SPECIAL COURT MONITORING PROGRAM UPDATE # 98
TRIAL CHAMBER I – RUF TRIAL
MAY 29-JUNE 1, 2007

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SUMMARY

First accused, Issa Sesay, concluded direct examination early in the week. Prior to cross examination, Mr. Sesay's Counsel, Wayne Jordash attempted to bring a motion to suppress certain anticipated Prosecution evidence. The Trial Chamber spent a great deal of time hearing arguments about whether or not it was timely to hear arguments on the substance of the motion. Ultimately, the Bench barred Defense from bringing the motion on the grounds that it was premature. The Court also disposed, somewhat obliquely, of the unresolved matter of translation irregularities raised late last week. After Mr. Jordash concluded direct examination of his client, Counsel for the co-accused proceeded with cross-examination for the remainder of the week.

MOTIONS AND PROCEDURAL ISSUES

Trial Chamber I consumed the entire first morning session of the week on procedural and administrative matters. In a frustratingly undisciplined half day of proceedings, the Court heard preliminary procedural arguments about whether it would be appropriate to hear substantive arguments on a Defense motion to exclude certain evidence. The Chamber spent the remainder of the time attempting to determine how best to proceed resolving translation errors on the official trial record. The translation issue was ultimately disposed of, although not necessarily resolved.

Motion to Exclude Evidence

The evidence in controversy was statements taken from the first accused during ten days of post-arrest custodial interrogation in March and April of 2003. The core procedural question addressed by the chamber was one of timing. Mr. Jordash submitted that he was entitled to raise the motion to exclude evidence at this time because he had received notice from the Prosecution of intent to use the statements to impeach Mr. Sesay's credibility on cross examination. The Bench seemed disposed to put off hearing the exclusion motion until Prosecution actually sought to admit the statements in cross examination. Nevertheless, the Presiding Judge invited Mr. Jordash to convince the Bench why he was entitled to bring the motion, and further, why the Chamber should exercise its discretion in favor of hearing the objections of the accused at this juncture.

There was a general lack of focus on cited authorities driving the Bench's inquiry into the matter before it. This led the Court to dispose of the issue in a less than efficient manner, and certainly gave rise to moments of misapprehension and tense exchanges between Counsel and the Bench. For example, initial disagreement over whether or not the Trial Chamber had discretion to hear the motion *at that point* remained unresolved until midway through the morning, when Mr. Jordash presented ICTR jurisprudence[1] in support of the principle that evidentiary exclusion motions may be heard either at the time of notice or at the time of attempted submission. The Prosecution presented no cases to counter the point of law, instead drawing the Court's attention to the facts of the ICTR's *Ntahobali*[2] case, where a particular Defense counsel had waited to raise admissibility objections until the Prosecution sought to admit evidence on cross. According to Mr. Harrison, the facts of this one case indicated a "tried and true method of raising the issue"[3] later in proceedings. Mr. Jordash argued various reasons why earlier consideration of the motion would be more efficient and fair to the accused without prejudicing the Prosecution.[4] Mr. Harrison responded that it would be "the proper procedure" to wait, but articulated no specific rejoinders to the Defense arguments. He did advise the Court that the Prosecution had come prepared to argue the merits of the exclusion motion.

Further compounding the inefficient resolution of the matter, the Chamber became sidetracked by the question of whether, *if* allowed to bring his exclusion motion, and *if* the motion were subsequently denied, counsel for the first accused would be entitled to lead his client through the circumstances of his 2003 arrest in direct examination. Judge Boutet became rather exercised on this issue, insisting that such a line of examination was not relevant until such time as the Prosecution actually tendered the transcripts of the interviews into evidence. Defense strenuously disagreed on the grounds that *notice* of intent to use the statements was sufficient to establish relevance. Without commenting on the question of relevance or citing any supporting authorities, Mr. Harrison rose to inform the court that, "the Prosecution maintains the view that it can never be appropriate, during direct examination, to ask an accused witness about circumstances of arrest."[5] Mr. Jordash rejected Prosecution's assertion wholesale, arguing that the Prosecution cited no supporting authority because none exists which bars counsel from leading an accused through the circumstances of his arrest and custodial interview. Defense counsel did not cite any counter-authorities to the Prosecution position, but insisted that this manner of direct examination is standard practice in his home jurisdiction. "In fact," Mr. Jordash offered, "I have *never* done a case in England where I *haven't* taken an accused through an interview."

