



U.C. Berkeley War Crimes Studies Center

Sierra Leone Trial Monitoring Program

CHARLES TAYLOR TRIAL REPORT (December 1, 2008 – February 28, 2009)

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Overview

After 205 days—or 41 full weeks—of court sessions, examination of the Prosecution’s 91st and final witness concluded on January 30, 2009. Prosecutor Stephen Rapp said his team had “achieved what [they] set out to do.”¹ Proceedings ran smoothly and efficiently in these final weeks. The Defendant missed a single day of trial on the last day of the session, but he gave consent for the trial to proceed in his absence. The trial session extended several days past the original schedule in December so the Defense could finish cross-examining witness TF1-274, Dauda Fornie, before the winter recess (December 12, 2008 – January 12, 2009). Fornie, a radio operator in the RUF, provided the last strong linkage testimony heard in open session. Upon resuming hearings in January, the Court heard the remaining seven Prosecution witnesses. Hassan Bility, a Liberian journalist, testified that Taylor had him tortured for authoring newspaper articles about Taylor’s involvement with the RUF in Sierra Leone. Special Court for Sierra Leone employee Tarik Maliq testified about how documentary evidence is processed at the SCSL. One witness gave testimony entirely in closed session. The Prosecution closed the session with four crime-base witnesses. These witnesses provided testimony about the atrocities allegedly committed by the RUF and AFRC forces in Sierra Leone from 1996 to 2002. The witnesses are as follows:

1. TF1-274, Dauda Aruna Fornie aka DAF (linkage)
2. TF1-355, Hassan Bility (crime-base witness)
3. Tarik Maliq
4. TF1-168 (closed session)
5. TF1-062 (crime-base)
6. TF1-174 (crime-base)
7. TF1-303, Finda Gbamanja (crime-base)
8. TF1-278, Alusine Conteh (crime-base)

The Court addressed several routine procedural matters during this session as well. On January 19, 2009, Justice Richard Lussick became the Presiding Judge for Trial Chamber II, taking over from Justice Theresa Doherty at the end of her one year rotation. At a status conference on February 27, 2009, after the Prosecution officially rested its case, the Trial Chamber addressed the Rule 98 “Motion for Judgment of Acquittal” that customarily arises at the close of

¹ Special Court for Sierra Leone, Office of the Prosecutor Press Release, February 2, 2009.

Prosecution evidence.² Counsel for the Accused confirmed that the Defense intended to file such a motion, and sought to fix a date for oral arguments. The Defense requested 40 working days to prepare its arguments; the Prosecution countered that this constituted undue delay and suggested a period of 10 working days instead. The Trial Chamber ultimately granted 25 working days, and scheduled oral arguments for April 6, 2009. Also during the status conference, the Court declined the Prosecution's request to set a date for the start of the Defense case, stating that it would be inappropriate to do so before deciding the Rule 98 motions.³

As with the previous reports, available online at <http://charlestaylortrial.org/trial-reports/>, this report summarizes witness testimony heard during this period and identifies legal and procedural issues that have arisen at trial.

Prosecution Themes and Strategies

The conclusion of the Prosecution's case in chief touched upon linkage evidence and documentary authentication, before returning to a review of the key atrocities that constitute the crime-base. The Prosecution began this reporting period with important linkage testimony from a radio operator who worked in Liberia and in Sierra Leone. The witness testified he had worked with Sam Bockarie on at least three separate occasions between 1997 and 1999. He provided damaging testimony about Taylor having given direct orders to Sam Bockarie regarding RUF military operations. Prosecution witness Hassan Bility also provided at least circumstantial linkage evidence of Taylor's involvement in the Sierra Leone conflict. Bility testified about being tortured on Taylor's orders for publishing unfavorable newspaper articles about the Accused when he was President of Liberia. While this testimony certainly suggested that the Defendant had a character for cruel and vindictive behavior, any linkage between Taylor and the conflict was established primarily by inferential reasoning—his testimony seemed to ask the Court to conclude that Taylor's underlying motivation for having Bility tortured was that the witness's articles truthfully and accurately exposed the extent of Taylor's involvement in the conflict in Sierra Leone.

The Prosecution also led evidence from a Special Court employee, Tarik Maliq, in compliance with an August 2008 decision from Trial Chamber II that required the Prosecution to lay a proper foundation before introducing documents into evidence via Rule 89(c).⁴ In order to admit certain documents into evidence before closing its case, the Prosecution called Maliq at the last minute to authenticate records and testify about Special Court record keeping procedures.⁵

Ending its case on a dramatic note, the Prosecution called four crime-base witnesses, one from each from major victim group in Sierra Leone: a victim of looting and a witness of burning

² Rules of Procedure and Evidence, Rule 98. The rule states "if, after the close of the case for the prosecution, the evidence is such that no reasonable tribunal of fact could be satisfied beyond a reasonable doubt of the accused's guilt on one or more counts of the indictment, the Trial Chamber shall enter a judgment of acquittal on those counts." *Id.*

³ Notably, the Court arrived at this holding in spite of the Prosecution's argument that setting such dates before Rule 98 hearings has been standard operating procedure in similar complicated, high profile cases at international tribunals.

⁴ Rules of Procedure and Evidence, Rule 89(c) states that "a Chamber may admit any relevant evidence."

⁵ See the Charles Taylor Trial Report for August for a detailed discussion of this issue.

(TF1-062), a man who worked closely with child soldiers (TF1-174), a victim of rape and forced marriage (Finda Gbamanja), and an amputation victim (Alusine Conteh). By ending its case with a broad swath of testimony about atrocities allegedly committed by the RUF and the AFRC during the indictment period, the Prosecution likely sought to conclude with the maximum emotional impact on the Bench, and remind the Court of the human face of the injuries suffered across Sierra Leone as a result of Taylor's alleged involvement in the civil war.

