



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

Special Court Monitoring Program Update #30 Trial Chamber I - RUF Trial 1 April 2005

by Sara Kendall, Senior Researcher

Continuing cross-examination of former child combatant, Witness TF1-141

The prosecution in the RUF case thus far has called a total of 28 witnesses, and the pace of the trial has proved to be considerably slower than the other two trials. This slow pace seems at least partly due to the substantial amount of testimony given by insider witnesses in recent sessions, though it also appears to result from the extensive leeway granted by the bench to cross-examination by defense counsel. As the right to examine prosecution witnesses falls under the rights of the accused, the bench intervenes infrequently, which occasionally allows the defense to continue irrelevant lines of questioning.

This week began with two days of continuing cross-examination of Witness TF1-141, the third former child combatant to be called in the RUF case thus far [1]. Thursday was a Muslim holiday, and the chamber spent the remaining two days of the week in closed session hearing evidence from an insider witness. As this witness had given evidence directly implicating all three accused, the court spent over four days in cross-examination of this witness, amounting to over a full week of court time spent exclusively on the evidence of Witness TF1-141.

This week's public testimony focused on the roles of the second and third accused within the RUF in operations in the eastern districts of Sierra Leone in 1998. Cross-examination was briefly interrupted as the court adjourned to remove a young boy from the public gallery: the Presiding Judge announced that "we are disturbed about a child like that being present in proceedings like this." Children younger than twelve years old are not permitted to attend court proceedings.

Continuing Cross-examination of Witness TF1-141

The prosecution had originally sought to call this young ex-combatant during the previous RUF trial session on 18 January, but his testimony was first delayed in order to assess his psychological state and then postponed due to allegations by the defense that the prosecution had violated its disclosure obligations [2].

Combatant relationships within the conflict

Counsel for the second accused questioned the witness's perception of the differences between fighting factions during the conflict. This theme is particularly significant for defense counsel in both the RUF and AFRC cases, as they are contesting the prosecution's allegation of a "joint criminal enterprise" between the two factions. The overlapping categories of combatants are not

always consistent in witness testimony, reflecting the changing relationships between the factions during the course of the conflict: AFRC fighters are frequently referred to as “SLAs,” former members of the Sierra Leone Army who sided with the rebels after the May 1997 coup, and the term “juntas” is often broadly defined to include AFRC and SLA combatants as well as RUF rebels. During cross-examination the witness was asked to define some of the terms he had been using, and he stated that he understood the term “combatants” to refer to the RUF or SLA, whereas the term “rebel” referred strictly to the RUF.

Kallon’s counsel explored alleged atrocities committed against the rebels: in particular, he drew the witness into describing how some soldiers and junta collaborators were burned alive by civilians and Kamajors. These alleged atrocities committed against the AFRC and RUF forces in the Kono district appeared to be retaliation for “Operation Pay Yourself,” in which junta forces looted civilian properties during their withdrawal from Freetown in February of 1998. The witness stated that Kamajors had also burned houses of some junta collaborators. Supporting the prosecution’s claim that the two factions were operating closely together with the same purpose, the witness stated that the composition of the juntas was very mixed when they captured Koidu town in the Kono district, and it was difficult to separate RUF rebels from SLAs.

Individual and Command Responsibility of Kallon and Gbao

The defense also focused on command relationships within the RUF. During examination in chief, the prosecution led evidence directly implicating Morris Kallon as the commander in charge of the men who had initially captured the witness in Koidu town. The witness had also stated that Kallon personally ordered Small Boy Units (SBUs) to go on “food finding missions,” in which civilians were captured and made to carry food for the rebels. The witness had also alleged that Kallon had taken a woman who was captured on one of these missions as his wife. These allegations would constitute individual responsibility under Article 6(1) of the Statute [3]. Counsel stated that these claims were “a figment of [the witness’s] imagination”; however, he did not provide a foundation for contesting them.

When defense counsel asked the witness if their client was only a major at the time of the events he had been described, the witness stated that “sometimes assignment is greater than rank,” a point that he repeated several times during his testimony, adding that within the RUF a person could be a corporal and be made a brigade commander. The defense has consistently tried to show that the command structure was far more fluid than the prosecution has alleged, but in this case the witness seemed to be indicating that Kallon had more responsibility than his rank would indicate. The witness claimed that he knew the second accused was a senior officer based on where Kallon stood during the muster parade.

The following day, defense counsel for Kallon returned to a particularly gruesome incident in Tomboodu that the witness had described under direct examination. The witness had alleged that rebels had made a bet regarding the fetus of a pregnant woman, and they subsequently killed her and cut her fetus in half. The witness claimed that Morris Kallon was the most senior commander who arrived after the incident had transpired. The witness maintained that the commanders did nothing to punish the perpetrators and instead “admired the situation,” which could constitute a “failure to prevent and punish” according to the Statute if the witness’s evidence is considered credible [4].

In direct examination the witness testified that Colonel Gbao was a G-5 commander responsible for screening recruits at Kailahun, and he personally used small boys as “securities.” Cross-examination by counsel for the third accused focused on the role of the G-5 commander, the position allegedly held by Augustine Gbao in Kailahun, though this was contested by Gbao’s counsel. The witness established that the G-5 was an administrative unit rather than a combat unit, and it was responsible for overseeing the relationship between RUF combatants and civilians. The defense sought to establish that Gbao’s responsibility for the alleged atrocities was

fairly limited: his unit screened new recruits to determine whether they belonged to enemy groups, and it also was responsible for deciding how many civilians were needed for rebel labor.

Trauma, memory, and witness testimony

As with other child ex-combatants, this witness was in an unusual position of being both a victim of and a perpetrator in the conflict. He had been previously diagnosed with post-traumatic stress by the court psychologist, which meant that he was considered to be a vulnerable witness who carried a greater risk of being re-traumatized through the process of testifying [5]. Despite this risk, and despite the fact that his testimony lasted for over a week, the witness appeared to adapt reasonably well to the courtroom environment. The difficulties he expressed during his testimony seemed to reflect the challenges faced by witnesses in general, who must attempt to conform memories of events that transpired years ago to the precise requirements of legal frameworks. This witness repeatedly stated that “my head is not a computer; I cannot recall everything.”

1.) Witness TF1-199 was called during the first trial session , and the second, Witness TF1-021, appeared during the second trial session. For details of their testimony, please refer to Special Court Update No. 3 and Update No. 11 respectively.

2.) Please refer to Special Court Update No. 18 for additional details.

3.) According to Article 6(1) of the Special Court Statute, individuals who “planned, instigated, ordered, and committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute shall be individually responsible for the crime.”

4.) Article 6(3) of the Statute states that “the fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior had failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

5.) See report 18, section entitled “Post-traumatic stress and witness testimony.”