The Judges deliberated over the lunch break and ultimately announced a unanimous decision that the motion to exclude evidence was premature and would not be heard at

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[1] *Prosecutor v. Semanza*, Case No. ICTR-97-20-I. Decision on the Defence Motion for Exclusion of Evidence, August 2000, para. 12; *Prosecutor v. Kabiligi*, Case No. ICTR-97-37-I. Decision on Motion to Nullify and Declare Evidence Inadmissible, 2 June 2000, para. 22.
[2] *Prosecutor v Ntahobali and Nyiramasuhuko*, Case No. ICTR-97-21-AR73 (Appeals Decision), 27 October 2006.
[3] SCSL Transcript, 29 May, 2007, Page 35 (Line 5).
[4] *See* SCSL Transcript, 29 May, 2007, Pages 14-15.
[5] SCSL Transcript, 29 May, 2007, Page 35 (Lines 22-25).

this time. They articulated no rationale or guiding legal principle behind their decision. The Bench also ruled preemptively on the side-issue. The Chamber declared that, although Prosecution had given notice of intent to cross examine Mr. Sesay on his post-arrest statements, Defense could not properly examine the accused about his arrest during case-in-chief, and would not be permitted to do so. The grounds given for the latter decision were puzzling for their circularity and lack of articulable legal principle. In effect, the Trial Chamber ruled that Counsel would not be permitted to lead his client on this matter "on the grounds that it is impermissible to do so."[6] Rather than articulate what procedural rule or legal principle (e.g. relevance) *made it* impermissible to examine the accused on the subject, the Bench simply declared it so, full stop. It is difficult to understand why the Trial Chamber needed to devote so much time to hearing oral submissions and debating legal procedure with Counsel, only to reach such a cryptic, ill-explained final resolution on the matter. It makes little sense to solicit Counsel's efficiency and fairness arguments, only to leave them entirely unaddressed in the final ruling on the matter. A summary dismissal of the application could have been achieved within 15 minutes, and would have carried as much jurisprudential value as the ultimate ruling from the Bench.

Translation Irregularities

During the morning session, the Court also addressed the translation discrepancy concerns raised by the Defense (and left unresolved) at the close of proceedings the previous week. The original concern raised by Counsel for the first accused was that his client would be cross examined on his direct testimony by the Prosecution using erroneous transcripts. Mr. Jordash further expressed frustration that undue burden seemed to be placed on the Defense teams to spot and seek remedy of specific inconsistencies when, given the grave and persistent translation difficulties plainly apparent to anyone witnessing proceedings over the last several weeks, the presumption of regularity of the record would appear to have been rebutted. Notwithstanding the apparent need for wholesale review of the transcripts, however, neither side supported seeking an adjournment while the Court waited for the Translation Unit to conduct such a review. Thus, the Court appeared to be at an impasse for some time, with the Bench apparently unclear as to what remedy could or should be pursued. Ultimately, the Chief of the Translation Unit was called in to address the Court formally on what was being done to remedy the apparent problem of persistent errors in translation on the official Court record. He informed the Court that, since Defense Counsel had called his attention to examples of numerous errors in the May 3rd transcript, he and his staff had dedicated themselves to reviewing the entirety of Mr. Sesay's four weeks of direct examination. He could not, however, give the court an estimate as to how long the review would take. Because neither side wanted adjournment, Mr. Jordash noted that there seemed to be no choice but to resort to the presumption of regularity to justify continuing with the trial, despite ample evidence of translation-related irregularities on the official Court record. The Bench admonished the Translation Unit Chief "to intensify your efforts to make sure that the proceedings are clearly reflective of what actually transpired in this Court."[7]

[6] SCSL Transcript, 29 May 2007, Page 54 (Lines 12-13).
[7] SCSL Transcript, 29 May 2007, Page 47 (Lines 18-20).

