



U.C. BERKELEY WAR CRIMES STUDIES CENTER
SIERRA LEONE TRIAL MONITORING PROGRAM
WEEKLY REPORT

Special Court Monitoring Program Update # 71
Trial Chamber I - RUF Trial
3 March, 2006

by Alison Thompson
Senior Researcher

Summary

Witness Profiles at a Glance

Status Conference

Witness TF1-213 Testimony

Witness TF1-113 Testimony

Cross-Examination of Witness TF1-113

Prosecution Application for Leave to Amend the Indictment

Summary

The 7th trial session for the RUF case began this week, with the previous session having ended on 8 December 2005. A status conference was held on Monday and the trial session began on Thursday, with all three accused in attendance. The status conference, presided over by Justice Thompson, dealt with several managerial issues including witness lists, the health of Issa Sesay and the legal representation of Augustine Gbao. The Prosecution continued to lead its case and called its 58th witness thus far. The Prosecution expects to call an estimated 23 witnesses this session, many of which are anticipated to testify in closed session. The Prosecution has also filed an application for leave to amend the Indictment as they wish to expand the time period for crimes committed in Kono. A decision by the Trial Chamber in 2004 granted such leave to the Prosecution to add the charge of forced marriage to the Indictment.

Witness Profiles at a Glance

TF1-213

This witness, the 58th for the Prosecution, testified under protective measures in Krio. Voice distortion was used in concert with other protective measures, such as a screen which shielded the witness from view of the public gallery. The witness is 22 years old and was born, and has lived periodically, in Freetown. She provided crime-base evidence about an RUF attack on the village of Lengekoro, Koinadugu district.

TF1-113

Witness TF1-113, an insider witness for the Prosecution, testified in Mende in both open and closed session. She elaborated on the full nature of her contact with the RUF and the three

accused in closed session in order to avoid divulging possible information that would reveal her identity to the public. The witness also previously testified for the Prosecution in the AFRC trial

Status Conference

The status conference preceded the trial session and dealt with matters related to the assurance of expeditious trial proceedings as well as matters of concern to the accused. Justice Bankole Thompson presided over the conference and began the proceedings by requesting comments on matters related to the accused's health and detention issues.

Mr. Wayne Jordash, lead counsel for the first accused, raised the matter of the outstanding operation for his client, Issa Sesay. The operation is required to remove a bullet lodged in the accused's pelvic region, however, delays have been caused as the Registry was attempting to make arrangements to have Sesay treated in another country. Jordash noted that it now appears that there is a real possibility that the operation could be carried out in Freetown and thus much of the bureaucratic red tape that has delayed the operation so far could be avoided. However, Jordash was careful to emphasize that, despite some progress on the matter, Sesay's condition continued to cause him ongoing discomfort and required immediate attention.

Ongoing problems related to Augustine Gbao's legal representation were also addressed at the status conference. Gbao, the third accused in the RUF case, stopped communicating with his lead counsel, Mr. Andreas O'Shea, and refused to attend court proceedings during past trial sessions¹. The situation came to a head recently when Gbao made a formal request to have lead counsel removed from his case. As such, Vincent Nmehielle, Principal Defender, was present in court given that it is the Defence Office that is responsible for appointing and dismissing counsel and ensuring that each defendant is properly represented. Mr. Nmehielle reported to the court that he had received a letter from Gbao on 17 February, 2006, formally seeking the withdrawal of his counsel. The withdrawal of counsel is usually only granted according to "most exceptional circumstances", as outlined in Rule 45(E) of the Special Court's Rules². It is especially controversial in this particular instance given the stage to which the RUF case has progressed, with the defence case due to start in the next one or two trial sessions. Mr. Nmehielle stated that after receiving the letter he met with the presiding judge, Justice Boutet, to discuss the matter as he himself does not hold the authority to withdraw counsel. This is, in fact, a mis-statement of the rules, as under Article 24 of the Directive on the Assignment of Counsel, the Principle Defender is, in fact, authorized to withdraw counsel: it is only where a request for withdrawal has been denied by the Principal Defender that counsel in question (and not the Principal Defender) may seek review from the Chamber.³ Nmehielle then recommended to the Chamber that a Sierra Leonean counsel be added to Gbao's team, which currently consists of two international counsel, due to the 'domestic dimensions' of his case. Under Article 13(B)(iv) of the Directive on Assignment of Counsel, defence counsels are chosen based on their experience in both domestic

