



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

Special Court Monitoring Program Update #61
Trial Chamber I – RUF Trial
Covering period ending November 7, 2005

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Summary

The sixth session of the RUF trial resumed on Wednesday after a lengthy recess of three months. Due to bank holidays, no hearings were scheduled for Thursday. The week began with a status conference on Tuesday under Rule 65*bis*. As with past RUF Status Conferences, a single judge conducted the hearing.

The first witness called was Witness TF1-314, who testified in court on Wednesday and Friday and came back for the second half of cross examination on Monday, 7 November 2005. On Friday and Monday, the third accused, Augustine Gbao, did not attend the hearings.

Witness Profiles at a Glance:

Witness TF1-314 is a protected witness who testified with voice distortion. The witness was born in Masingbi in 1984. She is married and has three children. Her evidence was given in Krio.

Evidence at Trial

Witness TF1-314 testified to her alleged abduction by the RUF forces and recruitment as a child soldier, to rape and forced marriage, and further, to an RUF attack on UNAMSIL forces. She also gave evidence to the command structure within the RUF forces.

The prosecution alleges that Issa Hassan Sesay and Morris Kallon, as senior commanders in the RUF, Junta and AFRC/RUF forces, and Augustine Gbao, as a senior officer in the RUF and AFRC/RUF forces, are individually criminally responsible for crimes referred to in Articles 2, 3 and 4 of the Statute, in accordance with Articles 6.1 and 6.3 of the Statute.¹

¹Amended and Consolidated Indictment (Part I) dated 13 May 2004 at paragraph 38.

The witness's testimony began with evidence to her alleged abduction from Masingbi in the Tonkolili District in 1994.² She described RUF forces entering the town. On the same day she was allegedly raped, and subsequently was brought to a camp in Buedu together with over 50 other civilians. In the camp, Issa Hassan Sesay allegedly ordered the civilians and children to be trained as soldiers.

The witness's testimony comprised the time frame starting from 1994 to 1998 when she supposedly served in the RUF forces as a child combatant. During those four years that she spent in Buedu she was forced into two marriages with RUF soldiers. According to her statement, throughout the whole period, Issa Hassan Sesay held the over-all command in Buedu, and Augustine Gbao and Morris Kallon were also based in the camp. The witness stated that all three of them had child soldiers under their command.

The witness did, however, testify to an event when the first accused, Issa Sesay punished and executed soldiers who had raped civilians. During the course of cross-examination, she explained that the punishment followed complaints raised by the victims. According to the witness, investigations were carried out with regards to these complaints. Furthermore, she confirmed that this kind of disciplinary system prevented the soldiers from committing crimes and that rapes, killings and burnings ceased.

The witness also testified to radio communications between SAJ Musa (who was supposed to hold a senior command position within the AFRC forces) and Issa Hassan Sesay that allegedly took place in 1998. She was told that SAJ Musa had sent a message concerning plans to attack Freetown.

The prosecution concluded the examination in chief with questions to an alleged RUF attack on UNAMSIL troops near Makeni. The witness stated that she had heard that Augustine Gbao and Morris Kallon had given the order to attack the UN peacekeepers. Some time later, she saw Gbao and Kallon coming back to Makeni with UNAMSIL vehicles and captured UN personnel. According to the witness's knowledge, the captured peacekeepers were subsequently brought to Kono by Gbao and Kallon.

Cross Examination

During cross-examination, the defense cast doubt on the credibility of this witness's testimony. On the whole, the cross examination seemed extensive. The defense extensively questioned the witness regarding the sources of her information. A large amount of the testimony given by the witness amounted to hearsay evidence, including her knowledge about radio communications between the commanders, about Sesay holding the over-all command in Buedu and about his ordering the training of children as soldiers.

Furthermore, the witness admitted that she had not seen Morris Kallon and Augustine Gbao in Buedu: it was later in 1998 in Makeni when she saw Gbao for the first time. Similarly, she had only seen Issa Hassan Sesay only once throughout the whole time she was based in Buedu. However, the witness insisted that, to her knowledge, Sesay had maintained command of the camp throughout her time there.

The witness also seemed to have difficulty describing Buedu under cross-examination. This appeared to discredit her testimony somewhat, given she allegedly lived there for four years. Defence counsel asserted that there was some doubt as to her being in the camp at all. Finally, as is standard procedure during cross-examination, the defense challenged the witness's

² The power of the Special Court to prosecute serious violations of international humanitarian law is restricted on the period starting from 30 November 1996, as set out in Article 1 of the Statute of the Special Court for Sierra Leone.

reliability while tendering contradictory statements that she had previously given to OTP investigators.³

Remarks

Issues relating to the rights of co-accused in joint trials were raised in the RUF trial this week, when the Chamber heard submissions from one defense counsel requesting that certain questions asked by another defense counsel be disallowed, on the grounds that the questions could incriminate his client. The Presiding Judge requested that the defense teams engage in a “healthy exchange of ideas” and stated that more discussion between them was essential in order to ensure that such submissions would not need to be put forth to the Chamber. The Presiding Judge did, however, highlight that the Chamber took the view that evidence that arose in cross-examination by one defense counsel would not be used to incriminate a co-accused. This manner of proceeding, as Judge Boutet explained, was crucial and must be observed in order to guarantee an accused’s right to a fair trial in joint proceedings.