CONCLUSION OF DIRECT EXAMINATION OF ISSA SESAY (May 2000-2003)

Once past the procedural issues, Counsel for the first accused concluded direct examination of his client by leading Mr. Sesay from July 2000 through the Abuja I and II peace talks, UNAMSIL re-deployment, and RUF disarmament. Mr. Sesay's testimony focused primarily on explaining the process by which he became interim RUF leader, the manner in which he cooperated with UNAMSIL and Government officials to implement the peace accords, why he did so, and the consequences he faced within the RUF for the role he played in disarmament.

According to Mr. Sesay's testimony, on 26th July 2000 he met with ECOWAS leaders in Monrovia at the executive mansion of then-Liberian President Charles Taylor. President Obasanjo of Nigeria told Sesay the ECOWAS leaders had called him there because they wanted Sesay to take over leadership of the RUF for the purposes of disarmament. They chose him, he testified, because Foday Sankoh "wanted them to be ashamed" and was violating the Lome Accords. The West African leaders were concerned that "if the Lome Accord fell in Sierra Leone then it was they, the West African leaders that had failed."[8] President Obasanjo reportedly said, "Do not sit idly by so that the western powers would say that we were not able to solve their problems."[9] According to Sesay, the ECOWAS leaders wanted to deal with him as the leader of the RUF because they believed he would faithfully implement the agreement and help bring peace to Sierra Leone. Sesay returned to Sierra Leone to hold a meeting and relay this information from ECOWAS to the senior RUF commanders. With some noteworthy dissent from Foday Sankoh's bodyguards, and certain senior commanders such as Gibril Massaquoi, a majority voted to comply with the ECOWAS preference. Sesay was officially made interim leader of the RUF in August 2000 while Foday Sankoh remained incarcerated in Freetown. Sesay testified that he received clear instructions from President Obasanjo and the ECOWAS leaders, "Young man, we've given you this leadership purely for you to implement the Lome agreement to disarm the RUF." He said, "Please, you are a child, so please don't embarrass us."

Having been told to wait for further instructions from Obasanjo and not attack any Sierra Leonean government positions,[10] Sesay ensured communication throughout RUF controlled territories, such that from August onwards there was no fighting between the RUF and Government or peacekeeping forces. Sesay also testified about his cooperation throughout disarmament with General Daniel Opande, first commander of UNAMSIL, including return of seized UNAMSIL equipment, re-opening of roads in RUF controlled territory, and peaceful re-deployment of UNAMSIL peacekeepers throughout the country to oversee disarmament of RUF and CDF fighters.

As Mr. Sesay explained to the Court, because of the way he cooperated with ECOWAS and UNAMSIL to successfully achieve disarmament, many senior RUF commanders were extremely upset. They accused Sesay of betraying Foday Sankoh because he did not negotiate the former leader's release from prison. Some of these individuals testified as insider witnesses for the Prosecution, including TF1-045 and TF1-362, and confirmed

[8] SCSL Transcript, 29 May 2007, Page 56 (Lines 10-12).
[9] SCSL Transcript, 29 May 2007, Page 56 (Lines 13-15).
[10] SCSL Transcript, 29 May 2007, Page 69 (Lines 6-12).

their resentment for Sesay on the stand. Sesay further testified that many fighters felt, because of the way disarmament proceeded, that he had "betrayed the entire RUF. They had disarmed and they did not have any benefit and that I was the cause."[11] His testimony included accounts of threats both to his safety and to the success of the disarmament process. According to Sesay, Foday Sankoh's wife was actively trying to undermine the process by posting threatening internet messages from the United States against UNAMSIL in order to confuse General Opande and others about who was in control. At one point, there was an apparently botched attempt on Sesay's life, where one of Sankoh's bodyguards, upset that they were going to peace talks while Sankoh remained in prison, shot and killed the man sitting behind Sesay in a car on the way to Abuja. In other cases, Sesay testified he had to make careful strategic decisions about disgruntled commanders to ensure they didn't organize fighters under their own authority against Sesay's interim leadership. For instance, he deliberately sent Gibril Massaquoi to Monrovia with a small RUF delegation to act as liaisons with the ECOWAS leaders, because Massaquoi had been unhappy about the fact that Sesay released the UNAMSIL hostages without negotiating the release of Sankoh. Massaquoi and some of these disgruntled commanders also tried to stymie the peace process by boycotting tripartite meetings around the country which had been set up to effectuate complete disarmament. Massaquoi was reportedly unhappy about the fact that people were speaking favorably about President Kabbah nothing was being said in the meetings about releasing Sankoh.

