



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

**Special Court Monitoring Program Update #20
Trial Chamber I - RUF Trial 4 February 2005**

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Continued testimony of Witness TF1-015 Witness profiles at a glance Testimony relating to sexual violence Testimony relating to forced labour Testimony relating to physical violence and unlawful killings Testimony relating to attack at Tombodu and implications for mid-level commanders Further breaches by the Prosecution of Rule 66: Witness testimony relating to sexual violence and forced labour rendered inadmissible Trial Chamber No.1 rules in favour of alleged “new” evidence in child soldier’s witness statement to be admitted

The pace of proceedings in the RUF trial quickened considerably this week, with the prosecution more than doubling the number of witnesses it had called thus far in the last four days of the session. This change of pace was largely assisted by a tactical decision taken by the Defense to refrain entirely from cross-examining two of the witnesses called, a decision likely to have been adopted due to the sensitive nature of these witnesses’ testimony.

Trial Chamber No.1 heard further testimony of witnesses corroborating the evidence regarding alleged attacks on civilians in the Kono district by rebel combatants in early to mid-1998. In particular, the witnesses gave crime base testimony relating to alleged acts of sexual violence, unlawful killings and physical violence, as well as the use of civilians for forced labour in the camp at Wonedu and both in and around Tombodu.

AFRC Commanders Staf Alhaji (also known as Al Hadji Bayoh) and Savage were particularly implicated in the testimony of Witness TF1-012, supporting evidence given by Witness TF1-304 during the first week of the session [1]. The on-going implication of Alhaji and Savage in the testimony of the proceedings is particularly noteworthy, given civil society groups in Sierra Leone identified them to Human Rights Watch as mid-level commanders who they thought should be indicted by the Special Court [2].

Issues of disclosure continued to dominate the proceedings, with the Chamber issuing two further rulings regarding the Prosecution’s disclosure obligations to the Defense. These rulings have important implications for the nature and timing of the disclosure of material evidence during the course of the proceedings.

And without a word or any warning, each of the first and second accused returned to the proceedings after their two-week absence [3]. The third accused, Augustine Gbao, remains absent from the proceedings and, according to informal interviews with his legal counsel, has made no mention of wanting to return.

The session ended with a total of 25 witnesses having testified in the RUF trial thus far. Due to the new six-week timetable adopted by the court and a two week break over Easter, the trial is slated to resume on 5 April 2005.

Continued testimony of Witness TF1-015

The week began with the continued testimony of Witness TF1-015. As was the case the previous week, significant portions of this witness's testimony were given in closed session. The witness did, however, testify in open session to his arrest by RUF commander Captain Banyia, due to his assisting civilians to leave the civilian camp at Wonededu. Captain Banyia is alleged to have subsequently shoved a wooden board into the witness's mouth causing the loss of several of his teeth. The witness has been permanently maimed and as a result is unable to chew food.

Under cross-examination, the witness gave further evidence regarding the commanders whom he alleged were "in control" of the civilian camp at Wonededu and surrounding areas in Kono during the 1998-99 period. In particular, counsel for the first accused appeared to imply that mid-level commanders were in charge of the areas where the witness was taken after his capture by the rebels in early 1998. The witness agreed that the RUF commander Colonel Rambo acted as the leader at the Sunna Mosque during the time that the witness was there in 1998, and that he later was in charge and the "top commander" of the area known as Superman's ground for much of 1998. The witness was unable to testify to the whereabouts or responsibilities of Staf Alhaji (aka Al Hadji Bayoh) at this time, but asserted that Savage was in Tombodu, allegedly the site of the "Savage Pit" - a large open pit housing the bodies of civilians killed in the area. This testimony further corroborates the evidence of Witness TF1-304, who previously gave evidence as to a major rebel attack occurring in this village during that time and Witness TF1-012, who testified to the "Savage water" at Tombodu junction being a body of water that people were thrown into by the rebels after being killed [4].

