

Report on the Tenth Session of the RUF Trial, Special Court for Sierra Leone

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LIST OF ABBREVIATIONS

AFRC	Armed Forces Revolutionary Council
AFRC case, or AFRC trial	The case against the three accused alleged to be members of the AFRC at the Special Court for Sierra Leone (<i>Prosecutor v Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu</i>)
CDF	Civil Defence Forces
CDF case, or CDF trial	The case against the three senior members of the CDF at the Special Court for Sierra Leone (<i>Prosecutor v Sam Hinga Norman, Moinina Fofana and Allieu Kondewa</i>)
Defence	The defence teams for all three accused in the RUF trial
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the Former Yugoslavia
ICTR	International Criminal Tribunal for Rwanda
Indictment	<i>Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao</i> , (SCSL-04-15-T), Amended Indictment, 2 August 2006
JCE	Joint Criminal Enterprise
OTP	Office of the Prosecutor, Special Court for Sierra Leone
RPE	Rules of Procedure and Evidence for the Special Court for Sierra Leone
RUF	Revolutionary United Front
RUF case, or RUF trial	The case against the three accused who are members of the RUF currently proceeding at the Special Court for Sierra Leone (<i>Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao</i>)
Sesay's Defence	The defence team for Issa Sesay
SLA	Sierra Leonean Army
Statute	Statute of the Special Court for Sierra Leone, 16 January 2002

I. Executive Summary

(i) Introduction

The following report is intended to provide the reader with an overview of the RUF's recently completed tenth trial session (the 'Tenth RUF Trial Session' or the 'Session').¹ The case against the alleged senior members of the Revolutionary United Front is arguably the most complex case the Special Court will try, but international focus on the trial has largely been waning. The War Crimes Studies Center hopes that this report will reinvigorate research and reporting interest in the RUF trial, as well as assist those currently analyzing the work of the Special Court by providing them with an update on proceedings that, for reasons explained below, are almost entirely inaccessible to an international audience.

The primary aims of the report are as follows:

1. To provide the reader with a broad overview of the witness testimony heard during the Session;
2. To give the reader an overview of the main legal and procedural issues being considered by the Chamber;
3. To comment on any issues relating to witness protection that arose; and
4. To comment on the extent to which the Special Court is (i) following the recommendations made by independent expert Antonio Cassese in his 2006 Report to the Special Court's Management Committee (the 'Cassese Report') and (ii) achieving its twin goals of fairness and expeditiousness.

The report is divided into four main sections, with each section broadly corresponding to the aims outlined above.

(ii) Key Findings

The key findings of this report are as follows:

- ***Witness testimony: Sesay's Defence posits counter-theory of the RUF in Kailahun.*** In an attempt to counteract the Prosecution's case, which characterizes the RUF as a carefully orchestrated criminal enterprise seeking to take over the country by any means necessary, witnesses brought by Sesay's Defence testified to rebels promoting a policy of social cohesion and respect for civilians, said to have formed an integral part of the RUF's ideology. Witnesses further testified to community farming, free schools for children and the availability of medical services. The witnesses predominantly gave evidence relating to the Kailahun crime base, which the Prosecution alleges became the site of forced labour camps fuelling the RUF's war effort between 1996 and 2000. According to the Defence witnesses, civilians working in and around the Kailahun district largely worked for and with the RUF. For the most part, the testimony seems to have gone unchallenged under cross examination. Although a significant portion of the

¹The session began on October 4 and ended on December 6, 2007, when the Chamber had its December recess. The eleventh trial session began on January 10, 2008. The War Crimes Studies Center will produce an overview of the eleventh trial session when the Court goes into recess for its March break.

evidence led related to events that occurred outside the period covered by the Indictment, this did not detract from the unchallenged testimony in favour of the accused clearly relating to the charges they face.²

- ***Legal and procedural issues: Defence calls for Justice Thompson to voluntarily withdraw or be disqualified from hearing the RUF case.*** A Defence motion submitted in mid-November 2007 asserted that Justice Thompson’s recent dissent in the CDF case contains statements and opinions giving rise to doubts about his impartiality. According to the Defence, Justice Thompson’s dissent expressed ‘judicial and political support for any armed force engaged in combat with the RUF ... presenting their actions as a manifestation of “normal human instinct” against a great evil.’³ As such, his opinion is said to evince ‘a strong commitment to the Prosecution’s cause/case’ giving rise ‘to an appearance of bias’ and ‘shifting the burden for the RUF to “prove” its innocence’.⁴ The Prosecution has responded by asserting that Justice Thompson’s statements have been taken out of context. Citing the ICTY case of *Brdjanin and Talic*, it further argues that a judge should not be disqualified on the sole basis of a position taken by him on a preceding case at odds with the one currently being tried.⁵ After adjourning the proceedings to deliberate on the matter, Justices Itoe and Boutet determined that, even though they agreed that some of the indicia of bias had been apprehended in Justice Thompson’s dissent, they were ‘satisfied that this conclusion [was] not sufficient to overcome the high threshold set’ by the *ad hoc* tribunals to warrant Justice Thompson’s disqualification. Citing the recently issued ICTR Appeals Chamber Judgement in the *Media* case, their Honours further noted that ‘solid and sufficient evidentiary proof’ must be established ‘in order to rebut the presumption of impartiality’.⁶ The matter is currently being considered on appeal. If Justice Thompson is recused from the proceedings, the RUF accused could face a re-trial, although Defence counsels have sought to pose alternative solutions.⁷
- ***Witness protection issues: OTP investigators for Taylor trial alleged to be interfering with RUF defence witness.*** Sesay’s Defence filed a motion in which it asserts to have *prima facie* evidence of investigators from the Office of the Prosecutor (OTP) intentionally breaching protective measures for a Defence witness and acting in contempt of court. The motion was filed following a series of confidentially filed prosecution motions relating to the same issue, in which the Prosecution asserted the investigators’ breach of protective measures was

²See Section IV(v) of this report for further details relating to the Prosecution’s cross examination of witnesses.

³*Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T) ‘Sesay and Gbao Joint Motion for Voluntary Withdrawal or Disqualification of Justice Bankole Thompson from the RUF Case’ (14 November 2007), paragraph 5.

⁴*Ibid.*, paragraphs 3 and 19.

⁵*Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T) ‘Prosecution Response to Sesay and Gbao Joint Motion for Voluntary Withdrawal or Disqualification of Justice Bankole Thompson from the RUF Case’, (20 November 2007), paragraph 13. The Prosecution relies on *Prosecutor v Brdjanin and Talic* (IT-99-36-IT) ‘Decision on Application by Momir Talic for the Disqualification and Withdrawal of a Judge’, 18 May 2000, paragraph 18.

⁶*Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T) ‘Decision on Sesay and Gbao Motion for Voluntary Withdrawal or Disqualification of Hon. Justice Bankole Thompson from the RUF Case’ (6 December 2007), paragraphs 87 and 94.

⁷See Section V(iii) of this report.

accidental. The OTP has allegedly approached the witness in question to testify for the Taylor trial. Sesay's Defence alleged several grounds of impropriety, including: approaching the witness after the Defence had informed the Prosecution in open court as to his actual identity; disguising the witness in question during his meetings with investigators at the OTP; and paying the witness US\$100 as an incentive to cooperate with the Prosecution.⁸ The motion is currently being considered by the Trial Chamber.

- ***Trial management issues: Justice by the stopwatch?***⁹ Hopes that the RUF trial proceedings would be complete by the end of 2007 were completely dashed by the year's end, with the Defence calling only 18 of an anticipated 196 witnesses by the Session's close.¹⁰ Trial Chamber I is under pressure to complete proceedings and issue a judgement by the end of 2008 / early 2009, with the Special Court now issuing progress reports to its Management Committee every six months to ensure it meets the deadlines of its recently revised completion strategy.¹¹ Not all of the factors contributing to the slow pace of the proceedings were within the Chamber's control, with a legacy of insecure funding and 'just in time' responses to the needs of the Court still besetting the trial. However, a seeming lack of clear planning for the RUF trial's sessions and (on average) at least an hour each day being lost due to late starts and extended breaks continued to contribute to an appearance that the Chamber was responsible for the lag in 2007.¹² Despite asserting that judicial management of the trial should be above the scrutiny of external actors, 2008 seems set to be a year of justice by the stopwatch at the Special Court, as 'the managerial dog' continues to want to 'wag the judicial tail', as Justice Thompson recently put it.¹³

(iii) Conclusion

2008 poses a number of challenges for the Special Court for Sierra Leone. For Trial Chamber I, the key challenge will be managing the remaining defence phase in the RUF trial with extreme expeditiousness, while ensuring that the quality of justice delivered to the accused is not compromised. Add to this the uncertainty under which one of the judges continues to hear the case and there seems no doubt that the Chamber faces a number of competing pressures as the year begins. Although the Special Court's attention and resources are being diverted to the Hague to keep up with the demands of the recently opened Taylor trial, it seems likely that Trial

⁸*Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T)'Sesay – Public with Confidential Annexes Motion to Initiate Contempt Proceedings' (24 October, 2007), paragraphs 11-13, 18 and 23 – 26.

⁹This phrase is gratefully borrowed by a lawyer formerly of the ICTY, who told the author of this report passing that the phrase was used to describe a general increase in the pace of trials following that tribunal's adoption of its completion strategy documents.

¹⁰Unofficial Transcript, 27 November 2007, 4.

¹¹See recommendation of the Cassese Report, paragraph 254.

¹²See Annex B: Summary of Breaks Taken During Trial Days in the Session.

¹³According to the Cassese Report, the judges of Trial Chamber I asserted that the Management Committee's request that an independent expert assess the Special Court's judicial productivity amounted to an undue interference with 'the independence of the judges in the performance of their functions'. See Cassese Report, paragraph 18. For Justice Thompson's recent comments, see Unofficial Transcript, 13 November 2007, 103.

Chamber I and the Defence will require increased support in order to complete the RUF case this year.

Trial Chamber I has reached a significant stage in its history at the Special Court and deserves to be commended for its ongoing commitment and dedication in delivering justice to the people of Sierra Leone. Yet if the Special Court is to achieve its twin goals of fairness and expeditiousness, 2008 is set to be an important year for the Chamber. The 'lessons learned' from 2007 will clearly need to be taken on board for 2008. No doubt open communication between the Special Court's Management Committee, the Registry and the judges will be imperative, in order to ensure the Special Court's goals – both for the RUF trial and the Court as a whole - are met.

