



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

Special Court Monitoring Program Update #31 Trial Chamber I - RUF Trial 8 April 2005

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This week began with the continued cross-examination of insider witness TF1-362, whose cross-examination by counsel for the first accused took longer than direct examination, lasting a total of two full days. The court was adjourned Wednesday to observe the anniversary of Sierra Leone's independence from Britain. Proceedings continued on Thursday with the testimony of a prosecution investigator, who was called in response to a request by one of the defense teams to clarify an issue from a previous witness statement.

Witness TF1-114, the thirtieth witness of the prosecution, appeared this week as the fourth individual to testify in the open before the public gallery [1]. Denis Koker was a former SLA member, and his testimony focused on the actions of the combined RUF/AFRC "junta" forces in the eastern provinces of Sierra Leone after their withdrawal from Freetown in 1998. In particular, his testimony sought to directly implicate first accused Sesay for ordering "Operation No Living Thing" and second accused Kallon for civilian abductions and forced labor.

Witness Profiles

Anne-Catherine Hatt . Hatt was called as the 29th witness heard in the RUF case. She is an investigative judge from Switzerland who was employed by the Office of the Prosecutor.

Witness TF1-114. Witness TF1-114, subsequently identified as Denis Koker, was born in the Bo district. He was educated through form 5 and is partially able to read and write. He speaks Krio, Mende, and some English, and he testified in Krio.

Witness TF1-060 . Witness TF1-060 was born in Lalehun, Tongo Field in the Kenema District. He gave one of his professions confidentially to the chamber, and he noted that he was also a diamond miner. He was a member of the Mende tribal group, and he testified in English.

Testimony of prosecution investigator on the statement-taking process

Cross-examination of witnesses has often centered on issues arising from the statement-taking process during the investigation phase of the prosecution's case. From the evidence that has emerged thus far, it appears that there may not have been a uniform method used by prosecution

investigators during their early interviews with witnesses. The defense has encountered difficulties in cross-examining some witnesses on written statements that they have denied ever making, which leaves the defense with less material for testing the prosecution's case. By calling in this investigator, counsel for the third accused is attempting to establish that the omission of certain details from a witness statement supports his claim that Witness TF1-199 fabricated these details during his oral testimony in July of 2004.

Trial Chamber I has already heard testimony from one investigator in the CDF case, who was called to testify in the last trial session in relation to a witness who had refuted significant parts of his written statements [2]. This week the court heard from Anne Catherine Hatt, an investigative and juvenile judge from Switzerland, who had worked as an investigator for the Office of the Prosecutor specializing in the use of child soldiers. Although she was called in to address issues surrounding the statement of a particular witness, her testimony provided a broader window into the investigative process.

Hatt stated that she worked in Sierra Leone from May to November of 2003. During that time she focused on locating child soldiers, whom she contacted primarily through child protective agencies. If they agreed to speak with her, she would ask them about the details of their experiences as child combatants. Although she tried to conduct interviews in English, most of them were in translation, as was the case with Witness TF1-199. Significantly, Hatt noted that it was not the practice at the time to read back statements to witnesses, nor did investigators ask witnesses to sign their statements. The investigator wrote the report, and she signed it herself to verify that it was what the witness had told her. This practice contrasted with the description given by investigator Virginia Chittandra in the CDF trial, who stated that the interpreter would read back the statement to the witness, who would then sign or thumbprint it [3].

Defense counsel for Gbao claimed that his purpose in calling back the investigator was to establish that the witness had fabricated specific details about the abduction of UN peacekeepers in his oral testimony. He claimed that aspects of the abduction that the witness described during his oral testimony were absent from his written statement. During cross-examination, the witness told counsel that he had mentioned the incident in detail when Hatt interviewed him and wrote the witness statement. The investigator could not remember whether he told her about hostages, but she emphasized that she was primarily interested in the witness's experience as a child combatant, and she did not focus on other charges of the indictment.

Hatt's testimony highlighted the gaps in the process of gathering evidence: she stated that children have shorter attention spans, which restricted the amount of time she had to work with child ex-combatants, and she was instructed to focus specifically on the issue of child soldiers, which meant that she often did not follow up on other lines of evidence. This testimony indicates some of the challenges faced by the prosecution in the process of gathering evidence for a large and complex case, where many of the witnesses allegedly suffered from, witnessed, or participated in multiple atrocities that fall under a number of counts of the indictment. The defense faces a different set of challenges in attempting to find a basis for cross-examination: witness accounts in court often vary from the information disclosed before trial in their witness statements, sometimes adding new incidents and allegations that the defense is often unable to investigate before trial.

Testimony of Witness TF1-114, Denis Koker, regarding alleged junta atrocities

The prosecution announced that Denis Koker, Witness TF1-114, had decided to testify in the open. Counsel for the first accused asked for an explanation, arguing that if the witness was no longer afraid about his identity being disclosed, other witnesses may also be able to testify openly. Koker responded that he did not want to be "in hiding," and he wanted the people of his country to know that he was testifying before the Special Court.

