distribution of arms and ammunition from the storage facility at Base Zero.

Post-coup changes in Kamajor recruitment

Expanding upon his claim that Kamajor resistance following the coup was fairly disorganized, the witness described a shift that allegedly took place in the process of Kamajor recruitment after the May 1997 coup. Before the coup, the witness claimed that there was an organized structure to Kamajor recruitment. Community members would recommend people of good character to the town chief. This recommendation would pass through the section chief, the paramount chief, the district officer, and finally to the Civil Defense Coordinator. A civil defense committee would take the decision to the initiator, who would then initiate the recommended person. After the coup, the witness testified that there was a proliferation of initiators who could initiate a Kamajor without the authority of a chief. There was no screening of Kamajor recruits, and people were asked to pay money to be initiated. Under cross-examination the witness stated that the Kamajors were disorganized following the 1997 coup.

The witness noted that he is also a Kamajor, and he was initiated by Allieu Kondewa. According to the witness, the purpose of initiation is to immunize and protect the initiate from bullets. After the initiation, the new Kamajor was then prepared to go to the war front. Before going to the front, however, the initiate required the blessing of High Priest Allieu Kondewa, who allegedly determined whether an initiate could be blessed to go to the front by looking at him. The witness maintained that he had never been to the war front and was in another wing of the CDF; the details of his location within the command structure were disclosed during closed session.

Structure and authority of the CDF War Council

According to the witness, the War Council served as the administrative wing of the CDF, and it made recommendations to Hinga Norman, who served as the National Coordinator of the CDF. The witness testified that the National Coordinator had authority over the War Council within the command structure: he was not required to endorse or follow their recommendations. The composition of the War Council included three kinds of members: district or regional representatives, those who were members due to their status (such as the Director of War), and those who were members because of talent or ability. Duties of the Council allegedly included identifying strategies and recommending them to the National Coordinator, looking into the complaints of fighters, and recommending punishments. In particular, the Council investigated complaints of looted civilian property and the killing of civilians. The War Council was not responsible for planning attacks nor for sending Kamajors to the war front.

1998 War Council meeting

The Council recommended to Hinga Norman that Bo should be taken from the junta forces, and it additionally advised him that Bo should not be attacked without consulting General Khobe, an ECOMOG commander. Khobe himself came to Base Zero in 1998, and a meeting was held wherein the Council proposed an attack on Bo and Freetown. Norman agreed to send seven hundred Kamajors to assist ECOMOG forces in Freetown, and Khobe agreed to send helicopters to transport the Kamajors to Freetown.

In the presence of Kamajor commanders, Hinga Norman announced that the CDF would attempt to take over Bo, Kenema, Freetown, and Kono. He stated that the headquarters of the CDF would then be moved from Talia to Freetown. The War Council subsequently recommended that the fighters should concentrate their attack on Bo. During his testimony, the witness emphasized that the role of the Council was to make recommendations to the National Coordinator rather than planning the attack itself.

Bo attack and establishment of the Peace Office

The attack transpired in February of 1998, and the CDF worked with ECOMOG to capture Bo [1]. The witness claimed that the CDF occupied the town for about three or four weeks following the

attack, at which point the AFRC re-captured the town from the Kamajors. The witness was en route from Base Zero to Bo with other Council members at the time when Bo was re-captured, and he waited in the town of Dalsala outside Bo for five days.

The prosecution asked the witness whether there had been any structure established in Bo to check Kamajor activities or atrocities. Judge Itoe objected to the use of the term “atrocities” by the prosecution, but the witness used the term himself when he testified that the Peace Office was established in 1998 for the purpose of checking the atrocities and excesses of the Kamajors.

Cross-Examination of Witness TF2-008

Defense counsel for Sam Hinga Norman questioned the witness’s characterization of the War Council, and he focused in particular on attempting to show that the Council had more authority in relation to the three accused than the witness had originally indicated. Under cross-examination, the witness elaborated on his previous description of the War Council, adding that Hinga Norman had wanted the Council to assist with managing the war effort. He stated that one of the responsibilities of the Council was to bring organization to the Kamajors, who had been in a state of disarray following the coup.