II. Introduction

The Special Court for Sierra Leone reached some important milestones in its history in 2007. In June, Trial Chamber II delivered the Court's first judgement, in the case against members of the Armed Forces Revolutionary Council, *The Prosecutor v Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu* (the 'AFRC case').¹⁴ Trial Chamber I followed soon after with its judgement in the case of *The Prosecutor v Samuel Hinga Norman, Moinina Fofana and Allieu Kondewa* (the 'CDF case'), which was issued in August.¹⁵ Both trials are currently at varying stages of the appeals process.

As 2008 begins, Trial Chamber II has once again become the focus of international attention, with the highly anticipated trial of former Liberian President Charles Taylor beginning in the Hague this month. The trial marks the first time a former African Head of State is being tried by an international court. Many human rights organizations see Taylor's trial as providing a symbolic victory, with Human Rights Watch stating it sends a strong signal to the international community that 'no one is above the law'.¹⁶ At the same time the Special Court's Prosecutor, Stephen Rapp, sees the trial as a providing an 'enormous test' for international justice, perhaps signalling not only the significance of the trial, but the difficulty of proving the required nexus between Taylor and the rebel activity in Sierra Leone under existing theories of international criminal liability.¹⁷

Far less attention, on the other hand, is being paid to the ongoing case in Trial Chamber I, despite its importance both for the people of Sierra Leone and for the Special Court.¹⁸ The case in question – *Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* - begins its eleventh trial session this month, with the Defence for Issa Sesay ('Sesay's Defence') calling its nineteenth witness on January 10. Proceedings against the three alleged senior commanders of the Revolutionary United Front ('RUF') began in July 2004. At the time the case garnered much media interest - perhaps due to the fact that Sierra Leone's then President, Ahmed Tehjan Kabbah, had called for the inauguration of the Special Court on the grounds that members of the RUF movement should be prosecuted.

¹⁴*Prosecutor v Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu* (SCSL-04-14-T), Judgement, 20 June 2007 (Hereafter, 'AFRC Judgement').

¹⁵Although the Chamber did not enter a conviction against Norman following his death in February of that year, the judgement did include several factual findings that traversed the history of Norman's involvement in Sierra Leone's civil war. *Prosecutor v Samuel Hinga Norman, Moinina Fofana and Allieu Kondewa* (SCSL-04-14-T), Judgement, 2 August 2007 (Hereafter, 'CDF Judgement'). For further commentary on the reaction to Norman's death, see War Crimes Studies Center, 'Sam Hinga Norman Special Report' (22 February 2007) available online at: <http://socrates.berkeley.edu/~warcrime/SL-archives.htm>.

¹⁶'In War-Crimes Trial, A Signal to Africans', A Response to an Editorial in the New York Times, Human Rights Watch, New York, 11 June 2007, available on-line at www.hrw.org (Accessed on 13 January 2008).

¹⁷'World to Hear Case Against Taylor', BBC World News, 7 January 2008, available on-line at <http://news.bbc.co.uk/2/hi/africa/7172443.stm>. (Accessed on 13 January 2008).

¹⁸The shift in international attention to the Taylor trial is understandable, given international criminal trials generally appear to receive more attention at the start of proceedings than during the defence phase. Nevertheless, it's important to consider why this is the case, and what that means for the rights of the accused persons to a fair and public trial.

Yet despite the lack of sustained international interest in the proceedings, the RUF trial warrants ongoing consideration for a number of reasons. First, given that the accused face an indictment containing the greatest number of charges spanning the largest geographical area of any accused at the Special Court, the case is arguably the most complex the Court will try.¹⁹ The complexity of the case has made the trial procedurally and legally interesting in a number of respects, but will also serve as an interesting counterpoint to the trial of Charles Taylor, given the two cases are linked by a common factual matrix. Second, despite hopes of completion of proceedings by the end of 2007, the RUF trial has fallen decidedly behind schedule: the Defence called only eighteen out of an anticipated 196 witnesses last year.²⁰ If the Special Court is to adhere to its goal of expeditiousness, increasing the pace of proceedings in the RUF trial needs to be given maximum priority.²¹ Third, important issues pertaining to the rights of accused persons have been raised during the defence phase of the RUF trial that warrant a higher profile than they are currently receiving. In particular, the extent to which the Taylor trial is impacting on the rights of the accused in Freetown need to be taken seriously.²²

The following report is therefore intended to raise the profile of the RUF proceedings, by providing the reader with an overview of the RUF's recently completed tenth trial session (the 'Tenth RUF Trial Session' or the 'Session'). The primary aims of the report are as follows:

1. To provide the reader with a broad overview of the witness testimony heard;
2. To give the reader an overview of the main legal and procedural issues being considered by the Chamber;
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4. To comment on the extent to which the Special Court is (i) following the recommendations made by independent expert Antonio Cassese in his 2006 Report to the Special Court's Management Committee (the 'Cassese Report') and (ii) achieving its twin goals of fairness and expeditiousness.²³

The report is divided into four main sections, with each section broadly corresponding to the intentions outlined above.

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¹⁹Although Taylor's trial may seem to be the most symbolic for the Special Court, the RUF trial stands to be the most historically significant for Sierra Leone and jurisprudentially significant for international criminal law.

²⁰When Professor Antonio Cassese wrote his independent expert's report to the Special Court's Management Committee in December 2006, he anticipated that the RUF trial proceedings would complete by 2007 and a judgement in the trial would be issued by mid-2008. See Section VII(ii) of this report.

²¹The lagging pace of the trial is partly circumstantial and outside the Court's control. As will be discussed further in Section VII of this report, some of the lag however, undoubtedly relates both to the diversion of the Court's resources to the Hague and a seeming lack of clear planning and foresight in the management of the trial schedule.

²²See in particular sections V(ii), VI(i) and VII(i)(B) of this report.

²³Although the Special Court is under no obligation to follow the recommendations of the Cassese Report, they provide a useful independent benchmark upon which to assess the Court's overall progress last year.

currently analyzing the work of the Court, by providing them with an update on proceedings largely inaccessible to those who are not based in Freetown.²⁴

III. Methodology

Unlike the weekly reports that have preceded it, this report has not been written from the first-hand observations of court monitors sitting in the public gallery, but from a review of the trial transcripts and court documents produced during the Session. Due to the fact that transcripts are as yet not publicly available, all references are to 'Unofficial Transcripts'. In accordance with an order issued by Trial Chamber I in October 2004, witness testimony during closed session proceedings has not been reported on.²⁵

While reading trial transcripts can, to some extent, provide one with a picture of what is occurring during the courtroom proceedings, they are by no means a substitute for monitoring the trial in person: obviously, the nuance of oral communication is lost when it appears in written form, as are the visual cues that give life to the words being spoken. Readers should therefore bear this in mind when reading Section IV of this report.

No formal interviews were conducted in order to produce this report. As always, any factual errors or mistakes in this report are entirely the fault of the author.

IV. Witness Testimony

'It's our case that the conflict in Kailahun has been much misunderstood and that the misunderstanding of what happened in Kailahun has arisen because of the atrocities committed by the Liberians. And from that, and those atrocities, including the use of child soldiers, the Prosecution, NGOs, human rights groups – have effectively misunderstood what happened in Kailahun ... It is the fundamental basis of my client's case that *that* misunderstanding has led to a misunderstanding of what the RUF was about.'

- Defense counsel for Issa Sesay, Wayne Jordash, on the second day of the Tenth RUF Trial session²⁶

Community farming, schools for children, and free medical services. According to Defence witnesses called for Issa Sesay, these are just some of the provisions the

²⁴Unlike the Taylor trial, which, thanks to the commendable efforts of Open Society Justice Initiative and its partners, now has a comprehensive website dedicated to keeping the public informed about the trial (see www.charlestaylortrial.org), proceedings that continue in Freetown are largely inaccessible to those outside the public gallery of Trial Chamber I. Due to the efforts needed to ensure that transcripts from the proceedings are properly redacted prior to being released on the Special Court's website, at present, no transcripts are publicly available for proceedings beyond 6 April 2006. See www.scs-l.org/RUF-transcripts.html. (Last accessed 16 January 2008). The War Crimes Studies Center is the only organization currently monitoring the RUF trial proceedings. Up until July of this year, independent trial monitors were attending trial proceedings on a daily basis. As of September of this year, the Center is producing periodic analyses of the defence case from transcripts of the proceedings that roughly coincide with the length of a trial session. For weekly reports on the RUF, from June 2004 to July 2007, see <http://warcrimescenter.berkeley.edu>.

²⁵*The Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T) 'Order on Trial Monitoring During Closed Session' (28 October 2004).

²⁶Unofficial Transcript, 5 October 2007, 61.

RUF offered civilians during Sierra Leone's eleven-year civil war.²⁷ In an attempt to counteract the Prosecution's case, which characterizes the rebel militia as a carefully orchestrated criminal enterprise seeking to take over the country by any means necessary,²⁸ witnesses brought by Sesay's Defence instead testified to rebel commanders promoting a policy of social cohesion and respect for civilians that is said to have formed an integral part of the RUF's ideology. Furthermore, negating the allegation that senior members of the RUF failed to prevent or punish disobedient subordinates, this policy is said to have been implemented through a functioning disciplinary system. According to Defence witnesses, combatants who committed crimes against civilians were brought before an internal investigations board with the authority to enforce punitive measures.²⁹

Over the course of the Session, Sesay's Defence brought both crime base and insider witnesses who spoke favourably of the RUF, with many civilian witnesses asserting that they had worked and lived voluntarily within RUF strongholds. The evidence predominantly centered on Kailahun - particularly events that took place in Giema, where Issa Sesay is said to have been based for part of the war.³⁰ Based on a review of the transcripts, the testimony seemed largely unchallenged by the Prosecution under cross-examination.³¹

The following section provides an overview of some of the highlights of the witness testimony during proceedings.

