



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

Special Court Monitoring Program Update # 88
Trial Chamber II – AFRC Trial

Week ending 29 September 2006

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Summary

This week saw the cross examination of one common defence witness, and the beginning of the individual defence case for the first Accused, Alex Tamba Brima. Seven witnesses appeared for Brima. The witnesses were all subject to special protection measures pursuant to Trial Chamber II’s decision of 9 May 2006.¹ They were consequently shielded from view from the public gallery while they testified and their identities have not been recorded in any court records or transcripts. Some of the witnesses appearing for Tamba Brima were subject to brief cross-examination by defence council for the other two Accused as well as cross-examination by the prosecution.

Witness Testimonies

Common Witness

DAB-096: Cross-examined on evidence given on Monday 18 September. The prosecution repeated allegations that the witness had come before the court to give false evidence. The prosecution claimed the witness had been a soldier under SAJ Musa’s command, and had taken active part in the second AFRC attack on Freetown. The witness denied this, claiming he only joined the army in 2002, and that he accompanied SAJ Musa’s group to Freetown as a civilian. The witness claimed to have heard SAJ Musa ordering his troops not to ‘brutalise’ the civilian population. The witness emphasised that the three Accused had been prisoners during the advance to Freetown. The witness acknowledged that the first Accused had been a personal friend, and that he had attended Brima’s engagement ceremony in 1997. He denied having maintained this

¹ [The Prosecutor v Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu \(SCSL-16-488\) “Decision on Joint Defence Application for Protective Measures for Defence Witnesses”, 9 May 2006, available on-line at: http://www.sc-sl.org/AFRC-decisions.html.](http://www.sc-sl.org/AFRC-decisions.html)

friendship to the present. The witness further denied that the first and third Accused were involved in diamond mining in Koidu Town. The prosecution alleged that the witness had met with friends of the first Accused to plan the evidence he would give in court. The witness denied this.

Witnesses appearing for the first Accused

DAB 033: Witness is male, 38 years old, is born in Tongo Field, married with two children and currently supports himself as a farmer. The witness joined the army in 1992, and received promotions in 1994 and 1996.

The witness served under SAJ Musa, whom he alleged ordered him not to attack civilians during the AFRC advance to Freetown following the ECOMOG intervention. The witness was in Kono in 1998, where he had met RUF forces under the command of Superman and Issa Sesay. He claimed that the RUF in Kono forced civilians to fight for them and to mine for diamonds. The witness was sent by SAJ Musa to Colonel Eddie Town to talk to prisoners held there by Junior Lion. The three Accused were among these prisoners. The witness claims that SAJ Musa planned and led the advance to Freetown, during which Musa was killed in an explosion. The witness claims that the prisoners escaped after this explosion. Any military operations the witness had participated in were allegedly defensive.

Cross-examination by the prosecution: Scheduled for Monday 2 October.

DAB-111: Witness is male, born in Varya Town in 1950, still resides in Varya, has two wives and seven children and currently supports himself as a farmer. The witness also holds an important, elected post in the community. As the identity of this witness is protected, the exact position he holds was not made public.

The witness testified that in the period following the ECOMOG intervention in 1998 soldiers passed through Varya, forced the inhabitants to give them food and stole civilian property. The witness did not know to what faction these soldiers belonged, but stated they could well have been RUF rebels. The witness claimed that the elder brother of the first Accused – who also bears the name Tamba Brima - and the younger brother of the first Accused, Komba Brima, came to Varya. These two allegedly pleaded with the soldiers to stop harassing civilians in the town. Komba Brima was later captured by soldiers wearing red headbands, and shot in the knee. Komba Brima reportedly repeated ‘Junior, don’t kill me’. The first Accused arrived in Varya after the shooting of his younger brother – sometime during the rainy season of 1998. The witness later heard that the first Accused had been arrested by his comrades and taken away from Varya. The first Accused had by then been in Varya for several months.

