



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

**Special Court Monitoring Program Update #19
Trial Chamber I - RUF Trial 28 January 2005**

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Continued testimony of Witness TF1-071 Admissibility: Charts tendered as proof of prior inconsistent statements Witness profile at a glance Testimony of Witness TF1-015 Disclosure to the Defense: Alleged “trial by ambush”

Events that occurred in Sierra Leone’s diamond-rich Kono district continued to dominate the RUF trial proceedings this week, with the trial chamber hearing further testimony from Witness TF1-071, a category “C” insider witness (who began testifying last week), and Witness TF1-015, a civilian allegedly abducted by the rebels in March 1998.

The cross-examination of Witness TF1-071 took up much of the week’s proceedings, with the witness continuing to testify until Thursday afternoon. In particular, Defense counsel challenged the veracity of the witness’s testimony regarding the command structure of the RUF during the 1997-2000 period and the place of each accused within that structure. Tensions between the members of the RUF and SLA/AFRC high command were also highlighted.

Frustrations with the pace of proceedings were heightened as the week began, with the Prosecution declaring that they were “very concerned about time management. We’re in the third week. We’ve finished one witness” [1]. This frustration was reiterated by the Presiding Judge later in the week, when he suggested to learned counsels that, while it was normal procedure to go into closed session, “wherever we can avoid it, please, we better do so, because the hassle is too much”.

Issues relating to the disclosure [2] and admissibility of evidence [3] continued to feature strongly, with the Defense obtaining favourable rulings from the trial chamber in relation to its submissions in both instances.

Continued testimony of Witness TF1-071 *Capture of UN Peacekeepers*

The week began with the continued examination-in-chief of Witness TF1-071, who testified to the alleged capture by the RUF of peacekeepers from Makeni, the Lunsar axis and Magburaka in June 2000 [4]. The witness had heard that the capture was orchestrated by each of the second and third accused (Morris Kallon and Augustine Gbao, respectively) and another commander, Kailondo Tamba Vanney (phon.). The alleged capture of over three hundred peacekeepers was allegedly ordered by Gbao and Kallon after a dispute relating to disarmament arose between RUF commanders and UN peacekeeping forces [5]. Senior peacekeeping commanders were taken to Tombodu and the remaining peacekeepers were sent to Yengema training base.

The witness was challenged by Defense counsel on the grounds that his testimony amounted to hearsay evidence, which, while admissible, was less reliable. Counsel for the third accused also asked the witness why the first instance in which Gbao had been named in connection with these events was during a proofing interview with the Prosecution on 20 September 2004, despite the fact that the witness had given previous statements to the Prosecution on 17 November 2002, 12 February 2003 and 13 September 2004. The witness responded that he had not specifically been asked about “the details” of the events prior to that time.

Diamond mining

Events relating to diamond mining in the Kono district during the 1998 ? 2000 period continued to feature in witness testimony this week [6]. In particular, counsel for the first accused focussed on establishing that a “two-pile mining system” was operated by the RUF from 2000 onwards. According to the witness, the “two pile mining system” operated on the principle that one pile of diamonds was reserved for civilians and the other for the RUF. The diamonds reserved for civilians served as a form of remuneration to them for their services at the mines, which they subsequently sold to RUF commanders at prices they were able to negotiate. He further testified that the “two pile mining system” did not amount to a system of forced labour and agreed that the coercive system of mining that had existed prior to 2000 ceased to exist from 2000 onwards. He also agreed that the two-pile mining system had been administered under the order of Issa Sesay, whom he first saw at the mines in 2000, and that conditions at the mines improved at this time.

RUF Command Structure

As was outlined last week, a large part of Witness TF1-071’s testimony concerned the command structure of the RUF as it existed in Kailahun and Kono during the period from late 1997 - 2000.

Sesay’s role in the command structure

The Defense’s case focuses, among other things, on establishing the proposition that there was no rigid and coherent command structure within the RUF during the period of the conflict outlined in the Indictment. In support of this argument, counsel for the first accused asserted that, from May 1997 onwards, the relationship between Sam Bockarie (aka “Mosquito”) and the RUF high command was akin to Bockarie being at the centre of a wheel and his subordinate commanders being at the end of the spokes in that wheel: namely, that control of the command structure flowed directly from Mosquito to each commander, rather than there being a firmly established chain of command. In support of this proposition, the witness agreed that Mosquito did not relinquish direct control of the Kono district in February 1998, and that Dennis Mingo aka “Superman” would have been reporting directly to Mosquito (who was based in Kailahun) rather than through other commanders at that time.