Defense counsel for the first accused asked whether the Kamajors were trained in the laws of war. Objections from the prosecution that the witness was being asked legal questions were overruled by the bench, with Judge Thompson remarking that the accused individuals’ alleged violations of the laws of war form the substratum of the indictment. The witness testified that he received no training in the laws of war as a member of the War Council: no booklets from the Red Cross and no instructions not to shoot unarmed civilians or unarmed combatants. The witness explained that members of the War Council were interested in strategies for defending their communities, but they had no knowledge of the laws of war. The witness further stated that the War Council did not know how many Kamajor initiates there were, nor were they aware of the total number of Kamajors.

The witness explained that Hinga Norman was the National Coordinator of Kamajors for the CDF from before the coup took place, and he had been appointed by the National Provisional Ruling Council (NPRC) for the purpose of training Kamajor groups. He would attend meetings of the War Council where misconduct issues were discussed. Violations at the war front were reported to regional commanders, who then brought reports to the War Council. The worst violation the witness had heard of were acts of killing and looting under a commander known as Vanjawai; the witness claimed that the most serious punishment for such crimes was to be threatened with death. The witness reiterated that everything recommended by the War Council was passed on to the National Coordinator, which seemed to indicate that Hinga Norman had knowledge of Kamajor misconduct in addition to a position of authority over the CDF War Council.

This testimony raises the issue of command responsibility within the CDF; in particular, the issue of who or what body had effective control over the Kamajors and CDF fighters. According to the developing jurisprudence on command responsibility, a commander must be shown to have known or had reason to know about crimes committed by his subordinates, and it must be further demonstrated that he took no measures to prevent the crimes or punish the perpetrators. Article 6(3) of the Statute of the Special Court explicitly includes an articulation of this principle.

Cross-examination from counsel for the first accused concluded when the witness announced that he was feeling ill. Cross-examination by counsel for the second and third accused will take place when the witness recovers. After some discussion regarding the order of witness testimony, the prosecution announced that it would be seeking closed session for the insider witness who would testify the following day.

Closed session testimony of Witnesses TF2-068 and TF2-017

The prosecution brought an application for closed session to hear the testimony of Witness TF2-017, and the bench granted the application in a decision read by Judge Boutet. The bench emphasized that the accused parties are entitled to a fair and public hearing; however, in the case of the current witness, an exceptional protective measure was necessary in light of the risk he would incur in testifying about certain incidents he had been involved in.

Presumably referring to the dwindling attendance in the public gallery, counsel for the third accused pointed out that the interest of the public was waning. Judge Itoe remarked that it was probably because the members of the gallery suspected that the chamber would be going into closed session, and he expressed that the public should understand that these measures are not ordered lightly by the bench. Counsel clarified that his appeal was to his colleagues within the prosecution: if they would not bring closed session applications, the bench would not grant them. Judge Itoe stated that these applications would not be granted as a matter of course, but are instead considered on a case-by-case basis. The prosecution announced that it would not be seeking closed session for the next eight witnesses, and Judge Itoe commented that this was a “healthy development.”

The ongoing discussions in the chamber about balancing the need for a public trial with the need to protect witnesses have shown no signs of a decisive resolution. The bench has recently referred to closed session as an “extraordinary measure” that should not serve as a common or default form of witness testimony. Certain measures, such as the partition shielding the witness from view of the public gallery, are employed with each witness regardless of their assessed risk. Exceptions to the use of the screen have only resulted from the witness’s own request to testify openly. Apart from such standard measures, the court seems committed to making a case-by-case assessment of what each witness requires, and closed session has been the most contentious prosecutorial request thus far. The defense teams have expressed that the prosecution seems to be bringing requests for closed sessions as a matter of course, and the prosecution insists that the court is responsible for assuring the safety of its witnesses, many of whom are scared of retaliation. The bench has thus far attempted to accommodate both sets of concerns, and it has frequently pointed out the unique location of the trial in the country where the alleged violations took place and the attendant consequences for witness security.

1.) The 5 February 2004 Indictment refers to this attack in paragraph 24 (c).