(i) Relationship between the RUF and the Gios

The Defence case opened with Sesay's counsel seeking to clarify the relationship between civilians and the RUF, on the one hand, and civilians and other militia

²⁷See in particular: Testimony of DIS-177 (Unofficial Transcript, 4 October 2007); Testimony of DIS-080 (Unofficial Transcript, 5 October 2007, 89-91,97-99,100-101); Testimony of DIS-178 (Unofficial Transcript, 18 October 2007); Testimony of DIS-187 (Unofficial Transcript, 26 November 2007, 13-15, 31-33). Note that some of the testimony did not relate to the period for which the accused have been charged under the Indictment.

²⁸According to the Indictment, the RUF and AFRC 'shared a common plan, purpose or design (joint criminal enterprise) to take any actions necessary to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas'. The joint criminal enterprise included gaining and exercising control over the population of Sierra Leone in order to prevent or minimize their resistance to the RUF's geographic control. The crimes committed in the indictment were a foreseeable consequence of the joint criminal enterprise. See *Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao*, (SCSL-04-15-T), Amended Indictment, 2 August 2006, paragraph 36 and 37 (Hereafter, 'Indictment'). Available online at www.sc-sl.org.

²⁹See in particular Testimony of DIS-149 (Unofficial Transcript, 5 November, 2007, 26, 46-52).

³⁰Certain witnesses, however, testified to events that took place over a far greater geographical area, including in Kenema, Kono and Freetown and the Western Area. The evidence was largely led related to Sierra Leone's Eastern Province (comprising the districts of Kailahun, Kono and Kenema).

³¹Obviously, this assessment needs to be qualified by the fact that the researcher writing this report was not present during the proceedings to ascertain whether the witnesses' credibility appeared to be undermined. Furthermore, it may be that the Prosecution takes the view that assertions that schools were being run by the RUF in particular areas or that medicines were being supplied to civilians will not necessarily negate the specific claims made by its witnesses that atrocities were being committed in those areas at the same time. For example, Prosecution Witness TF1-113 testified to a specific incident in Kailahun where 67 civilians were arrested and subsequently used as forced labour by the RUF. (See War Crimes Studies Center, Special Court Monitoring Program, Update No. 71). This particular witness, however, was subject to rigorous cross-examination by the Defence at the time the witness testified.

groups operating during the conflict, on the other. This included leading evidence about a group known as ‘the Gios’, a reference to a tribal group from Liberia’s Nimba county. The Gio are one of the predominant ethnic groups represented in the National Patriotic Front of Liberia (‘NPFL’), the armed faction led by Charles Taylor from the late 1980s onwards and said to have had links with the RUF.³² According to witnesses for the Defence, it was the Gios, and not the RUF, who recruited children into armed combat. Similarly, it was ‘other soldiers, who did not speak Sierra Leonean dialects’, and not the RUF, who were said to have been harassing and killing the civilians.³³ Evidence was also led regarding Taylor’s supply of arms and ammunition to the RUF, said to have ceased around 1993.³⁴

While the testimony was useful in mapping the background to the relationship between the RUF and civilians, it did not directly discount allegations against the accused that related to the charges under the Indictment. At times, the extent to which the Sesay’s Defence focussed on periods outside the Indictment during the Session seemed to be counting against them: rather than bolstering the claims of their case, the judges appeared to question the need to go into such great detail about the RUF’s actions before 1996.³⁵ Similarly, the judges seemed to suggest at various points that they required far less corroboration of witness testimony than was being presented: Justice Itoe, in particular, seemed to think it unnecessary when the Defence asked various witnesses to reiterate the same sequence of events.³⁶

On several occasions, the Prosecution objected to the Defence leading what appeared to be irrelevant testimony. The Defence argued that its focus on the pre-Indictment period was necessary not only to frame the backdrop of its case, but also to directly negate the assertions of Prosecution witnesses who had testified to events that occurred before 1996.³⁷ Despite being clearly more interested in hearing evidence directly relating to the charges faced by the accused, the judges generally gave the Defence ample leeway to continue with lines of questioning about events pre-1996, preferring to give counsel ‘hints’ on how to frame their case rather than direct orders.³⁸

(ii) Kailahun crime base and eastern province

The witnesses predominantly gave evidence relating to the Kailahun crime-base, which the Prosecution alleges became the site of forced labour camps fuelling the

³²For further background on the NPFL see in particular Stephen Ellis *The Mask of Anarchy: The Destruction of Liberia and the Religious Dimension of an African Civil War (Second Edition)*, (New York University Press, 2007). See: Testimony of DIS-074 (Unofficial Transcript, 4 October 2007, 17-23) and Testimony of DIS-255 (Unofficial Transcript, 8 October 2007, 103-115). For testimony regarding Taylor’s early involvement in the Sierra Leonean conflict, see Testimony of DIS-069 (Unofficial Transcript, 19 October, 2007, 68-9).

³³Testimony of DIS-078 (Unofficial Transcript, 11 October 2007, 106 onwards).

³⁴Testimony of DIS-069 (Unofficial Transcript, 19 October 2007, 68-69):

³⁵See in particular, the conversation between Justice Boutet and Wayne Jordash (Unofficial Transcript, 5 October, 2007, 60-66).

³⁶See comments made during Testimony of DIS-069 (Unofficial Transcript, 19 October 2007, 80) and Testimony of DIS-149 (Unofficial Transcript, 5 November 2007, 55).

³⁷See Unofficial Transcript 8 October 2007, 81-82.

³⁸Unofficial Transcript, 8 October 2007, 83.

RUF war effort between late 1996 and 2000.³⁹ According to the Defence witnesses, civilians living and working in and around the Kailahun district during the conflict largely worked voluntarily for (and with) the RUF. This included working on farms owned by Issa Sesay.⁴⁰ Community farms owned and run entirely by civilians were also established during the war, many of which are alleged to have been in operation for the duration of the conflict and some of which continue to this day.⁴¹ Witnesses are said to have lived away from the front lines: according to one witness, the RUF would ensure that attacks against government troops took place in areas where civilians were not present.⁴² Similarly, the RUF's G-5 or 'civilian liaison' commanders are said to have determined ahead of time whether unoccupied houses could be occupied by rebels when a town was taken for attack.⁴³

At the same time, children were said to be attending free schools run by the RUF and community hospitals were used by both civilians and soldiers.⁴⁴ Bolstering Sesay's image as assisting civilians and generally working with them, Sesay was alleged to have been in charge of administering drugs brought by the ICRC to the hospital at Giema in the late 1990s.⁴⁵ He was similarly alleged to have been charitable to civilians working on his farms.

Allegations of forced labour in diamond mines in Tongo Field in 1997 were also negated by Defence witnesses. According to Witness DIS-069, the RUF operated a three-pile mining system in late 1997, at the Cyborg mining pit in Tongo. In a meeting held in Tongo in 1997, civilians were asked to form a civilian committee to work on the mines. Under the three-pile mining system, piles were divided between: (i) the RUF/AFRC junta, to go towards paying soldier's salaries, (ii) the civilian labourers; and (iii) the operators of the mine, for fuel and ongoing maintenance of the mining equipment. The witness affirmed that the RUF and AFRC were working together at this time, and that proceeds in the first pile were being shared between officers of both groups.⁴⁶ The three-pile mining system at Cyborg was complimented by a two-pile mining system at other mining sites, where equipment maintenance was not necessary. Hence, far from being forced to mine, the Defence argued that witnesses were working voluntarily, and remunerated accordingly.

Finally, several of the crime base witnesses also gave evidence which sought to negate the Prosecution's claim that civilian women were forced into marriage with RUF combatants. According to the witnesses, although several of the combatants did enter into romantic relationships with women during the war, the women who married soldiers did so on a voluntary basis. G-5 commanders were said to have

³⁹ Indictment, paragraph 74. See also War Crimes Studies Center, Special Court Monitoring Programme, No. 20 (Testimony of TF1-012, 4 February 2005, 4-5); War Crimes Studies Center, Special Court Monitoring Program, Update No.27 (Testimony of TF1-263, 18 March 2005).

⁴⁰ Testimony of DIS-080 (Unofficial Transcript, 5 October, 2007, 100) Testimony of DIS-128 (27 November, 2007, 37).

⁴¹ Testimony of DIS-069 (Unofficial Transcript, 19 October 2007, 94).

⁴² Ibid., 55-6.

⁴³ Testimony of DIS-124 (Unofficial Transcript, 22 November 2007, 72-73).

⁴⁴ Supra, note 32.

⁴⁵ Testimony of DIS-128 (Unofficial Transcript, 27 November 2007, 5-7).

⁴⁶ Testimony of DIS-069, (Unofficial Transcripts, 22 October 2007, pages 90-92).

presided over the marriages, which were not always officially celebrated due to the conditions of war.⁴⁷

(iii) Command structure and RUF disciplinary procedures

In order to assess the individual criminal responsibility of the three accused under Article 6(3) of the Statute, Trial Chamber I will consider whether evidence led about the RUF command structure demonstrates that the accused held a superior-subordinate relationship to combatants who perpetrated crimes during the conflict. This relationship is determined through the doctrine of 'effective control'. In its judgement in the CDF case, Trial Chamber I opined that a superior could be deemed to have had effective control over his subordinates, if it is proven that he had the 'material ability to prevent or punish criminal conduct'.⁴⁸ According to the Chamber, determining this material ability was more a case of examining the evidence than of substantive law. It further noted that 'mere substantial influence' was not sufficient to meet the threshold of 'effective control'.⁴⁹ Trial Chamber II has opined that when considering the command structure of irregular forces, the doctrine of 'effective control' can be determined with reference to several indicia, including 'a functioning chain of command, a sufficiently developed planning and orders process, and a strong disciplinary system.'⁵⁰

Many of the witnesses who testified during the Tenth RUF Trial Session gave evidence regarding the existence of a command structure and functioning disciplinary system within the RUF. Crime base witnesses testified to combatants being punished for committing crimes, sometimes severely: combatants would be flogged for looting civilian's food and those found to have raped women could be executed.⁵¹ According to one witness in particular, complaints about combatants would be investigated by the G-5 commanders working together with the military police and the Internal Defence Unit (IDU), alleged to have been under the control of Augustine Gbao. The witness noted that while the IDU and G-5s would investigate complaints, ultimate authority for enforcing punishments lay with area and battalion commanders.⁵²

The testimony of DIS-069 appeared to be particularly important for establishing the RUF command structure as the Defence sees it. According to the witness, commanders operated under a shifting command and control regime throughout the Indictment period. In 1996 (during the period when Sankoh was in Abidjan), Mohamed Tarawalie is said to have been largely in control. Issa Sesay is alleged to have been one of four battlegroup commanders reporting directly to Tarawalie, and in charge of the Kailahun area at that time.⁵³ By 1997, however, Sesay is said to have been operating in Freetown, where he held little *de facto* control over the troops. According to the witness, the RUF and SLAs (from the Sierra Leonean army) were not working together at this time in early 1997. The witness also

⁴⁷See Testimony of DIS-080 (Unofficial Transcript, 5 October 2007, 90-92).