The Prosecution's Case Overall

The categorical breakdown for the 91 witnesses who testified throughout the Prosecution's case in chief is as follows:

Crime-base (victim) witnesses: 56
Linkage (insider) witnesses: 31
Expert witnesses: 4

Of these 91 witnesses, 64 testified in open session. Twenty-three witnesses testified in open session with protective measures, and the remaining four witnesses testified in closed session.⁶ As is apparent from these numbers, the Prosecution called almost twice as many crime-base witnesses as it did linkage witnesses. This illustrates the Prosecution's tendency to highlight the horror of events suffered in Sierra Leone, and the effect this has had on victims of the civil war, rather than to emphasize evidence of Taylor's direct involvement with the war.

Further reflecting this prosecutorial tendency, a press release issued by the Office of the Prosecutor (OTP) at the close of evidence focused more on the emotional drama of the final witness's story than on the strength of the overall evidence linking Taylor to the atrocities committed or the legal developments that had arisen during the Prosecution's year-long case.⁷ Indeed, the OTP neglected to provide even a cursory summary for the press of the linkage evidence and the theories of liability upon which the Prosecution rests its case against Taylor.⁸ This is both surprising and disappointing, given the high profile nature of the trial and the fact that it is the first international criminal trial brought against a sitting head of an African State. While proving the commission of crimes in Sierra Leone is an important part of the Prosecution's case, Taylor's personal responsibility for and link to the commission of these crimes is ultimately the most critical element of the case against the Accused, and arguably the more difficult element to establish beyond a reasonable doubt. To the extent that the Prosecution is confident it has met its burden of proof in this respect, one would have expected the OTP to highlight such evidence in its press release at the close of evidence, rather than simply reiterating the same emotionally charged rhetoric about victims.

⁶ Correspondence with Special Court for Sierra Leone, Office of the Prosecutor.

⁷ Special Court for Sierra Leone, Office of the Prosecutor Press Release, February 2, 2009.

⁸ *Id.*

Defense Themes and Strategies

The Defense continued its strategy of impeaching witnesses with prior inconsistent statements they had made in interviews with the Prosecution or testimony in other trials. The Defense also sought to elicit testimony in favor of its case from linkage witness Dauda Fornie, questioning him about discord between the RUF and AFRC and Taylor's involvement in the Lome peace talks.

With crime-base witnesses, the Defense continued to draw out distinctions between the RUF and AFRC soldiers. The Defense maintains that Taylor did not have control or influence over the AFRC and thus cannot be held responsible for crimes they committed. As such, during its cross-examinations, the Defense highlighted differences in the clothing worn by RUF and AFRC soldiers, and asked witnesses about how the individual who allegedly perpetrated these crimes was dressed. If a witness responded that the individual was wearing military clothing, as opposed to civilian clothing, this would bolster the Defense's position that the AFRC was responsible for that particular crime. The Defense also continued to focus on discord between the two groups, and on whether it was the AFRC alone that led the invasion on Freetown in 1999. The evidence tended to show that the groups, although distinct, often worked side by side and were considered part of the same force by witnesses. Testimony indicated that while an individual who committed a crime may have been dressed in military clothing, they were often accompanied by rebels in civilian clothes or in mixed clothing. Witnesses also testified that although it may have been the AFRC who arrived in Freetown first in 1999, RUF soldiers formed part of the initial attack under direct orders from Sam Bockarie.

Legal and Procedural Issues

The Trial Chamber considered arguments on one major legal procedural matter during this reporting period—the scope of confidentiality for journalistic sources. During Hassan Bility's cross-examination, Defense counsel sought disclosure of the person or persons who helped Bility arrange a trip to Sierra Leone in August 1997. While Bility was willing to disclose that Nigerian ECOMOG soldiers had helped him, he refused to provide names, citing journalist ethics of protecting confidential sources. The witness claimed that his sources continued to serve in the Nigerian armed forces, and therefore might suffer persecution if their names were revealed.

The Court initially shielded Bility from any compelled disclosure of sources pending the Trial Chamber's ultimate judgment on this matter. The Bench heard oral arguments, and subsequently required the parties to make written submissions for the Court's consideration. As of the end of February and this reporting period, the Chamber had not released its written decision. However, the Justices did indicate during a status conference on February 19, 2009 that the Defense motion to compel disclosure had been denied. The Court indicated that a reasoned decision would be filed "in the near future."⁹

⁹ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 19 February 2009, pg. 24054, lines 3 – 7.

Key Oral Submissions of the Parties

In its oral application to compel the witness to disclose names of those who assisted Bility with travel, the Defense argued that as military sources, the individuals were not entitled to the same protections that civilian sources may claim.¹⁰ Furthermore, Counsel argued that the evidence ought to be disclosed because it was relevant to the Defense case: Counsel argued that the evidence would show an ongoing relationship between Bility and ECOMOG, and because, according to the Defense, ECOMOG was supplying the CDF with arms, Bility's relationship with ECOMOG might also imply that he had sources within the CDF forces. This would have lent weight to the Defense position that Bility was a spy working to topple Taylor's government.

The Prosecution countered by reasoning that the Defense was following a line of questioning intended to attack the credibility of the sources, not the witness himself. The Prosecution noted that the scope of the direct-examination was limited to the witness's direct observations and Taylor's response to his publications, and that the content of his publications was not addressed. Therefore, questioning the credibility of the sources Bility used to write his articles was not relevant. Addressing the point of confidential sources, the Prosecution argued, with considerably more robust legal support for its position, that both international law and public policy support the protection of confidential journalistic sources, whether military or civilian.¹¹ Taking its argument one step further, the Prosecution submitted that confidentiality was even more important in light of the military status of the sources, since these sources were analogous to individuals protected by "whistle-blower" statutes in some jurisdictions.

