



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

Special Court Monitoring Program Update # 89
Trial Chamber II – AFRC Trial

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Summary

This week saw the conclusion of the individual defence case for the first Accused, Tamba Brima, with the cross examination of two witnesses who gave evidence last week. Two final common witnesses were also heard, and the common defence case has now drawn to a close. The individual defence case for the second Accused, Brima Bazzy Kamara was initiated on Tuesday, and three of Kamara's individual witness were heard at the end of the week. The witnesses heard this week 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 have not been recorded in any court records or transcripts.

Witness testimonies

The testimonies heard this week sought to paint a different picture of events covered by the indictment than that presented by the prosecution. Firstly, witnesses claimed that a number of atrocities attributed by the prosecution to AFRC-controlled SLA troops were in fact committed by RUF soldiers. Secondly witnesses sought to dispel the prosecution clam that the three Accused were in effective command over troops committing many of the prohibited acts charged in the indictment. Witnesses testified that the three Accused had been prisoners at the relevant times, and could therefore not have been in command of any troops. Many witnesses give accounts indicating that other SLA commanders were in fact in charge at times and in places covered by the indictment. As the Accused were allegedly held captive at the material times, the witnesses also denied that the Accused could personally have carried out any of the crimes they are charged with.

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>.

Brima individual defence witnesses

These witnesses were cross examined on evidence given to the court last week. This time-lag between the witnesses giving their evidence in chief and their cross examination by the prosecution stems from a failure on the part of the defence to discharge its obligations under Trial Chamber II's Order of 26 April 2006² to disclose details on defense witnesses to the prosecution a minimum of 21 days before they appear in Court to testify.

DAB-059: The witness was cross examined by the prosecution on evidence given on 27 September. The witness denied having seen the first Accused attend meetings of the AFRC Supreme Council. As he does not know the other two Accused, he could not tell whether he had seen them attend any meeting of the Supreme Council. The witness denies that any of the three Accused had attended meetings with AFRC 'Honourables' at which the witness was present. The prosecution thought it odd that the witness – loyal as he was to JP Koroma, did not carry out Koroma's order to kill Tamba Brima when he was captured near Colonel Eddie Town. The witness responded that Brima was held in an RUF controlled area, and that the RUF preferred to keep Brima as a prisoner. The prosecution maintains that the entirety of the witness' testimony is falsehood.

DAB-033: The witness was cross examined by the prosecution on evidence given on 25 September. The prosecution continued throughout their cross examination to refer to the transcript of the witness' evidence in chief. They repeatedly confronted the witness with what appeared to be internal inconsistencies in his evidence. The witness did, for example, on several occasions deny seeing the three Accused after SAJ Musa's death. In the course of his evidence in chief he did, however, also claim that he saw the three Accused at Makeni after SAJ Musa had died. The Prosecution reminded the witness that lying under oath is a punishable offence. The witness maintained that he had not lied, and that any apparent contradictions in his evidence were the result of a misunderstanding or of poor interpretation between Krio and English.

The witness claimed that he did not know whether the three Accused were referred to as 'Honourables' – a title bestowed on AFRC personnel central to the overthrow of the Kabbah government. He further maintained that he did not know whether the AFRC Secretariat in Kono monitored mining activities in the area. Nor was he aware of any civilians being forced to mine for diamonds in the Kono District. The witness claimed that the People's Army consisted of SLA and RUF soldiers, but that RUF personnel assumed command and headed all units. He maintained that the RUF would shoot SLA soldiers who refused to take part in military operations. The witness further maintained that the nick-name 'Gullit' (which the prosecution claims is the nick-name of the first

² *The Prosecutor v Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu* (SCSL-16-488) "Order for Disclosure Pursuant to Rule 73ter and the Start of the Defence Case", 26 April 2006, available on-line at: <http://www.sc-sl.org/AFRC-decisions.html>.

Accused, Tamba Brima) was in fact the nick-name of the first Accused' s brother, the now deceased Komba Brima.