Status Conference

Health of the Accused

This was the very first item on the Court’s agenda. Counsel for the first accused informed the Court that his client has a bullet lodged in his pelvic region which is causing him increasing pain. Court medical personnel recommended that the bullet be surgically removed, a procedure which would require medical technology that is not available within Sierra Leone.

Counsel explained that the Court has no agreement with any country which would allow the detainees entry for medical treatment. The United Nations Special Court Management Committee in New York would need to make specific arrangements with a country that could accommodate the defendant’s health needs. According to defense counsel, the Principal Defender intended to take up the issue with the Management Committee, but there has been no resolution as yet.

Judge Thompson concluded that there was not sufficient material before the Court to justify the intervention of the judges, telling counsel that the best solution is to give the problem extensive coverage on the record and involve the new Interim Registrar immediately.

Service on the Defense Office

The prosecution informed the bench that the Defense Office had refused to accept service of documents on behalf of the Gbao and Sesay teams because there were no representatives of these teams available in Sierra Leone. A representative of the Defense Office asserted that service should be undertaken by the Court Management section, citing the expense of international courier services and the limited defense team budgets.

Lead counsel for both the Gbao and Sesay defense teams had no knowledge of this issue, and did not know that the prosecution had attempted to serve them any documents via the Defense Office. While the Defense Office was arguably attempting to shield the financially compromised Defense Teams from incurring additional expenses, the lack of communication between these entities generated confusion in the court room. As with all three cases, the strained relationship between the Defense Office and the Defense Teams appears to create a significant impediment to a fair and efficient trial. Judge Thompson instructed the parties to raise the issue with Court Management.

Outstanding Motions

³ She revealed in court that she was not armed on food finding missions which differed from previously given statements. Inconsistencies were also shown concerning Augustine Gbao taking part in the attack on the UNAMSIL trucks.

At the time of the status conference, the only motion pending before Trial Chamber I was the Confidential Prosecution Notice filed under Rule 92*bis* to admit the transcripts of the testimony from Trial Chamber II of witnesses TF1-023, TF1-104 and TF1-169. The prosecution filed the Notice on 25 October 2005, and at the bench was still expecting a response from the defense. Additionally, the prosecution was awaiting decision from the Appeals Chamber on the appeal of the Trial Chamber II decision not to recognize a protected privilege between a human rights monitor and his confidential sources.⁴ The prosecution postponed the appearance of one of its expert witnesses pending this decision.

Trial Schedule and Continuing Delays

On 6 June 2005 Trial Chamber I had issued its Order for Judicial Calendar, and this session of the RUF trial was slated to commence on 11 October 2005. However, the bench opted to postpone the start date so that the judges could attend an international tribunal exchange program in The Hague.⁵ This RUF trial session thus commenced on 2 November 2005 and is expected to finish on 8 December 2005.

Witness Issues

On 5 May 2005 the prosecution had filed an updated core witness list, to which it later added one additional expert witness, for a total of 102 prosecution witnesses in the RUF case. Of these, 42 witnesses have been called thus far. The prosecution announced that it was removing five witnesses from this list, and that it intended to reduce the existing list further and file a shorter, updated list in February or March 2006.

The prosecution also noted that it had scheduled 16 witnesses to appear during this trial session, but that do to extenuating circumstances (which included the three-week delay in the commencement of this trial session), three of these witnesses were not available to testify during this trial session.

Prolonged Delays

The defense teams adamantly protested the length of the adjournment since the last trial session, as well as the last-minute postponement of the start date for this one. Counsel for the first accused argued that the three month delay between trial sessions was unexplained and imposed negatives effects on his client's state of mind, as well as counsel's own professional commitments.

Counsel for the second accused also expressed concern for his client's prolonged detention, noting that it has taken 16 months to hear the first 4 witnesses and 60 more are currently scheduled to testify. He also noted the delay between trial sessions, pointing out that the next RUF trial session is not scheduled to begin until late spring 2006.

While Judge Thompson sympathized with the defense concerns that the trial seemed to be dragging on at a slow pace, he commented that there are "all kinds of imponderables and unpredictables" that can prolong the judicial process. He also remarked that the expeditiousness of the trial would be greatly enhanced if there were a third trial chamber available. Rather than reassessing the trial schedule at this stage, Judge Thompson simply encouraged both parties to keep their examinations as brief as possible. The prosecution jokingly assured the Court that it would rest its case "sometime this decade".

⁴ *Decision on the Prosecution's Oral Application for Leave to be Granted to Witness TF1-150 to Testify Without Being Compelled to Answer Any Questions in Cross-Examination that the Witness Declines to Answer on Grounds of Confidentiality Pursuant to Rule 70 (B) and (D) of the Rules*, 16 September 2005.

⁵ The International Tribunal Exchange is presented each year by the UC Berkeley War Crimes Studies Center.