The Court questioned the Prosecution on the distinction between "facilitators" and "sources," asking whether there was a difference between a source that provides information for an article and someone who merely facilitates transport for a working journalist. The Prosecution submitted that, among journalists, the term "source" refers to anyone who facilitates a journalist's ability to write a story. The Court also asked about the specific danger faced by the sources if their names were revealed, and whether the names could be revealed in closed session.

¹⁰ When the Court asked Defense counsel for legal authority to support this distinction and journalist source confidentiality in general, Defense counsel was unable to cite any relevant authority. Counsel argued instead that a "distinction in principle" should be made in which members of the military should not receive the same protections of confidentiality as civilian journalist sources. Counsel did refer to Article 10 of the European Convention on Human Rights (ECHR), which provides for the protection of confidential sources. However, this provision makes no express distinction between civilian and military sources.

¹¹ The Prosecution relied in part upon an SCSL Appeals Chamber decision in the AFRC case, where the Court upheld protection of confidential sources a witness relied upon in a human rights report. (*Prosecutor v. Brima et. al*, SCSL-04-16-AR73, Decision on prosecution Appeal Against Decision on Oral Application for Witness TF1-150 to testify without being compelled to Answer Questions on Grounds of Confidentiality: Separate and Concurring Opinion of Hon. Justice Geoffrey Robertson, QC, 26 May 2006). Counsel for the Prosecution also cited a European Court of Human Rights case against the United Kingdom in which the Court held that a journalist was not obligated to reveal confidential sources based on Article 10 of the ECHR (*Goodwin v. UK*, European Court of Human Rights ("ECtHR") Judgment of 27 March 1996), and an ICTY case in which the Appeals Chamber expressly recognized that public policy considerations supported a journalistic confidentiality privilege (*Prosecutor v. Brdjanin and Talic*, IT-99-36, "Decision on Interlocutory Appeal," 11 December 2002. The Prosecution did not provide citations for all relevant decisions). Under its ethical obligation to cite adverse authorities, the Prosecution concluded by noting that Sierra Leonean national law does not recognize a journalistic confidentiality privilege. (Counsel referred to these national cases in Court as *State v. Julius Spencer* and *State v. Paul Kamara*.)

The Prosecution responded that it could not attest to the potential dangers faced by the sources, but that if the testimony was compelled, it would request a private session.

Key Written Submissions of the Parties

Following oral arguments, the parties submitted written motions for the Court's review. The written Defense motion relied on different legal rationales for compelled disclosure than those presented during oral submissions. The motion also contained a stronger jurisprudential foundation in support of the Defense case. The Defense argued that: 1) No privilege exists for those who merely act to facilitate movement between countries, as distinguished from one who provides information;¹² 2) Journalistic privilege is not absolute and must yield where revealing a source is necessary to prove guilt or provide reasonable doubt about guilt of an accused;¹³ and 3) Under the *Prosecutor v. Brdjanin* balancing test, it is in the interests of justice to have all relevant evidence before the court.¹⁴ The Defense further submitted that although it considered the witness's claims about possible danger to the sources insufficient for claiming privilege, there were less restrictive means the Court could adopt should it determine it necessary to protect those individuals.¹⁵ Finally, the Defense argued that the Prosecution had failed to meet its obligations under Rule 66(B), because it did not make an application in advance for non-disclosure of this evidence, thus prejudicing the Defense.¹⁶

The Prosecution responded by arguing that: 1) The evidence sought by Defense was not relevant;¹⁷ 2) The journalistic privilege applies in this case, because the witness was acting in his scope as a journalist and because the term "source" has been interpreted broadly by international human rights and domestic laws to include "facilitators" as well as direct sources of information;¹⁸ and 3) The privilege is not outweighed by the interests of justice.¹⁹

Amicus Brief Application and Rejection

After the Defense filed its motion, the Prosecution apparently inquired with various non-governmental organizations about whether any would be interested in filing amicus briefs on the matter. A group of three international organizations did indeed seek leave to submit amicus arguments.²⁰ The application, filed by Article 19, Privacy International, and the Media Legal Defence Initiative, sought to provide legal background in response to Defense arguments.²¹ The Court denied the application, however, stating it was "neither necessary nor desirable for the

¹² *Prosecutor v. Taylor*, SCSL-2003-01-T, Defence Motion for the Disclosure of the Identity of a Confidential 'Source' Raised During Cross-Examination of TF1-355, 23 January 2009, paras. 11 – 15.

¹³ *Id.*, paras 16 – 18.

¹⁴ *Id.*, paras 19 – 24.

¹⁵ *Id.*, paras 25 – 26.

¹⁶ *Id.*, paras 27 – 30.

¹⁷ *Prosecutor v. Taylor*, SCSL-2003-01-T, Prosecution Response to Defence Motion for Disclosure of the identity of a Confidential Source Raised during Cross-Examination of TF1-355, 5 February 2009, paras 4 – 7.

¹⁸ *Id.*, paras 9 – 18.

¹⁹ *Id.*, paras 21 – 27.

²⁰ *Prosecutor v. Taylor*, SCSL-2003-01-T, Application for Leave to File an Amicus Brief on Confidential Source Issues Raised During the Cross-Examination of Witness TF1-355, 3 February 2009 [hereinafter Application for Amicus Brief]. Amicus briefs are allowed before the SCSL under Rule 74 of the Rules of Procedure and Evidence.

