



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

Special Court Monitoring Program Update #45 Trial Chamber II - AFRC Trial Covering week ending June 17, 2005

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Evidence at trial Cross examination by counsel for the first and third accused

The prosecution continued to lead the evidence of Witness TF1-334 this week. The primary focus of the witness's testimony was the AFRC/RUF attack on Freetown on 6 January 1999 and their subsequent occupation of the country's capital until the end of January. After testifying in examination in chief for over ten days, the defense began cross-examining the witness on Thursday. Cross-examination will continue through the course of next week. Evidence at trial

The prosecution alleges that on 6 January 1999, a large group of AFRC/RUF forces, as well as a significant number of civilians, entered Freetown bypassing ECOMOG resistance. The 6 January 1999 attack and the weeks that followed it forms one of the most notorious periods of the conflict, when AFRC forces are alleged to have committed a large number of atrocities, including the wide-scale amputation of a number of civilians beginning around 19 January 1999. According to the prosecution's pre-trial brief, during the invasion of Freetown and the subsequent retreat, AFRC/RUF forces killed approximately 3,000 ? 5,000 civilians, including women and children [1]. *Meeting and Colonel Eddie Town, death of SAJ Musa and subsequent entrance into Freetown*

The week began with the witness describing the AFRC's movement from Colonel Eddie Town in September 1998, down through Benguema and Allen Town and into Freetown on 6 January 1999. According to the witness, the AFRC increased the size of their force in Colonel Eddie Town, with a sixth battalion and a "Red Lion" battalion being added to the existing five battalions. A Rapid Deployment Force, comprising ex-SLA combatants was also formed. The witness further described how Musa appointed the first accused, Alex Tamba Brima (aka "Gullit"), as his deputy commander and further ordered that the second accused, Ibrahim "Bazzy" Kamara, report directly to Gullit and the third accused, Santigie Borbor Kanu (aka "Five-five") report directly to Bazzy. According to the witness, there was a distinction in the AFRC between the rank of a combatant and the assignment of a combatant: those who were subordinate in rank to another combatant wouldn't necessarily be subordinate in assignment. The prosecution may have led this evidence to show that the accused could have had "effective control" of an operation, despite being subordinate in rank to other officers within the AFRC. Determining that the accused were superior commanders (despite being subordinate in rank) is likely to be particularly important for the prosecution's case against the accused for the crimes alleged in the indictment that are punishable under Article 6.3 of the Special Court's Statute, restating the doctrine of command responsibility [2].

The three accused were nevertheless promoted in rank shortly after the AFRC left Benguema, where SAJ Musa is alleged to have died. According to the witness, many combatants believed that Gullit killed Musa at Benguema in a bid to gain power over the AFRC. Following Musa's death, Gullit took control of the troops. At this point, he is alleged to have appointed himself as Lieutenant General of the SLA, Bazy as Brigadier General and Five-five as Brigadier, Chief of Staff and third in command. *6 January 1999 attack and operations in Freetown*

Witness TF1-334 testified extensively to the AFRC occupation of Freetown and subsequent operations undertaken at Tumbu, Mamamah, Mile 38, Port Loko and Mokolo (in the Western area). In Freetown, the witness initially accompanied Supervisor "A" as part of the group of soldiers that moved from Pademba Road Prison through various parts of the city to State House. There, the third accused Santigie Borbor Kanu (aka "Five-five") allegedly announced that the army had taken over the government of President Kabbah and that the first accused, Alex Tamba Brima (aka "Gullit") was in charge of their operations. Gullit was allegedly aided by the first and second accused who each held subordinate command positions to the third accused. State House was used as the RUF/AFRC Defence Headquarters throughout this period.

The witness testified to the wide-scale looting of property and burning of houses and buildings all over Freetown during the first week of the attack. In particular, he alleged that Gullit had ordered the burning of police stations throughout Freetown: the police were believed to be collaborating with ECOMOG at this time. Gullit is further alleged to have ordered the burning of all buildings and the execution of any suspected CDF and ECOMOG collaborators.

According to the witness, the corpses of civilians littered the streets. In particular, the witness saw Gullit shoot and kill a young girl at State House and order the execution of 12 ECOMOG soldiers. Other SLA combatants are alleged to have killed civilians during this time. The witness also testified to seeing women being raped by various soldiers at State House. He further stated that the most beautiful women were raped by the three accused.

The witness testified that the AFRC forces moved as far as King Tom in the east of the city during the second week of the attack. At the time, ECOMOG forces are alleged to have held a stronghold at King Tom. During that week, Mosquito (who is alleged to have been in Kailahun at the time) announced on radio that all the buildings in Freetown should be burned down. Widescale looting and burning is alleged to have continued throughout this period.

The scale of physical violence against civilians allegedly increased during the second and third weeks of the attack. The witness described how the third accused, Santigie Borbor Kanu (aka "Five-five"), set an example for other combatants by maiming two civilians in what became known as a "short sleeve" amputation. The incident is said to have occurred while the third accused was at Uppun on the outskirts of Freetown. According to the witness, "short sleeve" amputations meant the civilians' hands were cut off at their wrists. A further ten civilians were then given "long sleeve" amputations, their arms being cut off at the elbow. Five-five allegedly told the civilians to "go to Pa Kabbah" to get new hands. "I saw it with my own eyes," the witness said. "He made sure that ? since he was going to carry out, he made sure that everybody ? he set an example for others to see and carry on with that."

