

**SPECIAL COURT MONITORING PROGRAM UPDATE # 102
TRIAL CHAMBER I – RUF TRIAL
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SUMMARY

Early this week, the Prosecution concluded its cross examination of the first accused, Issa Sesay. After Mr. Sesay stepped down, the Defense called its next two witnesses, both civilian women from Kailahun district testifying under protective measures. They were designated DIS-302 and DIS-301. Both women concluded their testimony before court adjourned on the 28th of June. This week's proceedings brought the summer trial session to a close. As announced earlier this month, the Trial Chamber adjourned a full month earlier than originally anticipated. At close of proceedings, the Presiding Judge announced that trial will resume the 11th of September, 2007.

WITNESS PROFILES AT A GLANCE

Issa Sesay: Mr. Sesay is the first accused in the RUF trial. He testified in Krio.

DIS-302: The protected defense witness is a 54 year old, uneducated female from Kailahun district. She has worked as a birth attendant since before the war. She testified in Mende.

DIS-301: The protected defense witness is female, approximately 35 years old. She is from Kailahun district. She has some education and has worked farming. She testified in Mende.

CONCLUSION OF PROSECUTION CROSS OF ISSA SESAY

SUBSTANTIVE MATTERS

In one final morning of questioning, Prosecutor Peter Harrison cross examined Issa Sesay on the contents of various official documents. The exhibits referenced during cross examination included (1) the minutes of a December 1998 RUF meeting in Kono, (2) a January 1999 report from the Bombali District RUF Intelligence Office addressed to "Brigadier I H Sesay," (3) a January 24, 1999 "Comprehensive Report," addressed to Major General Sam Bockarie from Brigadier Issa Sesay, which discussed the captures of Kono, Koidu, Kenema, Magburaka, Makeni and other towns (4) a February 1999 UN-RUF Joint Communiqué referencing a meeting held in Abidjan, and (5) a September 1999 Salute Report authored by Sam Bockarie.

Prosecution inquiries sought to advance the theory that the RUF jointly participated in the 1999 AFRC attack on Freetown, specifically by enabling the retreat of AFRC forces. Mr. Harrison also crossed Mr. Sesay on general issues of RUF-AFRC cooperation, operative command structure within rebel forces, and the details of a December 1998 RUF attack Mr. Sesay led against various CDF positions. Mr. Harrison raised various pieces of potentially inculpatory

information from the documents, including evidence of officially condoned RUF looting and indications of joint RUF-AFRC operations. However, Mr. Sesay frequently offered alternate, exculpatory explanations for certain factual concessions. For instance, Mr. Harrison suggested that the RUF positioned itself at Waterloo in order to aid the AFRC forces in a brutal attack on Freetown. Mr. Sesay agreed that the RUF took a position at Waterloo, but insisted they did so in furtherance of RUF objectives—to oust a corrupt regime from power—not “so that the AFRC could have an escape route from Freetown... that was not so, because RUF had been fighting to come to Freetown, because Freetown was the seat of government, which RUF had been fighting the war for.”¹ Mr. Sesay insisted the RUF went no further than Waterloo, and denied that the RUF leadership planned or commanded the attack on Freetown. Some lower level RUF fighter took part in the attack, but Mr. Sesay insisted the attack was an AFRC operation, not in concert with RUF. He reminded the Court that Prosecution witnesses had confirmed as much in their own accounts of the attack.

The witness questioned the reliability of two major Prosecution documents—Sam Bockarie’s Salute Report and the January 24th 1999 “Comprehensive Report” allegedly authored by Mr. Sesay. The accused testified that he could not speak to much of what Bockarie described in the Salute Report, because Sesay was not involved in the planning or execution of Freetown-related activities. He was, at the time, assigned elsewhere. Mr. Sesay confirmed that the RUF helped make way for the retreating AFRC forces to pass through. However, he explained Bockarie’s Salute Report was written for the captured RUF leader, Foday Sankoh, and Bockarie had a tendency to invent operations, misstate facts, and falsely claim credit for leading offensives in order to impress Sankoh. Mr. Sesay also denied authorship of the January 24th 1999 “Comprehensive Report” with his name on it. He testified that he reported on the capture of those towns to Bockarie via radio, not in writing. While certain facts in the document accurately described events as they occurred, Mr. Sesay pointed out numerous places where, according to him, the report contained falsehoods, inaccurate details, and significant omissions. For instance, the report made no mention of capturing 400-500 CDF in Masingbi (the largest group they had captured at one time). Mr. Sesay testified he would have surely narrated this noteworthy development to his superiors, were he the author of the report.

