



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

**Special Court Monitoring Program Update #17  
Trial Chamber I - RUF Trial 14 January 2005**

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The 2005 trial sessions began this week with the recommencement of the RUF trial in Trial Chamber One. As has become the practice of the Special Court, the week began with a short status conference on the first day of the session, after which the court adjourned in anticipation of hearing witness testimony the following day. Rather unexpectedly, the court faced a hiatus in proceedings this week, as each of the first and second accused protested (in written statements) against their indictment and prosecution by the Special Court. This was preceded by the first accused, Issa Sesay, attempting to address the bench regarding the contents of his statement, an attempt which the Judge Thompson precluded, reprimanding Sesay for attempting to "hold the court hostage" to political concerns and having Sesay physically removed from court.

After several adjournments in proceedings and further discussions between the bar and bench, counsel for each of the first and second accused announced that their clients each wished to exercise their right (under Rule 60 of the Rules) to waive their attendance at the trial for an indefinite period. As such, as of Wednesday, 12 January, none of the six accused currently on trial in the CDF or the RUF trials at the Special Court are attending the proceedings.

The prosecution's first witness for the session, Witness TF1-304, gave testimony under examination in chief and cross examination over the two and a half days that followed [1]. This brings the total number of witnesses heard in the prosecution's case thus far to nineteen ? that being nineteen witnesses out of the anticipated one hundred and two witnesses due to be called in total [2].

Status conference

The week began with a short status conference in the presence of Judge Thompson, attended by members of the prosecution and counsels for each of the first, second and third accuseds in the absence of their clients. During the conference, Judge Thompson stressed the importance of ensuring that proceedings were conducted, as far as possible, in open session, a point reiterated by his statement "Justice is not a cloistered mistress, [but is] administered in public." He also reiterated the need for both sides of the bar to ensure, as far as possible, that the trial proceeded efficiently and speedily, being mindful of the right of the accuseds to be tried without undue delay encapsulated in Article 17(4)(c) of the Special Court's Statute.

Issues relating to the timely production of evidence and its disclosure dominated the status conference. In particular, counsel for the first accused submitted that the Defense had not been served with a witness statement given by Witness TF1-359 (a witness due to testify this session) in July 2004 until 9 December 2004. He noted further that, in light of the disclosure the Defense had now received in relation to this witness, it was likely that he would be requesting that George Johnson (aka "Junior Lion") be recalled as a witness [3]. Mr Johnson, a former commander of the splinter rebel militia group the "West Side Boys", was one of the Prosecution's key insider witnesses to testify during last session's proceedings. The Prosecution responded by stating that a redacted witness statement for this witness had been submitted to the Defense prior to 9 December, to which members of the Defense retorted that they were significantly hampered by not knowing what additional unredacted statements might say when cross-examining key witnesses whose testimony related to those statements. The Prosecution responded by stating that it had, in all respects, complied with the rules regarding the disclosure of witness statements, rebutting the premise that it may have any tactical advantage with regards to this non-disclosure. Judge Thompson noted that the Prosecution and the Defense had, as much as possible, maintained a co-operative relationship with each other up until now and it hoped they would continue to do so during this trial session.

### Trial in the absence of the accuseds

#### *Oral submission from Issa Sesay*

Shortly after the Prosecution called its nineteenth witness on Tuesday, the first and second accuseds, Issa Sesay and Morris Kallon, put their hands up in court, Mr Sesay subsequently stating that he wished to address the bench. The Prosecution firmly objected to this, arguing that the Rules did not provide for oral submissions from the accuseds while the court was hearing the Prosecution's case. Presiding Judge Itoe granted Mr Sesay the right to speak, but as he began to do so, Judge Itoe interjected, stating that Sesay was clearly reading from a statement and that the right procedure for delivering such a statement would be to tender it into evidence as a submission.