⁴⁸CDF Judgement, paragraph 238.

⁴⁹Ibid.

⁵⁰AFRC Judgement, paragraph 621.

⁵¹Testimony of DIS-080 (Unofficial Transcript, 5 October 2007, 79).

⁵²Testimony of DIS-149 (Unofficial Transcript, 5 November 2007, 33-37).

⁵³The other three commanders at the same level of command as Sesay were: Sam Bockarie (Mattru Jong); Dennis Mingu aka Superman (Western Area) and Isaac Mongor (Northern Jungle).

gave important testimony regarding the command structure in mining areas controlled by the RUF and SLA during that year.

Negating early witnesses from the Prosecution's case, DIS-069 went onto allege that Issa Sesay was a battlefield inspector during 1998, responsible for the welfare of particular battalions in Pendembu. According to the witness, Sesay was being punished by having to man the front lines for losing a diamonds shipment while on mission to Liberia. Unit commanders at the time were alleged to report to Sam Bockarie directly.⁵⁴ This included Dennis Mingo, aka 'Superman'. Superman has been implicated in the Prosecution's case as committing various atrocities in the Kono district throughout the same period.⁵⁵ Whether or not Sesay had the material ability to prevent or punish the actions of commanders such as Superman is likely to be significant to the Chamber's determinations of his responsibility under Article 6(3). This ability seemed to be called into question by this witness.⁵⁶

(iv) Evidence in favour of the other accused

Some witnesses also gave evidence under cross-examination that supported the cases of the other accused. For example, Witness DIS-069 testified that Augustine Gbao did not have any command or control authority over battalion commanders in the RUF: as overall commander of the Internal Defence Unit, Gbao could only advise commanders, but did not have the authority to instruct them. The witness also stated that Gbao did not have any 'Small Boy Units' under his control, negating claims that Gbao was using child soldiers in 1996-7.⁵⁷ Similarly, Morris Kallon was allegedly not in charge of Small Boys Units in 1997-98. The witness also negated the claims of prosecution witnesses that Kallon was in charge of the mines at Cyborg from August 1997 – February 1998.⁵⁸

(v) Cross-examination by the Prosecution

For the most part, the Prosecution did not seem to undermine the testimony of the witnesses under cross-examination.⁵⁹ Often times, the Prosecution seemed to be raising unsubstantiated assertions that a witness was lying in an attempt to counteract

⁵⁴According to TF1-071, Issa Sesay was said to have been a Battlefield Commander in 1998. See War Crimes Studies Center, Special Court Monitoring Program, Update No. 18 (21 January 2005, 5). However, the exact time-frames in 1998 were not established in this witness' testimony, which may work in favour of the Prosecution.

⁵⁵Ibid. See also: See War Crimes Studies Center, Special Court Monitoring Program, Update No. 20 (Testimony of TF1-012, 4 February 2005, 4-5); War Crimes Studies Center, Special Court Monitoring Program, Update No.27 (Testimony of TF1-263, 18 March 2005).

⁵⁶Testimony of DIS-069 (Unofficial Transcript, 22 October 2007, 99-102).

⁵⁷Testimony of DIS-069 (Unofficial Transcript, 23 October 2007, 49 and 80). According to counsel for Gbao, John Cammegh, the witness directly negated the testimony of TF1-314 and TF1-371.

⁵⁸Testimony of DIS-069 (Unofficial Transcript, 23 October 2007, 19-23). According to counsel for Kallon, Kennedy Ogeto, the witness directly negated allegations made by TF1-141 and TF1-135 during the prosecution's case.

⁵⁹Supra, note 31. Clearly, it is far easier to observe whether a witness' credibility has been shaken when aided by the visual cues of the courtroom. That having been said, several of the witnesses during the Special Court's proceedings have testified from behind a screen, hence making it difficult to assess their credibility even when seated in the public gallery. See War Crimes Studies Center, Special Court Monitoring Program, 'Interim Report on the Special Court for Sierra Leone' (May 2005, 17).

his or her claim.⁶⁰ Allegations that witnesses were testifying out of an allegiance to the RUF seemed to be more successful in raising doubts as to their impartiality, though the witnesses vehemently denied coming to the Court for any other motive than to tell the truth.⁶¹ Similarly, in some instances, the Prosecution did seem quite successful in raising doubts regarding the witnesses' interpretation of events: for example, although witnesses would state that civilians were remaining on RUF farms or in RUF protected zones for their own safety and security, there was some suggestion that in fact, they were unable to leave the RUF-controlled areas without express permission from the RUF commanders.⁶² However, these doubts often appeared to be dispelled under re-examination.⁶³

The extent to which the Prosecution was cross-examining witnesses on the RUF's involvement in the January 1999 Freetown invasion was also called into question during the proceedings. According to the Defence, the Prosecution's cross-examination of Defence witnesses on this aspect of its case showed that the Prosecution considered the involvement of the RUF in the Freetown invasion to be significantly reduced from what is being pled in the Indictment. As a result, the Defence submitted the Prosecution should be ordered to state the extent to which their case (as it relate to the RUF's involvement in Freetown) had been reduced. The Chamber agreed to deliver a ruling on the issue in due course.⁶⁴

(vi) Significant testimony in closed session

Unfortunately, a significant portion of the Defence case is unable to be reported on: a key witness who testified during five of the twenty-six trial days did so entirely during closed session proceedings.⁶⁵ Similarly, other witnesses were asked to reveal details about the RUF in closed session. As a result, like the Prosecution's case, in which several key insiders testified entirely behind closed doors, important evidence relating to the RUF command structure is not likely to be made publicly available.

V. Legal and Procedural Issues

Several legal and procedural issues arose during the Tenth RUF Trial Session. The following is a summary of the key motions submitted during proceedings. Filings have been selected on the basis of their novelty (either to the proceedings or as a matter of international criminal law) and interest to a wider research and NGO-based

⁶⁰Prosecution lawyers would use a tactic of 'putting to the witness' an alternative statement of facts to the one the witness had provided, but would not provide any underlying evidence to bolster this assertion. The witnesses would then flatly deny the Prosecution's assertion, to which the prosecution would usually respond by moving to a new area of the witness' testimony. See for example: Cross-examination (Hardaway) of DIS-080 (Unofficial Transcript, 8 October 2007, 24-25); Cross-examination (Wagona) of DIS-149 (Unofficial Transcript, 6 November, 2007, 34); Cross-examination (Hardaway) of DIS-124 (Unofficial Transcript, 23 November 2007, 18-19); Cross-examination (Hardaway) of DIS-187 (Unofficial Transcript, 26 November 2007, pages 57-58).

⁶¹See Cross-examination (Wagona) of DIS-149 (Unofficial Transcript, 6 November, 2007, 32-33).

⁶²See for example Cross-examination (Fynn) of DIS-128 (Unofficial Transcript, 27 November 2007, 40-41).

⁶³Ibid., at page 58.

⁶⁴Unofficial Transcript, 13 November 2007, 30 – 47.

⁶⁵See Annex A: Summary of Witness Testimony.

audience. All of the motions discussed are currently *sub judice*. Filings were reviewed from 1 August – 31 December 2007.

(i) Prosecution declares Defence must raise objections to JCE Theory, or assume to have waived its right; Gbao files a motion

The Prosecution filed a notice prior to the start of the trial session reiterating its theory of joint criminal enterprise and unilaterally determining that justice demanded the Defence either bring any objection to its theory at that time or waive its right to file objections later. Citing the ICTR Appeals Chamber decision in *The Prosecutor v Imanishimwe* as authority for its action,⁶⁶ the Prosecution filed the notice to avoid the possibility that its JCE theory might later be considered defective as pled, in a similar manner to which it was determined to be so by Trial Chamber II in the AFRC case. Both Indictments advance a similarly broad theory of JCE, which was criticised by Trial Chamber II in the AFRC case as seeking to blur the line between the law relating to the use of force (*jus ad bellum*) and the laws of war (*jus in bello*).⁶⁷ According to the Prosecution, the JCE theory advanced is that the accused agreed to carry out ‘a campaign of terror and collective punishments, in order to pillage the resources in Sierra Leone, particularly diamonds, and to control forcibly the population and territory of Sierra Leone.’⁶⁸ Defence counsel for Augustine Gbao has since filed a motion seeking leave to raise objections to the RUF Indictment.⁶⁹

(ii) Equality of Arms: Sesay Defence requesting additional funding; Registrar says sufficient funds have been made available

Sesay’s Defence continued its battle with the Registry to secure additional funding, submitting a motion requesting judicial review of the Registry’s decision not to provide funds for an additional co-counsel during the RUF trial’s defence phase.⁷⁰ The motion follows an independent arbitration in April of 2007, in which the Arbitrator determined, in favour of the Sesay Defence, that the case against their client was ‘sufficiently serious, sizeable and complex’ so as to ‘warrant the provision of additional resources’ under the special consideration clause of the team’s Legal Services Contract.⁷¹ However, the Arbitrator did not determine the amount or extent to which additional resources should be provided, presumably leaving this to the discretion of the parties.

According to the Registrar, the arbitration resulted in Sesay’s Defence receiving an increase of 40 per cent. per month in its overall budget. This included a lump sum back-payment for the first two years of the case (November 2004 –

⁶⁶*Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T) ‘Public Notice Concerning Joint Criminal Enterprise and Raising Defects in the Indictment’ (3 August 2007), paragraph 12. See also *The Prosecutor v Samuel Imanishimwe* (ICTR-99-46-A), 7 July 2005, Appeals Judgement, paragraph 66.

⁶⁷AFRC Judgement, paragraphs 70 - 72.

⁶⁸*Ibid.*, paragraph 6.