²¹ Application for Amicus Brief, para. 10.

Trial Chamber to hear from the Applications in order to properly determine the Defence Motion.”²²

Based on the written briefs of the parties alone, the Trial Chamber denied the Defense motion, thus permitting the witness to protect the confidentiality of his sources. A reasoned judgment was not filed before the end of the reporting period.²³

Witness Testimony

TF1-274, Dauda Aruna Fornie, aka “DAF” (linkage)²⁴

An RUF signal commander, Fornie was reportedly captured in 1991, at age 16, while returning to his boarding school from holidays. The witness testified that he was trained in signal communications by the NPFL Signal Unit, and thereafter reported to RUF Signal Commander Foday Lansana.²⁵ Fornie provided strong evidence suggesting that Taylor had superior command over RUF leaders, provided them with arms and ammunition, and both solicited and received regular reports on the progress of RUF fighting.

Communications between Taylor and RUF Command

The witness testified about frequent radio conversations between Taylor and Foday Sankoh. He alleged that the two communicated regularly about RUF operations in Sierra Leone. Fornie claimed he was present when the RUF sent messages to Taylor about military actions in Sierra Leone. The witness also described several NPFL units that supported the RUF in their initial incursions into Sierra Leone. Testifying about the command structure of the RUF, Fornie said Sam Bockarie and Benjamin Yeaten were the most senior commanders of the RUF. The witness testified that that Bockarie used to report to Taylor, consult with him, and take orders from him. The witness claimed he knew this because he was the radio operator that had facilitated these conversations.

Trips to Liberia for Arms, Ammunition

Fornie also told the Court about a 1998 trip to Liberia with Bockarie. According to the witness, he and Bockarie stayed in Benjamin Yeaten’s home, and upon returning to Sierra Leone, took a load of ammunition which was used by the RUF forces to attack ECOMOG forces in 1999. Fornie claimed that Bockarie would send RUF fighters into Liberia, to Vahun and Voinjama, to pick up arms and ammunition and bring them back to Buedu, in Sierra Leone. The witness said that he had personally undertaken one of these trips under instructions from Bockarie.

²² *Prosecutor v. Taylor*, SCSL-03-1-T, Decision on Application for Leave to File an Amicus Brief on Confidential Source Issues Raised During the Cross-Examination of Witness TF1-355, 9 February 2009, 2.

²³ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 19 February 2009, pg. 24054, lines 3 – 7.

²⁴ Fornie testified in open session in Krio. At the request of the Prosecution, the Court granted a rescission of the protective measures granted in a July 5, 2004 decision (see *Prosecutor v. Sesay et al.*, SCSL-04-15-PT-180, Decision on Protection Motion for Modifications of Protective Measures for Witnesses, 5 July 2004. For an in depth discussion of the decision and its significance, please refer back to the Berkeley War Crimes Studies Center “October Taylor Trial Report,” available electronically at <http://socrates.berkeley.edu/~warcrime/SL-archives.htm>.

²⁵ Lasana also testified in the Taylor trial, in February 2008.

Fornie also testified about his involvement in a trip taken by Bockarie and others to Burkina Faso to pick up weapons and materials that were originally to have been picked up in Libya. The witness claimed that Benjamin Yeaten coordinated this transaction, and that he stayed with Yeaten for a week in Monrovia to work as a radio operator while his colleagues were in Burkina Faso. Fornie testified that, during this time, he personally received regular messages from the RUF frontlines in Sierra Leone sent to Taylor's radio station. The witness further reported that, upon their return from Burkina Faso, Bockarie and others loaded the arms into two trucks at Roberts International Airport in Monrovia and took them to Buedu. Once in Buedu, the arms and materials were distributed to RUF commanders and reportedly used in subsequent attacks on Kono, Tongo, Makeni, and Freetown. According to Fornie, Yeaten and Bockarie decided to attack Kono and Tongo, leading to attacks that took place in December 1998. Fornie further claimed that there were frequent updates and reports between Bockarie and Yeaten about various attacks in Sierra Leone.

Lome Peace Talks

Fornie also provided testimony about attending the peace talks in Lome, Togo, and about Bockarie's resignation from the RUF and subsequent move to Liberia. The witness explained that Bockarie left because of a misunderstanding with Sankoh; according to the witness, Issa Sesay subsequently took Bockarie's position as military leader of the RUF, and Superman became the Battle Group Commander.

Cross-examination

The Defense led a very detailed and thorough cross-examination of Fornie. In the course of its cross-examination, the Defense elicited testimony on the relationship between the AFRC and RUF, the contents of various salute reports and radio communication logs, details about the Sierra Leonean peace process, the Lome Peace Talks, and changes in leadership within the RUF, among other topics of testimony that spanned over 6 days. The Defense appeared particularly interested in any evidence about internal RUF operations that tended to demonstrate discord between the AFRC and RUF. Evidence has not shown that Taylor had a direct relationship with AFRC commanders. Thus, to the extent it can show exclusive AFRC responsibility for certain crimes, the Defense seeks to distance Taylor from certain atrocities highlighted during the Prosecution's case in chief.

