



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

Special Court Monitoring Program Update #63
Trial Chamber II - AFRC Trial
Period Ending 21 November 2005

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**Summary – Prosecution Closes its Case Against AFRC Accused
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Summary – Prosecution Closes its Case Against AFRC Accused

While the prosecution called its last witness in the AFRC case on 17 October 2005, Trial Chamber II has had to hold session three times during the month of November to wrap up outstanding evidentiary and procedural issues, including the movement of prosecution documents into evidence. The prosecution did not close its case until 21 November 2005, when these matters were finally resolved. The closure of the prosecution's case starts the clock ticking for defense teams, who must file their Motions to Acquit under Rule 98 within three weeks of November 21st.

Pending Motions

Upon the completion of prosecution witness testimony in mid-October, there were a number of motions pending before the court that prevented the prosecution from closing its case.¹ Most of these motions were resolved before the end of the month, but the parties continue to await a decision from the Appeals Chamber on the Trial Chamber II decision not to recognize a protected privilege between a human rights monitor and his confidential sources.² Nonetheless, the prosecution did close its case despite this one outstanding issue.

Prosecution Tenders Information for Admission into Evidence

¹ See Special Court Monitoring Report for AFRC trial, period ending 26 October 2005.

² *Decision on the Prosecution's Oral Application for Leave to be Granted to Witness TF1-150 to Testify Without Being Compelled to Answer Any Questions in Cross-Examination that the Witness Declines to Answer on Grounds of Confidentiality Pursuant to Rule 70 (B) and (D) of the Rules*, 16 September 2005. Also see Special Court Monitoring Report for AFRC trial, period ending 26 October 2005. Note: on 27 October 2005 defense teams filed a joint response to the prosecution's appeal, and the prosecution filed its reply four days later on 31 October 2005.

The prosecution officially tendered 44 documents for evidence on 1 November 2005.³ These proposed exhibits included the following: UN Security Council resolutions regarding the conflict in Sierra Leone and the diamond trade during the conflict period, situation reports from the UN Secretary General, progress reports of various UN Observer Missions in Sierra Leone, situation reports from the UN Office for Coordination of Humanitarian Affairs, a UNHCR report on atrocities committed against the Sierra Leonean civilian population, thematic and situation reports from various NGOs (including Human Rights Watch, Amnesty International, Physicians Without Borders, and No Peace Without Justice), all three Peace Accords, transcripts of numerous national radio broadcasts, RUF and AFRC press releases, and US State Department Country Condition Reports, and a video clip of what the Prosecution claimed to be unedited footage of the 6 January 1999 invasion of Freetown.

Timeline of November Proceedings

The following is an overview of progress in the AFRC trial during the month of November 2005. No witnesses were called this month. The next trial date has yet to be announced by the Trial Chamber, but it is likely that it will hear arguments on the Motions to Acquit sometime in middle to late January.

7 November 2005

Trial Chamber II reconvened to complete cross examination of witness TF1-023,⁴ then adjourned again to give the defense an opportunity to reply to the prosecution's Notice to Admit Information into Evidence.

16 November 2005

The first accused was absent from court due to illness. The prosecution began by requesting the opportunity to reply to the defense objections to its Notice to Admit Information into Evidence. Unpersuaded by the Trial Chamber I decision to allow oral submissions on the Rule 92*bis* motions in the CDF case, Trial Chamber II denied the prosecution's request finding no right of reply under Rule 92*bis*. Court then adjourned for the bench to render decision on the admission of the tendered documents into evidence.

21 November 2005

The bench published a written decision on 18 November 2005, admitting the majority of the prosecution's exhibits into evidence. A handful of documents were admitted on the condition that the prosecution file the complete text or more legible copy with the court. The video clip is the only exhibit that was excluded in its entirety. The Trial Chamber did not accept the footage from 9 January 1999 into evidence, finding that its relevance could not be established because "there is nothing in the video to indicate where it is taken and no sources are identified".⁵

In court on the 21st, the prosecution tendered three additional documents to authenticate an alleged recording of Foday Sankoh that it had attempted to tender during Gibril Massaquoi's examination in chief a few weeks earlier. The recording captures an alleged radio broadcast of Foday Sankoh calling on all RUF troops to take orders from AFRC leader Johnny Paul Koroma and "join your brothers for peace" in Freetown. Defense teams had objected to the tender of the recording without some form of authentication. The prosecution offered sworn statements to support the veracity of the recording, and the defense objected to the adequacy of these

³ *Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92bis*, 1 November 2005, Annexes A-B.

⁴ Cross examination of this witness had been interrupted due to concerns that her identity had been exposed and the proceedings of the ensuing contempt of court case. See Special Court Monitoring Report for AFRC trial, period ending 26 October 2005.

⁵ *Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92bis*, 18 November 2005, para 4.

documents for authenticating purposes. The bench over-ruled these objections and admitted the three items into evidence, along with the recording of the alleged radio broadcast.

Chief Prosecutor Desmond De Silva then announced that the prosecution was closing its case against the three AFRC accused.

Moving into the Defense Case

As the prosecution case closed on 21 November 2005, the defense teams have three weeks beginning 22 November 2005 to file any Motions to Acquit pursuant to Rule 98. All three defense teams have indicated their intention to file such motions.

Hence, the deadline for defense Motions to Acquit is 13 December 2005, and the prosecution must file its response within three weeks from that date. However, given that time does not toll during the judicial recess, the prosecution response is not due until 18 January 2006.

While it may appear that the prosecution effectively has an additional three weeks to review the defense submissions, prosecution attorneys will presumably focus their attentions elsewhere during the holiday. Moreover, this apparent benefit has fallen more or less equally upon the prosecution and the defense in both Trial Chambers.