The witness maintained that he had spoken to the three Accused when they were held as prisoners in Colonel Eddie Town. He told the court that it was therefore that any of the three Accused held positions of command at the relevant times, as they had all been prisoners of war. He further told the court that he was not aware of any SLA soldiers burning, looting, killing, raping, kidnapping civilians or amputating limbs either during the operations to recapture Freetown in 1999, or during the subsequent withdrawal from the capital. He did, however hear that the SLA had abducted children during their Freetown campaign.

The prosecution claimed that the witness had met other ex-SLA soldiers prior to testifying in order to fabricate evidence and plan what he was going to say during his testimony before the Special Court. The witness denied this.

Common witnesses

DAB-137: The witness is male, born in Sembahun village (Bo District), and is married with children. He is educated as an industrial engineer, but currently supports himself as a businessman. Due to his prominent position in the community and his frequent appearance on radio the witness testified using a voice distortion device in order to protect his identity.

The witness testified about events in the Kenema and Bo Districts in 1997 and 1998. He claimed that Kamajors burned villages and killed civilians in the Districts. He maintained that the Kamajors had attacked his native village and burned houses and killed civilians there because they suspected the townspeople of harbouring soldiers.

Cross-examination: Kept brief. The witness had not heard whether any of the three Accused were responsible for the Coup in 1997. He also claimed not to have any knowledge of the SLA command structure. The witness maintained he did not know whether AFRC troops were responsible for any of the atrocities committed in the Bo or Kenema Districts.

DAB-147: Witness is male, 32 years old, born in the Kenema District and is married with children. He is presently engaged in agriculture in the Tongo Fields area. The witness had served as a Sierra Leone Border Guard from 1992 to 1994, and had in that period received some military training.

After the AFRC had assumed power the witness reported to have heard radio broadcasts where JP Koroma urged all trained men to report for duty. The witness then claimed he reported for duty and began serving as an Intelligence Officer in the AFRC-controlled Sierra Leone Army in Kenema. He claims to have observed a number of clashes between Kamajors and AFRC troops in Kenema. He also testified that the RUF – led by Sam Bockarie, conducted public executions in Kenema Town. The witness further claimed

that RUF forces killed civilians and were involved with diamond mining in Tongo. He claimed that the RUF were also in control of the Kailahun District, and that Sam Bockarie ordered Operation Pay Yourself after the fall of the AFRC government. After the overthrow of the AFRC he alleged that RUF forces took control over any remaining AFRC personnel. He further alleged that Sam Bockarie would harass and kill the AFRC commander in Kailahun – claiming that they had ‘betrayed the revolution’. The witness claimed he had never heard that either of the three Accused were working together with Sam Bockarie in the Kenema district.

Cross-examination: The witness claimed he had not heard that any of the three accused were involved in the overthrow of the Kabbah government. He maintained that he did not know whether SLA soldiers were part of the group who conducted executions in Kenema Town under the auspice of Sam Bocarie. The witness claimed that he did not know whether SLA as well as RUF soldiers forced civilians to mine and killed civilian miners at the Cyborg Pit in Tongo. The prosecution alleges that the first Accused, Tamba Brima, went to Kenema and Tongo to supervise mining activities. The witness maintains that he never saw Brima in Kenema or Tongo.

Kamara individual defence witnesses

DBK-037: Witness is male, 36 years old, born in Freetown and joined the Sierra Leone Army in 1991. He received a promotion in 2004.

The witness testified that he had not received any training on the laws of war as part of his basic training or military induction. He claims that he evacuated from Freetown when ECOMOG intervened and fled to Masiaka with other SLA troops. The witness claims that JP Koroma addressed the troops at Masiaka, told them the AFRC had been overthrown and urged them to independently find places where they could rest and be safe. According to the witness, wounded soldiers were taken to Mongo (Kabala District) and later to Korunbola under the leadership of SAJ Musa. The witness claims that SAJ Musa called a muster parade at Mongo and informed his troops that Kabbah had ordered that the army be disbanded. The witness maintains that he never saw the second Accused, Brima Bazzi Kamara, in Mongo, in Korunbola or later in Rosos.