Counsel further sought to establish that, even if one agreed that the command structure in existence at the time was rigid and coherent, the accused, Issa Sesay, did not have effective control of the main combatant groups in the RUF’s principal areas of deployment during the junta period and was subordinate in rank to the commanders that did.

Witness TF1-071 agreed with counsel that the most senior commanders in the RUF at the time the RUF joined the AFRC in Freetown were Sam Bockarie, Isaac Mungo, Dennis Mingo (aka “Superman”) and Mike Lamin. He further agreed that Bockarie, Mungo, Mingo and Lamin had each been in command of the four principal areas of RUF deployment in 1996, at that time based in Kailahun, Kangari Hill (Northern Jungle), Braufaud (Western Area) and Camp Zogoda (Kenema), respectively. Counsel for the first accused also cited several examples showing these men to be holding superior ranks to Sesay, including Johnny Paul Koroma’s second address to the juntas in mid 1997, where he named Bockarie, Mingo, Superman and Lamin as “very

influential members of the RUF” (omitting Sesay) and the minutes of a Supreme Council Meeting in late 1997, which showed Mungo, Mingo and Lamin to be colonels and Sesay to be a (subordinate) lieutenant colonel.

A large part of counsel’s cross examination also focussed on attempting to establish that Issa Sesay was a Battle Group Commander in 1998 and not the Battlefield Commander attached to Mosquito (as Chief of Defense Staff), as was alleged by the witness. He asserted that the witness had repeatedly referred to Sesay as a Battle Group Commander in his witness statements, hence showing inconsistencies between the witness’s testimony and his written statements. The witness maintained that Issa Sesay was the Battle Field Commander at this time.

Kallon’s role in the command structure

Counsel for the second accused focused more acutely on establishing that Morris Kallon was a subordinate in the command structure, rather than establishing any differences between the *de jure* and *de facto* relationships existing within it. Witness TF1-071 testified that Kallon was appointed Battlefield Inspector by Issa Sesay in late 1998, a position that meant that he was effectively a special assistant and subordinate to Sesay, alleged by the witness to be the Battlefield Commander at that time. The witness further stated that the role of Battlefield Inspector was not considered a rank within the RUF, but was an assigned position in which Kallon was to administer certain combat activities and prepare missions. At that time, Kallon’s rank within the RUF was as major.

Counsel for the second accused then further established that the witness did not take any direct orders from Morris Kallon before 1999, although the witness placed Kallon at meetings in Koidu planning RUF attacks during the early part of 1998. Counsel did not refute that Kallon subsequently became a Battle Group Commander in 1999 or Battle Field Commander in 2000, but seemed to suggest that at the time he held these positions he was directly reporting to his superiors and that he was, at all times, a subordinate and a strict disciplinarian. The witness answered in the affirmative to both these assertions.

Gbao’s role in the command structure

The majority of the cross-examination undertaken by counsel for the third accused centered around refuting the witness’s allegation that Augustine Gbao was Chief of Security for the RUF from 1998 onwards. (Gbao’s counsel argued in the alternative that Gbao only held this position after 2000). He pointed out that the first time the witness had mentioned that Gbao was acting in this capacity at that time was during court proceedings last week, when the witness had stated he’d “heard Gbao was Chief of Security in 1998”. He argued that, given the witness’s intimate knowledge of the RUF command structure and dealings with RUF commanders, the witness would have met or had dealings with Gbao prior to 2000, were this to be the case. He pointed to the fact that, in charts co-authored by the witness and the Prosecution, the witness had not mentioned Gbao’s name at all, but had named Francis Musa as head of the Internal Defence Unit (Head Quarters) and Augustine Bonga as head of the Internal Defence Unit (Kono Battalion), each being positions of paramount authority in the internal security section of the RUF. The witness maintained that he had heard in 1998, from reliable sources, that Gbao was the Chief of Security.

Reiterating the notion of a lack of rigidity in the command structure, counsel for the third accused also suggested that Superman had acted outside the confines of the chain of command and was “the boss and taking orders from no-one” during the journey from Masiaka to Koidu (when he had allegedly orchestrated widescale attacks on civilians) when the RUF exited Freetown in February 1998. This suggestion was affirmed by the witness, who agreed that many of the RUF combatants perceived this to be the case at the time.