The way Mr. Harrison phrased his questions proved problematic throughout the morning. He would read a sentence or part of a paragraph aloud from one of the documents and then ask the witness in blanket terms, “Is that statement true?” The statements he read were sometimes lengthy, and often contained more than one factual assertion. Mr. Harrison rarely directed the witness toward the particular fact he sought to verify. As a result, Mr. Sesay’s answers were complicated and full of caveats. In one such exchange, Mr. Harrison read from Sam Bockarie’s Salute Report, “And the passage reads, ‘Prior to this diamonds mined from Kono were given to Brigadier Issa in order for him to make contact and delivery to a business associate of yours.’ Is that statement true?”² Mr. Sesay responded, in a slightly convoluted manner, that part of the statement was true—he was given diamonds to deliver—but added to his answer that these were not diamonds mined by the RUF in Kono in 1998. Because of the timing, they could not have been. According to Sesay, the diamonds, which were taken from Johnny Paul Koroma, must have been mined by the AFRC in Kono or in Tongo prior to 1998 (when the RUF first took

¹ SCSL Transcript, 26 June 2007, Page 54 (Lines 3-6).

² SCSL Transcript, 26 June 2007, Page 9 (Line 4-8).

control of the mines). The caveat is relevant in light of the temporal limits of the forced mining charges in the indictment.

The Bench appeared agitated and impatient with Mr. Sesay's repeated attempts to elaborate on his answers. He had a tendency to anticipate the conclusions one might draw from a yes or no answer, and preemptively address those conclusions. More often than not, his explanation preceded the yes or no answer, and sometimes he neglected to explicitly affirm or deny the statement at the end of a lengthy explanation. An overtly exasperated panel of Judges pressed the witness to give simple, direct answers, "So what are you answering to the passage Mr. Harrison read to you? What is your answer? Is it true?"³ Mr. Sesay became anxious over suggestions from the Bench that his answers were evasive. He explained his concern that the Court might draw incorrect inferences if he simply adopted or rejected, wholesale, the statements Mr. Harrison read. The Presiding Judge told Mr. Sesay his concerns were "perfectly legitimate," and he was free to elaborate as he saw fit. Nonetheless, certain Judges continued to display irritation with the witness (one judge made a show of rolling his eyes as the accused began a subsequent answer with a nuanced explanation).

PROCEDURAL MATTERS

Defense raised three procedural motions during cross examination. First, following a particularly lengthy and detailed passage, Defense formally objected to the format of Mr. Harrison's questions. Mr. Jordash suggested that the Prosecution was trying to elicit dubious evidence of joint criminal enterprise (JCE) by asking ambiguous questions from which they could later draw favorable inferences. Defense Counsel did not object to the substance of the inquiry, but suggested that it would be more efficient and less misleading to the tribunal if the Prosecutor were to seek verification of discrete, relevant facts: "Is it true that the RUF took the war from Kailahun to Freetown? Is it true that the war, which was taken from Kailahun to Freetown, was successful? Is it true that the war, if successful, put military pressure on the SLPP government?"⁴ etc. The Presiding Judge found merit in Defense Counsel's objection, and suggested the Prosecutor try breaking down his inquiry into smaller parts. Mr. Harrison briefly altered the format of his questions, and the clarity of evidence he elicited improved. However, he ultimately returned to his original method of inquiry.