Sesay explained to the Court that he saw he had two choices in front of him—to remain loyal to Sankoh and fight for his release, or to remain loyal to the people of Sierra Leone and work for peace through disarmament. As Sesay testified, because he chose the latter, he was lauded by national and international leaders privately and in public ceremonies marking the successful end to the war. However, he was berated by fellow RUF leaders, including Foday Sankoh himself, who accused him of selling out the RUF. Sesay made clear in his testimony that he received no material benefit for his cooperation with disarmament. He refuted prior allegations that he had diamond wealth from the war, testifying that he owned no property nor received any other benefit from the conflict. President Obasanjo, pleased with Sesay's successful leadership and reliable cooperation with the ECOWAS leaders, reportedly promised to send Sesay to school in Nigeria. However, this never happened, as within a year Mr. Sesay had been indicted and detained by the Special Court.

The final line of questioning put to Mr. Sesay on direct examination asked him to respond to the broad charges in the indictment, i.e. whether or not he, as a commander within the RUF was prepared "to take any actions necessary to gain and take political power and control over the territory of Sierra Leone."[12] Sesay explained, no, he personally never took that position, and if he had, why would he have cooperated with the peace process? He was young and remained a capable fighter and had tens of thousands of armed combatants at his disposal. If he had truly been intent upon taking over the government by any means necessary, he reasoned, he would not have listened to the ECOWAS leaders or cooperated with the disarmament process. In reference to the charge that the RUF had a deliberate plan to harm civilians, Sesay flatly denied he had any such plan.

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[11] SCSL Transcript, 29 May 2007, Page 85 (Line 2-3).
[12] *Prosecutor v. Sesay, Kallon, and Gbao,* Case No. SCSL-04-15-T, Indictment at para. 36.

He testified about the "standing orders" issued by the RUF leadership and the internal investigations units forbidding fighters from looting, raping, harming civilians, etc., and asserted that he took every reasonable measure to prevent and punish crimes committed under his control. He further reminded the Court that two of the Prosecution's own witnesses had testified that wherever Sesay was "there was law and order, there was discipline."[13] After one final piece of testimony about an award Sesay received for his role in the peace process, the Counsel for the first accused concluded his direct examination.

CROSS EXAMINATION BY COUNSEL FOR MORRIS KALLON, SECOND ACCUSED

Cross examination by Shekou Touray, Counsel for the second accused, was brief. Mr. Touray questioned Mr. Sesay on what he knew about Kallon's conscription into the RUF, his responsibilities and promotions within the organization during Sam Bockarie's leadership and that of Foday Sankoh, and his cooperation with Sesay to effectuate disarmament.

Sesay confirmed that, like himself, Kallon was a forcibly conscripted vanguard within the RUF, trained at a place called Camp Naama. Sesay agreed with Counsel's suggestion that, during the time Sam Bockarie controlled the RUF, Kallon was "not a significant factor within the movement." Kallon was not favored by Bockarie, and Sesay testified that many lower ranking RUF were promoted above Kallon from 1996 to 1998. The only time Sesay knows that Kallon commanded his own post was from March-October of 1999 in Magburaka. Sesay also confirmed that Kallon was never a member of the War Council, which undertook strategic and logistical planning of the war, nor was he responsible under Bockarie for the procurement of arms or the oversight of mining operations. Likewise, Sesay testified that, during the pre-Junta period, neither he nor Kallon had the G1 status which would have made them responsible for new recruitment into the RUF.