AFRC/RUF Internal Discord

The Defense asked the witness about the RUF/AFRC invasion of Freetown in 1999, and suggested to the witness that the relationship between the two groups was not based on "long term common interests." Fornie agreed, and testified that tensions eventually surfaced between the RUF/AFRC. However, the witness claimed that the RUF/AFRC operated as one group, and that the AFRC government paid RUF salaries for the time the AFRC remained in power. Notably, Fornie testified about problems between AFRC commander SAJ Musa and Sam Bockarie. However, Fornie claimed he could not recall hearing a BBC interview Bockarie gave just before Musa's death, in which Bockarie claimed it was RUF troops that were advancing on

Freetown and disclosed the troops' position to ECOMOG fighters, who launched bombs at the invaders. Fornie also failed to recall a subsequent radio communication in which Musa allegedly insulted Bockarie and told him that the RUF should not lay claim to the invasion of Freetown. Fornie consistently maintained that the RUF was involved in the Freetown invasion from the very start, and that invading soldiers took orders directly from Bockarie. He testified that he had heard an interview with Bockarie where Bockarie claimed it was RUF and AFRC troops that were advancing on Freetown, but Fornie maintained this interview was broadcast after Musa's death.

Kamajor Atrocities

The Defense also questioned Fornie about his arrest and captivity at the hands of the Kamajors in 1996. The witness claimed that he had been forced to do farm labor, write letters, and do domestic work for the Kamajors. Although he was allegedly threatened with death on several occasions, Fornie said he was free to move about during the day and eventually formed a good relationship with civilians in the village. He also told Defense counsel that the AFRC and Kamajors had an affable relationship and he saw them holding meetings together.

Changes in RUF Leadership

The Defense elicited testimony about Fornie's trip to Libya with Foday Sankoh, where Sankoh supposedly received money from Libyan leader, Omar Ghaddafi, to transform the RUF into a political party. The witness claimed that Bockarie was opposed to the change, and said it was one reason why Bockarie had a falling out with Sankoh. Fornie said that Bockarie was opposed to the disarmament process, and that when Fornie tried to tell Bockarie he should obey Sankoh's instructions to disarm, Bockarie had Fornie thrown into a dungeon and then departed for Liberia.

The witness also testified during cross-examination that although Issa Sesay officially became leader of the RUF at the request of ECOWAS leaders, he only did so because he was following Taylor's explicit instructions. The witness told the court that Sesay's trip to consult with RUF commanders about taking on the leadership position was staged by Sesay and Taylor, and that the meeting and a letter written to Sankoh were cover-ups to demonstrate to the international community that the decision was being made by RUF commanders, and not by Taylor. The witness claimed that Sesay had met with the witness and others in Pendembu and told them Taylor had instructed him to take over the leadership of the RUF. Providing further evidence of Taylor's superior command over Sesay, the witness also claimed that Sesay followed Taylor's orders to release a group of kidnapped UN peacekeepers.

Impeachment with Prior Inconsistent Statements and Bias

The Defense spent considerable time trying to impeach the witness through prior inconsistent statements and bias. Fornie had worked for a time for Talking Drum, an organization working on issues related to demobilization, reintegration, and the SCSL. Defense suggested that Fornie had been involved in spreading propaganda for the SCSL. The witness denied this, explaining that his work with Talking Drum was in the Traditional Department, and thus not connected with the organization's SCSL work. The witness admitted that he followed the SCSL proceedings by

radio in 2006, and had heard of Taylor's arrest. The Defense asked whether or not the witness had followed the testimony of his former commander Lansana and Isaac Mongor. Fornie responded that although he had heard that these friends of his had testified, he had not made an effort to learn what they had said in court. He did admit to following the testimony of several other Prosecution witnesses. When asked about his prior statements to the OTP and corrections he had neglected to make, the witness stated that although he had made many corrections to his statements, it was possible he had missed some errors. The witness also explained some inconsistencies as investigator errors in recording or note taking. On the whole, the witness gave seemingly credible and detailed testimony.

The Defense concluded its cross-examination by asking the witness about details of payments he received from the OTP and Witness and Victim's Section (WVS). The Defense noted many inconsistencies in payments given to the witness, such as money for transportation on days the witness did not meet with the OTP, money for cell phone cards twice in the same day, and money received from both the OTP and WVS for medical bills and a year's rent. The Defense noted that in a two year period, the witness had received over \$2000 from the OTP and \$1500 from WVS. The witness agreed that he had received funds from the OTP and WVS, but could not remember specific amounts. When the Defense suggested that the witness had been paid to lie in court against Taylor, Fornie responded that Defense Counsel, not he, was lying.

TF1-355, Hassan Bility (crime-base witness)²⁶

Hassan Bility was a journalist in Liberia during Taylor's presidency, and allegedly was held captive and tortured for his human rights reporting. Bility has testified before the SCSL in the RUF case, in the U.S. case against Taylor's son, Chuckie Taylor, and in the Dutch case against Guus van Kouwenhoven, accused of smuggling arms to Taylor during his Presidency.

Torture and Arrest for Editorial Articles

Bility testified about his repeated arrests and mistreatment by Taylor's security forces while the witness was living in Monrovia. The witness claimed that he first encountered problems with Taylor's security forces after he wrote an editorial titled "Who is the Judas in ECOWAS." This article questioned the sincerity of Taylor's efforts to work with regional leaders to end the conflict in Sierra Leone. Bility testified that after the article was published, heavily armed police officers stormed his offices and took him to Taylor's National Patriotic Party (NPP) headquarters. Taylor himself allegedly warned the witness to stop publishing articles that were critical of his government. Bility claimed that Taylor told him that any relationship he may have had with the RUF was his personal business.

Bility further testified that, after this initial arrest, he published several other articles criticizing the Taylor government and questioning its role in the Sierra Leone conflict. The witness testified that he was arrested six times, and suffered torture at the hands of state security officers. During the final arrest he was allegedly taken before Taylor, who accused Bility of being a spy, having traveled to Europe to purchase arms and ammunition, and hiding this material at the U.S. Embassy in Monrovia. Bility testified that he was accused of plotting to overthrow the Taylor

²⁶ Bility testified in open session, in English.

government together with Ellen Johnson Sirleaf, the current president of Liberia, Bishop Michael Francis, Ibrahim Mitchel, Alhaji Kromah, and US Secretary of State for African Affairs at the US Embassy in Liberia, Robert Perry.

