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Summary

The second week of the eighth RUF trial session saw the testimony of two important witnesses, one being a UN military observer who was held hostage by the RUF during the Disarmament Demobilization and Reintegration (DDR) process in 2000 and the other being a former RUF-combatant who was forced to join the RUF after being kidnapped from his village as a child. The defence also had the opportunity to cross-examine Prosecution witness Alfred Sesay, for whom the Prosecution submitted a solemn declaration in lieu of having him give oral testimony.

Both the Prosecution and the Defence carried out identification procedures with respect to Witness TF1-117. While the Prosecution had the witness conduct ‘in dock’ identifications of the three accused, the Sesay defence team requested the witness to identify six pictures of high ranking RUF and AFRC commanders with whom he allegedly interacted during his time as an RUF combatant. The cross-examination of Witness TF1-117, the 77th witness for the Prosecution in the RUF trial, by counsel for the first accused will continue next week.

Witness Profiles at a Glance

Witness TF1-367 continued his testimony in closed session, under protective measures. Witness TF1-367's evidence-in-chief commenced on the 21st June 2006 and this week's proceedings continued with the cross-examination of the witness.

Joseph Mendy, a Gambian national born in 1950, testified in English in open session. He was a lieutenant-colonel in the Gambian army and served as a UN military observer in Sierra Leone in 2000, when he was taken hostage by RUF combatants. During his time as a hostage he suffered major injuries to his leg, and has since retired from the army. His testimony was completed on 29 June 2006.

Alfred Sesay, a former investigator with the OTP and the 76th witness for the prosecution, testified in English in open session. The Prosecution submitted a sworn statement from Sesay and he was subsequently cross-examined by the defence on this evidence.

TF1-117 testified in Krio under protective measures. Although the witness was listed as a child witness by the Prosecution, he is in fact 23 years old and thus waived the right usually accorded to child witnesses to testify via video link. Witness TF1-117 was born in Gboajibu village, located in between Kenema and Tongo, and was initially captured by the RUF when he was ten years old. He subsequently fought as an RUF combatant. Cross-examination of the witness will continue with next week's proceedings.

The Testimony of Joseph Mendy

Joseph Mendy's examination-in-chief was conducted by prosecuting attorney Wendy Van Tongeren. Mr. Mendy stated that he was deployed in Makeni as a UNAMSIL military observer beginning in February 2000. He described the training he received in preparation for his role, the mandate of the military observers and the specific duties he was tasked with. He corroborated much of the testimony given by Major Jaganathan, who testified for the prosecution the previous week, with respect to the commencement of the disarmament process in Makeni in April 2000 and the antagonistic arrival at the reception center of Gbao, the third accused, along with other RUF combatants.

The witness testified that during his time in Makeni he came to identify the three accused, Sesay, Kallon and Gbao, as well as Colonel Jimmy, as being senior commanders of the RUF in the area. In terms of command hierarchy, the witness identified Sesay as being the most senior commander followed by Kallon and then Gbao. Mr. Mendy alleged that Gbao utilized Small Boy Units (SBUs), composed of armed children, whom he alleged were often under the age of fifteen. The witness testified that he frequently saw Gbao moving around Makeni with several of these units while he was stationed there in 2000.

On 1 May 2000, Mr. Mendy stated that he and two colleagues were responsible for the security situation in Makeni. It was on this day that a group of disgruntled RUF combatants took several UN personnel hostage, including the witness. He described the events surrounding the combatants' attack on the disarmament camp, identified Kallon as having opened fire on the military observers and also alleged that Issa Sesay was one of his captors. After being taken hostage, the witness sustained a massive leg injury from being loaded into an overcrowded truck that was subsequently in an accident. His badly

broken leg became severely infected. He was eventually transported to Liberia where he allegedly saw Charles Taylor and was released by the RUF. The witness testified that he was then brought back to Freetown on 28 May 2000 by the UN and placed in hospital. While the doctors initially considered amputating the witness' leg he was transferred to South Africa where he was able to undergo surgery that has facilitated a significant recovery. The witness testified that he was repatriated to the Gambia in January 2001 although he has since retired from the military due to his injuries.

