



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

Special Court Monitoring Program Update #7 Trial Chamber I - RUF Trial 8 October 2004

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Summary Procedural Delays Witness Examination in Chief Cross Examination by Counsel for First Accused

Summary

After one month of the CDF trial following its August recess, the court reopened proceedings for the RUF trial on Monday, 4 October. All three accused in the RUF trial have been charged with eighteen counts of crimes against humanity, violations of Article III common to the 1949 Geneva Conventions, and other serious violations of international humanitarian law for their alleged involvement in the command and organization of the RUF [1]. The trial resumed this week in the presence of the first and second accused, Issa Sesay and Morris Kallon. As with the previous session, third accused Augustine Gbao continued to dispute the constitutional legitimacy of the court, and he refused to give instructions to counsel or to attend trial. Morris Kallon had dismissed his international counsel the week before and was represented by a team of Sierra Leonean lawyers [2].

Trial this week focused exclusively on the testimony of Brigadier General John Tarnue, the former commanding general of the armed forces of Liberia. The prosecution stated that Tarnue was considered a "category C" insider witness, and his testimony primarily focused on tracing the alleged connections between the National Patriotic Front for Liberia (NPFL) headed by Charles Taylor and the RUF and AFRC in Sierra Leone [3]. In particular, Tarnue testified to the alleged transfer of diamonds and arms between the NPFL and the RUF as well as the command relationship between Taylor and the RUF leadership. His testimony additionally focused on the training of RUF forces in Liberia and their subsequent deployment in Sierra Leone. After nearly two days of examination in chief by the prosecution, the rest of the week was devoted to cross-examination of the witness by counsel for the first accused. Cross-examination by counsel for the second and third accused will continue next week.

Procedural Delays

Proceedings began with a temporary delay of the witness' appearance while the parties addressed both procedural and evidentiary issues. The prosecution requested to modify a protective order governing witness testimony because the witness had been relocated from the region and was therefore willing to testify publicly [4]. The court rose to consider two issues raised by the defense teams: 1) whether protective orders could be amended orally at trial, and 2) disclosure of the witness's country of residence, a fact that Sesay's defense counsel claimed was already a matter of public knowledge. Upon returning, the chamber stated that it was satisfied with the prosecution's application and ruled that protective measures relating to the witness's address and country of residence would remain in force.

Defense counsel for the first accused submitted that handwritten notes had been taken by investigators for the prosecution in relation to a tape recording played during a witness interview, and he maintained that these notes had not been disclosed to the defense. The prosecution stated that all documents pertaining to this witness had been disclosed, but no search was made for these specific handwritten notes. The prosecution then stated that there was no clear standard for assessing whether a note taken by a lawyer in the context of conducting investigative work should be disclosed: the distinction between the work products of a lawyer acting as a lawyer and a lawyer acting as an investigator had not been sufficiently considered by the court. The bench responded that it had issued a decision pertaining to this issue at the recent status conference [5], but that it would invite submissions by the prosecution and the defense. Despite defense counsel's claims that the witness's examination in chief could proceed without compromising the rights of his client, Judge Itoe announced that the examination of the witness could not go forward before the issue was resolved, and the chamber would adjourn without calling the witness. Since no stand-by witness was available, it appeared that the RUF trial would be delayed and that the witness would not be called until submissions had been made by both sides.

Witness Examination in Chief

Afternoon session opened with counsel for the first accused reporting that the prosecution and the defense had informally resolved the issues that had been raised in the morning session. The Chamber called the thirteenth witness of the prosecution, Brigadier General John Tarnue, whose appearance in full view of the public gallery was a marked departure from previous trial sessions. Witnesses preceding Tarnue had testified from behind a wooden partition, and they were visible only to the chamber and the accused parties. Tarnue had expressed interest in appearing before the court under his own name and without any protective measures in place except for the nondisclosure of his current address and country of residence.