Defense raised a second objection half an hour later, when Prosecution sought to admit a January 1999 RUF intelligence office report into evidence. Defense objected on late service of process grounds. According to Mr. Jordash, the document should have been served by April 26, 2004 or as soon as practicable thereafter, depending on when it came into Prosecution possession. The document was, in fact, not served upon Defense until May 1, 2007—three full years after the court-mandated pre-trial date for service of Rule 66 materials, and nearly six months after the close of the Prosecution case-in-chief. Defense argued that it would be unacceptably prejudicial to the accused to admit an inculpatory exhibit served after the close of the Prosecution case. The Prosecution would benefit from cross examining every Defense witness on evidence Defense was never allowed to thoroughly test. "There are a number of Prosecution witnesses the Defense would have liked to put this document to, both witnesses from the RUF, and witnesses from the SLAs, some of whom admitted to entering Freetown."⁵ Mr. Jordash argued that exclusion of the

³ SCSL Transcript, 26 June 2007, Page 10 (Line 25-27).

⁴ SCSL Transcript, 26 June 2007, Page 23 (Line 26-29).

⁵ SCSL Transcript, 26 June 2007, Page 52 (Line 22-25).

evidence was warranted in light of the unfairness and prejudice arising from such egregiously late disclosure. The Chamber, he said, was obliged by Rule 89 to admit evidence which best favored a fair determination of the facts.⁶ The facts, he insisted, could not fairly be adduced from evidence which gave Prosecution all the benefit, and Defense all the disadvantage. The Presiding Judge inquired why they could not admit the evidence, and then factor material prejudice into their determination of probative value. Mr. Jordash answered, “if Your Honors were to attach *any* weight to it, it's effectively providing the Prosecution with what the Defense have been deprived of; the opportunity to deal with it in the best way possible.”⁷

Prosecution rejected Defense suggestions that prejudice arising from late service of process could be grounds for exclusion. Mr. Harrison submitted that no such exclusionary rule existed, and that the evidence was admissible under Rule 89(C) simply because it was a relevant document.⁸ After brief consultation the Trial Chamber ruled in favor of admitting the evidence. At no time did the Bench press the Prosecution to justify the late service of process. The unexplained delay certainly leads one to wonder when the document came into Prosecution possession and whether the timing of the disclosure was in good faith. Mr. Jordash raised this as an inquiry relevant to probative value, saying, “We would respectfully submit the Prosecution have to explain *why* it has been served at this time. *Then* Your Honors can attach the proper weight to the document, bearing in mind when the Prosecution received it, when it was served in relation to that receipt and any explanation which might be given for the lateness of service.”⁹ The Bench left Mr. Jordash’s concerns unaddressed, and allowed Mr. Harrison to proceed without answering the challenge.

At the conclusion of Prosecution’s cross, Mr. Jordash raised his third procedural motion, seeking authentication of the January 1999 RUF intelligence office report. Because Mr. Sesay disputed the authenticity of the document in his answers, Defense Counsel sought an official statement of origin and chain of custody from the Prosecution. He was permitted to make his request orally in open court. If the Prosecution do not comply, Defense advised it would seek a formal order from the Court.

Mr. Jordash conducted a very brief redirect examination aimed at undermining the credibility of certain documents used on cross and weakening Prosecution JCE inferences. Mr. Harrison objected several times that Defense questions impermissibly re-canvassed topics already covered on direct examination. Mr. Jordash conceded on certain lines of inquiry, and withdrew his question. He persisted with respect to one line and was granted narrow latitude by the Bench to continue.

TESTIMONY OF WITNESS DIS-302

DIS-302 testified about her personal experience as a civilian and mother of 14 children under RUF governance in Kailahun district. According to her testimony, before the RUF took control of her town, it was controlled by a group of Liberian fighters known to her as “Gio people.” The

⁶ Rule 89(b) of the Special Court’s Rules of Procedure and Evidence says, “In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favor a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.”

⁷ SCSL Transcript, 26 June 2007, Page 54 (Line 19-22).

⁸ Rule 89(c) of the Special Court’s Rules of Procedure and Evidence says, “A Chamber may admit any relevant evidence.”

⁹ SCSL Transcript, 26 June 2007, Page 55 (Line 24-29).