The witness was cross-examined by the Defence in a similar manner to Major Jaganathan, a fellow UNAMSIL military observer who was taken hostage by the RUF, who testified the previous week. O'Shea, counsel for the third accused, conducted the most extensive cross-examination of the witness. He posed a series of questions regarding the training and preparation Mr. Mendy had received before his arrival in Sierra Leone. Mr. O'Shea concluded from the witness's testimony that the witness had undergone a totality of two weeks of training in the Gambia, suggesting that UN personnel had embarked on a mission to monitor RUF activities with little understanding of the situation in the country. He further alleged that this had led to members of the RUF being antagonized by them. While the witness disagreed with this characterization he admitted that he had little knowledge about how the RUF operated. Defence counsel had a seemingly difficult time discrediting this witness' testimony. However after extensive questioning by O'Shea on the presence of armed SBUs working with the RUF, the witness did clarify that he had only seen a few armed children during his time in Makeni.

The Cross-Examination of Alfred Sesay

The prosecution tendered the solemn declaration of one of its former investigators, Alfred Sesay, as an exhibit this week.¹ The witness's declaration, which was tabled pursuant to a decision issued by Trial Chamber I in April of this year, was admitted unopposed by the Defence.² The document was prepared by Mr. Sesay in July of 2005. The exhibit was open to the defence for cross-examination, an opportunity that all three defence teams pursued. The signed declaration of Mr. Sesay related to the seizure of documents from the house of Foday Sankoh, former leader of the RUF, in 2000, while Sesay was a member of the Sierra Leonean Police Force. At the time of seizure, Sankoh was the government minister in charge of strategic minerals and the Vice President of Sierra Leone. The documents in question came into the possession of the Prosecution at the SCSL subsequent to the search.

Mr. Jordash initially questioned the witness on the receipt of these various documents that had been seized by police from Sankoh's house subsequent to the mass protests outside his residence in May 2000. The witness was unable to say what else, besides these documents, was seized or whether there was also a computer in the house. He also

¹ Sesay's declaration was admitted pursuant to Rule 73bis of the Special Court's Rules of Evidence and Procedure, whereby the Prosecutor may, in the interests of justice, move the Trial Chamber to vary the list of witnesses to be called.

² 'Decision on Prosecution Request For Leave To Call An Additional Witness and Notice to Admit Witness' Solemn Declaration Pursuant to Rules 73BIS(E) and 92BIS', SCSL-15-534, 5 April 2006

testified that the police had not kept any records of the documents that were seized, nor was he able to account for the documents that were taken by the Attorney General at a later stage during that year, other than to describe them as “log books and diamond documents”. Similarly, Mr. Sesay was unable to confirm which documents were photocopied by UN representatives and which were taken by other members of the OTP at the SCSL in 2002.

Mr. Touray, counsel for the second accused, questioned the witness as to whether there was a warrant issued before police searched Sankoh’s house and whether someone in the house had endorsed the documents found. In both instances, the witness answered in the negative. The witness also confirmed that he was not present during the search. Upon hearing these responses, Touray asked “So you are not really in a position to tell this Court that all the documents allegedly handed over to you...were, in fact, taken from Foday Sankoh’s residence?”³ Mr. Sesay replied that he indeed could not say this with absolute certainty.

Counsel for the third accused suggested that the witness was lying about the circumstances surrounding the retrieval of these documents due to his loyalty, as a civil servant and police officer, to the government of Sierra Leone. The witness denied these allegations.

The Testimony of Witness TF1-117

Witness TF1-117 testified that he was ten years old when the RUF attacked his village in 1992. He described the rebels as burning houses in the village before they captured the witness and killed his father. He alleged that the commanders involved in the attack were Augustine Gbao, the third accused, as well as Titus and CO Mohamed, also of the RUF. After he was captured by the RUF, the witness testified that he was taken to Kono with a group of children where they were submitted to military training and taught how to use firearms. Following the training period the witness stated that he participated in various RUF attacks, including on Kono. He described the process of desensitization as follows:

“When they took me, I was afraid when I was seeing blood and I saw them killing a lot of people. So they took me. They gave me something that I was drinking, and that made me not to be afraid any more. By that time I developed great mind.

Q Do you remember what this thing was that they gave you?

A Yes

Q What was it?