¹Gbao has boycotted his trial from the beginning, his first appearance being on 6 July 2004, after which time he refused to attend proceedings until most recently. See *Prosecutor v Sesay, Kallon and Gbao* (Case No. SCSL-2004-15-T) "Decision on Application to Withdraw Counsel" dated 7 July 2004 available online at: <http://www.sc-sl.org/RUF-decisions.html>.

² Rules of Evidence and Procedure, 27 June 2005, available at: <http://www.sc-sl.org/rulesofprocedureandevidence.pdf>.

³ Directive on the Assignment of Counsel, 1 October 2003, available at <http://www.sc-sl.org/assignmentofcounsel.html>. For a good discussion of the interaction between the Directive on Assignment of Counsel and Rule 45 and the duty of the Principal Defender with regards to the withdrawal of counsel, see the separate and concurring opinion of Justice Gelaga King in *Prosecutor v Brima, Kamara and Kanu* (Case No. SCSL-04-16-AR-73) "Separate and Concurring Opinion of Justice George Gelaga King on Brima-Kamara Defence Appeal Motion on Trial Chamber II Majority Decision on Extremely Urgent Confidential Joint Motion for the Re-Appointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima Bazzy Kamara" dated 8 December 2005 at paragraphs 36 – 45. Available on-line at <http://www.sc-sl.org/Documents/SCSL-04-16-AR73-441-3.pdf>.

criminal law and international criminal law, as well as human rights and international humanitarian law. It has been the general policy of the Defence Office at the Special Court to appoint teams of mixed national and non-national composition, so that Sierra Leonean lawyers would provide the domestic criminal law experience and the international lawyers would provide the international law experience needed to comply with the Article's requirements.⁴

While the addition of any new counsel must come out of a defence team's existing budget, Justice Thompson emphasized that fiscal constraints should take a subsidiary position in the matter. He further indicated that the Bench was deliberating on this issue of legal representation and noted that a decision would be issued soon, likely before the commencement of the trial session. O'Shea added that he agreed with the Trial Chamber and the Principal Defender on the matter and would support whatever would facilitate Gbao to give instructions in his case.

Justice Thompson subsequently broached the subject of lengthy examinations-in-chief and cross-examinations, an issue that has been previously highlighted as an ongoing problem in the RUF case.⁵ While he took great care to note the contestable and arbitrary nature of such a judgment regarding the examinations-in-chiefs and cross-examinations, Thompson also remarked that the nature, length and quality of the examinations are necessary elements in determining whether a trial is both fair and expeditious. Despite Thompson's conscious effort not to impose limits on counsel's ability to carry out their examinations, it is apparent from his comments that the Trial Chamber is concerned that the examinations thus far have been unduly lengthy.

In terms of the more technical aspects of this conference, it was confirmed that the Prosecution had filed an updated witness list consisting of 95 core witnesses, 57 of whom have already testified, and 107 back-up witnesses. This amended list represents a slight reduction in the number of core witnesses to be called and lead counsel for the Prosecution assured the court that the Prosecution is intending to further reduce the list. It is expected that 23 witnesses will testify in this trial session and that the Prosecution will close its case in the upcoming eighth trial session.

