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Summary

The eighth session of the RUF accused trial began this week with a Status Conference on 19 June 2006. The trial session is scheduled to continue until 3 August 2006, inclusive. The health of the first accused, Issa Sesay, figured prominently in the Status Conference: Sesay continues to await surgery for a bullet wound in his hip. The Registry's efforts to complete the required administrative and legal processes to allow for the procedure to be conducted outside Sierra Leone appear to have reached a stalemate, with defence counsel having no further update as to the progress on this issue.

As well as this, the Prosecution indicated its intention to close its case by the end of this trial session, during which the testimony of two major expert witnesses as well as a key insider witness will be heard. The Presiding Judge assured both parties that a decision on the prosecution's motion for leave to amend the Indictment will soon be published.¹

Two witnesses for the Prosecution testified this week. Major Jaganathan testified about his experience as a UN military observer in Makeni when he was taken captive by RUF combatants and held hostage for several weeks. The second witness who began his testimony represents a major insider witness for the Prosecution and as such the cross-examination has been lengthy and rigorous and is set to continue in next week's proceedings.

¹ 'Prosecution Application for Leave to Amend the Indictment', SCSL-04-15-488, 20 February 2006

Witness Profiles at a Glance

Major Ganase Jaganathan, Witness TF1-042, was the 73rd Prosecution witness. He testified in English in open session. Mr. Jaganathan was born in 1958, is a Malaysian citizen and is a serving member of the Malaysian armed forces. He served in the United Nations Peacekeeping mission to Sierra Leone (UNAMSIL) as a UN military observer from July 1999 to July 2000, during which he was based in Kenema and Makeni. He was held hostage by members of the RUF in May 2000.

Witness TF1-367, is an insider witness for the Prosecution. He testified in closed session, under protective measures. His evidence-in-chief commenced on the 21st of June and he spoke primarily about his activities with the RUF throughout the conflict as well as his relationships with the three accused. The cross-examination by counsel for the first accused focused on the witness' motivation for testifying at the Special Court as well as the specific details regarding the alleged role of the accused within the RUF chain of command. When the witness was confronted with various inconsistencies in his preliminary statements to the Prosecution and his current testimony, the witness stated that he was initially fearful of being arrested himself and was consequently untruthful during these early interviews with prosecution investigators. The cross-examinations by the three accused are expected to be lengthy due to the witness' specific testimony regarding the individual criminal responsibility of the three accused.

Status Conference

Justice Thompson presided over the proceedings of the Status Conference marking the beginning of the eight RUF trial session. In terms of the health of the accused, Mr. Jordash, counsel for the first accused, raised the issue of his client's pending surgery. Jordash noted that while he has received the assurances of the Registrar regarding the Court reaching an agreement with another country for his client to receive medical treatment for the bullet currently lodged in his hip, no details have been provided of an expected date for the surgery. Jordash also noted his ongoing concern about the lack of treatment thus far, the lack of information provided to counsel as to the progress of the arrangements and further concerns over an allegation that his client's medical records have been passed on to third parties without the consent of the detainee. Justice Thompson reminded counsel that this was primarily an administrative matter and that the Trial Chamber would only intervene as a last resort when all other measures had failed. He did however urge the Registrar to intensify his efforts so that persons presumed innocent may stand trial in good health.

Augustine Gbao also appeared to have suffered a significant injury as his neck was heavily bandaged. His counsel, Mr. O'Shea, voiced his concern over the condition of his client. He was, however, unable to provide any details to the court as to the nature of the injuries as he had not had the opportunity to meet with his client prior to proceedings. Counsel noted his frustration over the fact that he had not been contacted about the condition of his client by the Registrar.

On the matter of case presentation, Justice Thompson opined that the examinations-in-chief and cross-examinations of prosecution witnesses have at times been "unduly

lengthy and repetitious and seemingly irrelevant.”² He also alluded to the “rumour” that the Prosecution would close its case during the course of this current trial session. Peter Harrison, prosecuting attorney, subsequently confirmed that the Prosecution did indeed intend to make every effort to close its case by the end of the trial session.

The Prosecution currently has a total of 88 core witnesses and 179 back-up witnesses noted on its updated witness list. 72 witnesses have already testified for the Prosecution. Counsel noted that they would not be calling the insider witness, Gibril Massaquoi, who also testified in the AFRC trial, in the current session, leaving a total of 13 witnesses scheduled to testify over the session, including an expert witness on forced marriage and one on the participation of children in fighting forces in Sierra Leone.

In terms of outstanding motions, the most significant for the RUF trial is the pending decision on the Prosecution’s motion for leave to amend the indictment. In February, the Prosecution sought leave to amend the Indictment in order to extend the time period of certain crime bases, particularly that of Kono³. The Presiding judge indicated that a decision on this motion would be published imminently, a decision which will have important implications for the defence and could perhaps warrant the recall of certain Prosecution witnesses.

The Testimony of Major Jaganathan

Major Ganase Jaganathan’s testimony primarily relates to Paragraph 40 of the Prosecution’s Indictment⁴, which alleges that the RUF launched armed attacks against civilians as well as humanitarian assistance personnel and peacekeeping staff working for UNAMSIL. Specifically, Counts 15-18 allege attacks on UNAMSIL personnel between April and September 2000 including the abduction and unlawful killing of hundreds of UNAMSIL staff.

Major Jaganathan testified that, while based in Kenema and Makeni, his core functions as a military observer was to carry out the disarmament and demobilization of the CDF, SLA, RUF and AFRC forces. He described in detail the official disarmament process and the type of combatants who were disarming during this period. He noted that many of those combatants who were participating in the disarmament process in Makeni were children, often ten years of age or younger.