With regard to the RUF-AFRC Junta period, Mr. Sesay gave evidence that he and Kallon both sat on the AFRC council, but not on the core decision making body within that council. He also provided exculpatory testimony about Kallon's movements with his family during the Junta period. For instance, Sesay's testimony placed Kallon outside Kailahun during the alleged killing of Kamajors, and confirmed Kallon's position subordinate to Superman and a number of other commanders. Sesay further confirmed that there were persistent tensions between Bockarie, Superman and Kallon and, according to Sesay, Kallon was periodically marginalized and punished by Bockarie for perceived acts of insubordination and sabotage of particular missions. It was only after Bockarie had left command, that Kallon was appointed Battlefield Commander in December 1999 by Foday Sankoh. According to Sesay, under Sankoh, Kallon was responsible for disciplining insubordinate RUF fighters and ensuring order and protection of civilians in the region from Kono to Makeni. Sesay concluded cross examination with testimony about Kallon's cooperation and effective leadership during disarmament.

CROSS EXAMINATION BY COUNSEL FOR AUGUSTINE GBAO, THIRD ACCUSED

[13] SCSL Transcript, 30 May 2007, Page 7 (Line 15).

Mr. John Cammegh conducted cross examination on behalf of third accused, Augustine Gbao. His questions touched upon Mr. Gbao's whereabouts and responsibilities during the war, general RUF command structure, and the functions of the Internal Defense Unit (IDU) and the Joint Security Board of Investigations. Mr. Cammegh also solicited specific responses to certain factual allegations brought by Prosecution witnesses.

Mr. Sesay explained that he and Gbao originally became acquainted when they were being trained at Camp Naama, however from 1991 to 1997, Gbao was never a fighter on RUF front lines. Counsel for the third accused took Mr. Sesay step by step through the period of the indictment soliciting testimony about his client's whereabouts and assignments. According to Mr. Sesay, Gbao was first a training leader instructing recruits in RUF ideology. He was then promoted to Captain and appointed overall IDU Commander and Chairman of the Joint Security Board of Investigation. Foday Sankoh subsequently promoted him to Major and moved him to RUF headquarters in Zogoda and later Kailahun, where he remained until late 1998. He was summoned to Buedu in late 1998 by Bockarie for a purpose unknown to Mr. Sesay. By 1999 Gbao had been promoted to lieutenant-colonel.

Counsel's cross examination on general command structure commenced on Thursday morning and accounted for a large portion of Mr. Sesay's testimony that day. The questions elicited detailed and fairly tedious testimony about structures of authority, promotions, demotions, and creations of new positions at various times relevant to the indictment. Mr. Cammegh's cross examination was difficult to follow at times, because he tended to jump suddenly from one name to the next in the course of exploring power struggles and various positions of authority held by different RUF commanders. The difficulty was compounded somewhat by Counsel's choice of phrasing, which seemed to confuse both the witness and the translation booth at times. Mr. Cammegh's questions generally aimed to establish an abstract understanding of superior authority and reporting structures within the RUF. Very few of these questions about command authority made express reference to Mr. Gbao—sometimes they invoked the names of other senior leaders, other times they focused solely on job titles. Mike Lamin was the topic of a considerable number of questions throughout the cross examination, as were Sam Bockarie and Mosquito. Periodic, pointed clarification questions from the Bench suggested that the Judges were generally following the testimony, but it was not always clear to an outside observer how all the information fit into Counsel's cross-examination strategy, or what impact certain answers had on Defense theories the third accused meant to advance.

Mr. Cammegh did elicit some fairly clear, potentially exculpatory information from the witness on the role, function, and reporting practices of IDUs. According to Mr. Sesay, the area IDU commanders, who received information about standing order violations were supposed to report to the overall IDU commander, Mr. Gbao. However, in practice, this reporting structure did not work well because it was difficult to send lengthy monthly reports from remote locations through the radio to the central HQ in Kailahun. Some of the local IDU commanders just reported directly to senior authorities in their own region, such as the IDU commander in Pendembu who made daily reports to Mr. Sesay in person, rather than radioing through to the overall IDU in Kailahun.

At various points throughout cross examination, Mr. Sesay was asked to refute discrete pieces of testimony from Prosecution witnesses incriminating Mr. Gbao. TF1-139 had placed Gbao in Monrovia at a meeting with Charles Taylor and Foday Sankoh in 1991, but according to Sesay, the witness had lied, because the only time Sesay knew Gbao had gone to Liberia to meet with Taylor was in 2000 at the meeting about disarmament with ECOWAS leaders. Sesay also denied that Gbao was ever Sankoh's war advisor or that he traveled on any "diamond flights" in the mid-1990s. According to Sesay, the RUF never controlled any diamond mines in Sierra Leone between 1991 and 1997. Contrary to TF1-355's claims that Gbao had been seen in Monrovia in 1998 with vehicles full of weapons, Sesay gave evidence placing Gbao in Kailahun for the whole of 1998.