Biographical details of Brigadier General John Tarnue

Tarnue began by recounting his educational background and military training, including training under special forces at Fort Bragg in the United States. Before the NPFL takeover in 1990, Tarnue was a member of the armed forces of Samuel Doe's government and headed the military science department of the Booker Washington Institute in Kakata, Liberia. After the takeover all former armed forces personnel were allegedly told to turn themselves in or they would be considered enemies of the NPFL. Tarnue surrendered to the area commander of the NPFL in June of 1990, and he was subsequently taken to Charles Taylor's "executive mansion" in Gbarnga, Liberia.

After an interview with Taylor wherein Tarnue described his military experience, he was offered a position in the NPFL. Tarnue testified that other members of the armed forces of Liberia had been executed by the NPFL, and he claimed that he joined out of fear for his life. He was made an instructor for troops as well as for civilians who were recruited from displacement camps and conscripted into the NPFL, a position which included training new forces for the RUF. From 1997 to 1999 he served as the assistant chief of staff for the armed forces, and in 2000 he was promoted to the rank of commanding general. After he was transferred to Taylor's Anti-Terrorist Unit (ATU) and subsequently tortured under suspicion of treason for alleged associations with the U.S. State Department, he fled Liberia in 2002.

Alleged events pre-dating the temporal jurisdiction of the Indictment

Much of the witness's testimony centered on events preceding the temporal jurisdiction of the court, reaching as far back as 1987 to connections allegedly made in Libya between Muammar Qaddafi, Charles Taylor, and Foday Sankoh, the head of the RUF [6]. Among the main topics of Tarnue's examination in chief were meetings attended by Taylor and Sankoh in the early 1990s.

Tarnue described a meeting held at a NPFL training base that was allegedly set up by Taylor in order to convince Sankoh to form an alliance with the NPFL. Tarnue testified that he personally engaged in training nearly one hundred Sierra Leoneans at camps in Liberia in November of 1990, and upon completion of their training in February of 1991 they were transferred to Camp Namma, the artillery base of the NPFL.

Taylor allegedly hosted a meeting on 27 February 1991, which was attended by Sankoh and other members of the nascent RUF, in order to discuss Sankoh's plan to stage a revolution in Sierra Leone. Taylor informed the attendees of his intention to support Sankoh with trained troops and supplies. The witness claimed that the third accused, Augustine Gbao, was present at the meeting and was introduced by Foday Sankoh. Taylor allegedly encouraged Sankoh to adopt the methods used by the NPFL, including attacking areas rich in natural resources and recruiting new soldiers from captured civilians. Tarnue further testified that Taylor planned to have diamonds sent to Blaise Compaore of Burkina Faso and Muammar Qaddafi of Libya, whom he referred to as "big brothers," and subsequently sold to create an income base for purchasing ammunition.

According to Tarnue, 292 men were deployed from Camp Namma for the purpose of invading Sierra Leone on 28 February 1991. The troops were comprised of both RUF and NPFL fighters and included 96 Sierra Leoneans. Taylor himself gave the operational order through long-range radio and provided transportation, cash, ammunition and food. Tarnue testified that Sam "Mosquito" Bockarie was present at the troop deployment in his capacity as a commander for the RUF, and that Benjamin Yeaten, one of the special forces under Taylor, would accompany the troops to oversee the transfer of diamonds to the "big brothers." The witness's description of this troop deployment indicated a working relationship between Taylor's NPFL and the RUF.

Tarnue testified further to the transfer of diamonds and goods in exchange for arms between members of the RUF and the NPFL. The witness described an October 1992 visit at Taylor's executive mansion from members of the RUF, including Foday Sankoh, Sam Bockarie, and Augustine Gbao, who came by truck to deliver goods and diamonds to Taylor. Further visits were allegedly made in 1993, when Sam Bockarie and Benjamin Yeaten would come with junior RUF commanders, including Kallon and Sesay, in order to obtain arms and supplies. Tarnue testified that air strips were constructed in 1993 to help facilitate the transfer of arms, which were brought from Burkina Faso via the Ivory Coast to Taylor's executive mansion. Arms were allegedly loaded onto trucks and taken to the front line to continue the war effort in Sierra Leone.