The Prosecution attorney, Shyamala Alagendra, led the witness through the events surrounding his kidnapping by RUF combatants. Accordingly, Major Jaganathan testified that they officially started the DDR process on 17 April 2000 in Makeni. On this first day of the disarmament process, the witness stated that a group of armed rebels, led by Augustine Gbao, the third accused, approached the disarmament camp. The witness identified Gbao as the RUF overall security commander of Makeni at that time. Gbao subsequently entered into the reception center and threatened to burn the camp down,

² SCSL Transcript, 19 June 2006, Page 10, lines 25-26.

³ ‘Prosecution Application for Leave to Amend the Indictment’, SCSL-04-15-488, 20 February 2006

⁴ The Prosecutor vs. Sesay, Kallon, Gbao. ‘Corrected Amended Consolidated Indictment’, SCSL-04-15-619, 2 August 2006

with staff inside, unless the DDR process was stopped. The disarmament process did, however, continue despite this incident.

He then alleged that on 1 May 2000 a group of approximately 30 to 40 armed RUF combatants again approached the disarmament camp. The witness again identified Gbao, whom he described as being obviously drunk at that point, as the leader of the group. Gbao allegedly demanded the release of “his” combatants, and their weapons. The witness then alleged that another car, with “rounds of gunfire coming from inside”, arrived at the camp. Morris Kallon, the second accused, was allegedly in the car. He identified Morris Kallon as the fifth brigade commander of the RUF, based in Magburaka. He also stated that Kallon, whom he described as “highly aggressive”, threatened and assaulted another military observer and then attempted to stab him with a bayonet. Kallon allegedly ordered his men to arrest the witness and Major Jaganathan was taken in the car with Kallon and other RUF combatants at knife point. The witness further testified that Kallon subsequently ordered his combatants to open fire on an approaching UN vehicle occupied by four peacekeepers, who were also subsequently kidnapped by the RUF combatants.

Major Jaganathan testified that after being abducted he was taken to Teko barracks at the RUF camp in Makeni where he was held with other hostages, all UN personnel. He spoke about his days in captivity during which the RUF combatants often tied and beat the prisoners, and deprived them of food and water. At one point the witness and his fellow hostages were involved in a motor vehicle accident while tied up in the back of a truck, with several suffering severe injuries. The witness also testified that he met Issa Sesay, the first accused, during his captivity. The group of twenty hostages the witness was with was eventually released by the RUF in a staggered process. Major Jaganathan was released with the last group, on 20 May 2000.

The Cross-Examination of Major Jaganathan

Mr. Jordash, counsel for the first accused, began his cross-examination by questioning the witness on Foday Sankoh’s role in the disarmament process. As leader of the RUF, Jordash alleged, Sankoh could authorize the movement of UN personnel in RUF-controlled territory, including Makeni. His line of questioning suggested that UN personnel had not obtained permission from the RUF to begin the DDR process in Makeni and that it was Sankoh who bore the greatest responsibility for the capture of these UN personnel. Lead counsel for the first accused also emphasized the tension and discord that existed within the RUF ranks with respect to the commencement of the DDR process, with some combatants supporting it and others opposing it. The witness testified that his team had assessed that more time should have been spent resolving these differences before the UN proceeded with the disarmament process. Yet he refused to subscribe wholeheartedly the defense’s theory that combatants who took UN personnel hostage perceived the commencement of the DDR process as fundamentally flawed and antagonistic towards the RUF. Questions also centered around how the witness came to identify Issa Sesay (i.e. his specific relationship and interactions with him) both before being held hostage and during the ordeal.

Perhaps in order to show that civilians in RUF strongholds were able to live in relative peace during this time, the witness also confirmed that Makeni had a functioning school system and hospital, as well as a procedure through which crimes were investigated and punished.

The cross-examination conducted by Mr. Touray, counsel for the second accused, initially focused on the witness' acquaintance with a Military Police commander known as Colonel AS Kallon. However, Major Jaganathan denied any knowledge of such an MP commander, thereby discrediting the second accused's theory of mistaken identity between RUF brigadier Morris Kallon, the accused, and the MP commander Kallon. Mr. Touray also questioned the witness on how he came to identify and know Morris Kallon, which the witness confirmed was second hand information from a fellow military observer. He did however insist that it was Brigadier Morris Kallon who was involved with the kidnapping incident in Makeni, and not the MP commander, as suggested by counsel.

The cross-examination by counsel for the third accused, Mr. O'Shea, touched on the principles of UN peacekeeping and the training that the witness had received before he took up his post in Makeni as a UNAMSIL military observer. The witness confirmed that the RUF was unaware of the disarmament of the initial ten combatants in Makeni and that he knew of certain members who had reservations about provisions in the Lomé Accord.⁵ He also stated, however, that the DDR process was conducted publicly and voluntarily. Similar to the strategy of counsel for the first accused, O'Shea seemed to be advancing a theory that it was the perceived antagonistic and improper actions of the UN with respect to the DDR process that provoked the kidnapping incident. He went so far as to ask the witness whether UN peacekeepers could have been perceived as enemy combatants. Although Major Jaganathan did express some reservations about the commencement of the disarmament process and the tensions it caused with the RUF, he denied this defence theory at every opportunity, and reiterated his support for the actions of the UN in Makeni. On Wednesday, as the cross-examination by the third accused continued, the bench vocalized its growing impatience with the length of the cross-examinations. O'Shea refused to bow to this pressure and noted that the Prosecution had had many opportunities to shorten its case, which it had not taken. The witness completed his testimony on June 21st.

⁵ The [Lomé](#) Peace Accord was signed in July 1999 by President Kabbah and RUF leader Foday Sankoh. The Accord provided various RUF commanders with key positions within the Sierra Leonean government and mandated the presence of an international peacekeeping force in the country. The terms of the accord were quickly violated however, and fighting continued.