After a brief adjournment, during which Sesay spoke to his legal counsel, Sesay was granted further liberty to speak, upon assurances from his counsel that his statement would take no longer than four minutes of the court's time. Judge Thompson noted that the court was "moving outside the straight jacket approach" of being bound by the Rules and, in keeping with the "doctrine of fundamental fairness", the judges were able to act "judiciously and judicially" in making their determination about the accused's right to speak.

Sesay then began to read a short statement to the bench regarding, *inter alia*, the right of amnesty against judicial action expressly provided to RUF combatants under Article IX (iii) of the Lome Peace Agreement [4]. Sesay had barely begun to speak when his honour Judge Thompson asked counsel for the first accused to control his client and subsequently ordered that Sesay be removed from the court-room, stating that it was "time for this court to emphasize that we stand for the rule of law and not the rule of anarchy".

#### *Written submissions from each of the first and second accused: the nature of exhibits and submissions*

After a further two adjournments and several discussions between the bar and bench as to the trial chamber's refusal to hear any form of political statement from the accused as an oral submission, counsel for the first accused moved to submit Sesay's statement to the bench as an exhibit. The Prosecution objected to this, stating that, from its preliminary observations of the document, a submission of this nature from the accused was not correctly characterised as an

exhibit and should not be treated as part of the evidence before the court, further suggesting that the submission be tendered as part of a motion.

When asked to produce an authority for this position, the Prosecution submitted that the practice directions of several common law jurisdictions showed that lawyers practising in those jurisdictions adopted a similar approach to the one the Prosecution was suggesting. Judge Thompson rejected this argument, stating that the court had the right to relax the rigid, technical and inflexible rules of the national jurisdictions. He further noted that there was a clear relaxation of the rules in other procedural aspects of the trial and asserting further that the bench would assess the relevance, reliability and probative value of the submission as evidence when the time came giving due regard to its value accordingly. Mr Sesay's statement was then submitted as Exhibit 11 and Mr Kallon, raising his hand to indicate he too, wished to submit a written statement, submitted a statement of his own (to the Prosecution and subsequently to the bench) which was tendered as evidence and marked as Exhibit 12.

While Judge Thompson's approach regarding the submission of evidence was clearly consistent? namely, that a formal and technical or, what his honour termed as "a straight jacket" approach to the submission of evidence should be rejected by the trial chamber, it appeared less apparent why the oral submission of a political statement was vehemently rejected by the bench, but that the exact same statement could then be submitted into evidence as a written statement. If, as was suggested, the trial chamber is working from the premise that political statements from an accused should be rejected outright, one could speculate that a more consistent approach to this particular piece of evidence would have been to have precluded the submission of it into evidence altogether, as the Prosecution had suggested. The inconsistency in this approach can perhaps be explained by the fact that the trial chamber was, in effect, giving each accused some leeway to address the bench regarding his concerns and further, that the submission of such evidence as an exhibit is more in keeping with the procedural norms of the court established thus far.

#### *Accuseds waive their right to attend trial*

After a further adjournment, each of the second and third accused decided to waive their right to attend the trial for an indefinite period, requesting, however, that their legal counsels continue to represent them in their absence.

There has been some speculation from members of the Special Court that Chief Hinga Norman, the first accused in the CDF trial, whose judicial protest in September last year signalled the beginning of the non-attendance by the all CDF accuseds in the CDF trial proceedings [5], has instigated the decision by the accuseds in the RUF trial to refuse to attend their trial. As a former paramount chief and alleged leader of the CDF forces, Hinga Norman is likely to be considered a highly respected authority figure amongst the detainees currently housed in the detention center. If this is indeed the case, it may be that this solidarity amongst the detainees proves to the detriment of the Defense's case and an advantage to the Prosecution, given their attendance at trial can significantly affect the strength of the Defense's cross-examination of key Prosecution witnesses.

#### Witness profile at a glance

*Witness TF1-304.* Witness TF1-304 was born in Tombodu village in the Kamara chiefdom in 1959. He attended school until Form 1 (seventh grade). He Speaks Kono, Krio and some English. He is married and has 7 children. He is a farmer and currently resides in the Kono district. The witness testified in Kono, with English translation.