Witness TF1-213

This crime-base witness was led in evidence by the prosecuting attorney Mr. Alain Werner. She testified that following the overthrow of the Kabbah government in 1997, rebels soldiers came to Lengekoro village, Koinadugu district, where she was living at the time. According to the witness, during the attack the rebels looted property before they began indiscriminately abducting and killing civilians as well as setting houses on fire. She testified that only the school and the mosque were spared from the destruction. After hiding in the bush, the witness stated that she later returned to the village in order to hide at her aunt's house. It was once she returned that the witness testified that she was viciously raped by a rebel soldier and was subsequently left bleeding and unconscious. Once she regained consciousness she stated that a group of rebels began to argue over her fate before the leader of the group, a soldier allegedly called 'Yellowman'⁶, amputated her right hand, and partially amputated her left one, with a machete. According to the witness, Yellowman then gave her a letter addressed to 'Pa Kabbah' telling him that Yellowman would be coming soon, which he told her to deliver to the President (then in exile in Conakry). The witness testified that she subsequently saw many other residents of Lengekoro who had also suffered amputations of their hands and feet as well as genitalia. While in Freetown receiving treatment for her wounds, the witness testified that Lengekoro was again attacked and that several members of her family were killed during the fighting.

⁴ Article 13(B)(iv) states that to be eligible to be included in the list of qualified counsel, a counsel must possess reasonable experience in criminal law, international law, international humanitarian law or international human rights law

⁵ SCSL Monitoring Project, 2nd Interim report.

⁶ 'Yellowman' was the bodyguard of RUF commander Dennis Mingo, who operated under the nickname of 'Superman'.

Both counsel for the first and third accused declined to cross-examine the witness. Counsel for the second accused, Mr. Touray, posed a handful of questions clarifying how the witness knew that it was Yellowman specifically who had perpetrated some of the alleged crimes. On the whole the witness' testimony was coherent and powerful and as such served as strong crime-base evidence for the Prosecution.

Witness TF1-113

The initial testimony of Witness TF1-113 was heard in closed session as it related to personal details that could potentially reveal her identify, however, proceedings quickly moved into open session. The witness testified that while in Giema Issa Sesay, the first accused, acted as the overall commander of the RUF rebels in the area and accordingly exercised command control over them. She also alleged that Augustine Gbao, the third accused, was the G5 commander and acted as the liaison person between civilians and rebel commanders. According to the witness, Gbao was responsible for coordinating all of the forced labour; labour used by the RUF primarily for farming purposes.

The witness testified extensively about an alleged incident in Kailahun town where Gbao was in charge of investigating allegations that civilians in Kailahun were operating as Kamajors. As a result of these investigations the witness alleged that 67 civilians were arrested, put in jail and used as forced labour by the RUF under suspicion of being Kamajors. According to the witness, Sam Bockarie, a senior RUF commander, arrived in Kailahun town and summoned the prisoners to the town's roundabout. It was from here that the witness reported that she heard gunshots coming from and, after arriving at the scene, she testified that she saw two corpses on the ground. She then recounted that she witnessed Bockarie shoot a further eight prisoners. She identified both Gbao and Sesay as being present during these events and working alongside Bockarie. The witness further alleged that Bockarie ordered MP personnel to execute the remaining 57 prisoners, which they began to do under the supervision of Gbao. The witness recounted with visible emotion that she herself had family members amongst the executed prisoners and the presiding judge called for a short recess in order to allow the witness to regain her composure.

As the witness continued her evidence she identified two of the accused, Sesay and Gbao, along with Bockarie, as being frequently accompanied by Small Boys Units (SBUs) while in Kailahun town. She also alleged that she observed Small Girls Units (SGUs) operating with the RUF and estimated that many of the members of such units were not much older than ten years old, and often younger.

Witness TF1-113 also testified about the use of forced labour by RUF commanders in Kailahun district. She recounted that G5 soldiers would go out into villages, kidnap civilians and then force them to work on RUF farms, which were under the control of high-level commanders. She specifically identified Gbao, the third accused, as one such commander.

Cross-Examination of Witness TF1-113

The cross-examination of this witness by counsel for the first accused, Mr. Jordash, was lengthy and detailed. While at times it seemed repetitive, given the insider nature of the witness' testimony and her specific testimony related to Sesay, it was also warranted.