Cross-examination by the prosecution: The prosecution maintained that the witness had been a clerk for Sam Bockarie in the Kono District, and had in fact not been in Varya at the time he claims to have witnessed the shooting of Komba Brima. The prosecution claimed that the witness had invented the story about Komba Brima and Junior. In order

to substantiate this argument it noted that an account of this event had not been included in the summary of evidence which the prosecution had been given by the defence. The prosecution therefore applied to have the witness's original statement included as an exhibit, so that the judges could use it as an aid to establishing the credibility of the witness. The statement was tendered as an exhibit. The prosecution further claims that this witness had colluded with his nephew to give identical evidence to the Court. His nephew is scheduled to testify before the court under the pseudonym DAB-109.

DAB 059: Witness is male, born in 1968 in Freetown – where he still resides, and is married with children. He has worked as a police officer, but currently supports himself as a petty trader. In order to protect his identity part of his testimony was heard in closed session.

The witness worked as a body guard for Honourable X – an official responsible for mining in Kono. In order to protect the identity of the witness the real name of this person was not disclosed. The witness met Tamba Brima in Kono in December 1997. The witness remained in the Kono District until February 1998, and alleges that Tamba Brima was in Kono during that entire period. According to the witness, when ECOMOG intervened in Freetown, JP Koroma sent a message ordering Honourable Y to come to the capital. The first Accused remained in Kono due to ill health. The witness and the group he was travelling with never made it to Freetown, but met JP Koroma in Masiaka. When Koroma asked for Brima and was told he had remained in Kono, Koroma called Brima ‘a coward and a bastard’.

The witness then testified to returning to Kono in the company of Koroma. When they came to Kono they met troops who told them that Tamba Brima had told his men that they should surrender and that they should not brutalise civilians in Kono. After a meeting with Mosquito in Kailahun, JP Koroma ordered Honourable Y to kill Tamba Brima. When Brima was tracked down, they chose not to kill him and incarcerated him instead. The witness saw Tamba Brima imprisoned in Buedu Town. Later Mosquito and Rambo accused JP Koroma of wanting to desert and ordered the arrest of Koroma. The witness received one thousand lashes and was imprisoned on Mosquito's orders, as he was seen to be a Koroma sympathiser. The witness and JP Koroma was later released, but Brima remained incarcerated in Buedu. The witness claims to know who was responsible for burning civilian settlements in Kono, and that the three Accused were not among those responsible.

Cross-examination by the prosecution: scheduled for Tuesday 3 October.

DAB-095: This witness was cross-examined on evidence given 20 and 21 September 2006. Under cross-examination, the witness claimed that he never saw any of the three Accused at meetings he attended while he was a security guard at State House in Freetown during Koroma's period in power. He further maintained (as he had during his evidence in chief) that Koroma's first names are John Patrick. He continued to call Koroma John Patrick during cross examination, but also referred to him at certain times as Johnny Paul. The witness maintained that he was Koroma's body guard during

Koroma's flight from Freetown following the ECOMOG intervention. The witness explained that the RUF and the SLA formed a joint force called the People's Army in Koidu Town under the command of Superman. He further alleged that Superman ordered the burning of Koidu, but that only RUF personnel obeyed the order.

The prosecution maintained that the witness is a close friend and relative of the first Accused and that he has visited Brima in the detention facility at the Special Court on several occasions. The prosecution further claimed that the first Accused had saved the witness' life, and that the witness has met with other former SLA soldiers to fabricate testimonies to present at the Special Court. The witness denied this.

DAB-109: Witness is male, 30 years old, born in Varya and still resides there. The witness is married with children, and he used to work as a miner but presently supports himself as a farmer.

The witness testified that during the rainy season of 1998 he had been captured by soldiers together with a 'Mr Tamba'. The soldiers had threatened Mr Tamba and asked about his relatives. A 'Mr Komba' was also brutalised by soldiers some distance away from the others. Mr Komba was shouting 'Junior Lion, you have shot me!'