Gios, she testified, had been violent and oppressive. “They were very bad people. They looted our properties, took our food from us and they raped our children and they beat us up as well.”¹⁰ According to the witness, things did not improve until “the rebels” drove the Gios from her town. She described “the rebels” as Sierra Leonean men who were “our brothers.” After the rebels drove the Gios out, they established rule of law in Kailahun district. Regulations were imposed banning rape, theft, and killing civilians. These crimes were harshly punished. The witness testified at some length about the mechanisms for enforcement of these rules. She described the G2 and MP offices and their functions when crime was reported by civilians or by soldiers. She related a personal story where a rebel soldier stole food from her and she reported the theft to the G2 office. The G2 investigated the crime and punished the thief. According to the witness, the people of Kailahun felt protected by the rebels, not threatened. “We were living in peace with the rebels. We had no problems. They treated us well. We treated them well too.”¹¹

The witness met Issa Sesay when she was living in the town of Giema. She described him in very positive terms, as the leader of the rebels in Giema. According to her, he was a man who cared for civilians, and came often to the hospital where she worked as a birthing assistant. Mr. Sesay reportedly ensured the hospital, which treated both civilians and rebel soldiers, was stocked with medicines and supplies. According to the witness, Giema was a “safe area” away from the warfront. It bore many of the hallmarks of normal, ordered life under RUF governance: civilians grew and harvested food, hospitals and schools functioned without interruption, Christian and Muslim religious services proceeded on a regular basis, local G2 offices administered law, and local G5 offices issued documentation enabling civilians to move freely through RUF controlled territory. According to the witness, the RUF relocated civilians to Giema from the front lines of the conflict for their own protection, “so they wouldn’t die there.”¹² The rebels reportedly facilitated the integration of refugee civilians into the population of Giema by distributing newcomers amongst the houses and telling the people of Giema to take care of the new people. The people of Giema farmed collectively, but the witness noted that the rebel commanders made very clear that the newcomers were to be absorbed into normal life and cared for “as brothers and sisters,” not treated as slaves. Those who were not absorbed into private households and farms lived and worked on what the witness called the “government farm,” a collective run by Issa Sesay. The witness testified that no one was forced to work on the farm, but only those able bodied people who worked on the farm received food from the farm. Mr. Sesay, she testified, distributed food to those who labored, and ensured no one took more than their fair share from others laboring.

Upon cross examination by Counsel for the second accused, the witness refuted TF1-093’s testimony about a supposed “sacrifice” of seven pregnant women in Kailahun district. DIS-302 reported that she never heard tales of such an act in all her time as a birthing assistant in Kailahun district. Trial Attorney Charles Hardaway cross examined DIS-302 for the Prosecution. He put various alternate versions of events to the witness—that the labor on the “government farm” was in fact forced, that the civilian population in Kailahun felt terrorized, that the women whose babies the witness delivered had become pregnant through sexual violence and forced marriage, etc. However, Mr. Hardaway’s cross examination failed to gain much traction, as the witness rejected Counsel’s suggestions and continued to assert her evidence

¹⁰ SCSL Transcript, 26 June 2007, Page 96 (Lines 28-29).

¹¹ SCSL Transcript, 26 June 2007, Page 100 (Lines 3-4).

¹² SCSL Transcript, 26 June 2007, Page 107 (Line 1).

consistently. The Prosecution rarely confronted the witness with evidence to controvert her account. When they did, DIS-302 flatly rejected the few pieces of contrary testimonial evidence Mr. Hardaway raised (such as TF1-118's testimony about working without being fed on the "government farm"). Mr. Hardaway left witness credibility entirely untouched. Overall, the testimony of DIS-302 entered into evidence virtually unchallenged.

