



U.C. BERKELEY WAR CRIMES STUDIES CENTER
SIERRA LEONE TRIAL MONITORING PROGRAM
WEEKLY REPORT

Special Court Monitoring Program Update # 87
Trial Chamber II – AFRC Trial

Week ending 22 September 2006

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Summary

This week saw ten defence witnesses examined. This included the first insider witness called by the defence. All witnesses were called to testify on behalf of the three Accused simultaneously as part of a joint defence strategy. The witnesses were all subject to special protection measures pursuant to Trial Chamber II's decision of 9 May 2006.¹ They were consequently shielded from view from the public gallery while they testified and their identities are not recorded in any court records or transcripts.

Witness testimonies

DAB-110: Witness is male, born in Nonkoba (Port Loko District). He has two wives, four children and is currently supporting himself as a farmer and a blacksmith. He testified about events in the Port Loko District.

During the course of his testimony, the witness alleged that soldiers (whom he identified as RUF rebels) had captured and killed his brother. He further alleged that the RUF had launched repeated attacks during which civilians were killed or kidnapped and their property burned and looted. The witness himself was allegedly captured, tied up and mistreated by RUF rebels. He further described how these rebels had proceeded to murder, cook and eat his grandfather. The witness was then allegedly forcibly moved, given weapons training and forced to raid other civilian settlements in search of

¹ *The Prosecutor v Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu* (SCSL-16-488) "Decision on Joint Defence Application for Protective Measures for Defence Witnesses", 9 May 2006, available on-line at: <http://www.sc-sl.org/AFRC-decisions.html>.

foodstuffs for his captors. He reports seeing Superman during his period in captivity with the RUF.

Cross-examination: Kept brief. Mainly targeted at clarifying the time-period of events covered in the testimony.

DBK-111: Witness is male, born in 1954 in Mayepoh (Tonkolili District). He has been a teacher in Nonkoba since 1993, has two wives and seven children.

This witness' testimony largely related to RUF activities. He alleged that Superman was in charge of Lunsar in 1999 and that the had RUF attacked Nonkoba, looted civilian property and forced civilians to carry equipment and provisions. He further testified that the RUF killed civilians throughout the region, burned several villages and abducted children. According to the witness Tina Musa had taken charge of captured civilians after SAJ Musa's death.

Cross –examination: While his evidence in main was given on 18 September, the witness was cross examined on 22 September. The cross examination was kept brief, with the witness testifying that he did not know whether the three Accused were part of the force that overthrew the Kabbah government.

DAB-134: Witness is male, about 40 years old, born in Kono District, married with two wives and eight children and presently supports himself as a farmer.

The witness testified to events in Njardu (Kono District). Armed men he identified as RUF rebels allegedly burned houses, killed civilians (among them the witness' brother), kidnapped children and raped women and girls. The witness had not heard of any of the three Accused in connection with events in Kono

Cross-examination: Kept brief. Focused on the witness' unclear conception of the time-period during which events covered in the testimony took place. The witness did not know whether the rebels he witnessed may have consisted on SLA and RUF operating as a mixed force.

DAB-122: Witness is male, born in 1960, resides in Sewafe (Kono District), is married with six children and currently supports himself as a farmer.

The witness testified to seeing SLA soldiers stationed in Sewafe in 1997. He further testified that RUF forces later came to Sewafe and joined the SLA to create a joint force called the People's Army. According to the witness, during the time of this joint occupation, the CDF launched an unsuccessful attack on Sewafe, which was followed by a successful ECOMOG invasion. Civilians returned to the city when it came under ECOMOG control, and found large parts of Sewafe burned to the ground. ECOMOG informed them that the AFRC were responsible for the burning. The witness testified that he had not heard of any of the three Accused in relation to events in Kono, nor did he know whether they were linked to the overthrow of the Kabbah government.

Cross-examination: The witness reports widespread looting and killing in Kono, as well as civilians forced to mine diamonds the region, while the AFRC were in government.

DAB 096: Witness is male, 32 years old, resident in Koidu Town (Kono District) and is married with two children. He has been a member of the armed forces, worked as a miner, and is presently a petty trader.

The witness testified that RUF troops led by Sam Bockarie (a.k.a. Mosquito) came to join SLA fighters already stationed in Koidu. He allegedly witnessed RUF forces setting fire to houses and killing civilians in several locations in Kono District. He further stated that he followed a group of soldiers to Colonel Eddie Town where he saw Colonel Eddie, SAJ Musa and Junior Lion holding the three Accused captive allegedly due to the fact that the Accused wanted to desert or surrender. He further testified to moving towards Freetown in the company of soldiers under SAJ Musa's command. The three Accused are alleged to have been moving with the armed group as prisoners.

Cross-examination: Scheduled for Monday 25 September.