Witness profiles at a glance

Witness TF1-195. Witness TF1-195 was born in Kono town in the Kono district in 1960. She belongs to the Kono ethnic group and speaks Kono and Krio. The witness is illiterate and has not received any formal education. She worked as a petty trader before the war and was married before and during the war. She currently has four children. The witness testified in Kono with English translation.

Witness TF1-192. Witness TF1-192 is from Bambafuindu in the Kono district. The witness speaks Krio and cannot read or write English. He testified in Krio with English translation.

Witness TF1-218. Witness TF1-218 is 46 years old and has four children. The witness has had no formal education. She testified in Limba with English translation. The witness's voice was distorted throughout her testimony.

Witness TF1-012. Witness TF1-012 was born in Tombodu in the Kono district. He speaks Kono and Krio and was living in Kono during the war. The witness is a farmer. The witness testified in Kono with English translation.

Testimony relating to sexual violence

Three of the five witnesses who testified this week gave evidence regarding alleged acts of sexual violence committed by the RUF, including individual and gang rape and sexual assault in 1998. The testimony of these witnesses further corroborates that given by Witness TF1-016, who testified during the October 2004 session of the RUF trial [5]. The accused are charged with four counts of sexual violence under the amended and consolidated indictment - rape, sexual slavery

(including any other form of sexual violence) and other inhumane acts, constituting crimes against humanity, and outrages upon personal dignity, a violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II (War Crimes).

Perhaps the most harrowing testimony of the week was given by Witness TF1-195, who recounted being gang raped by rebel combatants on two separate occasions, the first which occurred while she was hiding in the bushes about 2.5 miles from Gandorhun and the second at Fall Road en route to Benguema Fiama. During the first incident, the witness alleged that she was threatened at gunpoint by one rebel and subsequently forced to have sex with him and two other men, each of them watching as the other men raped her. During the second incident, the witness and six other women were made to lie on the road naked as combatants raped them. She was raped twice by two different rebels, the second of whom shoved a long stick into her vagina. The witness is still suffering from pain and injury from the incident today and her husband has left her as a result of the incidents.

Witness TF1-218 and Witness TF1-192 each testified to separate incidences of civilians being forced to have sexual intercourse in public places and being subject to sexual violence. According to Witness TF1-218, civilians were captured by the rebels and taken to a house at Cookery Junction in Bumpeh, Kono district where they were stripped naked and made to watch while a married couple were forced to have sexual intercourse with each other. The witness testified to the husband being hit on the wrist with the butt of a gun and forced at gunpoint to penetrate his wife. The couple's child was subsequently forced to wash her father's genitals. The witness then testified to being raped by two of the combatants and subsequently shot as she fled the scene.

Similarly, Witness TF1-192 testified to seeing a group of around 20 civilians being forced to have heterosexual sex with one another on the verandah of the chief's house in Bambafuindu. The witness further testified to the genitals of one man and one woman being lacerated by one of the rebels with a knife. He further alleged that the damage done to the woman's genitals precluded her from being able to have children.

Defense counsel refrained from cross-examining all three witnesses in relation to their testimony relating to sexual violence. This refrain seemed both sensitive and logical, given none of the accused were directly implicated by the witnesses and the testimony itself would likely mean the witnesses felt particularly vulnerable under scrutiny.

Testimony relating to forced labour

Witness TF1-195 and Witness TF1-012 each testified to civilians being subjected to forced labour, although the testimony given by Witness TF1-195 was deemed inadmissible by the Chamber due to the Prosecution's breach of its disclosure obligations to the Defense [6].

Witness TF1-012 was an errand boy for RUF commanders during the conflict and testified to incidences of forced labour that occurred in Tombodu and the surrounding bush areas in the Kono District in 1998. According to the witness, a convoy of vehicles led by Johnny Paul Koroma (dressed incognito) and commanders Mosquito, Rambo, Staf Alhaji and Issa Sesay arrived in Tombodu after the AFRC/RUF exit from Freetown. The commanders had allegedly orchestrated the capture of a large number of civilians from Freetown, Koidu and Tombodu who were being used to walk alongside the vehicles carrying goods for the combatants.