Alleged events within the temporal jurisdiction of the Indictment

Prosecution additionally focused on the period of Charles Taylor's presidency following the 19 July 1997 general election in Liberia. As of 25 May 1997, the democratically elected Kabbah government in Sierra Leone had been displaced by the AFRC coup led by Johnny Paul Koroma. According to Tarnue, Taylor sent his defense minister to Freetown in an effort to forge a military alliance between Koroma's AFRC and the RUF. Taylor allegedly recognized Koroma's *de facto* government and offered support in the event of any outside intervention.

After the presidential inauguration in 1997, Tarnue testified that Taylor's support of the RUF intensified. When the RUF/AFRC juntas were driven out of Freetown by ECOMOG forces in February of 1998, Taylor advised the junta leadership to retreat and reconsolidate. He allegedly offered to resupply the forces with arms and ammunition. Tarnue testified that he had personally witnessed the transfer of weapons to Issa Sesay and Morris Kallon during a helicopter trip in 1999 or 2000. He gave further details about a conference allegedly held at Roberts International Airfield in Monrovia, Liberia in 2000 after UN peacekeeping troops were abducted by the RUF. Tarnue stated that Taylor sent for the RUF high command, including Issa Sesay and Augustine Gbao, to appear at the conference, which was attended by heads of state from Togo, Nigeria, Mali and Gambia. Tarnue claimed that he witnessed the abductees' arrival by helicopter at

Springfield Airfield in Liberia, and stated that they were transported back to Sierra Leone one or two days later [7].

The remainder of the witness's examination in chief was comprised of biographical details regarding his departure from Liberia and his subsequent contact with investigators for the Special Court. Tarnue testified that he had been suspected of attempting to overthrow the Taylor government. Although he was cleared of this charge in a formal investigation, he was subsequently transferred to the Anti-Terrorist Unit (ATU), which ran security for President Taylor, and was later tortured by Taylor's son.

Cross-examination by Counsel for the First Accused

Unlike other international tribunals, no time limitations are placed on cross-examinations of witnesses in the Special Court. The cross-examination by counsel for Issa Sesay began on Tuesday and continued through the end of the week with little intervention from the bench. During cross-examination, the defense focused on possible discrepancies between the witness's *viva voce* testimony and his written and oral statements. Counsel primarily drew from an interview conducted by Dr. Alan White, the chief inspector for the prosecution, which took place on the ninth and tenth of April 2003. Sections of the interview transcript were read into the record by Sesay's counsel, and a number of discrepancies were alleged regarding altered dates and added details pertaining to the accused.

Specific areas dealt with by counsel for the first accused this week included Tarnue's interactions with Dr. White, his training of troops in 1990 and 1991, the nature of his relationship with Charles Taylor, and his allegations regarding Issa Sesay's activities from Tarnue's examination in chief. The chamber held two hours of closed session on Tuesday while defense counsel brought questions that would presumably reveal Tarnue's current country of residence, but the remainder of the cross-examination was conducted in open session.

The witness insisted during the course of the cross-examination that he did not have a personal relationship with Taylor, and that Taylor considered him one of "Doe's men," a carry-over from the regime of Samuel Doe. Tarnue maintained that he had surrendered to Taylor under threat of death and was therefore not serving the NPFL or the Taylor government of his own free will. Tarnue's own participation in Taylor's regime became a subject of scrutiny, as defense counsel focused on (a) Tarnue's credibility and the expenses from his relocation, and (b) the witness's own contributions to what defense counsel referred to as Taylor's "military machine."

Witness credibility and compensation

During his first day of cross-examination, counsel for Sesay expressed his intentions to explore the motivations of the witness and what was provided for him. The witness stated that during 2002, as he was attempting to leave the region, he would have done anything to get his wife and children to safety. When he was contacted by Dr. Alan White, chief investigator for the special court, Tarnue further stated that he was relieved. He was relocated shortly after meeting Dr. White. Defense counsel stated for the record that from April of 2003 to the present, Tarnue had received over \$90,000 USD from the Office of the Prosecutor. The Victims and Witnesses Unit had paid his rent during this period, as well as utilities, bills, and a monthly stipend of \$1,000.