The witness claims that at Eddie Town the soldiers got word from a civilian that an AFRC man called Ibrahim Kamara was in a neighbouring village. He alleges that Junior Lion was sent to find Kamara, and that Kamara was apprehended and incarcerated at Eddie Town.

The witness maintains that after SAJ Musa died in an explosion at Benguimam the remaining AFRC officers (including Junior Lion, FAT and Eddie) reorganised the system and structure command in order to complete the advance to Freetown.

The witness claims that during the attack on Freetown the AFRC controlled SLA forces had some RUF men in their ranks. He claims that an officer named ‘O-Five’ was the operational commander as they captured State House in the centre of the capital. The

witness claims AFRC troops, under the command of Junior Lion, then moved to Pademba Road Prison where they released SLA soldiers held there by ECOMOG.

Cross-examination by council for the first Accused (Brima): The witness claimed he never heard JP Koroma order Operation Pay Yourself, nor did he hear of any other soldier mentioning that Koroma order the operation. The witness maintained that he saw Tamba Brima held as a prisoner in Colonel Eddie Town. He maintained that he did not see Brima in Masiaka or Benguima. The witness further claimed he had never heard that Brima was handing out promotions and issuing orders to SLA soldiers.

Cross-examination by council for the third Accused (Kanu): The witness maintained that he had not seen Kanu during any of the operations he gave evidence about. He also maintained that his troops never made civilians walk ahead of the soldiers when they were going into battle, nor did they mix civilians with military personnel when they were fighting ECOMOG forces in Freetown. The witness claimed he had never heard that Kanu was in command of any troops during the period between the ECOMOG intervention and the AFRC's attempt to recapture Freetown. The witness maintained that Kanu was never in command at West Side. He does, however, admit that they held 300 children at West Side. Some of these children were abductees from Freetown.

Cross-examination by the prosecution: The witness denied that JP Koroma ordered Operation Pay Yourself. He further denied that Brima was in command of troops at Rosos, Colonel Eddie Town or at State House in Freetown.

The witness claimed he did not know whether any of the three Accused were members of the AFRC Supreme Council, or whether Brima's nick-name was 'Gullit'. He denied that Brima took over overall command of the AFRC forces after the death of SAJ Musa, and maintained that the commander succeeding SAJ Musa was FAT. The witness denied that Kamara became second in command after the death of SAJ Musa, and maintained that FAT's second in command was Eddie. The witness also denied that Kanu was in command of any troops at all after SAJ Musa's death, maintaining that Kanu was a prisoner. The witness denied that Kamara was a commander at West Side, or that he was the supreme commander in Kono from 1998 to 2000.

Questions from the bench: In answer to questions put by Judge Sebutinde the witness claimed that the 300 children at West Side had followed the troops voluntarily and had not participated in military operations.

DBK-005: Witness is male, born in 1967. He joined the Sierra Leone Army in 1991, receiving his military training between May and November of that year. He maintained that this training did not include instruction on the laws of war. The witness left the army in 2002 in the rank of a Lance Corporal. The witness claims to know Kamara from the time they both training with army in 1991.

The witness knew that all three Accused were instrumental in the overthrow of the Kabbah government. He claimed that he was ordered to guard State House after the

AFRC had taken power. He further maintained that civilians in Freetown supported ECOMOG and would target SLA soldiers and their families – threatening to burn them alive.

The witness then told the court he had been wounded by an ECOMOG bullet and spent several months in hospital in Freetown. He claimed that he was informed at the hospital that SLA soldiers should report to Lungi for demobilization. He claims he went to Lungi and that about 3000 SLA soldiers gathered there. The witness testified that at Lungi they heard rumors that a group of soldiers were coming to Freetown from Masiaka. At the time the witness claimed it was not known to what faction these approaching soldiers belonged. The witness testified that the demobilized soldiers at Lungi were evacuated to the national stadium in central Freetown, as the Sierra Leone government feared they would join forces with the approaching army. The witness claimed he ended up in Pademba Road Prison instead of at the national stadium.