Attempts by Counsel to question Mr. Sesay about strained relations between Gbao and senior commanders Bockarie, Mosquito, and Superman yielded mixed results. Sesay confirmed some problems and reprimands Gbao received, but could not confirm or deny much of the specific questions Mr. Cammegh put to him, because he lacked firsthand knowledge about certain particular situations. These types of questions consumed a considerable amount of time throughout the cross examination, on a variety of topics. A number of Counsel's questions inquired into events occurring in towns where Mr. Sesay was not present at the time of alleged events or had no knowledge of Mr. Gbao's motivations for taking certain actions. This made the exercise frustrating at times, and periodically the Bench would advise Counsel to move on from certain lines of inquiry and be more cognizant of this difficulty when forming his questions.

During the final hour of cross examination on Friday, Mr. Cammegh's questioning jumped around quite a bit, hitting on a number of final topics. Counsel asked Mr. Sesay to testify what he knew about allegations that Mr. Gbao's farm employed forced labor or that he had child soldiers from Small Boys Unit (SBU) with him. Sesay gave evidence that he was never aware of any forced labor on Gbao's family farm and never saw Gbao with child combatants, only children who were members of his extended family. He reiterated that Gbao did not go to the front lines so it wouldn't have made sense that he would have had SBUs with him in Buedu. Gbao's bodyguards, at least in 2000, were all adults according to Sesay. Mr. Sesay also gave evidence that Gbao was among the group of RUF commanders who angered Bockarie by attempting to initiate peace negotiations with the CDF in December of 1998. His testimony further touched upon Gbao's support for transforming the RUF into a peacetime political party and his contributions toward bringing order in Makeni late in the conflict when there was factional tension and civilian harassment problems.

Early Adjournment

After Counsel for the third accused concluded cross examination, he asked to be excused from Court due to illness. Members of the Bench expressed concern about proceeding without anyone to represent Mr. Gbao in court. In particular, they wondered aloud why none of the duty counsel from the Defence Office was present to act as standby counsel, and further why none had appeared in court for any of Mr. Sesay's testimony. Judge Itoe said, "I'm surprised, you know, that none of them has been here to follow the testimony of the first accused, which is very, very important and strategic for the Defence case. I must say, that I'm rather surprised that there has been this lukewarmness… So I think that we need to have recourse, you know, to them, because they're there. I think they should

do their job."[14] Mr. Sesay also informed the Court that he was experiencing medical discomfort in his leg and wished to be excused. Mr. Harrison rose to explain that prior to starting its cross examination of Mr. Sesay, the Prosecution would be bringing a legal application to admit evidence. Both Mr. Harrison and Mr. Jordash were of a disposition to carry on with legal arguments in the afternoon, even absent of Mr. Cammegh (who had no locus in the legal argument) and Mr. Sesay (contingent upon his consent). Both counsel were anxious not to lose valuable time in the session. Nevertheless, the Bench announced, after brief consultation with one another, that they would adjourn early and reconvene for oral arguments the following Tuesday. Just as the Court was adjourning, Mrs. Kah-Jallow from the Defense Office belatedly rushed into the chamber—presumably after hearing the office chastised over the live internal Court webcast for its neglect of the proceedings (although this was not confirmed). She sought an audience with the Court, however, the Presiding Judge informed her they had already adjourned and they were not disposed to stop at that moment to hear her explain her prolonged absence from Court.

[14] SCSL Transcript, 1 June 2007, Page 93 (Lines 2-12).

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This publication was originally produced pursuant to a project supported by the War Crimes Studies Center (WCSC), which was founded at the University of California, Berkeley in 2000. In 2014, the WCSC re-located to Stanford University and adopted a new name: the WSD Handa Center for Human Rights and International Justice. The Handa Center succeeds and carries on all the work of the WCSC, including all trial monitoring programs, as well as partnerships such as the Asian International Justice Initiative (AIJI).

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