



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

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Trial Chamber II - AFRC Trial Two-week period ending 29 April 2005

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Summary

The prosecution called a further two witnesses during the second half of April, bringing the total number of witnesses called in the AFRC trial thus far to sixteen. Both witnesses testified to the alleged murder of Paramount Chief Sandy Demby in Gerihun (Bo district) in mid-1997. Chief Demby was allegedly killed by former SLA soldiers under the command of A.F. Kamara, the AFRC's Secretary of State at that time.

As the month ended, proceedings in Trial Chamber II almost ground to halt, after defense counsel sought and obtained various recesses, including an adjournment to investigate the police detention of two individuals related to their case, one of whom was a legal clerk working for Santigie Borbor Kanu's defense counsel. The progress of proceedings was further hampered by the absence of Kanu's counsel, who was allegedly traumatised by the events relating to the detention of his legal clerk and who refrained from coming to trial on two occasions during the last week of the month.

While the prosecution called Witness TF1-272, an international witness, to testify in the final week of the April, the witness was unable to testify due to defense objections to the application to have the witness's testimony heard in closed session. As a result, no witnesses were called in the AFRC trial during that week.

Witness profiles at a glance

Witness TF1-053 was born in 1939 and is married with ten children. The witness is only literate in Arabic. He is a farmer. The witness gave his testimony in Mende.

Witness TF1-054 was born in 1974 in the Bo district. He attended school up until Class 5 (Fifth grade) and has trained in building and construction. He currently works as a construction supervisor. The witness testified in Krio.

Evidence at trial*Witnesses testify to alleged murder of Chief Sandy Demby*

Witness TF1-053 and Witness TF1-054 each testified to murder of Paramount Chief Sandy Demby in Gerihun during June/July 1997 [1]. According to Witness TF1-053, eight soldiers dressed in military attire entered Chief Demby's house from the street. He was allegedly killed in his bedroom. Under cross-examination, the witness said he recognised one commander - Boysie Palmer ? and heard the name "AF Kamara" used by another combatant. Five of the soldiers are said to have entered the paramount chief's bedroom while three others remained on guard in the parlour of the house. The witness did not see who killed Chief Demby, but heard a gunshot from where he was hiding in the bush nearby.

Witness TF1-054 was staying at the Demby Hotel in the Bo district the night before Chief Demby was killed. Soldiers in search of the paramount chief allegedly ambushed the hotel. According to the witness, the soldiers raided the hotel at around 1am. Corroborating the evidence of Witness TF1-053, the witness stated that among the soldiers he saw were three he recognised: AFRC Secretary of State, AF Kamara, AFRC Brigade Commander, Boysie Palmer, and another AFRC member known as "ABK".

The witness travelled to Gerihun the day after the soldiers attacked to warn Chief Demby. The paramount chief responded, "We should leave everything to God." He attended a town meeting held by members of the RUF in Gerihun the next day, during which civilians were encouraged to ask the Kamajors to co-operate with the AFRC [2]. As the meeting was taking place, the witness heard gunshots coming from the entrance of the town. He again rushed to Chief Demby's house, in an attempt to warn him against what he believed to be an impending AFRC attack. The witness allegedly watched the murder of Chief Demby through the bedroom window of the paramount chief's house. The witness alleged that the Secretary of State for the AFRC, AF Kamara, ordered the shooting.

Under cross-examination, defence counsel put forward the theory that the paramount chief's political opponents were at the center of his murder. According to counsel for the first accused, the political landscape in the Baoma chiefdom where Chief Demby resided was dominated by two families: the Kondo family and the Demby family. In a similar strategy to that used by defense lawyers in the CDF trial, defense counsel argued that members of the Kondo family assassinated the paramount chief in an attempt to gain control of the chiefdom.

Counsel for the first accused also sought to establish that the three officers named ? AB Kamara, Boysie Palmer and ABK ? were all more senior ranking officers in the AFRC than his client, Alex Tamba Brima. Defense counsel argued that at all material times, his client, Tamba Alex Brima, was a corporal in the Sierra Leonean army and was subordinate to these officers. At times, cross-examination by counsel for the second and third accused appeared to be overly lengthy and repetitive, and the Presiding Judge directed defense counsel to refrain from adopting the same line of questioning unless it was absolutely necessary.

Potential defense witness arrested by the Sierra Leonean military police

On Tuesday, 26 April, counsel for the first accused announced that during the course of the previous weekend, a potential witness for the defense's case had been arrested by the Sierra Leonean military police. While the charges against the potential witness seemed unclear, counsel for the first accused alleged that party in question was suspected to be harbouring ammunition or military uniforms. Defense counsel believed that the Sierra Leonean military police were acting upon the orders of State House, whom they alleged may be intentionally interfering with the defense's ability to amass evidence for their clients' cases. While counsel for the first accused

seemed hesitant to draw definitive conclusions from the events over the weekend, he did infer that it seemed more than coincidental that the arrest of this potential witness had occurred as the prospect of obtaining defense witnesses from the ranks of military personnel grew more likely. He pointed to various defense initiatives taken to harness the support of witnesses from within the armed forces and noted that the defense had “more than a mere suspicion” that a body of people may attempting to intimidate potential witnesses.