Alleged tensions between the RUF and SLA/AFRC

Witness TF1-071 also testified under cross-examination to alleged tensions and disagreements between the RUF and SLA/AFRC commanders upon the overthrow of Kabbah's government in May 1997 and during the junta period. The witness agreed that the RUF high command perceived the real power of the *de jure* AFRC government to lie, first and foremost, in the hands of those who were involved in the coup ? namely, Johnny Paul Koroma and those who were close to him ? and that the key posts of the government ministries were given to members of the AFRC and not the RUF. The witness also stated that Mosquito had told him personally that he was not going to be involved with the AFRC and was "not going to participate with them". He further testified that throughout the junta period, the AFRC maintained control of their men and the RUF fell under their own command.

Admissibility: Charts tendered as proof of prior inconsistent statements

Following on from last week's proceedings, during which the bench ruled that three charts evidencing the command structure of the RUF and co-authored by the Prosecution and Witness TF1-071 were inadmissible [7], counsel for the first accused sought, this week, to tender sections of one of the charts as evidence of inconsistent statements given by the Witness.

Defense counsel for the first accused argued that admitting the chart for this purpose was not inconsistent with the bench's previous ruling against the admissibility of the chart as part of the evidence adduced by the Prosecution's case, because the purpose for which the chart would be used, in this instance, was solely to determine the veracity of the witness's *vive voce* testimony. As such, whether the chart itself evidenced the truth of the command structure that existed in 1998 as it purported to do) was not at issue or for the bench's consideration, but rather, the ability of the witness to tell a consistent story. Counsel argued that the submission of charts in this manner was consistent with the bench's ruling with regards to prior inconsistent statements in the CDF trial [8]. Counsel for the third accused concurred with Sesay's defense counsel.

Counsel for the second accused argued that the chart should still be rendered inadmissible, on the grounds that certain sections of that chart were wholly prejudicial to his client, Morris Kallon, and that if the evidence were submitted, the second accused may become bound by the evidence as exhibited therein. Counsel characterised the argument put forward by counsel for the first accused as asking the bench to "put their reflectors on at one point and their blinkers at another".

The Prosecution responded by stating that they did not object to the admissibility of the chart as evidence of a prior inconsistent statement *per se*, but disagreed with the Defense's characterisation of the chart as a written statement of the witness, submitting in the alternative that the chart amounted to demonstrative evidence adduced for the purposes of shedding light on certain elements of the Prosecution's case. The Prosecution submitted further that, all three charts should be admitted into evidence, due to the inextricable interrelation between each of them.

After some deliberation [9], the Trial Chamber unanimously ruled that the chart should be admissible for the purpose of showing prior inconsistencies in the witness's statements with the injunctions that: (i) defense counsel highlight the sections of the chart he sought to rely on and (ii) while the chart is admissible as an exhibit to evidence inconsistent statements made by the witness, the highlighted sections of the chart and the answers given by the witness would not constitute evidence against the second accused, Morris Kallon.

Witness profile at a glance

Witness TF1-015. Witness TF1-015 is the 21st witness called by the Prosecution. He was born in the Kono District, Kono Town in 1960. The witness attended school until Form 5 and can read and write in English. He is a pastor. The witness speaks English, Kono, Krio and Mandingo. He testified in Kono with Krio translation.

Testimony of Witness TF1-015

Witness TF1-015 gave testimony as to the alleged killing of his wife and two children and his subsequent capture by the rebels in March 1998. According to the witness, he and five other people were captured in Tongoro Bush, outside Kono Town and taken to Kania in the Kono district. There, he allegedly witnessed the death of his friend, Aiah Abu, before being taken (along with 249 other civilians) to the Sunna Mosque in Hill Station, Koidu Town, where he and other civilians were greeted by rebels, some of whom were dressed in ECOMOG uniforms and others dressed in plain clothes. Among the commanders allegedly present at the Sunna Mosque were KS Banya and Alhaji Bayo (of the AFRC) as well as Morris Kallon (the second accused), Alpha Momoh, Amara Peleto, Captain Ranger, Major Kailondo, Colonel Rambo, Hungry Lion, Amara Ambush Commander and Major Rocky (of the RUF).

The witness alleged that he was taken from Koidu Town to Wandedu by Major Rocky in April 1998, where he resided at the civilian camp there. He recalled being awoken at night to the screams of women whom the rebels had forcibly taken as their wives who were allegedly being raped. He also testified to there being 25 to 30 Small Boy Unit (SBU) combatants between the ages of 12 and 16 present at the camp under the command of commanders C.O. Pepe and "Rebel Father". C.O. Pepe is alleged to have been 16 years old at the time.