The witness also testified extensively to the RUF's diamond mining operations in Kono at the time the Lome Peace Accord was signed (on 7 July 1999) and thereafter. According to the witness, civilians were captured from Kono, Makeni and Kabala and were forced to mine diamonds between Tombodu and Bendutu under extremely poor conditions. The mining was allegedly undertaken under the direction of Officer Med and Gebo. The witness alleged that Officer Med

and Gebo were working under the command of Issa Sesay, who allegedly came to collect the diamonds himself and would visit the mines nearly every day. The witness further testified to the conditions at the mine having been extremely poor, with civilians not being given food or water during the times at which they worked.

A significant portion of Witness TF1-195'S testimony under cross examination was given in closed session. Defense counsel continued to allege discrepancies between the witness's *vive voce* testimony and his written statements to discredit the witness. At one point, the witness admitted to lying, because he feared that his identity may be revealed in the courtroom, calling into question the witness's understanding of closed sessions and the Prosecution's ability to request them on his behalf. Counsel for the first accused continued to attempt to establish the case that the conditions at the mines had dramatically improved when Sesay visited the mining operations from 2000 onwards.

Testimony relating to physical violence and unlawful killings

Several of the witnesses testified to alleged acts of physical violence and unlawful killings in the Kono district during 1998 this week.

Witness TF1-192, whom the Prosecution described as "a young man", testified to several brutal acts of violence occurring in his village in 1998. In particular, the witness recalled a Limba man and woman being killed at the village chief's verandah. He further testified to the female civilians in the group being taken to his father's farmhouse in the village and being subject to physical violence. The men left behind were divided into two lines and subsequently had their hand and feet amputated by three rebel commanders. The witness recalled having his right hand severed from his body by one of the rebels on this occasion. He became distraught while recalling the incident and members of the Witness and Victims Protection Unit were called upon to assist him at this time.

Witness TF1-218 also testified to several men and women being killed after incidences of forced sexual acts had occurred in the house at Cookery Junction. In particular, she testified to finding her son covered in the blood of civilians whose bodies had fallen on him. Her son had hid on the floor under the civilians and the rebels had thought him to be dead at the time. She stated that there were more bodies of dead civilians than she was able to count, but that at least five civilians had been killed.

Neither of these three witnesses were cross-examined with regards to their testimony about these alleged incidents.

Witness TF1-012 further testified to six civilians being killed in Tombodu by RUF and AFRC combatants en route to Guinea after their removal from Freetown by ECOMOG soldiers in 1998. According to the witness, a meeting was held at Pa Fania's compound (an elder in the town) where six civilians were killed due to their discovered allegiance to President Kabbah [7]. These killings were disputed under cross-examination, although the witness remained adamant that they had occurred.

The witness also gave detailed testimony about the mass slaughter of civilians under the command of Savage, who was alleged to have ordered that these civilians be thrown into the "Savage water" once they were killed. This testimony further corroborates evidence given by Witness TF1-304 earlier this session.

Testimony relating to attack at Tombodu and implications for mid-level commanders

Witness TF1-012 gave detailed testimony regarding the collaboration of RUF/AFRC commanders between 1997 and 2000. His testimony primarily centered around the RUF/AFRC withdrawal from Freetown in 1998 and the subsequent diamond mining undertaken in Kono during 1999-2000.

The witness's testimony pointed to Staf Alhaji and Savage as playing pivotal roles in the RUF/AFRC operations in Tombodu in 1998. According to the witness, the primary top-level commanders in the convoy exiting from Freetown based themselves in Kailahun, alleged to have been where the junta head quarters were based at this time. Savage and Alhaji, however, remained at Tombodu and were joined by commanders Superman, Gullit and Five-five. It was under these commander's control that small boy units were ordered to burn houses in Tombodu, the alleged site of a major junta attack at this time.

