



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

Special Court Monitoring Program Update #59 Trial Chamber I - CDF Trial 27 October 2005

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Summary of Procedural History Judgment on Motions to Acquit Status Conference --
Commencement of Defense Case Follow Up

Summary of Procedural History

The prosecution rested its case against the three CDF accused in July 2005.[1] On 20 September 2005, Trial Chamber I heard comments and arguments on the CDF Motions for Judgment of Acquittal.[2] On 21 October 2005, Trial Chamber I reconvened and the Presiding Judge read an extract of the bench's decision on these motions into the record. On 27 October 2005, the Trial Chamber reconvened again for a status conference. The proceedings against the three CDF accused are scheduled to continue with the commencement of the defense case on 17 January 2006. At least one more status conference will be held prior to that date.

This is the first defense case to be heard at the Special Court, and Trial Chamber I is working with the Office of the Prosecutor and the Defense Office to hammer out the procedural details for this new trial stage.

Judgment on Motions to Acquit

On 21 October 2005, Trial Chamber I reconvened to deliver an oral summary of its judgment on the Motions for Judgment of Acquittal. The Presiding Judge read an extract from the bench's unanimous decision into the record. Judge Bankole Thompson appended a concurring opinion to the Court's decision.[3]

Applicable Standard for Judgment of Acquittal

The Trial Chamber first settled the issue of the applicable standard for a judgment of acquittal, noting the importance of a contextual approach to the interpretation of the Rule 98 standard.[4] The bench clarified that Rule 98 does not envisage a pronouncement of guilt or innocence, but rather a simple determination of whether the prosecution's evidence is "legally capable of supporting a conviction on one or more counts of the indictment".[5] In other words, the evidence need not be such as that it *should* support a conviction, but only that it *could* support a conviction.[6]

The establishment of a clear standard for judgment of acquittal is crucial, and no doubt timely for defense teams in the AFRC trial in Trial Chamber II, who are beginning to prepare their motions for acquittal in anticipation of the closure of the prosecution's case in that trial. In Trial Chamber I there was significant confusion and debate regarding the appropriate legal standard under Rule 98, with each of the defense teams and the prosecution arguing for a different interpretation of the rule and periodically (and mistakenly) relying on the pre-amendment language of the rule.^[7] Now that Trial Chamber I has settled this question, arguments for and against the motions to acquit in the AFRC and RUF trials will presumably be better organized.

Motions Dismissed, But Some Specific Locales Eliminated From Indictment

The Court found no grounds on which to acquit any of the accused, and thus dismissed the motions. However, the Court found the prosecution had not presented sufficient evidence to support a conviction for some crimes in specific geographic locations.^[8] While the Court struck these location-specific allegations from the indictment, it did not eliminate any actual count of the indictment.

In some instances, the elimination of geographical references may have compromised the specificity of the indictment. Defense counsel for the first and second accused note that, following the Court's decision, Paragraph 25(g) of the indictment now includes no geographical location. The defense maintains that it therefore need not address any allegations regarding "Operation Black December", as the Court's decision has rendered these allegations fatally imprecise.^[9]

Status Conference - Commencement of Defense Case

As promised at the end of the hearing for Judgment on Motions to Acquit, the Court reconvened for a status conference on 27 October 2005. The stated purpose of this status conference was to consider the preparation and presentation of the defense case. The defense case is scheduled to begin on 17 January 2005, with a pre-defense conference six days earlier on 11 January 2005.

Scheduling Issues

The Trial Chamber touched on a number of organizational issues during this status conference, many of which remained unsettled and were slated to be resolved at the January 11th conference. The prosecution voiced concern that the Court was reserving too many important issues for the pre-defense conference, including the determination of the number of witnesses to testify and the order of the defense case. As the pre-defense hearing is scheduled to occur only six days before the commencement of trial, the prosecution argued that this last-minute approach to key procedural matters would likely result in a delay, and suggested instead that the Court schedule another status conference in November to assess the progress on these matters. The bench agreed to consider this suggestion, but was reluctant to commit to an earlier date at this point.

All three defense teams gave their respective estimates of the time they need to put on their evidence, with a cumulative estimate of roughly 48 weeks for the defense trial. However, the teams conceded that these estimates did not account for shared or joint witnesses, and the Court is thus hoping to hear all of the defense evidence in a significantly shorter time period.