He maintained that Pademba Road Prison was overrun by soldiers under the command of Junior Lion and Alabama. These soldiers were allegedly looking for Trina Musa (SAJ Musa's wife) and ex-president Momoh. The witness then claimed that Junior Lion ordered the men to go to State House, but that the soldiers who were released from the prison were angry at the way they had been treated and fed up with being soldiers and therefore went on a killing spree and started torching civilian houses.

The witness claimed he eventually made it to State House where FAT was in command. He maintained that he did not see Kamara at State House, nor did he see Kamara at Benguema where he fled to after ECOMOG launched a counter offensive in Freetown.

Cross-examination by the prosecution: Scheduled for 12 October, as the defense had not discharged its obligations under Trial Chamber II's Order of 26 April 2006³ to disclose details on defense witnesses to the prosecution a minimum of 21 days before they appear in Court to testify.

DBK-012: Witness is male, born in 1967, lives in Freetown, is unmarried and has four children. He joined the Sierra Leone Army in 1989 and was deployed as a security guard for president Momoh in 1990. He left the army in 2000 holding the rank of sergeant.

The witness claimed that he was in Freetown when the AFRC launched their attack in May 1997 and that he reported for duty at the nearest army barracks when he heard gun fire. According to the witness, when ECOMOG intervened, he left Freetown for Masiaka with a group of soldiers. The witness claimed that he saw Kamara at Masiaka, but denied that Kamara was in command of any troops.

The witness denied seeing Kamara in Kabala, but claimed he heard news that Kamara had been in a car accident with Junior Lion in the area. He maintained that SAJ Musa was

³ *The Prosecutor v Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu* (SCSL-16-488) "Order for Disclosure Pursuant to Rule 73ter and the Start of the Defence Case", 26 April 2006, available on-line at: <http://www.sc-sl.org/AFRC-decisions.html>.

in command over the troops at Kabala, and led the AFRC retreat to Mongo Bendugu. He denies having seen Kamara at Mongo.

The witness claimed that the group of soldiers under SAJ Musa's command were divided into two teams at Mongo. One team was allegedly led by SAJ Musa, and the other by his second in command Mani. The witness further maintained that some of these soldiers surrendered to ECOMOG and were killed by their captors

According to the witness, he then went to Korunbola where SAJ Musa reorganised the structure of command and sent a team lead by FAT to Rosos to set up a camp there. The witness claimed that he saw a number of AFRC men – among them all the three Accused - as captives in Colonel Eddie Town. He maintained that Junior Lion was in charge of the prisoners, and that they were captured they had urged soldiers to stop fighting or to surrender.

The witness claimed that SAJ Musa took over the overall command of the troops at Colonel Eddie Town, announced that the AFRC was disbanded and that the SLA was going to push to Freetown to reinstate a military government. The witness maintained that ECOMOG soldiers captured at Masiaka during the advanced to Freetown were treated well and given status of prisoners of war. The witness denied that SLA soldiers burned civilian property, abducted or raped civilians on the march to Freetown. He maintained that any violence was always directed only at ECOMOG troops.

The witness then testified that SLA soldiers broke into Pademba Road Prison in Freetown where they met some 4000 imprisoned SLA soldiers. He claimed these soldiers were all released, but that it was impossible to control them. He claimed that the released soldiers were angry about their treatment in custody and therefore began killing civilians, burning houses and amputating people's arms.

The witness claimed he pulled out of Freetown under the leadership of FAT, Junior Lion, Bobson and O-Five when ECOMOG launched a counter offensive. He denied seeing Kamara during the withdrawal from Freetown or during the fighting with ECOMOG which ensued.

The witness claimed he spent a long time at West Side, and maintains that FAT and Junior Lion were in command there. He claimed he never saw Kamara at West Side, and that it was Junior Lion who ordered and led the attack on Manarrma (Port Loko District).

