



U.C. Berkeley War Crimes Studies Center
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Weekly Report

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Trial Chamber I - RUF Trial
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The Special Court for Sierra Leone opened a new trial session this week with the opening of the joint trial of three of the key leaders of the Revolutionary United Front (RUF). These three individuals, all alleged to have been senior officers and commanders within the RUF, are Issa Sesay, Morris Kallon, and Augustine Gbao. They are charged with eighteen counts of crimes against humanity and other violations of international humanitarian law, their charges including acts of terrorism, collective punishment, extermination, murder, enslavement, and pillage.

As with the case against the Civilian Defense Forces (CDF) that began last month, these three RUF leaders are also specifically charged with the use of child soldiers as a violation of international humanitarian law. Unlike the indictment against the CDF, however, which does not include any charges of sexual violence, the charges against the RUF leaders include four counts of sexual violence, among them charges of rape, sexual slavery, and outrages upon personal dignity.

Opening the RUF trial on Monday 5 July, Presiding Judge Benjamin Mutanga Itoe delivered a brief address to the Court. In this statement, Judge Itoe reiterated the history and purpose of the Special Court, and also stressed the Court's commitment to protecting the rights of the accused by ensuring a fair and expeditious trial.

After this address, Chief Prosecutor David Crane proceeded to deliver the first half of the prosecution's opening statement. Outlining the history and background of the conflict, his address highlighted the regional nature of the conflict, focusing on a February 1991 planning meeting held in Liberia, at which meeting the initial RUF-led invasion of Sierra Leone was allegedly planned. Throughout his address, Crane made a point of stressing that the RUF's motive was not political reform, as is often claimed by this group, but was instead the control of Sierra Leone's "resource rich areas."

Against this background, Crane outlined the 18 charges of war crimes and crimes against humanity with which the defendants in this case are charged. In this context, he repeatedly emphasized the centrality in this case of the legal concept of joint criminal enterprise, particularly in regards to the alleged wartime collaboration between the RUF, the AFRC (Armed Forces Revolutionary Council), and the NPFL (National Patriotic Front for Liberia, led by Charles Taylor). Following this introduction, Crane gave a broad outline of the evidence that the prosecution will present in support of those charges.

With the rhetorical flourish for which he has become known, Crane peppered his statement with quasi-poetic phrases, telling his listeners that this case "is a tale of horror, beyond the gothic into the realm of Dante's inferno." Various referring to the RUF as "hounds of hell," "dogs of war,"

and "handmaidens to the beast of impunity that walked this burnt and pillaged land," he described the RUF/AFRC collaboration as a "macabre dance of death," claiming that "ruin was their motto and destruction was their creed." Along the same lines, Crane claimed that the witnesses to be called in this case would "meet and slay the beast of impunity with the righteous sword of the law." Not surprisingly, this language generated a lively debate, initiated by the defence counsel, regarding the appropriateness or inappropriateness of such potentially emotive language.

The second half of the prosecution's opening statement was delivered by prosecution attorney Abdul Tejan-Cole. Tejan-Cole elaborated on the nature of the crimes in question, emphasizing the widespread nature and consistent pattern of the crimes committed by the RUF during the war. He also detailed a number of specific crimes allegedly committed by each of the accused, in addition to stressing the criminal significance of their responsibility as senior commanders. Finally, Tejan-Cole outlined the categories of witnesses to be called for the prosecution. These categories included 1) those who will give an overview of the nature and geographic spread of the crimes, 2) those "insiders" who can give detailed evidence about the command structure of the RUF, 3) crime-based witnesses, 4) expert witnesses, 5) witnesses testifying about the conscription of child soldiers, and 6) those giving evidence about attacks on UNAMSIL personnel.

These statements by the prosecution were followed by an opening statement by Raymond Brown, defence counsel for Morris Kallon. Emphasizing that Kallon's defence team represents their client as an individual, not as a member of the RUF, and not as part of any RUF/AFRC "joint enterprise," Brown stressed that the guilt of the RUF was not in any way equivalent to the guilt of his own client. He went on to refute Crane's claim that "this was not a just war," stressing that Kallon fought in the war because of his commitment to democracy, not to some "corrupt enterprise." Brown also refuted the idea of a clearly defined command structure in the RUF, as well as the concept of a "marriage" (or even any clear alliance) between the RUF and the AFRC.

Lastly, Brown proceeded to test the concept of "those who bear the greatest responsibility" upon which the Special Court rests, by suggesting that Kallon and perhaps others are being tried in lieu of those who truly bear such "greatest responsibility," such as Charles Taylor (in exile in Nigeria), Foday Sankoh (deceased) and Sam Bockarie (deceased). Brown also underlined the necessity to question the credibility of the "insider" witnesses referred to in the Prosecution's opening statements, and pointed to a number of inconsistencies and contradictions inherent in such witnesses' testimony.