#### Witness's testimony

Witness TF1-304 testified to events which largely occurred in the Kono district between March 1998 and mid-2001. His testimony primarily centered around the alleged abduction and subsequent use of civilians as forced labour by RUF combatants between February 1999 and May 2000 [6] and the capture and detainment of peacekeepers “during the mango season” during April/May 2000 [7].

He also described leaving the town of Tombodu in March 1998 upon the rebel attack on that village and subsequently going in search of members of his family [8] with whom he was reunited in Forkonya (sic), a town in Guinea near the border of Sierra Leone. Upon returning to Tombodu in February 1999, the witness was allegedly confronted by what he termed as being the “Savage Pit”: a large, open pit filled with the skulls and bones of hundreds of people. The witness further described how the town itself had been almost completely burned down, with allegedly only 21 of the 360 houses that had stood when the witness had left in 1998 remaining [9].

*Alleged forced labour I: carrying looted goods and retrieving vehicles*

Under examination-in-chief, the witness described in detail how, in February/March 1999, he and other civilians were held “with guns over their heads” by rebel combatants (acting under the instruction of Colonel Twe Twe, an RUF commander) and forced to retrieve vehicles from the surrounding bush areas near Tombodu and subsequently take them to Koidu. He further described how he and other civilians were asked to retrieve goods from the houses of surrounding villages (again at gunpoint), as well as being asked to pound rice for the rebels.

This *viva voce* testimony varied somewhat from the statement given by the witness to the Prosecution on 16 November, 2002, as was pointed out to the witness by counsel for the first accused under cross-examination. Counsel argued that, in his written statement, the witness had alleged that “they made *people*” retrieve vehicles from Tombodu to Koidu, alluding to the fact that the witness himself had not been asked by the rebels to retrieve the vehicles. The witness argued that he was part of the “people” he was referring to in this instance. This appeared to be part of an overall argument launched by the Defense that Witness TF1-304 was, in fact, co-operative with the rebels and that this could be evidenced from his preclusion from certain acts of forced labour.

*Alleged forced labour II: diamond mining*

The witness also gave extensive testimony about diamond mining which occurred in Bendutu (Kono district) under the command of Officer Med, an RUF commander whom the witness alleged told the civilians that he (i.e. Officer Med) “was sent by Issa Sesay to come and start mining”. According to Witness TF1-304, able-bodied male civilians were captured from Tombodu and the surrounding villages by rebel soldiers working under the direction of Officer Med and made to mine diamonds. It became unclear as to how the system of mining was implemented: during his examination in chief, the witness stated that civilians would work “until they became tired” and were then allowed to rest in sheds which the civilians had built around the mines, but under cross-examination, this testimony became confused, as the witness described a shift-working system and then reneged on these statements, reiterating his original testimony. The witness stated that, amongst others and besides Officer Med, C.O. Gebo, Major Saul and Colonel Lion were in charge of the mining. The witness further testified that when the mining began, approximately 150 civilians were forcibly conscripted, but that throughout the period of diamond mining this number grew to 500.

The witness initially alleged that diamond mining had begun in Bendutu in March 1999, but under cross-examination, he corrected this statement, saying that it was “in the dry season of 2000”, around March/April, when the diamond mining began. This statement is particularly significant for the Defense, as it effectively means that, the witness had been testifying to events relating to

diamond mining which occurred outside the period alleged in the indictment to have been the period in which the enslavement of civilians in the Kono district took place. This evidence was primarily important to the Prosecution's case against Issa Sesay, whom the witness named as directing the diamond mining operations and whom he placed at the scene of the diamond mines in Bendutu [10].

