



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

**Special Court Monitoring Program Update #48 Trial Chamber I - CDF & RUF Trials  
Covering week ending July 8, 2005**

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Summary

The RUF trial began its fifth trial session this week, with the prosecution calling a further four witnesses in its case against the three accused Issa Sesay, Morris Kallon and Augustine Gbao. During a short status conference on Monday, the prosecution announced that it had been granted leave to add a further three witnesses added to its core witness list, bringing the total number of witnesses slated to testify in the prosecution's case to 102. Perhaps mindful of the 64 witnesses remaining in the prosecution's case, the Chamber noted that some aspects of examination-in-chief and cross-examination continued to be unduly lengthy and oblique and appealed to counsel to ensure their joint commitment to a fair and expeditious trial was upheld. Witness testimony primarily centered on events that occurred in the Kenema district during the RUF/AFRC occupation from August 1997 to May 1998.

The Chamber adjourned briefly from the RUF trial proceedings on Wednesday morning to hear submissions regarding the prosecution's admission of documentary evidence in the CDF case in accordance with Rule 92*bis* of the Special Court's Rules. The judges anticipate delivering their decision on the admissibility of this evidence on Wednesday, 13 July.

Witness profiles at a glance

*Witness TF1-272* is an international witness who testified entirely in closed session.

*Witness TF1-035* is 53 years old from the Kenyama village in the Bo district. He has two wives and thirteen children. The witness is a miner and a farmer. He has testified in both the CDF and AFRC trials. He mines diamonds and was living in Tongo Field during the RUF/AFRC occupation in 1997/98. The witness testified in Krio.

*Witness TF1-122* is 46 years old and was born in Bandasula in the Pujehun district. The witness worked as a station sergeant in the Criminal Investigation Department of the Kenema police station during the alleged RUF/AFRC occupation of Kenema from May 1997 to February 1998. The witness testified in English.

*Witness TF1-212* is 44 years old and resides in Kabala in the Koinadugu district. The witness testified in Krio.

#### Evidence at trial

Witness TF1-035 and Witness TF1-122 each testified to events that occurred in the eastern province of Kenema from late 1997 to early 1998. Corroborating the evidence of Witness [ ] who testified last session, Witness TF1-122's testimony included allegations relating to the arrest, torture and subsequent murder of B.S. Massaquoi, Brima Kpaka and Andrew Quee ? each being prominent members of the Kenema district community at the time of the AFRC's overthrow of the Kabbah government. Witness TF1-035 testified at length regarding the conditions at the "Cyborg Pit" in Tongo Field, a site where the prosecution alleges the RUF and AFRC forced an unknown number of civilians living in the Kenema district to mine for diamonds during the period from August 1997 to February 1998.

Witness TF1-212 testified to events that occurred in Tombodu (in Kono) and Koinadugu village (in Koinadugu) in April and October 1998, respectively. In particular, she testified to atrocities allegedly committed by SAJ Musa and Superman. She recalled how Superman allegedly commanded an attack on Koinadugu village where forty-eight people were hacked to death. She further alleged that all the houses in the village were burned. None of the three accused were named during the course of her testimony.

#### *Alleged forced mining at Tongo Field, Kenema*

Witness TF1-035 testified to events that occurred over a ten-day period following the RUF/AFRC entrance into Tongo Field in August 1997. According to the witness, RUF commander Sam Bockarie (aka Mosquito) entered the town along with around three hundred combatants. Upon entering the town, Bockarie allegedly announced that the RUF/AFRC had taken over Sierra Leone and that civilians should participate in diamond mining on behalf of the new government. Directly implicating the second accused, the witness had heard that Bockarie told the civilians that in his absence, Morris Kallon would be in charge at Tongo Field.

The witness is a diamond miner whose workers were allegedly enslaved by the RUF/AFRC to participate in forced mining. The witness was allegedly captured and beaten by the rebels for encouraging civilians not strike against the working conditions implemented by the new regime. According to the witness, the RUF commander Sam Bockarie originally promised civilians that they would be working in accordance with a system whereby for every five hours they worked to mine for the government they would be granted two hours to mine for themselves. Sam Bockarie left Tongo Field a few days after making this announcement and conditions at the mining pit changed. In practice, the witness alleged that the civilians were forced to mine exclusively for the government: men, women and children were held hostage at the notorious Cyborg Pit, where over one thousand civilians could allegedly participate in mining at any given time.

According to the witness, the pits were manned by three groups of combatants: small boy units (or SBUs); junior commanders; and colonel majors or senior commanders. He recalled in particular instances where the junior commanders and the SBUs had opened fire on people in the pit.

Under cross-examination, the witness admitted that in certain material respects, there were similarities between the mining conditions experienced by the civilians when mining for the rebels and the mining conditions of miners who work for him. According to the witness, his workers are not paid for the mining they undertake: workers are fed during working hours, but are paid only for the diamonds they find. The price paid for the diamonds is negotiated: the witness obtains half the profits of all the diamonds found and his twenty-two workers split the remaining half.