⁶⁹ *Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T) ‘Gbao – Request for Leave to Raise Objections to the Form of Indictment’ (23 August 2007).

⁷⁰*Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T) ‘Application for Judicial Review of Registry’s Refusal to Provide Additional Funds for an Additional Counsel as part of the Implementation of the Arbitration Decision of 26 April 2007’ (5 September 2007).

⁷¹*Ibid.*, paragraph 2.

November 2006), and an increase in overall funds for the team from US\$25,000 to US\$35,000 / month for the remaining period, inclusive of daily living allowances ('DLA') and travel expenses. Additionally, the team was provided with funds for an international investigator for a period of four months.⁷² The Registrar submits that the dispute stems 'not from the Sesay defence team's desire to hire an additional co-counsel, but rather from its unwillingness to negotiate with the Registry as to how to budget for this alleged need in a way that would be consistent with the Arbitrator's decision.'⁷³ Sesay's Defence argues that the resources required by the team ought to be considered equal to or greater than that provided to the Taylor Defence team, bearing in mind that 'the Sesay defence case is the most sizeable and complex case at the Special Court'.⁷⁴ The Registry has provided the Taylor defence team with a budget of US\$70,000 per month for 3 counsel and 2 legal assistants, exclusive of DLA and travel allowances, a budget therefore amounting to more than double that awarded to Sesay's Defence. According to the latter, 'no logical forensic reason has been provided for this disparity', making the decision unfair and arbitrary.⁷⁵

The dispute highlights more systemic problems associated with the payment of defence teams at the Special Court, with the confluence of payment for legal fees and travel and living expenses undermining the amount the teams are paid and acting as a deterrent for international counsel to make frequent trips to Freetown. Yet despite calls from independent expert Antonio Cassese to review its budgeting strategy with regard to *all* the defence teams, and to separate DLA from the legal fees agreed with each team, the Registry has chosen only to partially implement Cassese's recommendations in relation to the defence in Taylor's trial and keep the payment structure for Freetown ostensibly the same.⁷⁶ In justifying its actions with regard to the latter, the Registry states that living allowances form only part of the current payment structure to the teams and 'there is no need to change this system' – a view seemingly not shared by Sesay's Defence.⁷⁷

(ii) Defence claims Justice Thompson should withdraw from adjudicating RUF trial

Trial proceedings were thrown somewhat off course in mid-November, when the Defence submitted a motion requesting that Justice Thompson either voluntarily

⁷² *Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T) 'Submission by the Registrar pursuant to Rule 33(B) of the RPE in relation to the Sesay team's 'Application for Judicial Review of Registry's Refusal to Provide Additional Funds for an Additional Counsel as part of the Implementation of the Arbitration Decision of 26 April 2007'' (17 September 2007), paragraph 15.

⁷³ *Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T) 'Submission by the Registrar Pursuant to the Interim Order Concerning Application of Judicial Review dated 1 November 2007 (With Confidential Annex)' (5 November 2007) paragraph 16.

⁷⁴ *Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T) 'Application for Judicial Review of Registry's Refusal to Provide Additional Funds for an Additional Counsel as part of the Implementation of the Arbitration Decision of 26 April 2007' (5 September 2007), paragraph 6.

⁷⁵ *Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T) 'Application for Judicial Review of Registry's Refusal to Provide Additional Funds for an Additional Counsel as part of the Implementation of the Arbitration Decision of 26 April 2007' (5 September 2007), paragraph 40.

⁷⁶ See Antonio Cassese 'Independent Expert's Report on the Special Court for Sierra Leone', (6 December, 2006) at paragraphs 137 – 141.

⁷⁷ Special Court for Sierra Leone, Budget 2008 – 2009, paragraph 6 available on-line at www.sc-sl.org/documents.html (Last accessed 17 January 2008).

withdraw or be disqualified from continuing to hear the RUF case.⁷⁸ Lawyers for Sesay and Gbao (and later, Kallon) questioned both Justice Thompson's impartiality and the threat to an appearance of impartiality created by statements made in his recent partially dissenting opinion in the CDF case.⁷⁹ Justice Thompson acquitted the CDF accused on all counts, largely relying on the common law doctrine of criminal necessity. According to Justice Thompson, the application of this doctrine to the actions of the CDF accused excused their 'disobedience to a supranational regime of proscriptive norms' in the particular circumstances of the Sierra Leone civil war.⁸⁰

The Defence motion argued that Justice Thompson's dissent contained statements and opinions that 'express judicial and political support for any armed force engaged in combat with the RUF ... presenting their actions as a manifestation of "normal human instinct" against a great evil.'⁸¹ As such, the opinion is said to evince 'a strong commitment to the Prosecution's cause/case' giving rise 'to an appearance of bias' and 'shifting the burden for the RUF to "prove" its innocence'.⁸² The Prosecution responded by asserting that Justice Thompson's statements had been taken out of context. Citing the ICTY case of *Brdjanin and Talic*, it further argued that a judge should not be disqualified on the sole basis of a position taken by him on a preceding case at odds with the one currently being tried.⁸³ Justice Thompson issued a separate statement in which he too, asserted that his findings had been taken out of context. According to Thompson, his analysis of 'competing evils' referred to the disintegration of the State of Sierra Leone (on the one hand) and the CDF's non-compliance with international law (on the other), not of the 'evil' of any particular group the CDF fought against.⁸⁴

Rule 15 of the Special Court's Rules of Procedure and Evidence ('RPE') provides that 'a judge may not sit on a trial or appeal in any case in which his impartiality might be reasonably doubted on any substantial ground'.⁸⁵ The ICTY in the *Furundzija* case has established that the test for impartiality must be determined

⁷⁸The initial motion caused the Chamber to call a plenary, which, from the absence of transcripts, seemed to last three days, after which Justice Thompson was absent from proceedings pending the outcome of the motion. The Chamber then adjourned a week later for a further nine days in order to determine the outcome of the Defence motion. As a result, the Chamber lost a total of nine trial days deliberating the motion.

⁷⁹Morris Kallon later voiced his support for the motion at trial, and subsequently submitted a motion stating as such. See *Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T) 'Kallon Defence Statement in Support of Sesay and Gbao Joint Motion for Voluntary Withdrawal or Disqualification of Justice Bankole Thompson from the RUF Case' (20 November 2007).

⁸⁰Justice Thompson's Dissenting Opinion annexed to the CDF Judgement, paragraph 68.

⁸¹*Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T) 'Sesay and Gbao Joint Motion for Voluntary Withdrawal or Disqualification of Justice Bankole Thompson from the RUF Case' (14 November 2007), paragraph 5.

⁸²*Ibid.*, paragraphs 3 and 19.

⁸³*Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T) 'Prosecution Response to Sesay and Gbao Joint Motion for Voluntary Withdrawal or Disqualification of Justice Bankole Thompson from the RUF Case', (20 November 2007), paragraph 13. The Prosecution relies on *Prosecutor v Brdjanin and Talic* (IT-99-36-IT) 'Decision on Application by Momir Talic for the Disqualification and Withdrawal of a Judge', 18 May 2000, paragraph 18.

⁸⁴*Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T) 'Hon. Justice Thompson's Comments on Sesay and Gbao Joint Motion for Voluntary Withdrawal or Disqualification of Justice Bankole Thompson from the RUF Case' (28 November 2007), paragraph 19.

⁸⁵Special Court for Sierra Leone, Rules of Procedure and Evidence, available on-line at www.sc-sl.org/documents.html.

not only with reference to a judges' *actual* bias, but to *an appearance of* bias, lest the tribunal lose the confidence of the public it seeks to serve.⁸⁶

After adjourning the proceedings to deliberate on the matter, Justices Itoe and Boutet determined that, even though they agreed that some of the indicia of bias had been apprehended in Justice Thompson's dissent, they were 'satisfied that this conclusion [was] not sufficient to overcome the high threshold set' by the *ad hoc* tribunals to warrant Justice Thompson's disqualification. Citing the recently issued ICTR Appeals Chamber Judgement in the *Media* case, their Honours further noted that 'solid and sufficient evidentiary proof' must be established 'in order to rebut the presumption of impartiality'.⁸⁷

Leave to appeal their decision was granted, and the issue is currently under consideration by the Special Court Appeals Chamber. That Chamber does have a precedent for determining issues under Rule 15: in 2004, the Sesay Defence successfully called for the recusal of Appeals Judge Geoffrey Robertson, on the grounds that passages contained in his book, *Crimes Against Humanity*, demonstrated 'the clearest and most grave sense of bias'.⁸⁸ In that instance, the Appeals Chamber determined that the 'crucial and decisive question' to be determined is whether 'an independent bystander or so to speak, a reasonable man, will have a legitimate reason to fear [the judge in question] lacks impartiality'.⁸⁹

The RPE are unclear regarding how the proceedings would continue, should Justice Thompson be asked to withdraw. Rule 16 states that the President of the Special Court may appoint an Alternate Judge to hear the remainder of the case. However, unlike Trial Chamber II for whom an Alternate Judge was recently appointed to hear the Taylor trial, no funds have been allocated in the Special Court's Completion Budget for an Alternate Judge for Trial Chamber I.⁹⁰ Alternatively, if an Alternate Judge is not available, the RPE states the remaining judges can determine to hear the proceedings in Justice Thompson's absence, provided they are satisfied doing so would not affect their decision either way. Rule 16 seems to suggest that in the event that in the event the judges *were* split on their decision, a re-trial would need to be ordered - a consequence that the Special Court is likely to want to avoid at all costs.

VI. Witness Protection Issues

Other than as outlined in VI(i) below, witness protection issues did not appear to feature strongly during the Tenth RUF Trial Session. However, during court proceedings on 8 October, Witness DIS-077 did appear anxious to return to his village. According to the witness, he had spent some 25 days at the Special Court

⁸⁶*Prosecutor v Furunzija* (Case No. IT-95-17-1), ICTY Appeals Chamber (21 July 2000), paragraph 182.

⁸⁷*Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T) 'Decision on Sesay and Gbao Motion for Voluntary Withdrawal or Disqualification of Hon. Justice Bankole Thompson from the RUF Case' (6 December 2007), paragraphs 87 and 94.