The witness's reference to the "dry season of 2000" precipitated an extensive discussion between the bench and counsel for the first accused regarding the temporal significance of the "dry season of 2000" as it pertained to the witness's testimony. Judge Thompson, in particular, seemed very mindful of the possibility that the witness may, in fact, be referring to a period of time which began in 1999, given the first dry season of 2000 would in fact begin in September/October of the previous year. This was despite counsel's objection that the witness had clearly stated the period of time he was referring to began in the year 2000. A significant amount of the court's time (approximately 20 minutes) was spent discussing the nature of the wet and dry seasons experienced in African countries. The witness was subsequently asked to confirm that he did, in fact, mean to refer to March/April 2000, which he subsequently confirmed.

*Attacks on UNAMSIL personnel: capture of Zambian peacekeepers*

The witness further described how 190 Zambian peace keepers were held captive in Tombodu for over one month under the direction of Officer Med. Under examination-in-chief, the witness described how the peace keepers, many of whom were from Zambia, were held captive in a Mosque in Tombodu and how he and other civilians would deliver food to them. Under cross examination, the witness stated that he was taking food to the peacekeepers in April/May 2000, a time at which he had previously stated he was forced to mine for diamonds. In response to counsel's question as to how he could both be mining and taking food to peacekeepers, the witness went stated that it was his wife who took the food to them, but that he had effectively orchestrated the food being taken.

Payments to Witness TF1-304

According to the allegations by Defense counsel under cross examination, which were neither confirmed nor denied by the witness (who stated he didn't know how much he'd received) Witness TF1-304 has, since September 2004, received Le777,500 (approximately US\$275) [11] in payments and kind from the Victims and Witness Support Unit of the Special Court.

- 1.) As is usual practice, the court adjourned on Wednesday afternoon.
- 2.) This figure does not include a further three witnesses which the Prosecution submitted it would like to call on 23 November 2004. The matter as to whether the Prosecution shall be allowed to call these witnesses is still pending the ruling of the Trial Chamber's.
- 3.) See Special Court Monitoring Program Update No.8 dated 15 October 2004.
- 4.) Article IX(3) of the Lome Peace Accord states: "[T]o consolidate the peace and promote the cause of national reconciliation, the Government of Sierra Leone shall ensure that no official or judicial action is taken against any member of the RUF/SL, ex-AFRC, ex-SLA or CDF in respect of anything done by them in pursuit of their objectives as members of those organisations, since March 1991, up to the time of the signing of the present Agreement." See also SCSL-04-15-PT-060-I and SCSL-04-15-PT-060-II, *Decision on challenge to jurisdiction: Lome Accord amnesty* dated 13 March 2004 at <http://www.sc-sl.org/RUF-decisions.html>. 5.) See Special Court Monitoring Program Update No.5 dated 24 September 2004.

6.) Count 13 of the Amended Consolidated Indictment dated 13 May 2004 (the Indictment) charges Sesay, Kallon and Gbao for being individually criminally responsible for enslavement, a crime against humanity, punishable under Article 2.c. of the Statute. However, the indictment only refers to this charge as it relates to the Kono District for the period between about 14 February 1998 and January 2000.

7.) Counts 15 -18 of the Indictment charges Sesay, Kallon and Gbao with being individually criminally responsible for widespread attacks against UNAMSIL peacekeepers between about 15 April 2000 and 15 September 2000.

8.) Namely, two of his children and his mother-in-law. 9.) According to *Conflict Mapping In Sierra Leone*, a report written by international non-profit organisation, No Peace Without Justice, RUF/AFRC forces launched "Operation No Living Thing" shortly after the reinstatement of President Kabbah on 10 March 1998. This wide-scale military operation is alleged to have primarily taken place in the Kono District, where hundreds of civilians were allegedly killed and "the intensity of violence in Sierra Leone was elevated to new and unprecedented levels". See Smith, L. Alison, Gambetter, C. & Longbay, T *Conflict Mapping in Sierra Leone: Violations of International Humanitarian Law from 1991 to 2002: Executive Summary* (March 2004, No Peace Without Justice) at page 27.

10.) According to the witness, Issa Sesay allegedly came every day after the civilians started washing the diamonds and collected diamonds in white sheets of paper.

11.) Based on an exchange rate of US\$1 = Le2,800.



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