Continuing a familiar line of cross enquiry, counsel for the second accused argued that there was more than one commander named Morris Kallon present in the south-eastern provinces at this time, alleging that there was a member of the AFRC government who resided in Bo whose name was Morris Kallon. The witness denied having knowledge about this.

#### *Events in Kenema Town, Kenema*

Witness TF1-122 gave extensive evidence relating to alleged crimes committed by members of the RUF/AFRC between May 1997 and February 1998. In particular, the witness's testimony implicated the first accused, Issa Sesay. According to the witness, "Sesay's boys" orchestrated an elaborate "flag trick" in Kenema, whereby they would raise the national flag in the centre of the town in order to make civilians stop and subsequently rob them or order them to give them their property. The witness alleged that the flag trick was played on civilians every day. Under cross examination, counsel for the first accused pointed to discrepancies in the witness's testimony during the AFRC trial, where the witness had claimed the flag trick was a regular (but not an every day) occurrence. Counsel argued that the witness was embellishing the truth by increasing the significance of the alleged crime, which the witness denied.

Corroborating the evidence of Witness [ ], the witness also testified to the Sesay's alleged capture of the CPO and the Commissioner. No new evidence came to light regarding their capture.

The witness also testified to events occurring in the surrounding villages of Tongo Field and Segbwema (in the Kailahun district) in early 1998. In particular, a large influx of people migrated from Segbwema to Kenema at this time due to an AFRC/RUF attack on the village.

#### Legal and procedural issues

##### *Proliferation of supplementary witness statements alleged to hamper the defense's ability to cross-examine effectively*

During the course of Witness TF1-035's cross-examination, it became clear that the witness was unable to distinguish the dates and times of interviews taken by the prosecution since the time of his original interview in November 2002. The witness also appeared confused as to which interviews related to his testimony in the RUF trial (having also testified in the CDF and AFRC cases). Counsel for the first accused noted that the prosecution had served the defense with seven supplementary or "will-say" statements from interviews conducted with this witness since his original interview in November 2002. Counsel alleged that this extensive proofing of the witness by the prosecution was making it difficult for the defense to establish prior inconsistencies in his statements, as the witness seemed confused regarding the timing of his statements and was unable to distinguish when the statements were taken and by whom.

In a separate but related issue regarding supplementary witness statements, the defense have recently argued that the allegations in witness's supplementary statements contain statements that, when viewed in light of the original statements, constitute "new" allegations against the accused persons. According to the defense, allowing the prosecution to serve such statements violates the accused's rights under Article 17 of the Statute, which provides that the accused must be informed promptly and in detail of the nature and the cause of the charges against him and tried without undue delay. The prosecution has responded that in ascertaining whether the allegations made in supplementary statements are new, the court is not merely confined to a review of the original statement of the same witness, but ought to engage in an analysis of the material factual allegations of the indictment and the pre-trial brief. To date, the Chamber has agreed with the prosecution's argument, noting on a number of occasions that, in the Chamber's opinion, allegations that are germane to the general allegations set out in the indictment and the prosecution's pre-trial brief cannot be characterised as entirely new [1].

*Rule 92bis hearing in the CDF trial*

The Chamber heard legal arguments relating to the prosecution's submission of documentary evidence in the CDF trial this week. The documentary evidence the prosecution sought to submit included: reports relating to the conflict in Sierra Leone from various sources and documents written by, for or about the accused persons. The submission of documentary evidence forms an important element of the case against the accused persons, because it corroborates the testimony of the witnesses the prosecution has called.

The prosecution argued that all the documents it sought to admit should be admissible, because Rule 92bis allowed for the *prima facie* admission of all documentary evidence relevant to the prosecution's case [2]. The defense argued that the prosecution had to prove that the reliability of the evidence had been susceptible to confirmation: in other words, that the evidence was corroborated by witness testimony. The prosecution responded that the reliability of the documents in question would only need to be proved by the end of the case against the CDF accused, a submission the defense strongly opposed on the grounds that the prosecution should not be allowed to rely on the probability of the defense calling witnesses that would substantiate the documents they were tendering prior to submitting them. The Chamber anticipates delivering its decision on the issue by mid-week next week.

1.) See, in particular *Ruling on Application for the Exclusion of Certain Supplemental Statements of Witness TF1-361 and Witness TF1-122* dated 1 June 2005. For further examples see also: SCSL-04-15-T, *Ruling on Oral Application for the Exclusion of Statements of Witness TF1-141* dated respectively 9 October 2004, 19 and 20 October 2004 and 10 January 2005 dated 3 February 2005; *Ruling on Oral Application for the Exclusion of "Additional" Witness Statement for Witness TF1-060* dated 23 July 2004; *Ruling on Disclosure Regarding Witness TF1-015* dated 8 January 2005; *Ruling on Disclosure Regarding Witness TF1-195* dated 4 February 2005.

2.) Unlike the Rules for the ICTY and ICTR, which state that the Chambers must make a preliminary assessment of the probative value of evidence prior to admitting it, the Special Court's Rule provide that the Chamber must only determine that the evidence is relevant.