Bility offered a detailed account of his torture experiences, which reportedly stretched over six months of detention. He testified that the torture included confinement to a four-foot high prison cell, electrocution of his genitalia, beatings, and other forms of cruel and inhumane treatment.

While graphic and disturbing, Bility's testimony ultimately seemed only tangentially related to specific charges in the indictment and was therefore of questionable weight to the Prosecution's case. While the testimony suggested, circumstantially, that Taylor targeted Bility because he wished to keep any account of his relationship with the RUF out of the newspapers, the Prosecution limited its direct examination so as to avoid questioning the witness about the content of his articles and his basis for reporting certain links between Taylor and the RUF.²⁷ The witness's experiences provided circumstantial evidence suggesting that Taylor was involved in the Sierra Leone conflict insofar as he allegedly sought to arrest and torture a journalist who had written editorial articles about said involvement. Bility testified that Taylor told him that his connections with the RUF were none of Bility's business, and that Taylor thought the RUF was fighting a just war. However, the Prosecution did not push any line of questioning that asked the witness to provide more evidence about Taylor's comments about Sierra Leone. Nor did the Prosecution ask the witness about the contents of his articles, his sources, or the facts he may have discovered in the course of writing these articles. Rather than bolster the linkage evidence between Taylor and the RUF, Bility's testimony highlighted Taylor's character for violence and oppressive conduct towards a member of the press.

Cross-examination

The Defense started its cross-examination by suggesting to the witness that 1) He is a liar; 2) He is engaged in a personal crusade against Taylor; 3) His personal crusade is motivated by ethnic and political loyalties, not by alleged human rights abuses or Taylor's involvement in Sierra Leone; and 4) He is a U.S. spy. The witness denied these allegations, as well as the suggestion that he was in constant communication with the United States CIA and FBI during his time in Monrovia. The witness testified that he was released by Taylor in 2002 through the intervention of the U.S. government, and that in 2004 he was contacted by the FBI, who questioned him about Taylor's possible membership in Al Qaeda.

Disclosure of Confidential Sources

During questioning about the witness's trip to Sierra Leone in August 1997, Defense counsel sought disclosure of the person or persons who helped Bility arrange the trip. Upon hearing legal arguments which are detailed in this report above, the Court held that the Defense would have to submit a written motion to compel the witness to name his sources.

²⁷ In light of the earlier discussion of journalistic confidentiality, it is likely the Prosecution limited its direct examination to avoid triggering a legal battle over the witness revealing his sources for the articles. The Prosecution may also have sought to protect the witness from credibility-damaging questions on cross-examination about the ultimate veracity of the articles.

Impeachment: Accusations of being a Liar and a Spy

Throughout its cross-examination, the Defense suggested that the factual elements of Bility's testimony were untrue, continuously calling him a liar and proposing that he was a spy. The witness held up under his cross-examination, and maintained that the testimony he had given was true. When faced with questions about prior inconsistent statements from interviews with the Prosecution, Bility alleged that details had been inaccurately recorded and that he had not had the opportunity to correct them.

The Defense asked Bility about his testimony at prior trials stating that on one arrest he had been held for two days, whereas at the Taylor trial the witness claimed he had only been held for one day. Bility responded that on those two prior occasions he had misspoken. Another inconsistency addressed by the Defense pertained to Bility's testimony before Dutch courts where he claimed to have been held for one week after a January 1998 arrest, whereas before the SCSL, Bility claimed to have been held for only one day. The witness responded that he was only physically detained for one day, but that his movements had been monitored for a week following the arrest, which he considered a form of arrest. The Defense also questioned the witness about an interview with the Prosecution in which Bility had stated he was taken to a hospital and visited by a US Embassy official after one arrest. After the witness initially refused to disclose the name of the official, the Court compelled Bility to admit that he was visited by US Embassy official John Bowman. Defense Counsel asked in cross-examination why Bility had not mentioned any such visit his earlier testimony before the Court. The witness admitted that his previous testimony had not been fully accurate.

The Defense also spent considerable time during cross-examination attempting to show the bias of the witness, asking him about his involvement with ULIMO and LURD, and questioning him about a book he is writing documenting his experiences. The witness denied that he was on a mission against Taylor, and that he had any substantial relationships with ULIMO or LURD.

Tarik Maliq

Chief Prosecutor Stephen Rapp led Maliq through his testimony. A staff member of the SCSL, Maliq verified Prosecution exhibits, testifying about how they were obtained and processed. Justice Doherty disclosed to the parties that she had previously met Maliq in a group setting, although she assured everyone that she and Maliq had never discussed professional matters and that this prior experience with the witness would in no way prejudice her neutrality. Presiding Judge Lussick also informed the parties that all three sitting Judges had previously served on an interview panel with Maliq.

Documentary Evidence Procedures at the SCSL

When asked to explain how evidence was processed at the court, Maliq testified that original documents are stamped with red ink and marked as an original when they arrive to his office. He reported that occasionally, only photocopies of documents are available, not the originals. Maliq explained that although documents are normally stored in Freetown, some had been stored in

The Hague for the Taylor trial. The witness explained that documents are received by a variety of organizations, including the UN, governments, human rights organizations, and various warring factions from Sierra Leone and Liberia. Maliq explained that UN documents cannot be disclosed to third parties without explicit approval from the UN.