⁸⁸*Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* (SCSL-2004-15-AR15) 'Decision on Defence Motion Seeking Disqualification of Justice Robertson from the Appeals Chamber' (13 March 2004), paragraph 2, available online at www.sc-sl.org.

⁸⁹*Ibid.*, paragraph 15.

⁹⁰See Special Court for Sierra Leone, Budget 2008-09, paragraphs 9 and S.180.

facility over the past few months, and was anxious to go home to be with his wife.⁹¹ Both judges and counsel did their best to alleviate the witness' concerns by assuring him that he would be going home soon.

(i) Alleged interference with Defence witness By OTP investigators

Defence for Issa Sesay filed a motion in which it asserts to have *prima facie* evidence of investigators from the Office of the Prosecutor ('OTP') intentionally breaching protective measures for a Defence witness and acting in contempt of court. The motion was filed following a series of confidentially filed prosecution submissions relating to the same issue, in which the Prosecution asserted the investigators' breach of protective measures was accidental. According to the Defence, the OTP has allegedly approached the witness in question to testify in the Taylor trial.

Sesay's Defence alleged several grounds for the impropriety of the investigators' actions, including: approaching the witness after the Defence had informed the Prosecution in open court as to his actual identity; disguising the witness in question during his meetings with investigators at the OTP; and paying the witness US\$100 to cooperate with the Prosecution.⁹² 'The fact that the OTP has an independent budget, unregulated by the Witness and Victims Support Unit, which allows for gifts of large sums of money to both potential and actual witnesses, unqualified by reference to any legitimate or assessed security need' was hugely disturbing, stated Sesay's Defence. Given the impoverished state of most witnesses who testified at the tribunal, such actions were 'bordering on the Kafkaesque'.⁹³ The Prosecution responded with another confidential motion, raising further anxieties about the investigative process at the Special Court, already seriously called into question after the *voir dire* hearings in June of last year.⁹⁴

VII. Trial Management / Completion Strategy Issues

Hopes that the RUF trial proceedings would be complete by the end of 2007 seemed wildly optimistic as the Tenth RUF Trial Session began, with Sesay's Defence calling the fourth of an anticipated 287 core Defence witnesses on October 4.⁹⁵ By the end of the session, however, defence counsel appeared to be making significant efforts to reduce their anticipated witness lists – either by cutting the number of witnesses or intending to submit witness statements *in lieu* of testimony – and at the final status conference held by the Chamber, this number had been reduced to 196.⁹⁶

⁹¹Testimony of DIS-077, (Unofficial Transcript, 8 October 2007, page 6).

⁹²*Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T) 'Hon. Justice Bankole Thompson's Comments on Sesay, Kallon and Gbao Joint Motion for Voluntary Withdrawal or Disqualification from the RUF Case' (28 November 2007) paragraph 19.

⁹³*Ibid.*, paragraph 27.

⁹⁴*Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T) 'Confidential Prosecution Response to Sesay Motion to Initiate Contempt Proceedings' (30 October 2007). For further information relating to the *voir dire* proceedings see War Crimes Studies Center, Special Court Monitoring Program Updates No. 99 – 101 (June 2007) available online at: <http://warcrimescenter.berkeley.edu>.

⁹⁵Unofficial Transcript, Status Conference, 26 September 2007, 6.

⁹⁶By the time of the Chamber's status conference on 27 November, the Defence witness list had been reduced from 287 to 196. (Based on a review of the transcript from the proceedings, the Defence witness list, which by that time had already been reduced to 238, seemed likely to be reduced by a further 22 witnesses (for Sesay) and 20 witnesses (for Kallon), reducing the number of witnesses on the

Nevertheless the Defence estimated that, at the very earliest, the proceedings would be completed by mid June of 2008.⁹⁷ Justice Boutet expressed concerns that, based on the current witness list, the Chamber would have to sit beyond 2008 ‘and that cannot be. It has to be finished some time in 2008.’⁹⁸

A number of factors appear to have contributed to the slow pace of the RUF proceedings in 2007, not all of which are within the Chamber’s or counsels’ control. The following section seeks to highlight these factors, bearing in mind the extent to which the Special Court is adhering to the recommendations made by the Cassese Report. Although the Court does not appear to be under any obligation to follow the recommendations made by Professor Cassese, they provide a good independent benchmark on which to assess Trial Chamber I’s progress in 2007.

(i) External factors contributing to the slow pace of proceedings

(A) A legacy of insecure funding and insufficient planning

As was noted in the Cassese Report, to some extent, the Special Court has, from its inception, operated under a ‘just in time’ recruitment policy.⁹⁹ This, coupled with an insecure budget based on voluntary contributions, has meant that the Defence has seemed almost an afterthought at the tribunal. Unfortunately, this history of ‘just in time’ planning seems to continue to cause delays in Trial Chamber I, with defence counsel having had to take a reactive stance to the proceedings. Counsel for Issa Sesay, Wayne Jordash, recently pointed out the difficulties this had caused the Defence:

‘The problem isn’t that we cannot reduce our witness list. The problem is having the time to assess ... our witness list. If we’d had time two years ago, and resources to investigate in the field properly ... we would have been in a better position at an earlier stage to know exactly which witnesses to call.’¹⁰⁰

From the point of view of expediency, the choice to have one Trial Chamber hearing two cases on a concurrent basis has always seemed problematic.¹⁰¹ This is because Trial Chamber I has largely lacked adequate support to undertake this task in a timely manner: compared to the ICTY, Chambers have been, until recently,

core witness list to 196). Counsel for Gbao has a witness list of 20 core witnesses and estimates his case will take approximately 2 weeks, largely due to the assistance afforded his client by the witnesses called by Sesay’s Defence. (Unofficial Transcript, Status Conference, 27 November 2007, 15 – 28).

⁹⁷Ibid. Sesay’s Defence estimates that their case will be completed by mid-March, Kallon’s defence counsel estimated his case taking between 2-4 months, and Gbao’s defence counsel estimates his case to take approximately 2 weeks. Assuming no more than a two week break for Easter, the Defence case will, at the very earliest be completed by the middle of June, 2008.

⁹⁸Unofficial Transcript, Status Conference, 27 November, 8.

⁹⁹Cassese Report, paragraph 43. Comments to this effect were also made by the Special Court’s first Registrar, Robin Vincent, in previous interviews with monitors from the War Crimes Studies Center. See War Crimes Studies Center, Special Court Monitoring Program, ‘First Interim Report On the Special Court for Sierra Leone’ (May 2005), at 17.

¹⁰⁰Unofficial Transcript, Status Conference, 27 November, 15.

¹⁰¹This opinion has been affirmed by at least one of the judges of Trial Chamber I during previous interviews for reports for the War Crimes Studies Center. See also Cassese Report, paragraph 294.

dramatically understaffed.¹⁰² Either further resources should have been invested in Chambers from the outset, to give the Chamber adequate support to undertake the task of hearing the trials concurrently, or the trials should have run back-to-back.¹⁰³ That having been said, taking Trial Chamber II's experience in the AFRC trial as exemplary of how long a joint trial of three accused running continuously is likely to take, the time taken to run the trials back-to-back may not have significantly reduced the overall length of proceedings in Trial Chamber I. Based on an assumption that one trial would take 28 months to complete (as per the AFRC case), the CDF sentencing judgment would have been handed down in October 2006, and the RUF sentencing judgement by early 2009.¹⁰⁴ It would seem, therefore, that to some extent, more expedient trials necessarily required a greater financial commitment to the Court at its inception – perhaps a 'lesson learned' for future tribunals.

(B) Court reporters and IT staff significantly reduced in Freetown

Staff in the IT and stenographers' sections of the Special Court were significantly reduced during the Tenth RUF Trial Session, at points causing both counsel and the judges to remark on the difficulties this caused in ensuring the proceedings continued smoothly and efficiently.¹⁰⁵ In particular, a lack of court reporters, with staff reduced from a total of nine (for the two Chambers) to three (for the single Chamber), caused delays in the production of trial transcripts needed for accurate cross-examination. It also put added pressure on the remaining stenographers, who worked extended hours in order to ensure as far as possible that the Chamber's needs were met.

The reduction in staff seemed particularly untimely, in light of the over-staffing of both Chambers during the period immediately preceding the May 2007 trial session. It would seem, on its face, that the channels of communication between the Registry and the Chamber needed to anticipate its requirements in advance of the trial session were still not as open as they should have been.¹⁰⁶ Justice Itoe did note during the Session that he had spoken to the Registrar at least informally about the issue, perhaps boding well for 2008.¹⁰⁷

¹⁰²See Cassese Report, paragraphs 117 and 294. Cassese recommended that extra staff should be assigned to Chambers. The Registrar responded to Professor Cassese's recommendation in the Special Court's Completion Budget by noting that at the time the report was written, an increase in staffing had already been agreed upon. According to the (then acting) Registrar, there did not appear to be a need for a further increased staff in Chambers, though legal officers were upgraded from P2 (entry level) to P3 positions. See Special Court for Sierra Leone, Budget 2007 – 2009, paragraph 12, page 8. Available online at: www.sc-sl.org/documents.html (Accessed on 16 January 2008).

¹⁰³See Cassese Report, paragraphs 58 – 87.

¹⁰⁴These calculations take into account the scheduled breaks in the trial sessions in March-April, August and December-January.

¹⁰⁵See comments of counsel (John Cammegh) and Justice Itoe, Unofficial Transcript, 13 November 2007, 65 – 67.

¹⁰⁶See Cassese Report, paragraphs 88 – 90 and 162 – 166.

¹⁰⁷Unofficial Transcript, 13 November 2007, 65 – 67.