The witness further testified to the burning of houses by the SBUs under the command of C.O. Pepe and the order of K.S. Banya as well as several food finding missions being undertaken by the civilians at the camp.

A large portion of this witness's testimony was given in closed session. As has become standard practice in respect of closed session proceedings, the trial chamber delivered an oral ruling granting the Prosecution's submission to proceed with a closed session in open session. The ruling was granted on the grounds that the Prosecution sought to elicit information from the witness that would likely reveal his identity to the public, hence causing a threat to the security of the witness and his family.

Disclosure to the Defense: Alleged "trial by ambush"

Friday's proceedings ground to a halt shortly before midday, after the Defense launched an objection alleging that the Prosecution had intentionally omitted information given to them by Witness TF1-015. Counsel for the first accused initially raised the objection during Thursday's proceedings, after the witness testified to his wife and children being killed by the rebels. He argued it was clear from the conduct of the Prosecutor during examination in chief that the Prosecution had already been informed of these killings, and that while the events themselves were not disputed by the Defense, a lack of disclosure in this regard was tantamount to the Prosecution conducting "a trial by ambush".

The allegations against the Prosecution became more weighted on Friday morning, when it became clear that the witness had given information to the Prosecution alleging the existence of SBU combatants and forced food-finding trips undertaken by civilians that had not been disclosed to the Defense. Counsel for the third accused became extremely irate, admitting that the non-disclosure "raised shackles" on his side of the room, because these omissions amounted to the intentional non-disclosure by the relevant Prosecutor of information that clearly affected the Defense's ability to adequately cross-examine the witness. The Prosecution responded by stating

that the principal evidence they were seeking to lead related to threats made to, and subsequent assault of, the witness by Captain Banya (as yet undisclosed). They argued further that the evidence in advance of that was introductory evidence that amplified the circumstances, but also admitted that they had prior knowledge of this evidence.

The judges of the Trial Chamber ruled unanimously that the Prosecution had breached Rule 66 of the Rules regarding its disclosure to the Defense of the circumstances of the alleged arrest and mistreatment of the witness by Captain Banya and ordered that the Prosecution disclose all information in their possession relating to these events to the Defense by the close of business on Friday. Proceedings were then adjourned for the week, to give the Prosecution leave to comply with the Chamber's order.

1.) These comments were made in response to a lengthy discussion between members of the Defense and the bench as to whether the Prosecution should be allowed to establish whether Witness TF1-071 knew certain members of the RUF high command by reading the names of those members to the witness from a list it had prepared. The Prosecution subsequently withdrew its request to ask the witness the relevant questions.

2.) The issue of the timely disclosure of evidence to the Defense was initially raised at the status conference at the beginning of this trial session and continues to be a contentious issue between the Defense and the Prosecution. See also "Special Court Monitoring Programme Update No. 17" dated 14 January 2005, at paragraph (i) *Status Conference*.

3.) See also "Special Court Monitoring Program Update No.18" dated 21 January 2005, at paragraph (iv)(d) *Evidentiary dispute: introducing a chart in place of oral testimony* .

4.) By "Lunsar axis" the witness was referring to Lunsar and its surrounding villages.

5.) According to the witness's hearsay evidence, approximately 300 peacekeepers remained at Yengema and all senior commanders were taken to Tombodu.

6.) See also "Special Court Monitoring Program Update No.17" dated 14 January 2005, at paragraph (iv)(b) *Witness testimony - Alleged forced labour II: Diamond mining*.

7.) See "Special Court Monitoring Program Update No.18" dated 21 January 2005 at paragraph (iv)(d) *Evidentiary dispute: introducing a chart in place of oral testimony*.

8.) Decision on Disclosure of Witness Statements and Cross-examination dated 16 July, 2004 (N.B.: This decision is currently not available on-line).

9.) The court adjourned for approximately one hour and forty-five minutes to consider the submissions of counsel. Upon returning, the Presiding Judge announced that their Honours would be considering the matter over the lunch break (which was one hour and forty-five minutes long). Upon returning, his Honour judge Thompson asked learned counsel for the first accused to lay the proper legal foundation in his cross examination for chart to be submitted as evidence of a prior inconsistent statement prior to the court delivering its ruling.



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