



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

**Special Court Monitoring Program Update #57
Trial Chamber II - AFRC Trial 5 October 2005**

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Summary Witness Profiles at a Glance Expert Testimony on the "Bush Wife Phenomenon"
Testimony by Alleged Expert on Child Soldiers Testimony Identifying the First and Third Accused
Testimony from Alleged Former Child Combatant

Summary This report covers the first three days of this week's trial. Key insider witness, Gibril Massaquoi, took the stand on Thursday and Friday, and Monitoring Report #57 provides separate coverage of his testimony.

During these first three days the prosecution called four witnesses to testify: two expert witnesses, one former Special Court staff member, and one child witness. The experts provided information and opinions on the "bush wife phenomenon" and the use of child soldiers during the war. The former court staff member affirmatively identified two of the accused, by their proper names and their aliases. The child witness gave testimony regarding his alleged experience of abduction and forced combat.

Witness Profiles at a Glance Mrs. Zainab Hawa Bangura testified as an expert witness on forced marriages during the war in Sierra Leone. She testified in open session with no witness protection measures in place. Mrs. Bangura is the founder of Campaign for Good Governance (CGG) and the Executive Director of the National Accountability Group (NAG). She speaks Krio, Timne, and English, and she testified in English.

Witness TF1-296 testified as an expert on the recruitment and use of child soldiers during the war in Sierra Leone. This witness testified in closed session and is protected as a Group I, Category C witness. Her testimony is under seal and the nature of its content cannot be released to the public.

Lt. Col. John Petrie of the British Armed Forces testified as the former Chief of Legal Operations for the Office of the Prosecutor at the Special Court. He testified in open session with no witness protection measures in place.

Witness TF1-199 is classified as a Group 1, Category B child witness and testified via closed-circuit television. He is from Bombali District and speaks Madingo, Krio and English. He claims to be 18 years old, and he testified in English.

Summaries of Witness Testimony

Mrs. Zainab Hawa Bangura: Expert Testimony on the "Bush Wife Phenomenon" Mrs. Bangura has completed numerous advanced degrees in Sierra Leone and abroad. She is the founder of Campaign for Good Governance (CGG) and the Executive Director of the National Accountability Group (NAG). She speaks Krio, Timne, and English, and she testified in English. Trial Chamber II certified her as an expert witness on forced marriages during the war in Sierra Leone.[1] She testified in open session with no special witness protection measures in place.

Background and Methodology The prosecution commissioned Mrs. Bangura in February 2005 to prepare a report describing the "bush wife phenomenon" and detailing the context in which forced marriage allegedly occurred, the meaning of forced marriage, and whether forced marriage existed before the war.[2] Her testimony aimed to support the prosecution's novel argument that forced marriage during the war constitutes a war crime and crime against humanity. Were the court to make such a finding, it would create international precedent by criminalizing this type of wartime gender-based violence.

The witness and her CGG colleagues relied on both primary and secondary sources for this report. They conducted interviews with 59 "bush wives" and a number of ex-combatants or "bush husbands", as well as paramount chiefs and religious leaders.

Description of "Forced Marriage" and its Consequences in Sierra Leone Mrs. Bangura described "forced marriage" in the context of the Sierra Leonean conflict as the physical abduction of a girl or woman by a rebel soldier, usually during an attack, where the man claims the girl or woman by saying, "yu na' mi wef".[3] According to the witness's report and testimony, there was no possibility to consent to or protest the "marriage". She distinguished this practice from arranged marriages where the girl does not consent but her family does, contending that traditional arranged marriage is an agreement between two families, whereas forced marriage is a non-consensual taking.

According to Mrs. Bangura, a bush wife would serve only one man, and she would be accountable to him as his wife, i.e. she must have sex with him, take care of him, carry his loads, do his laundry, etc. In return, her "husband" would protect her from the other rebels. The witness testified that forced marriage became a means of survival for most girls in the bush. She described the bush life as a lawless society, wherein the girls were at the mercy of their captors. Because gang-rape was prevalent in the rebel camps, she claims that most girls preferred to subject themselves to their "husband" alone, as he would then protect her from the others in the camp.[4]

Mrs. Bangura described the psychological consequences to former bush wives, noting that they often feel indebted to their bush husbands for this "protection". Moreover, Mrs. Bangura reported that some bush wives remain with their "husbands" even after the war has ended because now they have children from these men and feel they have no other choice. Other women are forced to stay with their "husbands" because they are perceived as rebel collaborators in their own communities and therefore cannot return. Some stay because they love their "husbands". Nonetheless, she contends, while it may appear that some of these bush couples are now married in the traditional sense, the origin of the bush marriage lies in an abduction, without consent by the girl or her family, and therefore constitutes a "forced marriage".