The cross-examination by Jordash was carried out partly in closed session while questions related to the witness' identity and personal details were posed. During open session Jordash confronted the witness with purported inconsistencies between her testimony in the court room that day and her previous testimony for the AFRC trial as well as between her testimony and her

earlier statements to the Prosecution.⁷ These inconsistencies mostly related to her contention that family members of hers were amongst the civilians taken prisoner by the RUF in Kailahun town, what she exactly witnessed during the execution of these prisoners as well as the alleged kidnapping of one of her children by the RUF. The witness blamed these apparent inconsistencies on those in the Prosecution who had taken down the witness' statements.

The cross-examination by Jordash continued into Friday's proceedings in closed session. While Jordash argued that they, his defence team, "challenge her evidence across the board in terms of its credibility"⁸ the Presiding Judge, Justice Boutet intervened towards the end of the morning and warned Jordash that he was in danger of pushing the witness too far. Under Jordash's intense questioning the witness had at times become alternately unresponsive or agitated and Jordash was visibly frustrated with the lack of clear answers he was able to elicit from the witness. Justice Boutet indicated that ultimately it was up to the Bench to determine the validity of a witness' testimony. While the witness' testimony had been seemingly powerful during the examination-in-chief, Jordash's cross-examination was able to highlight numerous inconsistencies between her evidence in the two trials and her statements to the Prosecution. This, along with the witness' refusal to answer many of Jordash's questions, significantly diminished the witness' credibility.

In open session Jordash also suggested that money was a motivating factor in the witness' appearance before the Special Court in the AFRC and RUF trials. He noted that the witness has received over one million leones (USD []) from Witness and Victims Services in witness allowance and the reimbursement of medical and transportation expenses. The Prosecution objected to the imputations they claimed this suggestion made, namely that the witness was motivated to come to the court and lie due to a financial payoff. Justice Boutet stated that while Jordash would not be precluded from raising the issue of witness motivation before the Trial Chamber this was not the proper time to raise such an argument. Justice Thompson then insisted on exploring whether such questions regarding witness motivation as related to money were imputing that the court itself was involved in something illegal, as a sort of inducer to perjury by implication. Jordash maintained that it was only the intention of the witness that mattered and the debate took on a tangential aspect, finally dropped as the week's proceedings closed at 5:30.

Prosecution Application for Leave to Amend the Indictment

The Prosecution filed an application for leave to amend the indictment on 20th February 2006. The motion seeks to extend the time period for Kono crimes in paragraphs 42, 68 and 80 as well as to make a typographical change to paragraph 31 of the amended indictment. The Prosecution was previously granted leave to amend the indictment by a decision reached by the Trial Chamber on 6 May 2004.⁹ As a result, most significantly, the further and new count of forced marriage was added to the consolidated indictment.¹⁰ While the current motion remains outstanding all three defence teams submitted separate oppositional responses this week.¹¹ They argued that such an application for amendment, if granted, would translate into fresh allegations and thus amount to novel charges. The defence teams further indicated that a decision to grant such leave to the Prosecution would cause irreparable prejudice to the accused.

⁷ The Defence has access to the witness statements taken by the Prosecution according to the rules governing disclosure, namely Rule 66 of the Rules of Procedure and Evidence. Available at <<http://www.sc-sl.org/rulesofprocedureandevidence.pdf>>

⁸ Transcript, 3 March 2006, pg 16, lines 2-3

⁹ Decision on Prosecution Request for Leave to Amend the Indictment, 6 May, 2004, SCSL-2004-15-PT

¹⁰ Amended Consolidated Indictment, available at <<http://www.sc-sl.org/Documents/SCSL-04-15-PT-122-6181-6191.pdf>>

¹¹ Defence Response to Prosecution's Application for Leave to Amend the Indictment, 2 March 2006, SCSL-15-501, SCSL-15-502, SCSL-15-503.