



U.C. Berkeley War Crimes Studies Center  
Sierra Leone Trial Monitoring Program  
Weekly Report

**Special Court Monitoring Program Update #42 Trial Chamber II - AFRC Trial Covering week ending June 10, 2005**

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Summary Decision Refusing Reappointment of Counsel

Summary

Proceedings were adjourned for all of last week and most of this week while the Chamber deliberated on a request to reappoint defence counsel who had previously been allowed to withdraw. Proceedings resumed Thursday morning following a scheduled one week recess, but they were postponed again until next week for a combination of reasons, including ongoing deliberations on outstanding motions as well as witness scheduling issues. The prosecution had intended to lead a witness whose testimony was the subject of one of these pending motions, and his evidence had to be postponed until he could return from abroad to testify. By the time proceedings resume on Monday, it will have been over two weeks since any witness testimony has been heard in the AFRC trial.

At this stage, Trial Chamber II appears to be beset by a number of factors which are considerably delaying the AFRC trial. Some of these issues may have been avoided, but the deeper tensions arising from the need to balance fair trial rights against the need to expedite proceedings appears to be an ongoing challenge for the Special Court. In this case, Presiding Judge Doherty noted that the trial could not go forward until rulings had been issued on the two outstanding motions. She described the postponement as “very regrettable.”

At the end of the week, the Chamber released its decision on the request of former counsels for the first and second accused to be reappointed as lead counsel. The request was denied by the majority of the Chamber, with Judge Sebutinde dissenting. The majority ruling posted this week publicized a number of issues that had been raised in Trial Chamber II since the Chamber had granted counsel leave to withdraw on 12 May. These issues primarily concerned the extent of the accused individuals’ rights to be represented by counsel of their choice as well as alleged efforts by some members of the defence to delay the trial proceedings.

The first and second accused will continue to be represented by their co-counsel, who have been appearing on behalf of their clients from the beginning of the trial until new lead counsel are appointed.

Decision refusing reappointment of counsel

The contentious decision released this Friday denied the motion requesting reappointment of lead counsels from the Brima and Kamara teams. The Chamber found that the statutory right to legal assistance granted to the accused “does not carry with it an absolute right to any counsel” [1]. Although the first and second accused specifically requested to have their former counsels reappointed, the Chamber determined that they were not eligible for reappointment because their names had been removed from the list of qualified counsel maintained by the Defence Office.

#### *Internal tensions between the Registry and the Defence*

Aspects of these internal struggles between the defence and the court administration were detailed in the decision, which made public certain exchanges between parties that had been filed confidentially. Unlike the Office of the Prosecutor, the Defence Office is not a separate organ of the court, and it is located within the court Registry. The Registrar had removed both names from the list of qualified counsel after counsel had received permission to withdraw due to concerns for their safety, among other reasons. The Registrar contended that these safety concerns were never addressed with the Registry. In his confidential submissions, the Registrar claimed that the motion requesting reassignment was an abuse of process which sought to go behind the court order allowing counsel to withdraw. The majority decision characterized the confidential defence response to these submissions as a “personal attack on the Registrar” [2].

The decision highlighted tensions in the relationship between these two offices. In this ruling, the majority contended that the Registrar has overall authority over the assignment of counsel despite the apparent unwillingness of representatives from the Defence Office to follow his directions [3].

#### *Allegations of bad faith by the bench and the bar*

Members of the defence argued that Judges Doherty and Lussick should recuse themselves from deciding this motion because they had “reconfirmed” an order not to reappoint counsel in a letter to the Registrar. The majority decision pointed out that the judges had not issued any order about reappointing counsel, but had instead permitted counsel to withdraw in accord with their request. The decision alleged that the two lead counsels were “not sincere in their reasons for bringing their motion to withdraw from the case and that they never expected it to succeed” [4]. According to the decision, the accused were “boycotting the trial and obstructing the course of justice”, and their “real motive is to cause as much disruption to the Trial as possible” [5]. The decision went so far as to assert that “this motion was not founded on bona fide motives”, adding that it “seeks to reverse an order granting relief which the Defence itself sought” [6].

#### *Perceptions of Trial Chamber II*

The decision shows an admirable commitment to transparency in the trial process, as it makes public some of the details of the confidential submissions that had been made by various parties. However, it appears that a struggle present from the beginning of trial has grown into a much broader issue which could threaten public perceptions of the Trial Chamber. From the beginning of the AFRC trial, some behavior by members of the defence could be construed as a challenge to the authority of the bench. However, this challenge was not diffused by the responses from the bench in the weeks that followed. In finding that counsel for the first and second accused should be allowed to withdraw due to security concerns, the bench appeared to find a balanced outcome. This most recent decision seems to allege that the withdrawn defence counsel acted in bad faith, which could fuel perceptions that members of the bench have ongoing concerns about the conduct of these two defence counsel. The Registry’s removal of the names from the list of qualified counsel could be regarded as an effort to preempt any further appearances by these attorneys at the Special Court.

1.) *Decision on the Extremely Urgent Confidential Joint Motion for the Reappointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima Bazzy Kamara and Decision on Cross Motion by Deputy Principal Defender to Trial Chamber II for Clarification of its Oral Order of 12 May 2005, 9 June 2005, paragraph 44.*

2.) *Ibid.* at paragraph 22.

3.) *Ibid.* at paragraph 61.

4.) *Ibid.* at paragraph 48.

5.) *Ibid.* at paragraph 35.

6.) *Ibid.* at paragraph 52.