DAB-142: Witness is female, resides in Kailahun (Kono District), and is married with six children. She is a trained nurse but currently supports herself as a petty trader.

This witness alleged that RUF rebels led by Mosquito arrived in Kailahun in 1997. According to the witness she was not aware that any of the three Accused had commanded rebels in Kono. She saw JP Koroma in Kailahun following the ECOMOG intervention in Freetown. She had heard that several members of the SLA, including the first Accused (Brima) had been arrested for desertion. She testified that women, including herself, were forced to marry RUF rebels, and she alleged that she saw children fighting for the RUF.

Cross-examination: The witness did not know whether Tamba Brima had been arrested due to conflict over the division of wealth from diamond mining. When she saw Tamba Brima in Kailahun he was not in fact incarcerated in a cell of any description.

DAB-138: Witness is male, resides in Bo, and is married with two children.

He reports of clashes between Kamajors and military forces sympathetic to the AFRC in Bo in 1997. According to the witness, the Kamajors killed people in Bo. He had not heard the names of any of the three Accused connected to events in Bo.

Cross-examination: Kept brief. The witness was not familiar with any of the activities that the prosecution alleged AFRC forces were involved with in Bo.

DAB-143: Witness is male, born in 1964, resides at Taadu (Kailahun District), has two wives and five children, and is a blacksmith.

The witness testified that rebels, including Mosquito, arrived in Buedu Town in 1997. The witness and several other civilians were forced to carry equipment and sell produce for the benefit of these rebels. He later encountered SLA soldiers led by John Paul Koroma in Buedu. He never heard anyone refer to any of the three Accused. He reported that rebels used children as soldiers.

Cross-examination: Kept short. The witness was not familiar with any of the events that the prosecution asked him to comment on.

DAB-140: Witness is male, born in 1957, resides in Buedu Town (Kailahun District), has two wives and eight children, and currently supports himself as a farmer.

The witness was allegedly captured by soldiers commanded by Sam Bockarie. According to the witness, he was one of a number of civilians forced to carry equipment for these troops. Bockarie's soldiers also consisted of children, and these troops burned civilian property in Buedu. He also testified to seeing Johnny Paul held prisoner by Bockarie's forces. He had not heard of any of the three Accused.

The witness further alleged that his twelve year old daughter was raped by Bockarie's bodyguard and a number of other rebels. The girl died as a result of repeated rapes and was dumped by the rebel soldiers into a mass-grave. He had heard of a number of other rapes, and witnessed the dumping of several bodies into the mass grave.

Cross-examination: Kept brief. The witness was not familiar with any of the events that the prosecution asks him to comment on.

DAB-095: This witness is the first 'insider witness' the defence has called. The witness is male and was born in Koidu Town in March 1972. He joined the Sierra Leonean Army as an infantry soldier in 1992.

The witness testified that during his army training he had not received any information about the laws of war or domestic law relating to the armed forces. While he was deployed to fight RUF rebels, payments to soldiers were irregular and haphazard, low-ranking soldiers were treated poorly by their superiors, and the witness acknowledged that many soldiers were disgruntled and unhappy. After the AFRC coup in 1997 his army unit was moved to Freetown and assigned to protect State House. At around this time, the witness is alleged to have become JP Koroma's personal security guard. He allegedly accompanied JP Koroma as he fled the capital with a group of SLA soldiers (among them SAJ Musa) and their families during the ECOMOG invasion of Freetown in 1998. The witness claimed never to have heard of the three Accused during his period with JP Koroma. He further testified that both the ECOMOG and civilians were killing SLA and AFRC sympathisers and AFRC soldiers. The group eventually ended up in Koidu Town (Kono District) where they encountered a group of RUF rebels led by Denis Mingo (aka Superman). RUF and SLA joined forces as the People's Army, but the RUF assumed command over this combined force. SLA forces who refused to join the RUF's fight against ECOMOG were allegedly disarmed at that time.

The witness further testified that RUF soldiers burned houses in Koidu Town. The witness later accompanied SAJ Musa to Colonel Eddie Town where he saw a number of prisoners which SLA soldiers (under the command of Junior Lion) had captured as deserters. The first and third Accused (Brima and Kanu) are alleged to have been among these prisoners. From Colonel Eddie Town, SAJ Musa launched an operation aimed at reinstating his military government in Sierra Leone. Under his command, SLA forces attacked Freetown. The witness further claimed that the detainees he saw in Colonel Eddie Town accompanied the party to Freetown as prisoners. He subsequently alleged that the second Accused (Kamara) was one of the prisoners he saw at that time. SAJ Musa is said to have died in an explosion during the attacks on Freetown.

Cross-examination: Scheduled for 28 September.

