



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

Special Court Monitoring Program Update #39 Trial Chamber 2 - AFRC Trial Covering week ending May 27, 2005

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Continued examination of Witness TF1-334 Evidence of command responsibility and joint criminal enterprise Testimony regarding specific crimes Decision on defense motion for withdrawal of counsel

After nearly five full days last week and just over three days this week, direct examination of Witness TF1-334 still had not concluded by the time the court adjourned early on Thursday morning. According to the prosecution's pre-trial brief, the witness was anticipated to testify for six hours in direct examination; however, a number of adjournments in relation to the witness's health and objections on admissibility issues raised by the defense slowed the process considerably. The bench attempted to streamline the proceedings by conferring and issuing rulings in court as objections were raised, which has proved to be a more efficient method than temporarily adjourning the proceedings, as is the practice of Trial Chamber I.

This week the chamber also issued its majority opinion in support of its oral decision from two weeks ago that allowed lead counsel to withdraw from the teams of the first and second accused. Emphasizing the importance of Rule 78, which requires that all proceedings are held in public unless otherwise provided, the ruling made public a number of previously confidential matters. Among these were alleged threats to defense team members, including the alleged harassment of a team clerk and potential defense witness by military police. In particular, the majority decision noted that "unlike the ICTY, ICTR and ICC, this trial is taking place in the country where the alleged offences are said to have occurred, and this gives rise to substantial security concerns," adding that they were "of the view that the fears of Lead Counsel are justified." [1] Lead counsel for Brima and Kamara were permitted to withdraw primarily on the basis that there appeared to be legitimate concerns regarding their safety.

There will be no proceedings in Trial Chamber II next week as the Chamber takes a scheduled recess until 8 June.

Continuing examination of Witness TF1-334

Testimony this week continued to focus on communications between commanders, troop movements, and orders given by both AFRC and RUF commanders, centering on activities in the eastern region of Sierra Leone in 1998. According to the prosecution's pre-trial brief, the witness's testimony was meant to address a number of counts from the indictment, and it centered on the Kono and Freetown crime bases. The witness's testimony sought to implicate all three individual accused for issuing orders, directing attacks, and collaborating with RUF commanders.

The chamber upheld an objection by the defense that an ordinary soldier such as the witness was not qualified to give evidence about the AFRC command structure. In particular, the chamber stated that the prosecution had not laid the foundation that this witness had sufficient knowledge to testify on these matters. Related objections were upheld by the trial chamber throughout the week; however, a defense objection regarding alleged “double hearsay” evidence was overruled.

Evidence of command responsibility and joint criminal enterprise

This week’s testimony continued to emphasize the command roles of the accused individuals, including specific appointments they made within the command structure, orders they had issued, and communications between commanders. In particular, the prosecution led evidence of first accused Brima’s appointment of the second and third accused, as well as orders issued by Brima that civilians should be captured and absorbed as combatants. The prosecution sought to establish that Brima exercised effective command and control over troops, including ordering the execution of troops who tried to escape. The prosecution also led evidence that Brima directed an attack on President Kabbah’s home town, which was to serve as a demonstration to the rest of the country. The village was allegedly burned and captured villagers were amputated under Brima’s orders.

Part of the elicited evidence seemed to be brought in support of the joint criminal enterprise allegations, linking the activities of the AFRC high command with those of the RUF. A group comprised of both SLA and RUF troops under Major “05” captured civilians, and fifteen of them were executed by the commander himself. “05” reported back to first accused Brima at headquarters. The witness stated that there were also men from the Special Task Force (STF), who were from Liberia and “approved” by the Sierra Leone government, which would have presumably been used to help establish a link between the SLA and Liberia if Charles Taylor were transferred to the Special Court. However, in response to an objection by the defense, the Chamber ruled that there was no foundation for claiming that the government approved of the STF fighting alongside the SLA.

Testimony regarding specific crimes

Crime base evidence centered on civilian abductions and allegations of sexual violence. The witness described how children abducted from the area were trained at Camp Rosos, where the witness himself served as a training instructor. He further stated that at Camp Rosos, 35 women were handed over to soldiers and became their wives. According to the witness, “Five-Five” ? allegedly the third accused Kanu ? was “in total control of the women” at Camp Rosos. If one of the soldiers had a problem with his “wife,” he would report it directly to “Five-Five,” who wrote orders for disciplining women. First accused Gullit appointed the “Mammy Queen,” who handled matters related to the women; in particular, if a woman was found guilty of allegations made by her “husband,” she was locked up and disciplined. The witness stated that he personally escorted a woman to be locked up in a rice box after she was found guilty of sleeping with another commander.

Decision on defense motion for withdrawal of counsel

On Monday 23 May, the bench issued its written ruling regarding the withdrawal of lead counsel from the teams of the first and second accused. The oral order granting leave to withdraw was given on 5 May. These two teams stated that they had experienced significant difficulties with their clients as a result of an alleged incident between Special Court security and a defense team investigator who is currently the subject of contempt proceedings. The investigator had claimed that he was assaulted by security staff. The Chamber found that the accused individuals’ withdrawal of instructions to their counsel in light of these issues did not meet the threshold requirement of “most exceptional circumstances” to permit counsel to withdraw from the case.

The Chamber also dismissed the defense assertion that difficulties in their relationship with their clients based on the possibility that they could be called as witnesses in the contempt proceedings should constitute exceptional circumstances. The motion would fail on these reasons, according to the Chamber, but it was granted when these reasons were taken cumulatively with the allegations by lead counsel that they had received threats.

The accused are currently being represented by qualified co-counsel, who are standing in for lead counsel during the appointment process.

1.) *Decision on the Confidential Joint Defence Application for Withdrawal by Counsel for Brima and Kamara and on the Request for Further Representation by Counsel for Kanu* , 23 May 2005, paragraph 58.