On re-direct, Mr. Jordash sought clarification of the witness' use of the phrase "captured" in reference to civilians brought to Giema from the war front. Mr. Hardaway objected to the attempted clarification on the grounds that it fell outside the scope of what Prosecution addressed on cross examination. Mr. Hardaway asked the witness a number of questions about "captured civilians" working on the farms, but never specifically asked the witness what she meant by the word "captured." Mr. Jordash explained to the Bench that, "the Prosecution have misconstrued, throughout their case, what 'captured' in fact means... 'Captured,' as we discovered, through talking to our witnesses, means something quite different to the notion of captured as hostages."¹³ He wished to probe the subject further after Mr. Hardaway's questions sought to leave the impression that these "captured" civilians were effectively enslaved because the "had to work" along with everyone else in Giema. The Bench sustained Mr. Hardaway's objection and barred Defense Counsel from pursuing the inquiry on the grounds that he missed his opportunity to do so on direct examination. Before the witness stepped down, she answered one last question from Defense Counsel about the government farm. According to the witness, there were armed overseers on the farm, but as she had explained to Mr. Hardaway, they were not there to force civilians to work. They were armed in order to prevent violent disputes between workers (who came from all over the district and didn't necessarily get along) and protect the civilians from the possibility of armed attack were the war to come to Giema.

TESTIMONY OF WITNESS DIS-301

DIS-301 gave evidence largely corroborating DIS-302's testimony. She described a similar experience in 1991 with Liberian Gios coming to Kailahun and causing trouble: "They raped; they took our food from us; they were capturing people; those were some of the evil things they did to us. They did so many things."¹⁴ She testified that the Gios were driven out by "our brothers" led by "Mr. Sankoh" who came and "said they should be removed from among us."¹⁵ When Sankoh's men came to drive away the Gios, she explained, many men in Kailahun wanted to join the fight and were trained as "junior commandos." The witness described specific ways in which rebel fighters protected civilians in her town—for instance, junior commandos accompanied women as they went daily into the bush to search for roots and snails to eat because there was no other food at the time. They also warned the population when enemy fighters were coming, and helped them move away from the front lines.

The witness lived in a village which sheltered displaced persons and became a displaced person herself when the rebels warned her village that the enemy was approaching. She told the Court that, along with she and her neighbors, the "commandos" relocated many civilians discovered in the middle of the fighting (including the elderly, men, women, and small children). Children

¹³ SCSL Transcript, 27 June 2007, Page 45 (Line 6-10).

¹⁴ SCSL Transcript, 27 June 2007, Page 54 (Line 16-28).

¹⁵ SCSL Transcript, 27 June 2007, Page 55 (Line 9).

would travel with the commandos, who would give them into the care of civilian adults once safe areas were reached. Like DIS-302, the witness used the word “captured” but described a protective function: “When [the rebels] went to the war front, they wouldn't leave [the civilians] there to suffer in the bushes, they would bring them. So whichever time they captured, if they found them there, they would bring them so they wouldn't stay there and suffer. Because if other people met them there, they would kill them.”¹⁶ DIS-301 personally relocated several times during the conflict. The portion of her direct examination dealing with the timing and destination of each move was conducted in closed session to protect the witness identity.

In open session, the witness testified about living in Giema like DIS-302. DIS-301 corroborated the prior witness testimony about a functioning hospital, schools, religious institutions and farms. She described the medical care situation in wartime Giema as better than the present day situation in Kailahun district. Under rebel control, everyone received free medicine and treatment at the hospital. She knew Issa Sesay was a commander in Giema. She described him as the commander in charge of a big collective farm called a “target farm” on which she worked, along with many others from Giema and surrounding towns. When asked to explain how the farm functioned, she testified as follows:

That was [Issa's farm] because he was a commander, and the wounded soldiers were brought. And the feeding of the wounded soldiers was from that farm. We, the civilians, too, if we needed food, when we went to harvest, we'd get it from there. The pregnant women were fed. Those who were captured and brought, they were fed from that same rice. So we agreed to do that farming. So that if anybody was brought, they can get food to eat so that they wouldn't suffer.¹⁷

The witness described many elements of law and order in Giema. Like DIS-302, DIS-301 testified about the travel passes issued by the G5 offices, describing them as a paper which allowed one to move outside your town border. She spoke of the laws implemented by the rebels, including prohibitions on murder and stealing. Rape was reportedly punishable by death. Women, she testified, felt secure walking alone even at night. The witness described an orderly existence where, although there were no doors on the homes, people left their belongings during the day and theft was not a big problem. There were official systems set up for reporting if a law was broken or if food and salt (in scarce supply) were not distributed fairly. The witness described how these systems worked, giving specific examples of times she saw problems investigated and laws enforced on behalf of civilians through harsh punishment.