Legal clerk detained by Sierra Leonean military police: defense counsel missing from trial

Similarly, duty counsel for the AFRC case, Ms Claire Carlton-Hanciles, reported that the police searched the residential premises of Mr Manley-Spaine’s legal clerk during the same weekend. According to Ms Carlton-Hanciles, the police were looking for arms and ammunition. Mr Manley-Spaine is acting as co-counsel for the third accused, Santigie Borbor Kanu.

Rather mysteriously, defense counsel for the third accused did not appear on behalf of his client on Tuesday, and then again on Thursday morning. Ms Carlton-Hanciles informed the court on Tuesday that defense counsel was traumatised by the detainment of his legal clerk and therefore had sought medical leave. However, when the court resumed sitting on Thursday, the judges were informed that none of the counsels from the AFRC defense nor the Defence Office knew the whereabouts of Mr Manley-Spaine. Despite the fact that defense counsels in the AFRC trial have agreed to adopt a joint defense of their clients’ cases, his disappearance from trial appeared wholly unprofessional, given it effectively left his client without representation. While the duty counsel for the AFRC trial noted that she was capable of representing the first accused in the absence of his counsel, she had not received any instructions from his defense team enabling her to do so. The court was subsequently informed by the Deputy Principal Defender that defense counsel was ill and was seeking further medical leave. Mindful of both the rights of the accused and the need to conduct the trial expeditiously, the judges adjourned proceedings till the afternoon to allow for the defense to determine how best to proceed.

Defense counsel for Kamara issued with a warning for misconduct

Tensions regarding the behaviour of defense counsels appeared to surface during the final week as the Presiding Judge issued a warning of misconduct to Wilbert Harris, counsel for the second accused, for the publication of articles in three newspapers which were “offensive and contrary to the interests of justice”. The articles related to the visitation rights afforded to the accused as well as what they claim to be their basic human right to see their wives present in the public gallery [3]. At present, the accused’s wives are prohibited from attending proceedings pursuant to an order holding them in contempt of court issued by Trial Chamber II.

Mr Harris defended his actions by arguing that there was no rule prohibiting counsels at the Special Court from speaking to the press about various issues relating to the cases being tried at the Special Court. Supporting his colleague’s argument, counsel for the first accused, Kevin Metzger, noted that members of the prosecution had been at liberty to speak with the press on a number of occasions and had at times made “off-the-cuff” and “cutting” remarks when doing so. As such, the defense framed the issue as a matter of equality of arms: according to the defense, it was inherently in the interests of justice that they should be able to discuss issues raised at trial with the press in the same manner as the prosecution. The Chamber noted that it was not aware of the prosecution producing any such publications and requested that those publications be made available to it.

Returning to the issue of misconduct, there appeared to be some confusion regarding which code of conduct was to be applied to counsels appearing at the Special Court. The bench noted that, so far as it was aware, counsels appearing at the court should be subject to the code of conduct of the bar association in the national jurisdiction where they usually practiced. Defense counsels

argued in the alternative, that the Special Court had produced its own code of conduct for counsel which was currently in draft form and which was to be adopted at the next plenary meeting, due to be held by the judges of the court next month. As such, they argued that the code of conduct that the court should adopt when applying Rule 46(A) was the draft code of conduct.

The Deputy Principal Defender informed the court that until the code of conduct was adopted, she believed that counsels should be subject to the rules of their domestic bar. This approach appears to be inconsistent with the approach adopted by Trial Chamber I during the course of the November 2004 session of the CDF case. During that session, the judges determined that defense counsels could be assigned as court appointed counsel, despite this potentially being at odds with the rules of the domestic jurisdiction of some of the lawyers, as the Special Court was international in character. The issue raises interesting questions about the obligations for lawyers operating in the international context given, in every other respect, they are asked to adopt the normative framework of an international legal discourse outside the ambit of their national jurisdictions.

1.) According to Witness TF1-053, the killing took place on 26 June 1997. Witness TF1-054 was less specific, stating that the events he described took place in June/July 1997. He later said under cross-examination that the paramount chief was killed “on the 26 th, it was a Thursday”, although he could not remember the month.

2.) The witness named Mike Lamin and “Mr Gbao”, which is likely to be a reference to the third accused in the RUF trial.

3.) The articles in question appeared in the local news publications *Awoko* (Tuesday, 26 April 2005), *We Yone Newspaper* (Thursday, 28 April 2005) and *The New Vision* (Thursday, 28 April 2005).



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