While the witness gave evidence that orders had been received from Sam Bockarie in Kailahun to proceed with the operations, the witness implied that it was Savage and Alhaji who were primarily responsible for this attack at Tombodu. His testimony once again called into question the Prosecution's interpretation of its mandate to try those who bear the greatest responsibility for the atrocities committed during the conflict. Civil society groups in Sierra Leone have expressed frustration at the fact that Alhaji and Savage have not been indicted, given the level of their involvement in the junta operations at this time. The Prosecution has said informally that it is still considering indicting further commanders, although it has not made any indication as to who would be indicted.

Further breaches by the Prosecution of Rule 66: Witness testimony relating to sexual violence and forced labour rendered inadmissible

For the second time this session, Trial Chamber No.1 ruled that the Prosecution had breached Rule 66 of the Rules, after the Defense drew to the court's attention to the fact that they had not received any disclosure in the witness statement of TF1-195 relating to the first incident of sexual violence she recounted and certain alleged incidents of forced labour undertaken by civilians near Sawoa in the Kono district. As a result, approximately 1 hour and 10 minutes of the 1 hour and 50 minutes of this witness's testimony was rendered inadmissible and will not be considered by the Chamber.

Counsel for the third accused was particularly concerned and alarmed by this second breach of Rule 66, given it seemed to have followed so soon after the first. He pointed to there being a potential threat to the breakdown of trust between the Defense and Prosecution, should such breaches not be reprimanded by the Chamber. The Prosecution admitted some responsibility for the lack of disclosure, although it noted that the witness had given very detailed testimony regarding alleged acts of sexual violence that had taken place on the same day and in locations very close to one another. It further reiterated that any breach of Rule 66 on its behalf was not intentional, and that it was deeply regrettable that Defense counsel would cast aspersions on the integrity of the Prosecution as a whole.

The issue was handled sensitively by the Chamber, who ensured that the witness was not present during the proceedings in which it heard arguments from the Defense and the Prosecution and subsequently delivered its unanimous ruling relating to the inadmissibility of her testimony.

Trial Chamber No.1 rules in favour of alleged "new" evidence in child soldier's witness statement to be admitted

The week ended with Trial Chamber No.1 releasing its decision regarding the oral application by counsels for the first and second accused for the exclusion of certain sections of evidentiary material in the statements of TF1-141, a former child soldier that was due to testify this session

[8]. The Defense had previously argued that these sections should not be admissible on the grounds that the relevant evidentiary material included entirely new allegations against the accused and amounted to a breach by the Prosecution of its disclosure obligations [9]. They further argued that allowing for the admission of this material would amount to a violation of the rights of the accused to be adequately informed of the charges against him and to have adequate time and facilities for the preparation of his defence [10].

The Chamber ruled in favour of the Prosecution to allow for the admissibility of the evidence stating *inter alia* that, consistent with the reasoning in the case of the *Prosecutor v Bagosora* [11] and the Chamber's ruling in the RUF case of 23 July 2004 [12], the disputed statements cannot be characterised as entirely new, having regard to their contents in relation to the original statements disclosed to the Defense and the basic factual allegations specified in the amended and consolidated indictment. They added further, that the allegations embodied in the respective statements taken singly or cumulatively, were not new evidence, but rather "separate and constituent different episodic events, or as it were, building blocks constituting an integral part of and connected with the same *res gestae* forming the factual substratum of the charges in the Indictment".

It is unclear whether the Chamber has deemed that the material evidence in question has to satisfy both criteria under consideration in order to be admissible (i.e. a link to both previous witness statements *and* the Indictment), or only one arm of the two (i.e. a link to the previous witness statements *or* the Indictment). If their Honours adopt the latter position, the ruling will have important implications for both sides of the bar.