The following day, Tuesday 6 July, began with further opening statements from the defence. While defence counsel for Issa Sesay declined to make an opening statement at this point, Augustine Gbao not only opted to deliver his statement at this point, but chose to give the statement himself, in lieu of his defence counsel. Before Gbao began, the judges warned him that his statement must not touch on questions either of politics or of the constitutional legitimacy of the Court (an issue addressed earlier this year by the Trial Chamber), but that his remarks must, in accordance with the Court's Rules of Procedure and Evidence, remain "confined to the evidence he intends to present in support of his case."

Gbao's remarks, however, went directly to the issues he was forbidden from addressing. Refuting the legitimacy of the Special Court, he insisted that "it would be difficult to convince any critical mind that this court is not political....there is no judicial exercise without politics." After repeated warnings from the judges after each of these statements, however, his statement was shortly cut off, with the judges insisting that politics will not be allowed to "intrude into the domain of the impartial and dispassionate hall of justice."

Later that day, Gbao stood to address the Court, alerting the Court of his refusal to recognize the Court and requesting that no lawyer shall further represent him in the courtroom. After some deliberation, however, the Trial Chamber (citing a 2000 ICTR decision in relation to the Barayagwiza case) ruled that, due to the lack of "truly exceptional circumstances," Gbao's

defence counsel will not be permitted to withdraw but has the obligation to continue to represent him in court through the end of this trial. Gbao's defence counsel has since filed a motion for leave to appeal this decision but, in accordance with this ruling, have continued to appear in Court on Gbao's behalf.

As of the following day, however (Wednesday 7 July), Gbao himself stopped appearing in court for his trial, and instead sent a message through his counsel to reiterate that he 1) does not recognize the Special Court as a legal body, 2) will not take any part in it, as to do so would be to recognize its legitimacy, 3) would like to dispense with legal representative services, 4) will no longer furnish them with any instructions or information, and 5) will demand that his lawyers take no further part in proceedings. In response to Gbao's absence, the Trial Chamber ruled that the Gbao has effectively waived his right to appear, leaving them with no choice but to allow the trial to proceed without him present.

After having issued this decision, court was adjourned until the following Monday 12 July, in order that a number of motions that had been made earlier in the week by the defence counsel could be addressed by the Trial Chamber before the trial proceeded any further. These motions revolved around various questions concerning proper disclosure of exculpatory material by the Office of the Prosecution to the Defence Counsel. In particular, defence counsel was concerned about full disclosure to the defence counsel of monetary disbursements and any other details concerning the prosecution's interaction with the witnesses to be called for this case. The defence counsel cited a few cases of exceptionally large disbursements to witnesses as the basis for their arguments, and requested explanation of these disbursements and full disclosure of any other possible transactions.

In a lengthy ruling on this issue on Friday 9 July, however, the Trial Chamber's dismissed this decision, stating that the defence counsel's request lacked sufficient specificity regarding the content and materiality of such exculpatory evidence, and reiterating that defence counsel had not satisfied the Bench that an abuse of process had taken place.

Although this last week only represented the very beginning of what will certainly be a lengthy and complex case, the first days of this case highlighted a few issues and questions that will likely continue to arise throughout the duration both of this trial and also of the other trials currently before this Court.

The first of these issues is the question of "those who bear the greatest responsibility." As mentioned above, this issue was raised by defence counsel Raymond Brown in his opening statement on behalf of Morris Kallon. It was similarly raised by other defence counsel in the context of motions relating to the prosecution's "insider" witnesses. By virtue of these witnesses' important positions in relation to the key wartime contingents, they will undoubtedly be central in the prosecution's case, as their positions afforded them access to critical evidence and information pertaining to the defendants in this case. At the same time, however, these witnesses' very access to such information will undoubtedly raise the question of how they could have been privy to such information without also having participated in the crimes to which they bear witness. By extension, their testimony before the Special Court will undoubtedly open questions of why these individuals have not been indicted while Sesay, Kallon and Gbao have. Regardless of any legal import or impact this question may have in the context this case, this issue will undoubtedly be central in the minds of many within the Sierra Leonean public.

The second of these issues is the question of equality of arms. Raised repeatedly by the defence counsel in the CDF trial during that trial's first weeks (particularly in relation to various questions regarding resources available, respectively, to the prosecution and defence offices) it has also arisen, if only briefly, during the current RUF trial. In particular, this issue was noted by the defence counsel in their arguments concerning disclosure of exculpatory material, in which context defence counsel tabled the issue of the prosecution's significant monetary disbursements

for particular witnesses. While discussing these disbursements, the defence counsel raised the question of whether they, like the prosecution, would have access to the funds necessary to effectively protect the defence witnesses for this case.

Lastly, as evident in the first weeks of the CDF trial, and as was likewise clear both in Gbao's truncated opening statement and in his decision to no longer appear in the courtroom, is the continuing tension between justice and politics. A tension inherent in the very nature of this court as a legal body that must, by its very definition, exclude politics from its jurisdiction, it is nonetheless a tension that will likely continue to occupy the Court's attention in the coming months. For, after all, the very circumstances that created such a pressing need for justice in Sierra Leone (and, thus, for the Special Court itself) were inextricably intertwined with Sierra Leonean and regional politics. In this light, this recurring tension can be understood as not only likely, but truly inevitable.



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