Some reflections on the defence strategy

The witnesses called this week focused on RUF and Kamajor activities in Sierra Leone. This seems to form part of a defence strategy aimed at showing how atrocities which the prosecution alleges were committed by the AFRC, or by the AFRC in collusion with the RUF, were in fact committed without AFRC involvement. The defence does not, therefore, dispute that atrocities took place at locations and times specified in the indictment.

Defence witnesses this week further insisted that they had never heard of the Accused in connection with the atrocities they gave evidence about, nor seen them in the relevant areas at the relevant times. This may to an observer not seem like strong evidence. The fact that a number of witnesses has not seen or heard of the Accused does not, of course, mean that the Accused were not present or not involved. It is important to remember, however, that it will always be difficult to prove that something did *not* happen, that someone was *not* present or that someone was *not* involved. Yet this is in essence the task a criminal defence team is charged with. It is precisely for this reason that the rules of criminal law stipulates that the onus lies on the *prosecution* to prove its case – and to meet a high threshold of proof at that. While evidence of the kind led in the AFRC case this week cannot conclusively *disprove* the prosecution case, it may nevertheless cast reasonable doubt on the claims they make.

Some witnesses this week also claim to have seen the Accused imprisoned for their attempts to desert the AFRC forces. The defence is in this way seeking to establish that the Accused were in fact not in control or command of any armed force at relevant times, and that they cannot, therefore, be held responsible for the activities of AFRC troops.

Issues pertaining to defence witnesses

The defence continues to be plagued by problems relating to their witnesses. These problems caused a number of delays to the Court's proceedings this week.

On 21 September the court had to adjourn early for lunch as the witness scheduled to testify wanted to give evidence in Kissi, rather than in Krio as originally assumed. No qualified Kissi interpreter was available. On the same day the defence informed the court that three witnesses scheduled to appear the next day had not shown up in Freetown and would therefore not be appearing in court. The defence asked the Bench to allow a key insider witness scheduled for next week to take the stand instead. The prosecution did not object to this change in schedule, but indicated its displeasure with the continuing confusion surrounding defence witnesses and witness call-orders.

The number of witnesses the defence intends to call has also been cut dramatically this week. A (confidential) list of defence witnesses was filed on 14 September. On the same day, the Bench issued an order pursuant to section D of Rule 73^{ter} for the defence to justify the number of witnesses (in excess of 200) they intended to call. The defence reply was lodged on 20 September. The defence explained that several witnesses from the original lists submitted to the Court had now been dropped, and that duplications on the list was the cause of the seemingly excessive numbers. On the same day the defence informed the Court that they had decided to drop an additional 58 witnesses.

In response to the continuing alteration of witness call-orders and changes in the number of witnesses scheduled to appear for the defence, the Bench called an impromptu status conference on Thursday 21 September. At this conference, the defence clarified which witnesses were to remain on their witness lists and when these witnesses were to be called.

The court adjourned at 10.35 am on Friday as the witnesses scheduled to testify were unavailable. One could not appear due to illness, and the other due to an unforeseen family emergency to which he had to attend.

21-day rolling disclosure

Pursuant to Trial Chamber II's decision on 9 May 2006, the defence is obliged to disclose the identities of protected witnesses to the prosecution a minimum of 21 days prior to their testimonies. The Bench has also on several occasions indicated their commitment to conduct the trial as speedily as possible. These dual commitments have led to an interesting practice developing in the Chamber over the past weeks. Instead of demanding a halt to proceedings, the prosecution will allow defence witnesses to give evidence in chief even though it is less than 21 days since their identities were disclosed. The prosecution will, however, ask for (and be granted) adjournments before their cross-examination of these witnesses. The cross-examinations will thus fall after the 21 day disclosure period is complete. The prosecution are in this way given time to prepare and target their cross-examination specifically to a testimony in chief which is already given. It is worth reflecting on whether this practice gives the prosecution an advantage not afforded to the defence. It is that is the case it may offend the principle of equality of arms which calls for a reasonable equivalence in each party's ability to present its case. This practice also causes inconvenience to the witnesses concerned, as they must now

reappear in court after an unusually long interval. They must either spend a long, idle, period in Freetown, or conduct cumbersome return journeys to their homes in the regions only to repeat this journey at a later date.

The Charles Taylor Trial

On Friday 22 September a status conference was held in the Hague about the trial of Charles Taylor. Following extensive discussions regarding interpretation of the Rules of Procedure pertaining to disclosure of prosecution evidence, Judge Sebutinde announced that a tentative date for the commencement of proceedings had been set for 2 April 2007. Defence aired concerns about not having sufficient time to prepare their case by April, and indicated that September 2007 would be a more appropriate start-date for the trial.

As she was required to lead the status conference in the Hague, Judge Sebutinde was not present in Trial Chamber II during the AFRC proceedings on Thursday afternoon and Friday.



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