Cross-Examination Defense teams seized on the reported fact that many bush wives felt protected by their bush husbands during the war, and they remain with them in peace time. Counsel for the second accused argued that this circumstance is not indicative of a forced marriage, but rather it illustrates an initial abduction followed by a marriage of convenience, or a choice between bad and worse, but - as he emphasized - a choice nonetheless.

Defense teams also challenged the statistical basis of Mrs. Bangura's expert report and testimony, highlighting her reliance on personal experience rather than scientific data. This lack of scientific or statistical data, they argued, undermines the witness's ability to substantiate broad claims that the bush wife phenomenon generated "the most devastating effect on women of the war".[5]

Procedural Issues: Tendering the Expert's Report There was some debate in the court room as to how to handle the tendering of the expert's report. The prosecution moved to tender the report early into its examination in chief. The defense objected, citing the arguments raised in its opposition to the witness's certification as an expert, and contending that the report is based on personal rather than factual information, that it goes to the "ultimate issue" in the case, and that it is largely hearsay.[6]

The prosecution responded that the defense was "going behind" the court's order which already certified Mrs. Bangura as an expert, and that to the extent that her report may contain hearsay or personal experience those are issues of evidentiary weight, not admissibility. Finally, the prosecution responded that this report is focused solely on forced marriage, and therefore does not reach the ultimate issue of the accused's alleged responsibility for the crimes charged in the indictment.

The bench opted to postpone tender of the report until the close of cross examination, at which point the defense teams raised the same principle objections and the prosecution offered the same responses. Ultimately, the judges accepted the report into evidence.

Witness TF1-296: Closed Session Testimony of Alleged Expert on Child Soldiers This witness testified previously in closed session before Trial Chamber I. Trial Chamber II is bound by Trial Chamber I's ruling for a closed session, which was based on concerns for the witness's personal safety and a stipulation from her previous employer that she give testimony only in closed session.

In Trial Chamber I the prosecution submitted that the witness had been employed by an international organization while in Sierra Leone between 1998 and 2004.[7] and that she would give both direct evidence and expert opinions relating to the use of child soldiers during the conflict. According to these written submissions, the witness was expected to describe the following to Trial Chamber I: negotiations with commanders for releasing child soldiers, the age determination process used during disarmament, figures relating to use of child soldiers during the conflict, the process of enlisting child soldiers, and the witness's opinions regarding the motivation behind the use of child soldiers.[8]

There is no publicly available information as to the nature of this witness's expected testimony in Trial Chamber II.

Lt. Col. John Petrie: Testimony on Identification of First and Third Accused The prosecution called Lt. Col. John Petrie of the British Armed Forces as an additional witness to testify to the identity of the accused Brima and Kanu, and to confirm their aliases of "Gullit" and "55", respectively.[9] In its written submission, the prosecution argued that it was necessary to call this witness because the "unanticipated absence of the Accused from the courtroom during the evidence of witnesses who could have identified them has made an in-court identification impossible." [10]

Mr. Petrie told the court that he was part of the Special Court team that arrested the first and the third accused in Freetown on 18 January 2003. He testified that the first accused, previously known to the witness as "Gullit", stated his name to be Tamba Brima, and the second accused, previously known to the witness as "Five-Five", stated his name to be Santigi Kanu. The witness testified that he personally took these statements of identification from the accused during an

interview on the day of their arrest. On cross examination the witness admitted that neither Mr. Brima nor Mr. Kanu identified themselves as "Gullit" or "Five-Five" during this interview, though he claims they responded when called by these alleged aliases.

The witness testified that SLA soldiers were frequently called by the last few digits of their army identification number. But upon questioning by Kanu's defense, he admitted that one out of every 100 soldiers in the SLA would have had an identification number ending in "55".

All three defense counsels engaged in cross examination, despite the fact that only the first and third accused were implicated by this witness's testimony.

Witness TF1-199: Testimony from Alleged Former Child Combatant Witness TF1-199 is classified as a Group 1, Category B child witness and testified via closed-circuit television. He is from Bombali District and speaks Madingo, Krio and English. He claims to be 18 years old, and he testified in English.