Koker was in Freetown at the time of the AFRC coup working for the Sierra Leone Army (SLA) making army uniforms. He fled to the Kono district with the SLA/AFRC during the ECOMOG invasion of Freetown in February of 1998. He arrived in Koidu in a convoy with Johnny Paul Koroma, and he stated that a number of commanders were present, including first and second accused Issa Sesay and Morris Kallon, as well as Alex Tamba Brima of the AFRC.

Use of child soldiers and "Operation No Living Thing"

During this time, as the AFRC/RUF junta fought the Kamajors and moved from Koidu town to Gandorhun, Koker stated that Issa Sesay passed an order for "Operation No Living Thing." Under cross-examination, however, counsel established that Koker had not mentioned the operation in his witness statement, and Koker admitted that he had been saving it for his court testimony. The witness stated that the juntas abducted civilians, using them for forced labor and forcing women to be their wives; when questioned by counsel for the first accused, he explained that he understood "No Living Thing" to mean the junta's readiness to completely destroy Kono. Koker noted that Kallon and Sesay personally used a number of children for labor. Supporting the prosecution's claims that the RUF and AFRC were acting jointly at this time, the witness stated that "both the RUF and the ARFC, our brothers, they were responsible for burning houses," and he mentioned that the commanders had forgotten the laws of war.

Koker stated that Sesay was the top commander at the time, and he explained that commanders did nothing to stop the atrocities from taking place, a significant point for the prosecution's case of command responsibility. Koker stated that during this time, "if you even tried to stop [atrocities against civilians] they kill you." Demonstrating command responsibility requires showing that the commander was in a position of control and yet failed to prevent or punish atrocities.

Koker's position within the junta

After traveling with the former spokesman of the RUF from Kono to Baoma, the witness stated that the spokesman stole money from him, and Koker was wrongfully imprisoned. To compensate for this, he was appointed as an office of the military police (MP) by Sam "Mosquito" Bockarie, and he took charge of two Nigerian prisoners of war at the MP base in Buedu. "Mosquito" was in command; first accused Sesay was his deputy, and Kallon was also a battlefield commander at the time. Koker's own position as MP adjutant involved overseeing the detention of war prisoners. Under cross-examination he noted that three commanders – first accused Sesay, "Mosquito," and Mike Lamin – all decided the fate of war prisoners, and he could recall specific instances when Sesay had decided what to do with them, though he had not mentioned this before in his witness statement. During this period the witness testified that civilians were treated as slaves: they were brought in from all over the Kailahun district and were made to work without pay. Supporting Count 13 of the Indictment regarding abductions and forced labor, the witness testified that second accused Morris Kallon had a farm where civilians were forced to work, and he added that Kallon brought him a group of people to be sent for combat training, some of whom were under 15.

Evidence relating to forced marriage

In their request to amend the indictment, the prosecution has contended that "forced marriage" is a novel category of sexual violence, and existing categories under international criminal law do not adequately account for the "bush wife" phenomenon during the conflict in Sierra Leone. Koker went into detail during his testimony, emphasizing this sexual violence as a form of "marriage" – in particular, an "unlawful marriage" – which he blamed for destroying legitimate marriages. He claimed that he had heard about these incidents when people came to complain at the MP office: he knew that women were taken from captured villages, and he stated that some commanders

had five or six wives. Koker stated that he reported forced marriage to his superiors, once again supporting the prosecution's allegations of command responsibility for failing to prevent or punish.

Testimony of Witness TF1-060 regarding threats to Mendes in the eastern districts

The witness stated that he was from Tongo Field, the diamond mining area in Kenema district in the eastern region of Sierra Leone. Tongo Field was owned by the National Diamond Mining Company, and the main mine was known as "Cyborg." The witness notified the court of one of his professions in writing to avoid revealing his identity, and he stated that in addition to this confidential job he was also mining at the time of the AFRC coup in May of 1997. Kamajors were still in control of the area after the overthrow of the SLPP government, but the witness stated that by August of 1997 he saw a group of combatants led by Sam "Mosquito" Bockarie entering the town of Tongo.

The witness hid in the bush with his family, and he later went to town. On the way he saw burned houses and corpses. He spoke with one of his relatives, who informed him that Sam "Mosquito" Bockarie had announced at a town meeting that he was trying to recruit members of the Mende tribe, traditionally affiliated with the overthrown SLPP government, to support the new AFRC government. The witness went to see an SLA officer, who showed him the names of a number of prominent Mendes from the chiefdom, including his own name. Bockarie was in the office as well, and he threatened that the lists would be released and the named individuals would be killed if they refused to cooperate with the junta government. The witness offered to discuss the matter with his paramount chief in Kenema.

At this point in the witness's testimony the court moved into closed session in order to prevent his identity from being disclosed. Cross-examination by all three defense teams was completed in closed session.

- 1.) Previous testimony without the protective partition was given by John Tarnue and George Johnson for the RUF and Albert Nallo in the CDF.
- 2.) See update #24 from the week of 4 March regarding testimony of OTP investigator Virginia Chittandra.
- 3.) Chittandra testified on 2 March, and her testimony is summarized in Special Court Update No. 24.



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