Witnesses

The Norman defense team indicated an intention to call roughly 80 witnesses, and the Fofana and Kondewa teams stated that they expect to call about 30 witnesses each, for a total of roughly 140 witnesses. As noted above, some of these witnesses may provide overlapping testimony, and the Court asked that defense teams cooperate and consult amongst themselves in order to

reduce the overall number of witnesses.[10] Defense teams also indicated an intention to call two to five expert witnesses per team.

The Kondewa defense team was the only one to definitively state that it would require protective measures for its witnesses. The Court reminded the parties that it considers applications for protective measures on a case by case basis, and the determination of necessary measures will in turn determine whether witness lists are confidential or public.

The Court also reminded defense counsel that each accused may testify on his own behalf pursuant to Rule 35(c), but it did not as yet inquire whether the defense teams intend to call their clients as witnesses.

Special Defenses

The bench also reminded defense teams of the requirement for reciprocal disclosure of evidence under Rule 67(A)(ii)(b), whereby the defense shall notify the prosecution of any intent to enter a special defense (i.e. self-defense, diminished mental responsibility, etc.).

Opening Statements

The bench inquired whether counsel for the second and third accused intend to make an opening statement, and both responded in the affirmative. Counsel for first accused asked why he was not included in the Court's inquiry. The bench informed him that his client had exercised his right to make an opening statement at the beginning of the prosecution's case, and that he is therefore not entitled to do so at the commencement of the defense case.

Follow Up

The Trial Chamber has set 17 November 2005 as the deadline by which defense teams must file a list of the witnesses they intend to call to testify, along with a summary of the expected testimony and indication of which count of the indictment the testimony addresses. Defense teams must also submit a list of expert witnesses they intend to call and a list of all exhibits they intend to enter into evidence by that same date.

The next status conference (the pre-defense conference) is currently scheduled for 11 January 2006, but the Trial Chamber may choose to move that date forward or hold an additional status conference in November or December 2005, in accordance with the concerns the prosecution expressed.

- 1.) The CDF trial began on 3 June 2004, and the prosecution concluded its case on 14 July 2005 after testimony from 75 witnesses during five trial sessions. SCSL Press Release, 19 September 2005, "Oral Arguments Scheduled for Tuesday in CDF Case."
- 2.) "If, after the close of the case for the prosecution, there is no evidence capable of supporting a conviction on one or more counts of the indictment, the Trial Chamber shall enter a judgment of acquittal on those counts." Rule 98, as amended 14 May 2005. The wording of the previous Rule 98 was: "If, after the close of the case for the prosecution, the evidence is such that no reasonable tribunal of fact could be satisfied beyond a reasonable doubt of the accused's guilt on one or more counts of the indictment, the Trial Chamber shall enter a judgment of acquittal on those counts."
- 3.) In his concurrence, Judge Thompson emphasized that he wrote separately only to reinforce the Trial Chamber 's decision on grounds of the Chamber's " methodological ... to reliance upon

the jurisprudence of other international criminal tribunals” and “the scope of the judicial discourse on the prescribed legal standard under Rule 98 ”. *Separate and Concurring Opinion of Hon. Justice Bankole Thompson on Decision on Motions for Judgment of Acquittal Pursuant to Rule 98*, para. 3.

4.) Official Transcript, 21 October 2005, p. 4, line 28.

5.) *Ibid.* p. 5, lines 5-7.

6.) *Ibid.* p. 5, lines 14-16.

7.) See Special Court Monitoring Report # 55.

8.) The Trial Chamber found insufficient evidence to convict any of the accused for the following alleged crimes: “murder” in Panguma (Tongo Field), Sembehun (Tongo Field) , Kebi Town (Bo) , Mongere (Bo), Kpeyama (Bo), Bylago (Moyamba), Sembehun (Moyamba), Gbangbatoke (Moyamba), Makose (Bonthe), Jembeh, Gmahun, Gerihun , and Bo-Matotoka Highway; “cruel treatment” or “inhumane acts” in Blama; and “pillage” in Mobayeh.

9.) *Joint Motion of 1 st and 2 nd Accused to Clarify Decision on Motions for Judgment of Acquittal pursuant to Rule 98* , Case No. SCSL-04-14. The bench has not yet responded to this motion.

10.) The bench also encouraged defense teams to take advantage of Rule 92*bis* (Alternative Proof of Facts), which provides that the Court may admit “information” into evidence in lieu of “oral testimony”, as long as it is relevant and susceptible to confirmation, and the submitting party provides 10 days notice to the opposing party.