From the Prosecution's perspective, it will allow for extensive leeway to submit witness statements to the Defense at any time before a witness testifies that significantly contradicts or adds to the statements previously submitted, provided those statements can be linked to the "factual sub-stratum" of the Indictment. From the Defense's perspective, the ability to assess the extent to which a particular witness called by the Prosecution will testify to circumstances which implicate their client may be considerably hampered, as they may be served with a statement that has significantly changed in its content at any time before the witness testifies. This could affect both the Defense's ability to cross-examine witnesses effectively and their ability to assess the extent and the nature of the evidence against the accused.

In light of their Honours ruling being delivered at the end of the final week of the session, Witness TF1-141 was unable to testify this session, and shall be called upon to come back to Freetown to testify later in the year, most likely when the RUF trial resumes after the Easter break, on 5 April 2005. The witness is currently attending school and had been waiting to testify in Freetown for approximately three weeks prior to being dismissed on Monday 31 January 2005. His return in April will mean that he has to miss further time in the classroom. This highlights an on-going difficulty faced by witnesses from "up country" called in the CDF and RUF trials, whose shared trial time-table means that witnesses may, at times, have to spend lengthy periods of time awaiting their turn to testify in Freetown away from their on-going commitments in the provinces. While the court's Witness and Victim's Support Unit has generally been accommodating to the needs of witnesses, the reality of the trial time-table has made this difficulty almost inevitable.

1.) See "Special Court Monitoring Program Update No.17", dated 14 January 2005.

2.) See in particular Human Rights Watch's report - "Bringing Justice: the Special Court for Sierra Leone ? Accomplishments, Shortcomings and Needed Support", September 2004, Vol.16, No 8(A) at page 19, under the heading *IV.A: Limited interpretation of "Those Who Bear The Greatest Responsibility"* available on-line at:
<http://hrw.org/reports/2004/sierraleone0904/sierraleone0904.pdf>.

3.) For further information regarding the accused decision not to attend trial, see See “Special Court Monitoring Program Update No.17”, dated 14 January 2005. Trial Chamber No.1’s ruling on the issue was also recently released on-line. See SCSL-04-15-T-305 “Ruling on the issue of the refusal of the Accused Sesay and Kallon to Appear For Their Trial” dated 19 January 2005 at <http://www.sc-sl.org/RUF-decisions.html>.

4.) Supra, note 1.

5.) See “Special Court Monitoring Program”, Update No.8 dated 22 October 2004 at *Crime Base Witnesses Testimony of TF1-016*.

6.) See the section entitled “Further breaches by the Prosecution of Rule 66: Witness testimony relating to sexual violence and forced labour rendered inadmissible” in this report.

7.) The witness alleged that the RUF/AFRC combatants (also known at that time as “soldiers”) had discovered voter ID cards which stated these civilians had voted for Kabbah.

8.) The Chamber was mindful of the Prosecution’s response to the application and the Defense’s reply thereto. The Chamber also released an oral ruling in support of its decision to deny the admission into evidence of charts co-authored by the Prosecution and Witness TF1-071. See “Special Court Monitoring Program Update No.18” dated 14 January 2004 at *Evidentiary Dispute: Introducing a Chart in Place of Testimony*.

9.) In particular, the Prosecution’s disclosure obligation under Rule 66(A)(ii) of the Rules, which governs its continuous disclosure obligation. This rule provides that the Prosecution must disclose copies of the statements of all additional prosecution witnesses whom the Prosecutor intends to call to testify not later than 60 days before the date for trial, or as otherwise ordered by a Judge of the Trial Chamber upon good cause being shown by the Prosecution.

10.) As articulated under Article 17(4)(a) and (b) of the Statute for the Special Court for Sierra Leone.

11.) The case against Theoneste Bagosora is currently in progress at the International Criminal Tribunal for Rwanda . See Prosecutor v. Bagosora, ICTR-98-41-T, *Decision on the Admissibility of Evidence of Witness DP dated 18 November 2003* and *Decision on Certification of Appeal Concerning Will-Say Statements of Witnesses DBQ,DP and DA*.

12.) This decision is not available on-line.



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