Cross-examination by the prosecution: The prosecution suggested that the witness had discussed his testimony with another witness who has previously given evidence before the Court. Both witnesses are staying in the same house while in Freetown to give evidence. The witness denied this. The prosecution then questioned the witness about his understanding of time, and suggested that the events he testified about may in fact have occurred in 1997. The prosecution further claimed that the nick-name 'Junior Lion' was created in 1999 in response to a particular event. The witness could therefore not have heard Mr Komba shouting 'Junior Lion, you have shot me!' in 1998.

DAB-100: Witness is male, born in 1959 in the Kono District. He has three wives, nine children and presently lives in the Kono District where he holds an important public position. In order to protect the witness' identity part of his evidence was heard in closed session.

The witness testified that SLA troops were in charge in Kono until the ECOMOG attacked Kono in February 1998. The SLA then dispersed and Kamajor soldiers and RUF rebels took control over various parts of the district. The RUF controlled large parts of Koidu Town. The witness later saw that Koidu Town had been burned, and claimed RUF rebels were responsible for this. The witness denied that the SLA were responsible for forced mining in Kono, and he had neither heard of atrocities nor seen child soldiers involved in fighting in Koidu Town. But the witness reported that 22 civilians had been killed in Mortema in June 1998 by the RUF. The witness had not heard of any of the three Accused in relation to events in Kono.

Cross-examination by the prosecution: The witness claimed he did not know that the three Accused were prominent members of the AFRC government. The prosecution

indicated that this was improbable due to the prominent position the witness held in his community. The witness denied that the RUF and the SLA mined diamonds together during the time when the AFRC government was in power. The prosecution claimed that the witness organised diamond mining operations for the SLA/RUF alliance in Kono. The prosecution also alleged that civilians were forced to mine for the SLA/RUF in Kono. The witness denied this, maintaining that the SLA and the RUF were not cooperating. The prosecution further claimed that the witness was a supporter of the AFRC government, and appeared in court to protect Tamba Brima because they were both 'Kono-men' (men born of the Kono tribe).

DAB-156: Witness is female, 26 years old, married with one child. She was born in Kono, but currently resides in the greater Freetown area. She lived in Koidu Town in 1997 and 1998.

The witness testified that Kamajors harassed and threatened to kill the families of soldiers in Koidu. The witness fled Koidu Town together with a group of civilians. She eventually reached Kabala where she was allegedly assaulted by Junior Lion, who raped her and beat her. She was forced to accompany Junior Lion as he moved around Sierra Leone. She reports that SAJ Musa was in command of the forces in Kono, and that King, Junior Lion and FAT acted as his deputies. The witness saw the three Accused in Eddie Town. They were all held as prisoners. The witness was told they were incarcerated as they had attempted to desert the AFRC. The witness accompanied Junior Lion as his men moved towards Freetown in a push to reinstate the military government. She testified that Junior Lion was in command of the group of fighters based at West Side near Freetown, and that she had again seen the three Accused as prisoners at West Side.

Cross-examination by the prosecution: The prosecution, meanwhile, maintained that Junior Lion had been injured in a car accident in Kabala, and that it was therefore impossible for him to have been the one abducting and raping the witness. The prosecution further claimed that the first Accused led the troops headed for Freetown, and that the second Accused was in charge of the base at West Side. The witness denied this. She also denied that she has lied in court in order to incriminate Junior Lion and stated clearly that she believed he had raped her.

Leading Questions

The individual defence witnesses called this week sought to give Tamba Brima alibis for periods when the prosecution alleged that he was in charge of military operations in various parts of Sierra Leone. The exact timing of the events to which the witnesses testified was therefore of crucial importance. During the evidence in chief of witness DAB-109, the prosecution objected to the defence putting questions about specific dates to the witness. The Bench agreed that asking witnesses to comment on events occurring on specific dates is inappropriate when the witness is seeking to provide the accused with an alibi. Such questions from the defence would thus in future be considered leading, and would not be allowed.