The witness claimed to have fled his home in Madina Loko village when it was attacked in 1998. He testified that he was captured by rebels while hiding in the bush and "chosen" by a commander named Lt. Marrah. When the prosecution asked him if he knew who these rebels were, he explained that he later learned they were both RUF and AFRC fighters. The prosecution did not ask which group Lt. Marrah belonged to.^[11] This witness corroborated the testimony of previous witnesses by describing crimes allegedly committed in Madina Loko, Karina and Fadugu.

Witness TF1-199 said he was eleven years old at the time of his abduction into the rebel force. Throughout the CDF, RUF and AFRC trials, verifying the age of alleged former child soldiers has proved difficult for the prosecution. Defense counsel cross-examined heavily on this point, highlighting prior statements to investigators in which the witness indicated that he would be roughly 22 years old at the time of testimony. In court, the witness insisted that his mother told him he was born in 1987 and he is only 18 years old.

Witness TF1-199 told the court that he underwent a week of training in Bafodeya to learn how to shoot and dismantle a gun, how to ambush, and how to receive and obey commands. He stated that RUF Commander Savage was in charge in Bafodeya. The witness claimed that on two occasions his commander, Lt. Marrah, raped a girl in front of him, then forced him under threat of death to rape another girl himself. He estimated that he was 11 or 12 years old at the time. The witness stated that his commander sent him on many food-finding missions, forcing him to smoke "jamba" (marijuana) because it would make him brave. He told the court that he had tried to escape the rebels but was caught and flogged with the flat side of a machete, leaving a scar on his back which he showed to the video camera.

Witness TF1-199 said nothing directly relating to any of the accused. It appears that the prosecution intended this testimony simply as evidence that the AFRC did use child soldiers during the war, and that it did so in concert with the RUF.

1.) *Decision on Prosecution Request for Leave to Call an Additional Witness (Zainab Hawa Bangura) Pursuant to Rule 73bis(E), and on Joint Defense Notice to Inform that Trial Chamber of its Position Vis-a-vis the Proposed Expert Witness (Mrs. Bangura) Pursuant to Rule 94bis.* SCSL-04-16-T-365, 5 August 2005.

2.) "Expert report on the phenomenon of forced marriage in the context of the conflict in Sierra Leone, and more specifically in the context of the trials against the RUF and AFRC accused only", annexed to *Prosecution Request for Leave to Call Additional Witness Pursuant to Rule 73bis(E).* SCSL-04-16-325, 6 July 2005.

3.) This Krio phrase literally means, “you are my wife”. Mrs. Bangura testified that men used the word “wife” because it traditionally implies control and permanence. According to Sierra Leonean custom, once a man and woman are married, the man has control of the woman for the rest of her life, and she becomes part of his property.

4.) Mrs. Bangura explained that abducted women who didn’t belong to a specific husband were far worse off. They had to find their own food, they were often sent to the front to fight or spy, and they were at the sexual disposal of any man. She referred to these women as “non-bush wives”. (p. 16, para. 2 of Expert Report on ____ (title), quoted at line 26, p. 128 and lines 4-5, p. 130 of Official Transcript, 3 Oct 2005.) Apparently, although these women may have suffered greater abuses than the bush wives, they are not the focus of this report. It is also unclear whether this group would benefit from the proposed international criminal charge of “forced marriage”, given that these women were “non-bush wives” and they did not belong to a specific “husband”.

5.) P. 96, Oct. 3 rd ? lines 4-5, quoting page 6 of the report.

6.) While hearsay is admissible evidence at the Special Court, the opposing counsel is entitled to cross examine the witness as to the veracity and reliability of the hearsay statements. As the prosecution tendered the report at the beginning of its examination in chief, defense counsel argued that they had not had an opportunity to cross examine.

7.) *Prosecution Request for Leave to Call Additional Witnesses and for Orders for Protective Measures Pursuant to Rules 69 and 73bis(E)*, 15 February 2005, paragraph 15 (RUF Case, Trial Chamber I).

8.) *Ibid.* at paragraph 21.

9.) *Summary of Submissions of the Parties in Decision on Prosecution Request for Leave to Call an Additional Witness Pursuant to Rule 73bis(E)*, SCSL-04-16-T-366.

10.) *Id.*

11.) The witness did not make clear which force he was fighting with, and he stated that both AFRC and RUF fighters were involved in the incidents he described. This co-mingling of forces lends support to the prosecution’s theory of collaboration between the RUF and AFRC in pursuit of a joint criminal enterprise to use child soldiers.