Maliq testified that his office put the documents received into four categories: 1) Sankoh house documents; 2) RUF office documents; 3) Liberia search documents; and 4) Justice and Peace Commission documents. The Prosecutor then led Maliq through a series of questions in which Maliq described the process followed for the various documents in each category.

The Prosecution's strategy behind calling this witness was likely to allow introduction of a variety of documentary evidence that could not otherwise be admitted without witness verification. Documents of particular import include those obtained during searches in Liberia, including a search of Taylor's residence and office in March 2004.

Cross-examination

The Defense began its cross-examination by highlighting the fact that most of Maliq's testimony was hearsay.²⁸ The Defense also questioned Maliq about his relevant experience in dealing with evidence and documentation. Maliq admitted that while he was trained in evidence retrieval and storage procedures, he had not worked with the Sierra Leone Police and therefore could not attest to the system of evidence storage and documentation used by that organization, which had gathered much of the evidence in question. The Defense noted testimony by Sierra Leone Police Officer Alfred Sesay from the RUF case, suggesting that this testimony demonstrated the Sierra Leone Police had not used proper procedure in its evidence retrieval. The witness agreed that the procedures followed were not standard, but also noted that Sesay had not testified about all documents retrieved. When asked about access other international organizations had to the original documents, the witness admitted that various organizations had access but he could not confirm whether photocopies of the documents were made by any of them. The Defense took Maliq through several documents in evidence, highlighting discrepancies in the documents, such as variations in names used to sign reports, and also drawing attention to documents that were favorable to the Defense case, such as letters that indicated senior RUF officers were disciplined for misconduct. The Defense also asked Maliq about inventory lists of the documents obtained in each category.

TF1-168 (linkage, closed session)

This witness's testimony was taken entirely in closed session. The witness testified in English.

TF1-062 (crime-base witness)²⁹

A *92bis* witness, TF1-062's testimony in the AFRC case was entered as evidence and there was no direct-examination. The Defense cross-examined the witness about Kamajor activity in

²⁸ Hearsay evidence is admissible under Rule 89(c) of the Rules of Procedure and Evidence, which states that a Chamber may admit any relevant evidence.

²⁹ The witness testified in Krio behind a protective screen.

Tongo. The witness testified that he had heard that the CDF engaged in mining in Tongo when they occupied the area, although he claimed they did not mine Cyborg Pit. The witness said he never saw the CDF forcing civilians to mine for them, but he did see them kill people. The witness described one massacre of 24 people accused of being RUF/AFRC soldiers or soldiers' wives, and testified that the CDF used child soldiers. This evidence was likely elicited by the Defense in its efforts to demonstrate shared responsibility for the atrocities committed during the Sierra Leone civil war, directing attention to crimes committed by the CDF and AFRC as distinct from those committed by the RUF. TF1-062 testified that he witnessed burning by the RUF and that he was a victim of looting; he claimed he did not witness any raping or amputations by the RUF.

The Defense tried to impeach the witness's credibility by referencing prior inconsistent statements the witness had made during interviews with the Prosecution. One witness statement had said that the CDF took control of the Cyborg Pit, and forced civilians to mine for them. The witness responded that this was an error in translation; he claimed he had been talking about AFRC forces, and that because there was no interpreter during that interview, errors appeared in the statement.

TF1-174 (crime-base witness)³⁰

TF1-174 provided evidence about crimes committed in the Makeni area, specifically with regard to child soldiers. The witness testified that after the May 1997 AFRC coup, RUF rebels came to Makeni. According to the witness, local NGOs received permission from an RUF commander to provide some services for the child soldiers. He explained that most of the child soldiers, both male and female, were below 14 or 15 years of age, determined by either asking the child directly or by making a visual assessment. The witness explained that his group would take the children to church, cook with them, and generally interact with them.

RUF Atrocities in Makeni

The witness also testified about atrocities committed by the RUF after ECOMOG dropped bombs in Makeni in February, 1998. The witness recalled widespread looting, raping, and killing, which he said was committed as a part of 'Operation Pay Yourself.' The witness alleged that after ECOMOG entered Makeni in March 1998, the RUF attacked villages as they retreated, burning houses, amputating civilians, and killing. He testified about other episodes of killing, raping, and atrocities committed by the RUF in Makeni in December 1998. The witness alleged that after the RUF made a call for small boys and girls to join their forces, some 3000 children were registered to train and fight with the RUF, some by choice and some after being abducted.

Caring for the RUF's Child Soldiers

The witness provided evidence about his experiences running a care center for children, the Interim Care Center. He stated that by February 2000, all of the approximately 450 children in the center were from the RUF. According to the witness, between 60 and 70 percent of these children were under the age of 15. He claimed that during the first week of May in the year

³⁰ The witness testified in Krio with voice and facial distortion.

2000, one hundred children were taken from his care center by RUF soldiers, prompting him to begin transporting the children in his care to Freetown on May 19, 2000. On the way, the witness claimed one boy was taken from the group by rebels. The witness also testified about girls at the center who were young mothers or pregnant, claiming that some rebel commanders would visit the Interim Care Center wanting to see their wives. He stated that the children would tell stories about girls as young as 9 – 10 years old being shared by commanders and soldiers for sexual purposes. The witness testified that these girls were sent to Medecins Sans Frontieres (MSF), where they were given medical examinations to prove they were no longer virgins. He claimed that in April 2001, when a group of one hundred and twenty seven girls was taken to the center, some were re-united with their families while others were rejected by their families because of their experiences with the RUF/AFRC.