A They gave me jamba. We took cocaine.”⁴

Witness TF1-117, who continually referred to Issa Sesay as his Master, alleged that while based in Kailahun the RUF commanders included Gbao, Kallon and Sam Bockarie. Shortly after the coup of 1997, the witness alleged that he delivered instructions from Sesay to Gbao, in Kailahun, which notified Gbao that Johnny Paul Koroma proposed the

³ SCSL Transcript, 29 June 2006, page 72, lines 14-16

⁴ SCSL Transcript, 29 June 2006, page 89, lines 27-29, page 90, lines 1-5

union of RUF and SLA forces. The witness testified that he was subsequently taken to Makeni and left at Teko barracks, with various other children from the SBUs. In Makeni the witness was taken into the care of the church, where he remained until Koroma was overthrown, at which point he approached the RUF office and re-joined the rebel forces, this time voluntarily. He claimed that he participated in the RUF attacks against UNAMSIL military observers conducting the DDR process around Makeni. He also testified that he was with the group of RUF fighters, including the commanders Superman, Sesay and Gbao, who advanced on Freetown with the aim of releasing Johnny Paul Koroma from prison. After discovering that Koroma had already escaped prison, the witness stated that he participated in what became known as ‘Operation Pay Yourself’⁵, during which he, and fellow combatants (allegedly including Gbao and Kallon), extensively looted civilian property as they retreated out of Freetown. He testified that he was subsequently based in Makeni with the RUF.

Identification Procedures

The three accused in the RUF trial figured prominently into the witness’ testimony, as he often cited them as the commanders in charge during various operations in different locations over the course of the witness’ involvement with the RUF. Accordingly, the Prosecution requested that the witness individually identify the three accused in court. Counsel for the third accused, Mr. O’Shea, immediately objected to the move. He acknowledged the permissibility of such ‘in dock’ identification within the national jurisdiction as well as in accordance with jurisprudence from the ICTY and ICTR. While O’Shea noted that there was no specific reference to such an identification procedure contained within the Rules of Evidence and Procedure at the SCSL, he also highlighted the discretionary aspect of Rule 89(C). He argued that the term ‘may’ contained in Rule 89(C) implied that discretion could be exercised by the Chamber with respect to the admission of evidence where the prejudicial effect of evidence outweighs its probative value. O’Shea argued that the probative value of identifying the third accused would be severely limited due to the layout of the courtroom, the manner in which the accused could be identified with facility as well as to the position of the accused within the RUF (that is with the first and second accused as holding high ranking positions within the RUF, while it is the contention of counsel that the third accused is a relatively unknown member). Counsel suggested that due to these factors his client would in effect be identified ‘by default’ and the evidence would thus have no probative value and should consequently not be allowed. However, Justice Thompson wondered why O’Shea would be concerned about the probative value of the exercise at this point, given the Chamber’s flexible approach to the admissibility of evidence.

After a brief deliberation, counsel’s objection to the request made by the Prosecution for the witness to identify the accused was overruled. The Presiding Judge indicated the decision was based on the grounds that the question did not infringe any rule with respect to examination-in-chief so as to make the question impermissible. Furthermore, the judges found no compelling reasons to justify precluding the Chamber from exercising its

⁵ ‘Operation Pay Yourself’ refers to a massive campaign of stealing and looting carried out by RUF and AFRC forces in early 1998. Road blocks were established throughout the country and civilians were systematically terrorized.

discretion to 'exclude evidence whose prejudicial effect outweighs its probative value'. The witness was asked to identify the three accused in the courtroom, however after correctly identifying Issa Sesay he failed to correctly identify the second and third accused.

As part of the cross-examination conducted by counsel for the first accused, which began during the morning's proceedings on June 30th, six pictures of various high-ranking leaders within the RUF and AFRC were presented to the witness for identification purposes. Jordash stated that the exercise would assist him to ascertain the veracity of the witness' testimony as it pertained to his close personal interaction with those leaders. The witness correctly identified Johnny Paul Koroma in one of the photographs and incorrectly identified the photograph of Bai Bureh as Issa Sesay. He was unable to identify the others.

While both the Prosecution and Defence seemed to devote a large amount of time to these identification procedures, the evidence in this regard will at best assist the court in corroborating the witness' testimony.

Counsel for the first accused's cross-examination further centered on details relating to the witness' movements between different locations with the RUF, how long he stayed in various places, as well as the length of the journeys when relocating to various towns. He was also questioned on how one would dismantle an AK47, the weapon the witness alleged he used while operating as a bodyguard for Sesay, the first accused. Cross-examination of Witness TF1-117 will continue next week.



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