This seemed to cause difficulties for the remaining defence witnesses who testified. Given that a large percentage of the Sierra Leonean population is illiterate and many Sierra Leoneans have not completed primary education, the concept of dates, months and years is alien to many. The defence attempted to establish time by reference to specific momentous events (like the overthrow of the Kabbah government or the ECOMOG intervention) or by reference to signallers of time more commonly used in rural Sierra Leone (like the onset of the rainy season). The prohibition against providing witnesses with clues about specific dates did, however seem to cause the defence some difficulties, and many witnesses could not provide accounts of the precise time when events had taken place.

Continuing difficulties pertaining to defence witnesses

The defence teams continue to experience difficulties with their witnesses. This had again caused delays in proceedings this week. On Tuesday 26 September the court ended hearings at 10:37 as no defence witnesses were available to testify. Both witnesses scheduled to give evidence complained of ill health and remained at the witness safe house.

On Wednesday 27 September, the court was informed that two other defence witnesses were complaining of ill health and seeking medical attention at the witness safe house. This followed reshuffles in the witness list during previous weeks at trial due to witnesses' ill health.

Witnesses scheduled to testify before the Special Court are taken care of by the Witness and Victims Support Unit at a witness safe house in Freetown in the period prior to their giving evidence. Witnesses living in the safe house have access to medical services. The number of witnesses falling ill around the time of their testimony raises the question of whether witnesses with no regular access to free healthcare bring long-standing medical problems (rather than medical problems that may arise acutely while they are at the safe house) to the attention of the safe house medical staff for treatment. In the words of Presiding Judge Lussick: '...we've now got four out of the last six witnesses who are receiving medical attention and there was at least one or two last week, from memory, who needed medical attention. I hope it is not the fact that these witnesses are coming into the WVS to receive free medical attention.' (Transcript, 27 September 2006, p 4 lines 6-11)

Motion to reopen the prosecution case

On 28 September Trial Chamber II issued its decision on a prosecution motion to reopen its case and present an additional prosecution witness.² The prosecution motion, filed on 25 July 2006, is confidential and can thus not be commented on. However, in the

² [The Prosecutor v Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu \(SCSL-04-16-T-551\) 'Decision on Confidential Prosecution Motion to Reopen the Prosecution Case to Present an Additional Prosecution Witness', 28 September 2006, available on-line at http://www.sc-sl.org/AFRC-decisions.html](http://www.sc-sl.org/AFRC-decisions.html)

decision, the primary reason advanced by the prosecution for reopening its case is to call a further witness whose testimony is likely to have been significant to its case. The Bench applied the test set down by the Appeals Chamber of the ICTY in *Prosecutor v Delalic et al*³ and dismissed the motion on the grounds that the Prosecution had not discharged its burden of proof to show that with the exercise of reasonable diligence the evidence it now sought to admit could not have been found before the Prosecution closed its case. The Chamber noted that the witness in question had been interviewed by the Prosecution during investigations already in 2002, and that the statements taken at that time left no doubt that the proposed witness was “potentially a very important one”.⁴ The Chamber therefore maintained that the value of this witness’ testimony should have been apparent to the Prosecution at the time when they argued their case before the Court.

³ Decision IT-96-21-A of 20 February 2001, Para. 283. Also known as the *Celebici Appeals Judgment*.

⁴ *The Prosecutor v Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu* (SCSL-04-16-T-551) ‘Decision on Confidential Prosecution Motion to Reopen the Prosecution Case to Present an Additional Prosecution Witness’, 28 September 2006, available on-line at <http://www.sc-sl.org/AFRC-decisions.html>. ~~Ibid. at paragraph 30~~At -paragraph 30