Counsel put it to Tarnue that he felt indebted to Dr. White and the prosecution, and he had altered the facts of his testimony in order to correspond with the desires of the prosecution team. In particular, counsel referred to "off the record" conversations noted in the transcript of Tarnue's April 2003 interview with Dr. White that took place before Dr. White asked questions regarding diamonds and arms shipments. Counsel suggested that Dr. White had been giving the witness information on these two topics, and he claimed more broadly that Tarnue had tailored his

evidence to satisfy the prosecution. Further attempts were made by the defense to call the witness's credibility into question by referring to a phone call that the witness had made to the prosecution on the first day of his testimony. Tarnue admitted that he knew he was not supposed to speak with a representative of the prosecution during the course of his appearance at trial, yet he had made a phone call to a member of the prosecution team in order to seek legal advice.

The interchange between defense counsel for the first accused and Tarnue was notably strained as counsel moved into issues of Tarnue's own motivations and the veracity of his testimony. Defense counsel pointed out what he perceived to be evasiveness in Tarnue's responses. He further claimed that the witness's appearance in the Special Court may be a way of protecting himself from prosecution in Liberia. Tarnue responded that no one had discussed amnesty or methods for avoiding prosecution with him.

Determining responsibility

On the second day of cross-examination by counsel for the first accused, Tarnue stated that he did not think his own participation in Taylor's "military machine" made him criminally liable. He testified that he was not responsible for forcibly conscripting the 96 Sierra Leoneans who he had trained in Liberian camps. Defense counsel suggested that on the face of it, training forcibly conscripted soldiers constitutes a breach of the Geneva Conventions. Pressing further, counsel suggested that the prosecution's charge that Sesay was liable for exchanging diamonds for arms in order to continue the war in Sierra Leone paralleled the general's own admission to attending arms deliveries himself. The witness initially accepted and later rejected counsel's assertion that he was responsible for training the first wave of entrants into Sierra Leone. Counsel claimed that Issa Sesay was one of the first forcibly conscripted recruits in Camp Namma in 1991, and he suggested that Tarnue's own role in training recruits demonstrated a level of participation in the criminal activity of the NPFL and RUF.

An implicit concern in the defense's position appears to be the interpretation of the court's mandate to try those who bear the greatest responsibility. According to the witness, Issa Sesay and Morris Kallon were functioning as aides to Sam "Mosquito" Bockarie. With Foday Sankoh dead and Bockarie presumed to be dead, the defense appears to be arguing the position that these junior commanders are being tried in lieu of those who actually bear the greatest responsibility for atrocities committed by the RUF.

- 1.) According to the Amended Consolidated Indictment of 13 May 2004, all three accused were senior officers and commanders in the RUF, "junta," or AFRC/RUF forces.
- 2.) During the status conference of 1 October, the Principal Defender reported that there were problems with the Kallon team that could not be rectified, and as of 27 September the client and counsel had determined that the client would not be represented by this team.
- 3.) *Conflict Mapping in Sierra Leone*, issued by No Peace Without Justice (2004), states that "[w]hen they first entered Sierra Leone and during the early stage of the conflict, NPFL members, who not only outnumbered the RUF but also held most of the commanding positions, dominated the RUF forces" (38).
- 4.) Protective order dated 5 July 2004. According to the prosecution's request, the only remaining protective measures in place after modification of the order would be the witness's current address and whereabouts.
- 5.) At the 1 October status conference, Judge Thompson stated that the bench had given a broad range to the meaning of witness statements, and that interview notes taken by an investigator constitute witness statements, including handwritten notes.

6.) The Special Court has jurisdiction over acts committed after the Abidjan Peace Accords of 30 November 1996, a failed peace agreement between the fighting factions. According to the *Conflict Mapping in Sierra Leone* guide, this date was selected because it corresponded with a new phase in the conflict and would encompass the most serious crimes while being limited enough to avoid overburdening the prosecutor.

7.) Counts 15-18 of the Indictment refer to attacks on UNAMSIL personnel; in particular, Count 18 refers to abductions and hostage taking as a violation of common Article 3 to the 1949 Geneva Conventions.



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