(C) Illness

Two trial days were lost due to illness. On one occasion, a witness contracted malaria, and on the other, the accused Issa Sesay was suffering from pain related to a bullet wound injury.¹⁰⁸

(D) Defence Office not providing recommended legal research support

The Cassese Report outlines a number of recommendations to bolster the Defence at the Special Court, including recommendations aimed at ensuring the Defence Office would play a more substantive support role to the defence teams.¹⁰⁹ Despite calls for the Defence Office to ‘proactively anticipate some of the common needs of the defence teams’, including by providing compilations of relevant decisions and neutral witness summaries from trial testimony, a defence counsel questioned on the issue noted that these recommendations had not been followed.¹¹⁰ The Defence Office therefore seemed to continue to be taking a largely reactive stance towards providing legal support services during the Tenth RUF Trial Session. However, consistent with Cassese’s recommendation that the Office provide further logistical support to the teams, the Registrar has provided funds in the Special Court’s budget for a witness management officer for each of the defence teams. The extent to which this has substantively improved the logistical difficulties face by the teams, however, also continues to remain questionable.¹¹¹

(ii) Factors contributing to the slow pace of proceedings within the Chamber’s control

(A) Trial scheduling and timetabling

A significant amount of the Chamber’s time was devoted to drafting the CDF judgement and sentencing decision in 2007. Although it was anticipated that a five-month adjournment would leave the Chamber enough time to produce the judgement in the CDF case, this was not to be so.¹¹² The Cassese Report submitted that such an adjournment was not the only choice open to the Chamber, and that judges could have continued to sit whilst writing the judgement.¹¹³ However, the challenges associated with writing a judgement in the CDF case should not be underestimated. Not only had the Chamber to pronounce verdicts on novel charges under international law, it was also considering theories of international criminal liability in what was an entirely novel context - that of a pro-government civilian militia in West Africa. Added to this was the fact that the judgement was being written in Freetown, certainly not a location that can compare (in terms of resources and facilities) to the Hague. Perhaps the biggest challenge faced by the Chamber came with the

¹⁰⁸For further details, see the notes included in Annex A to this report.

¹⁰⁹Cassese Report, 69, Recommendation IV.

¹¹⁰Cassese Report, paragraphs 150 -152.

¹¹¹See War Crimes Studies Center, Special Reports ‘The Defence Office at the Special Court for Sierra Leone: A Critical Perspective’ (April 2006) available on-line at <http://warcrimescenter.berkeley.edu>.

¹¹²The Chamber adjourned from CDF proceedings on 27 October 2006 and scheduled the start date for the ninth RUF trial session as being 2 May, 2007. (See Cassese Report, paragraphs 162-164). In reality, the RUF trial session began on 10 May due to further rescheduling. The approximation of five months takes into consideration the scheduled breaks in session in December-January and March-April.

¹¹³Cassese Report, paragraph 164.

unanticipated death of the first accused, Chief Samuel Hinga Norman, in February of 2007. It may be that Norman's death meant a substantial re-writing of the judgement at that time.

While the length of time taken for this adjournment may seem justified when all these circumstances are taken into account, what seemed far less justifiable, with due respect, was the Chamber's subsequent management of the RUF trial sessions. After an already lengthy delay to proceedings, the Chamber chose to sit only 3.5 days a week during its May – July session.¹¹⁴ The session was then further interrupted when the judges called it to a close nearly a month earlier than anticipated.¹¹⁵ The order determining that the session would close a month early was only issued a week before the newly scheduled end date, likely coming as a surprise to counsel (and certainly, at least, to international monitors!). There seems no doubt that this contributed to the fact that, despite the Prosecution's case closing in August 2006, the Chamber had heard a total of only 3 defence witnesses in the RUF trial by August 2007.¹¹⁶

Similarly, the anticipated start date of the Tenth RUF Trial Session of September 11 was eventually pushed back to October 4. Presumably, this was to accommodate the writing of the CDF sentencing judgement, which was handed down on October 9. The RUF Trial therefore has lost about 7 weeks of trial time due to last minute re-scheduling. This, added to the time it lost during which the trial was not in session at all, meant that the trial in 2007 largely looked, to the outsider, to be proceeding in a disorganized and haphazard fashion.

It is hoped that with the CDF judgement behind it, the Chamber will now be able to proceed in the RUF trial without any further delays. With due respect to the judges, it would seem the Chamber must take a more planned and proactive approach to the RUF proceedings in 2008, in order for the trial to proceed to conclusion by June of this year. Furthermore (and again, with due respect) counsels should be alerted to any breaks proceedings well in advance of their occurrence, to ensure that any changes to the witnesses due to testify can be anticipated accordingly.

(B) Motions practice

Trial Chamber I made considerable progress in determining the outcome of motions during the Tenth RUF Trial Session, with five of seven outstanding motions being

¹¹⁴Observations of Court Monitors, UC Berkeley Special Court Monitoring Program, May / June 2007.

¹¹⁵*Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T) 'Order Rescheduling Judicial Calendar' (20 June 2007). The trial session was due to end on 27 July, but instead ended on 29 June.

¹¹⁶It's important to note that this was partly due to the fact that the first witness called by the Defence was Issa Sesay himself, who understandably testified over a lengthy period. Witness testimony was also further interrupted by *voir dire* proceedings during which Sesay's Defence examined Prosecution investigators to determine the admissibility of Sesay's post-arrest statements in 2003. The *voir dire* hearings bring the Prosecution's investigations process into serious disrepute, although the matter remains *sub judice* at the Special Court. See War Crimes Studies Center, Special Court Monitoring Program, Update No. 100 (June 12 to 15, 2007), available online at <http://warcrimescenter.berkeley.edu>.

determined by the end of the session.¹¹⁷ However, one of the remaining outstanding motions dates back as far as 24 April 2007.¹¹⁸ Similarly the Tenth RUF Trial Session began with an outstanding motion that dated as far back as 21 August 2006, showing a considerable slowness in the pace of determining issues in the RUF proceedings.¹¹⁹ This however, seemed largely attributable to the Chamber's focus on the CDF judgement.

(C) Asking names to be spelled out during proceedings

The Chamber continues to request that the names of places and people mentioned in a witness' testimony are spelled out during proceedings. Although this point may seem trivial, a significant amount of time throughout the trial appears to be wasted having the witnesses or counsel concur with this request, sometimes having to spell the name in question multiple times. A more efficient system might be for the judges to write the names as they assume them to be spelled during the proceedings and then to ask one of their legal officers or a Chambers intern to check the spelling with counsel during the mid-morning or mid-afternoon breaks.

(D) Curbing repetitive or irrelevant testimony

As has been noted in the Cassese Report, 'the need to grant a proactive role to international judges has been suggested by many authorities as a means of speeding up proceedings while safeguarding fair trial principles and the search for truth.' The judges at the Special Court, however, rejected calls from Professor Cassese to spell out these powers in more detail in a new addition to the Special Court's RPE. Nevertheless, the judges have inherent powers enabling them to do so.¹²⁰

Despite this, Trial Chamber I continued to take a cautious approach to curbing witness testimony during the Tenth RUF Trial Session. Although there appeared to be a lot of discussion regarding what may or may not be repetitive or irrelevant testimony (as well as the extent to which it was impinging on the pace of the proceedings) far less *actual* curbing of irrelevant or repetitive testimony appeared to occur.¹²¹

The Chamber did, however, endeavor to restrict defence witness lists, by pointing out to the Defence that it should reduce the number of witnesses that are not

¹¹⁷Based on the comments made by of Justice Thompson on outstanding motions at the Status Conference, Unofficial Transcript, 26 September 2007, compared with the comments of Justice Itoe on the same at the next Status Conference, Unofficial Transcript, 27 November 2007.

¹¹⁸Unofficial Transcript, 27 November 2007. The motion in question is *Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T) 'Defence Motion Seeking a Stay of the Indictment and Dismissal of all Supplemental Charges (Prosecution Abuse of Process and/or Failure to Investigate Diligently)' (24 April 2007). Replies to the Prosecution's response to this motion were filed on 5 May 2007.

¹¹⁹Unofficial Transcript, 26 September 2007. *Prosecutor v Issa Sesay, Morris Kallon and Augustine Gbao* (SCSL-04-15-T) 'Prosecution's Application for Leave to Appeal Majority Decision Regarding the Objection to Admissibility of Portions of the Evidence of Witness 371' (21 August, 2006). A decision on the motion was handed down by the Chamber on 15 October 2007.

¹²⁰Cassese Report, paragraphs 109 – 111.

¹²¹See for example, Unofficial Transcript, 8 October 2007, 77 – 81, Unofficial Transcript, 16 October 2007, 9-10, 26-27 (although this related to an exhibit, not testimony); Unofficial Transcript, 5 November 2007, 55-56.

crucial to the establishment of the guilt or innocence of the accused and restrict the number of witnesses for any particular crime base or incident. Comments made by at least one of the judges in the final status conference also seemed to indicate that the judges will be taking a more proactive stance towards curbing witness testimony in 2008.¹²²

(E) Extending scheduled breaks

Annex B to this report shows the deviations from scheduled breaks taken by the Chamber during the Tenth RUF Trial Session. As can be seen from the Annex, no real improvement seems to have occurred in ensuring sessions start on time: more often than not, trial sessions began about 20 minutes late. Similarly, the mid-morning and mid-afternoon breaks usually ran between 25 and 40 minutes in length. Lunchtimes were generally extended about 20 minutes more than scheduled. Despite a heightened awareness that the Chamber was required to ensure the trial proceeded expeditiously, no real improvement in keeping to the scheduled trial times appears to have occurred.

VIII. Conclusion

2008 poses a number of challenges for the Special Court for Sierra Leone. For Trial Chamber I, the key challenge will be managing the remaining defence phase of the RUF trial with extreme expeditiousness, while ensuring that the quality of justice delivered to the accused is not compromised. This is no easy task, but with the CDF case now behind them, a considerable improvement to the pace of the proceedings is anticipated.

Until now, Trial Chamber I has faced several difficulties that were beyond its control, and the extent to which this has placed pressure on the Chamber cannot be underestimated. In several respects, the Chamber's ability to operate on a shoestring budget and to manage concurrent proceedings has been admirable. However, due to the extended breaks taken, and the stop-start nature of the RUF trial in 2007, a great effort now seems to be required to ensure the case remains on schedule for completion this year. Add to this the uncertainty under which one of the judges continues to hear the case and it appears that in many respects, 2008 may prove as challenging as 2007. The judges have indicated that they will be adopting a more forthright approach to proceedings to ensure the trial remains on track for completion this year – an approach that will no doubt be welcomed by the Special Court's Management Committee.