Civilian abductions and sexual violence in Freetown

According to the witness, Gullit ordered SLA commanders to abduct civilians in Freetown so that the RUF/AFRC attack would "attract the attention of the international community". The civilians were made to follow the troops out of Freetown to Waterloo and Newton and on towards Benguema. The witness testified that the civilians were forced to carry loads, pound rice and undertake various domestic duties for the combatants. Women and young girls, allegedly under the command of the third accused, Five-five, were also allegedly forced into marriage and

subjected to sexual slavery. At the time, Five-five is alleged to have “married” a young girl, around the age of thirteen. Several of the young children who were abducted were also later trained to become small boy units (or “SBUs”), the name given to child combatants by the RUF/AFRC.

Attacks in the Western Area

The witness then went onto testify to the AFRC’s movement from Wellington to Benguema and out to Mamamah and onto Gberi Bana, where the ceasefire began in May 1999. According to the witness, the AFRC created a defensive position at Mamamah (outside Freetown) for which Bazy was the overall commander. The witness was at Mamamah and testified to widescale burning of civilian property while the AFRC occupied the town. Gullit and Five-five were allegedly on their way to Makeni at this time.

Cross-examination by counsel for the first and third accused

Trial Chamber II has adopted the practice that the order in which counsel for the accused cross-examine is based on the seniority of counsel, such that the most senior member of counsel cross-examines first. As such, counsel for the third accused, Santigie Borbor Kanu (aka “Five-five”) was the first to cross-examine Witness TF1-334 on Thursday of this week, followed by counsel for the first accused, Alex Tamba Brima (aka Gullit) on Friday.

After testifying for over ten days in examination-in-chief and implicating the third accused in a large number of atrocities alleged to be committed by the AFRC, cross examination by counsel for Kanu seemed surprisingly short. In particular, counsel for the third accused did not appear to challenge any of the evidence against his client relating to the period during which the AFRC occupied Freetown from 6 January 1999 to the time of their withdrawal. This included not challenging the direct allegation that Kanu had set an example for other combatants by engaging in “short sleeve” and “long sleeve” amputations at Uppun; raping women at State House; aiding and abetting the burning of Freetown and the abduction of civilians. Counsel relied instead, on arguments that tended to generally negate that his client was part of the AFRC high command. This included arguing that: there was no such position of Chief of Staff in the SLA (Five-five’s alleged appointment by Gullit before the attack on Freetown); the retreat from Freetown following the ECOMOG intervention in February 1998 was disorganised and no-one commander or group was in control; and that Johnny Paul Koroma and SAJ Musa were, at various points during the conflict, the overall commanders of the AFRC. Much of counsel’s cross-examination appeared to be reiterating the prosecution’s case, by allowing the witness to re-affirm what he had already stated in examination-in-chief.

Similarly, at certain points, counsel for the first accused, Gullit, appeared to adopt lines of cross enquiry that reiterated the prosecution’s case. In what seemed to be a bizarre twist in the interpretation of the doctrine of command responsibility, she adopted a line of questioning that allowed the witness to reaffirm that her client had ordered the burning of all the police stations in Freetown, but had failed to punish those combatants who refused to follow these orders. In other words, the witness was asked to confirm that the first accused had both ordered his subordinates to carry out acts constituting violations of international humanitarian law, and further, that he had not punished those combatants who had refused to commit such violations. The same line of cross enquiry was adopted for questions relating to the abduction of civilians. In a particularly damaging line of questioning, counsel first confirmed that when Gullit had said SLA commanders should abduct civilians to “attract the attention of the international community” he had effectively issued an order. She then asked the witness whether he had engaged in abductions. When the witness replied that he had only tried to save two children from being killed, counsel then asked whether he had been punished for “his flagrant disobedience of Gullit’s order” in doing so.

Both counsels cross-examined the witness regarding monies he had received from the prosecution and the court's Witness Protection Unit. The witness has allegedly received a total of Le 816,000 (US\$300) from the Witness and Victims Protection Unit during the course of his interactions with parties from the Special Court [3]. The material support provided to Special Court witnesses has been raised by the defence teams on numerous occasions at trial as an incentive for witnesses to cooperate with the objectives of the prosecution [4].

1.) *Prosecution's Pre-trial Brief pursuant to Order for Filing Pre-trial Briefs (Under Rules 54 and 73bis) of 13 February 2004, 5 March 2004, at paragraph 64 (SCSL-2004-16-PT).*

2.) Article 6.3 of the Statute says: 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.

3.) Based on an exchange rate of US\$1 = Le2,800. To give an example of the value of this amount, an average income in Sierra Leone for a security guard per month is approximately Le150,000.

4.) The RUF defence counsel has raised this point formally in a motion, in which they asserted that "Witnesses in a criminal case give evidence for many reasons ? truth is but one of these motivations. Why do the Prosecution seek to keep hidden from view the *possible* motivations of their witnesses and the nature of the assistance that might have encouraged them to implicate the accused?" *Defence Reply to Prosecution Response to Motion Seeking Disclosure of the Relationship between the United States of America's Government and/or Administration and/or Intelligence and/or Security Services and the Investigation Department of the Office of the Prosecutor, SCSL-04-15 (RUF), 22 November 2004.*