Cross-examination

Defense began its cross-examination with questions about the RUF invasion of Makeni in December 1998. Counsel for the Accused asked questions about Issa Sesay's efforts to bring rule of law to the area. The witness admitted that these efforts resulted in some calm but that rebels would not always observe Sesay's laws. The witness testified that there was no burning of houses in this initial attack, but that there was extensive looting and rape. The Defense also asked the witness about who had led the 1999 Freetown invasion and infighting between the RUF and AFRC. The witness claimed that he had heard the AFRC led the attack on Freetown but that the RUF was also involved. The witness testified that Superman had tried to kill Sesay, and that the former had controlled Makeni until Sesay's troops fought him off in April, 1999. The witness agreed that the AFRC left Makeni for good in October 1999, leaving the RUF in control. The witness also gave evidence on cross-examination about children who had told him they had gone to Liberia with their commanders, who had traded diamonds for guns and clothing.

When presented with contradictory statements from prior interviews, the witness explained the discrepancies as mistakes of the interviewer in failing to adequately explain the contents of his statement and the haste with which he had corrected some statements.

TF1-303, Finda Gbamanja (crime-base)³¹

TF1-303 provided evidence about the RUF attack on Kono in 1998. The witness claimed that many civilians were killed during this attack. Gbamanja testified that the rebels chased fleeing civilians into the bush, capturing and raping women and girls. The witness told the court that when she was captured by the rebels, she did not know her age but had not yet started her menstrual cycle. Her parents pled for the rebels not to take her away; the witness claimed that, as a result of this resistance, her mother was beaten by the rebels and her father shot and killed. She further testified that the rebels forced her and others with her to laugh at his death. According to Gbamanja, she was taken originally by a small boy, Pepeh, who raped her for an entire night. She said she was later given to Pepeh's sister, also a rebel, as a domestic servant. The witness was later captured by another rebel, Sgt. Foday, who also raped her and forced her to do domestic chores. Gbamanja said that both Pepeh and Sgt. Foday were members of

³¹ This witness testified in open session in Krio.

Superman's group. The witness alleged that she was later sent to do forced labor for Sgt. Foday's mother, where Sgt. Foday would rape her during his visits. Gbamanja claimed that for refusing to work on one occasion, Foday's mother locked her in a dungeon for one day. The witness said that Foday would tell her about rebels committing rape and murder on food finding missions. She testified that she had witnessed the rebels bringing back looted goods and civilians from these trips. She also said that Foday had told her about an order from Sam Bockarie to amputate the civilians and send them to then-President Kabbah, and that Foday told her the rebels had followed this order.

Cross-examination

The Defense cross-examination focused on impeaching Gbamanja by prior inconsistent statements and alleging that she had a faulty memory due to the trauma she experienced at such a young age. The Defense asked several questions about inconsistencies in the details she had given about her capture, the beating of her mother, and the death of her father. The Defense also questioned her about inconsistencies in her statements about whether the rebels who had captured her were RUF or AFRC, and what kind of clothing they wore. Counsel addressed several details that were mentioned for the first time in very recent interviews or in court, including the fact that Foday Sankoh had told her Bockarie had diamonds, that the rebels were RUF, and that Sgt. Foday spoke Liberian English. The witness consistently stuck to her in-court testimony and explained inconsistencies as having been improperly recorded during previous interviews. The Defense also asked Gbamanja about money she had received from WMU and WVS while she was working with the Prosecution and acting as a witness. Gbamanja agreed to having received money, but she did not remember the amounts.

TF1-278, Alusine Conteh (crime-base)³²

Alusine Conteh testified about the January 1999 invasion on Freetown. He said he witnessed armed rebels, dressed in both civilian and military clothes, harassing and stealing from civilians. Conteh claimed that rebels entered his home, threatened him, and stole 50,000 Leons. He testified that on another occasion, rebels entered his home and set it on fire, while he and his family hid in the bathroom outside the house. He told the Court that he and his family fled into a nearby banana plantation, where they hid for two days. Conteh claimed that two girls between the age of 16 – 18 were taken from hiding by rebels and seen again only after disarmament, allegedly having suffered sexual violence. Conteh testified that on the third day of hiding, rebels discovered his group when a baby cried out from hunger; he said he fled from the bush with his family and others. The witness described being caught by a group of rebels in the street who used an axe to amputate the hands of one of his companions. Conteh then recounted his own amputation, explaining how the rebels first chopped his left hand. The witness said that when the rebels threatened to cut off his four year-old son's hand for crying out about his amputation, he told the rebels to take his right hand instead. Conteh said the rebels chopped his right hand, leaving both hands hanging. The witness claimed he told his family to go with other civilians while he searched for a clinic. He was eventually helped by ECOMOG soldiers and spent the next six months in the hospital, recovering from his injuries.

³² This final witness in the Prosecution's case testified in open session in Krio.

Cross-examination

The Defense conducted a very short cross-examination of Conteh, asking him about the general timeline of the war in Sierra Leone. The Defense also asked the witness about rebels speaking with a Liberian accent. Conteh responded that he did hear Liberian English, based on usage of the term “meh”, but did not know whether it was because the persons were actually from Liberia or whether they were from Sierra Leonean towns bordering Liberia. Focusing once again on the clothing worn by the rebels, the Defense asked Conteh whether he believed some rebels he saw were RUF because they were not wearing uniforms. The witness agreed. The Defense asked whether the people who cut off his hand were soldiers; the witness responded in the affirmative. The Prosecution did not clarify the point on re-examination. This evidence could be used in the Defense’s favor, given its attempt to distinguish between crimes committed by the AFRC soldiers, usually in military uniforms, and crimes committed by RUF soldiers, usually in civilian clothes.



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