Yet the increased pace of proceedings may also require increased funding. Although the Special Court's attention and resources are (somewhat understandably) being diverted to the Hague to keep up with the demands of the Taylor trial, it seems likely that Trial Chamber I and the Defence will also require increased support in order to complete the RUF case this year. For the Defence, this support may need to be sanctioned by the judges: according to independent reports, Taylor's defence team was only allocated additional funds following Trial Chamber II's intervention into the

¹²²Comments of Justice Boutet, Unofficial Transcript, 27 November 2007, 18.

matter.¹²³ Absent a rigorous analysis of the differences between the two cases, the choice to allocate more funds to Charles Taylor's defence team seems at odds with the underlying fair trial standards that the Special Court has set for itself. Either the Special Court's Registry and Management Committee need to give clear reasons for the discrepancies in the two defence budgets or further assist the RUF Defence.

For the Chamber, a realistic assessment of the resources required to ensure the timely completion of the RUF trial phase needs to be undertaken.¹²⁴ It would seem prudent to base this assessment at least in part on the Chamber's experience when writing the CDF judgement. If required, short-term legal assistance from Chambers' legal officers from other tribunals should be sought and provided for in the Special Court's budget.

Trial Chamber I has reached a significant stage in its history at the Special Court and deserves to be commended for its ongoing commitment and dedication in delivering justice to the people of Sierra Leone. Yet if the Special Court is to achieve its twin goals of fairness and expeditiousness, 2008 is set to be an important year for the Chamber. The 'lessons learned' from 2007 will clearly need to be taken on board for 2008. No doubt open communication between the Special Court's Management Committee, the Registry and the judges will be imperative, in order to ensure the Special Court's goals – both for the RUF trial and the Court as a whole - are met.

¹²³ According to monitors at Charles Taylor's trial proceedings in July 2007, Justice Sebutinde 'took the Registry to task' for not acting swiftly to resolve issues of inadequate representation for Taylor. Justice Sebutinde apparently stated: 'The focus of the Registry has not been to provide the accused with adequate representation as required by Article 17 of the Statute. Rather, the Registry's focus has been *conserving funds and working within budgetary constraints*. In the Trial Chamber's view, the whole issue has *wrongly boiled down to availability of finances rather than fair-trial issues being addressed*. [emphasis added]'. See 'Court Orders That New Defence Team BE Assembled', available online at <http://charlestaylortrial.org/page/12/>. (Last accessed 16 January 2008).

¹²⁴ It may be that this assessment has already been undertaken as part of the Special Court's reporting to its Management Committee. In this regard, the reader should bear in mind that no interviews have been conducted for this report.

ANNEX A

WITNESS SUMMARY

Witness No.:	Date(s) s/he Testified:	Category of Witness:	Main Crime Base:	Brief Details of Testimony:¹²⁵
DIS-074	4 Oct	Crime Base	Kailahun	Testified about the Gios and their relationship to civilians (pre-Indictment); free school for children run by the RUF; community farming.
DIS-177	4 – 5 Oct	Crime Base	Kailahun	Testified to community farming; civilians exchanging goods at the Guinean border while protected by the RUF; civilians free to work and trade.
DIS-080	5 & 8 Oct	Details revealed in closed session	Kailahun	Large community farms cultivated in 1996-97; civilians trading on the border between Guinea and Sierra Leone; Medical care provided by the RUF between 1993-97; Schools for children; Marriages between soldiers and civilian women were voluntary; soldiers disciplined for stealing or committing crimes.
DIS-077	8 Oct	Details revealed in closed session		Witness farmed in Giema between 1993 – 96; Sesay gave witnesses seed rice to farm; children attended schools run by the RUF.
DIS-225	8 & 11 Oct ¹²⁶	Details Revealed in closed session		Evidence about the Gios and their relationship with civilians; schools; community farming from 1994 – war’s end.
DIS-078	11, 16-17 Oct ¹²⁷	EXAMINATION IN CHIEF IN CLOSED SESSION		
DIS-178	18-19 Oct	Crime Base	Kailahun	Gave evidence about Issa Sesay’s farm in Giema; community farming.
DIS-069	19, 22-23 & 25 Oct	Details revealed in closed session	Various	Witness gave evidence of the command structure of the RUF. Also gave evidence the RUF protecting civilians and that children were not being used directly in armed conflict. Witness negates testimony of prosecution witnesses TF1-141 and TF1-135 against Morris Kallon and testimony of TF1-371 against Augustine Gbao and TF1-314.
DIS-188	25 Oct – 2 Nov	TESTIMONY ENTIRELY IN CLOSED SESSION		
DIS-149	5-6 Nov	Details revealed in closed session		Gave evidence regarding the complaints structure in place, the responsibility of the G-5 and MP commanders and the disciplinary actions taken should combatants be found guilty of committing crimes.
DIS-281	6, 9 & 12-13 Nov ¹²⁸	TESTIMONY LARGELY GIVEN IN CLOSED SESSION		
DIS-293	13 & 20 Nov ¹²⁹	Crime Base	Tongofield (Kenema) and other	Witness gave evidence regarding the two-pile mining system operated under the RUF in diamond mining areas.

¹²⁵Details solely taken from Open Session transcripts.

¹²⁶The Chamber adjourned on 9 October as the witness was ill.

¹²⁷The Chamber adjourned on Friday, 12 and Monday, 15 October to observe Islamic feast days.

¹²⁸The Chamber adjourned on 8 November because the first accused, Issa Sesay, was unwell.

			mining areas	
DIS-124	22, 23 November	Insider	Eastern Province; Pendembu and other towns	Gave evidence regarding RUF occupation of towns between 1996 and May 1997; Testified that looting was prohibited by the RUF. Combatants who were caught looting would face disciplinary action. Ammunition, drugs and large amounts of food from enemy positions could be taken: 'government property' was re-administered by the RUF.
DIS-187	26 November	Crime Base	Segbwema, Foindu, Manowa, and other towns	Witness returned to Sierra Leone from Guinea at the time of the ECOMOG Intervention (February 1998); describes civilians undertaking community farming and food grown by civilians.
DIS-128	26-27 November	Details provided in closed session		Witness testified about community farming; freedom of movement and religion; trading at the Guinean border, largely between 1996-98.

¹²⁹The Chamber had to adjourn early at 4.30PM on 13 November due to a shortage of stenographers. According to the transcripts received by court monitors, the Chamber did not sit on 15, 16 or 19 November. Based on comments made by the Presiding Judge on 20 November, this was due to the fact that the judges called a plenary following the Defence's motion requesting that Justice Thompson either withdraw or be asked to stand down from hearing the RUF trial. The motion was filed on 14 November 2007.

ANNEX B

SUMMARY OF BREAKS TAKEN DURING TRIAL DAYS IN THE SESSION¹³⁰

<u>Date:</u>	<u>Start:</u> ¹³¹	<u>Morning Break:</u> ¹³²	<u>Lunch:</u> ¹³³	<u>Afternoon Break:</u> ¹³⁴	<u>End:</u> ¹³⁵	<u>Total Court Time Lost to Tardiness:</u>
4 Oct	0942	1134 – 1205	1300 - 1445	1631 - 1705	1730	51 minutes lost
5 Oct	0945	1140 - 1213	1308 - 1447	1640 - 1708	1732	43 minutes lost
8 Oct	0947	1131 - 1204	1300 - 1443	1648 - 1705	1745	26 minutes lost
11 Oct	0954	1135 - 1215	1250 – 1457	1645- 1717	1750	73 minutes lost
16 Oct	0950	1130 – 1203	1308 – 1456	1631 - 1709	1735	64 minutes lost
18 Oct	0946	1135 - 1215	1303 - 1450	1632 - 1705	1730	66 minutes lost
19 Oct	0950	1143 - 1215	1305 - 1450	1630 - 1710	1730	67 minutes lost
22 Oct	0959	1138 - 1215	1309 - 1449	1634 - 1706	1730	68 minutes lost
23 Oct	0958	1130 - 1207	1300 - 1452	1647 - 1725	1745	70 minutes lost
25 Oct	0955	1130 - 1224	1308 - 1453	1640 - 1710	1735	89 minutes lost
26 Oct	0950	1144 - 1220	1300 - 1442	1630 - 1705	1730	63 minutes lost
29 Oct	0948	1135 - 1215	1300 - 1447	1623 - 1659	1705	81 minutes lost; 25 minutes lost due to witness' illness
30 Oct	0951	1140 - 1224	1305 - 1445	1630 -1705	1733	67 minutes lost
1 Nov	1005	1135 - 1207	1300 - 1450	1630 - 1707	1730	84 minutes lost
2 Nov	0947	1135 - 1208	1255 - 1445	No break	1700	60 minutes lost
5 Nov	0945	1140 - 1221	1300 - 1459	1637 - 1710	1730	77 minutes lost
6 Nov	0950	1132 - 1210	1305 - 1445	1635 - 1715	1740	58 minutes lost
8 Nov	1002	-	-	-	-	32 minutes lost; *Proceedings adjourned at 1130 due to Sesay's illness.
9 Nov	0952	1135 - 1215	1300 - 1455	No break	1630	67 minutes lost; *Court adjourned early for technical reasons.
12 Nov	0945	1130 - 1205	1300 - 1445	1558 - 1615	1745	57 minutes lost
13 Nov	0948	1137 - 1209	1300 - 1446	No break	1630	46 minutes lost; *Court adjourned early due to lack of stenographers.
20 Nov	0959	1100	-	-	-	29 minutes lost; *Proceedings adjourned to consider how to proceed with Defence motion.
22 Nov	0950	1140 - 1215	1312 - 1450	1640 - 1710	1750	33 minutes lost
23 Nov	0950	1115 - 1155	1320			40 minutes lost; *Proceedings adjourned after hearing oral submissions on Defence motion.

¹³⁰Breaks have been recorded based on time recorded by the stenographer in the body copy of the transcript. Sometimes however, the times recorded by the stenographer have differed from the times recorded in the margins of the transcript itself. More often than not, the discrepancies did not appear significant.

¹³¹Assumes a session start time of 9.30AM, as per agreed start time during previous sessions.

¹³²Assumes a morning break of 20 minutes.

¹³³Assumes a lunch break of one and a half hours.

¹³⁴Assumes an afternoon break of 20 minutes.

¹³⁵Assumes an end to the session time of 5.30PM, as per agreed end time during previous sessions.

26 Nov	0949	1132 - 1237	1309 - 1455	1555 -1627	1742	90 minutes lost
27 Nov	0955	1125 - 1200	1300	-	-	40 minutes lost; *Court adjourned to determine Defence motion.