Cross-examination by council for the third Accused (Kanu) The witness denied ever having heard of 'Operation Pay Yourself'. He claimed that an 'Operation Pave Yourself Way to the Rear' had been launched. He maintained that Kanu was under arrest and had not led any attacks after the witness saw him as a prisoner in Colonel Eddie Town. The witness refuted claims that Kanu raped a lady in Sumbuya and he further refuted claims that a Kamajor soldier was cooked and fed to the civilians travelling with his contingent near Mamah. The witness rejected claims that several people were eaten on the road to

Freetown. The witness denied that he is currently in a relationship with one of Kamara's sisters. The cross-examination will resume on Monday 9 October.

Translation issues

Questions about the accuracy and quality of the translation have been recurrent throughout this trial. On several occasions Judge Sebutinde has indicated that she feels the translators are not accurately restating what the witness has said on the stand. Even the first Accused himself had made similar remarks through his council during the course of the proceedings. This week a similar complaint was made by one of the defence council for the first Accused⁴ and on a separate occasion by one of the council for the second Accused⁵.

Trial Chamber II's practice of allowing a time-lag between the examination in chief and the cross examination of witnesses in instances where the defence has not adequately fulfilled its disclosure obligations has served to further illuminate the problems associated with translation this week. The prosecution sought to confront a witness with what he had previously testified in court by reading the witness part of the transcript from his examination in chief. The witness then claimed he had never said what was read back to him, and claimed that any discrepancy between what he now said and what had been said previously must be caused by an error in interpretation⁶.

The extent to which inaccuracies in translation cause a witness' testimony to be significantly misrepresented will undoubtedly vary depending on the degree of inaccuracy in translation and the content of the testimony. While it may not be correct to claim that translation difficulties of the sort experienced in Trial Chamber II will ultimately prejudice the trial, it is worth noting that sub-standard translation can be an obstacle to the task of seeking accurate accounts of events and can unnecessarily call a witness' credibility into question.

Absence of Council for the third Accused.

On Monday 2 October council for the third Accused (Kanu) informed the court that he had to attend a funeral on Tuesday afternoon and would consequently not appear in court. The third Accused would therefore not have any representation in court on Tuesday. The judges expressed some concern about this situation, especially given that the accused would not have his legal representation present to cross examine the Kamara individual witnesses scheduled to testify. The Bench was eventually satisfied that the interests of the third Accused would not be compromised by this arrangement, as Kanu's council assured them he had been given access to summaries of the testimonies to be heard and had found nothing in them he wished to treat in cross examination.

⁴ *The Prosecutor v Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu* (SCSL-16-488), Transcript of proceedings, 2 October 2006, p 81

⁵ *The Prosecutor v Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu* (SCSL-16-488), Transcript of proceedings, 5 October 2006, p54

⁶ *The Prosecutor v Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu* (SCSL-16-488), Transcript of proceedings, 2 October 2006, p 98-99

Decision on Urgent Prosecution Motion for Relief in Respect of Violations of the Trial Chamber's Order of 26 April 2006⁷, issued 5 October 2006.

This prosecution motion was filed 29 August 2006, and sought an order from the Court addressing consistent violations by the defence on the rules laid down for disclosure of witness statement summaries and information regarding the order in which defence witnesses will be called. The Bench partially granted the motion, noting that the defence for Brima and Kamara had, indeed, not given the prosecution the required information in time. The Bench did, however, also note that the defence were entitled to alter the call order of their witnesses, provided the prosecution is informed 21 days before a witness is called to testify. The bench further noted that there was no basis for calling the motion urgent.

This motion indicates the prosecution's ongoing frustration at the defence's lack of compliance with the 21-day rule for disclosure. The Bench, despite verbally expressing a degree of exasperation with the defence's lack of compliance with the 21-day rule, do by their response to this motion indicate that they want to grant the defence as much leeway as possible. No repercussions will therefore follow from the defence's continued non-compliance with the Chamber's Order of 26 April 2006.

⁷ *The Prosecutor v Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu* (SCSL-16-488) "Decision on Urgent Prosecution Motion for Relief in Respect of Violations of the Trial Chamber's Order of 26 April 2006", 5 October 2006, available on-line at: <http://www.sc-sl.org/AFRC-decisions.html>.



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