Counsel for the second accused elicited testimony from the witness on cross examination which refuted prior testimony by a prosecution witness. DIS-301 testified that she saw a Dr. Kamara killed by Mosquito at the MP office in Beudu. This directly contradicts earlier testimony that Dr. Kamara was killed in Kailahun town by Rambo on the orders of second accused, Morris Kallon. Duty Counsel representing Augustine Gbao established on cross simply that the third accused was not, to the witness' knowledge, present or acting as the G5 commander in Giema when DIS-301 lived there.

¹⁶ SCSL Transcript, 27 June 2007, Page 63 (Line 1-6).

¹⁷ SCSL Transcript, 28 June 2007, Page 34 (Line 6-13).

Vincent Wagona conducted cross examination for the Prosecution. Mr. Wagona focused his questions primarily on the Giema group farm. Like Mr. Hardaway, Mr. Wagona posed a series of alternative stories to the witness and asked if she accepted them as the true version of events. The witness rejected suggestions that civilians were forced to work on the group farm, beaten if they did not perform, and kept in the fields long hours against their will. She denied that the harvest was given exclusively to rebel fighters. Mr. Wagona did uncover a pair of testimonial inconsistencies between the two Defense witnesses. DIS-301 insisted, contrary to the evidence given by DIS-302, that the overseers at the group farm in Giema were unarmed. She also claimed that Issa Sesay's personal family farm and the group farm were one in the same. DIS-302 had earlier testified that Mr. Sesay's family farm was separate.

Mr. Wagona was prevented by the Court from using the witness statement summary for impeachment purposes. He attempted to highlight what he thought were inconsistencies between the witness' in-court testimony and the words in her summary of anticipated testimony (disclosed by the defense prior to appearance for all testifying witnesses). However, the Bench stopped Mr. Wagona without even hearing an objection from Defense. They barred the line of inquiry, pointing out to Counsel that the summary contained the words of a lawyer, not the prior statement of the witness. It thus could not be used to impeach the credibility of the witness. Because the witness is a Defense witness, Mr. Wagona was not entitled to obtain a copy of the full witness statement without laying a proper foundation for compelled disclosure. He argued that the witness had testified to things on the stand not mentioned in the summary at all, but the Judges all referred Counsel to the Court's well established stance on the so-called "principle of orality." According to the Presiding Judge "You're not helped by that particular approach because, clearly, a witness is allowed to amplify on his or her statement made to investigators, whether for the Prosecution or the Defence. And to say that because what she says here is not contained in the statement that she made is not enough."¹⁸

Mr. Wagona abandoned the disclosure attempt and concluded his cross examination with a string of unsubstantiated accusations, which the witness denied. He suggested the witness had a Gio husband she hadn't told the court about. She insisted she had never married a Gio man. Her husband was a Mende. He accused her of lying about her Mende husband's civilian status. She maintained that her husband was killed while gathering food and not while fighting as an RUF combatant. He suggested the witness was commander of the RUF Women's Army Corps (WAC), that she fought in 1994 and 1995, and that she forced women to work on farms and coerced them to have sex with rebels. She earnestly rejected these suggestions, testifying that she never went to the front lines at all, was a civilian throughout the conflict, and worked alongside other civilians at the group farm. At no point during these final ten minutes of cross examination did Mr. Wagona reference testimonial or documentary evidence to support the allegations he leveled at the witness. Unless the Prosecution later adduces evidence to corroborate these allegations, Mr. Wagona's cross of DIS-301 can have had little impact on the witness' credibility.

Mr. Jordash declined re-examination. The Court declared the trial adjourned until September 11, 2007.

¹⁸ SCSL Transcript, 28 June 2007, Page 70 (Line 20-24).