



U.C. BERKELEY WAR CRIMES STUDIES CENTER
SIERRA LEONE TRIAL MONITORING PROGRAM
WEEKLY REPORT

Special Court Monitoring Program Update #77
Trial Chamber II – AFRC Trial
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Summary

This week saw the resumption of the AFRC trial session with the Defence teams opening their cases. Opening submissions were presented on Monday and the rest of week comprised the evidence-in-chief of the First Accused, Alex Tamba Brima. Court was adjourned on Friday morning after the medical officer in the detention centre reported that the First Accused was medically unfit to attend Court. He has been suffering from high blood pressure and had required an adjournment on Tuesday afternoon.

Status Conferences

There were three status conferences in May. The main reason for the status conferences on 17 and 25 May was the failure of the Defence to adhere to the 21-day rolling disclosure deadline.

At both the later status conferences the Prosecution raised as an issue with the Court regarding the sufficiency of the detail of the witness summaries disclosed by the Defence. The Prosecution submitted that, due to the arrival of rainy season, investigations were more difficult to conduct and detailed witness summaries, particularly for crime base witnesses, might allow the Prosecution to agree the content of a summary without the need for the witness to be called. The Court decided to leave this issue for the parties to agree among themselves.

At the status conference of 25 May 2006, the Prosecution made a submission to the Court that the summary of evidence of the First Accused was inadequate. In the Prosecution's submission it contained nothing more than "a blanket denial" and while alluding to a defence of alibi, provided no further information on what the First Accused intended to say during the 40 hours of testimony reserved.

The Court rejected this submission, stating; *“we do not consider that an accused testifying in his own defence must be treated in the same way as any other witness and should be compelled to provide a summary of his proposed testimony. Such an accused is not giving evidence on behalf of another person who has been charged with criminal offences. Rather, he is exercising his right to answer the charges against him by giving evidence in his own defence. We regard such a right as unconditional.”* The Court went on to add, that it would not have even made the order on 17 May 2006 requiring a summary for the First Accused but for the fact that both parties consented to this requirement.

The Court also refused to make the order requested by the Prosecution for the disclosure of the village or chiefdom of the witnesses on the basis that it was not reasonably convinced of the reasonableness of the request. This may be due to recent events in Trial Chamber I where it was revealed that the Prosecution had approached and interviewed defence witnesses, without notifying the Defence, and then used these statements in cross-examination to demonstrate inconsistencies in the witness' evidence.

The Prosecution also raised the failure on the part of the Defence to file a list of exhibits. The Prosecution therefore sought an order on 17 May 2006 that the Defence be required to show good cause before any exhibits be admitted. The Court held that in its opinion this was premature and simply required that, should the Defence wish to tender an exhibit, leave be sought at that time.

Finally, the Prosecution asked for clarification as to which of the expert witnesses named by the Defence as possibly testifying would be called. The Defence response was that the matter lay outside of their control and in the hands of the Defence Office and was largely an issue of financial constraints. Counsel for the First Accused, Mr Graham, noted that for the period 2003 to 2005, the total budgets for consultants and experts for the Prosecution was \$398,000, compared with \$120,000 for the Defence. A representative of the Defence Office informed the Court that attempts were being made to resolve the situation by requiring the Defence teams to compile a comprehensive document, which would clarify all the common expert witnesses, that could then be forwarded to the Registrar.

In both the 17 and 25 May 2006 status conferences the Bench expressed some annoyance at being used as a “conduit pipe” for communication between the parties. It has thus refused to make a number of orders requested by the Prosecution, stating that it was more appropriate for the parties to discuss the matter and reach an agreement between themselves.

Opening Submissions

The Defence opened its case with a joint statement provided by Counsel for the Third Accused, Santigie Borbor Kanu.

In his statement, counsel divided his submissions into evidence that would go towards arguments relating to joint criminal enterprise, superior responsibility, individual criminal responsibility, defences under criminal law and finally the evidence relating specifically to the Third Accused.

It appears the Defence intends to lead evidence to argue that the failure of the Sierra Leonean government to adequately educate, train and discipline the military resulted in there being no regulated, functioning military force in existence at the time of the AFRC coup. Thus, the Defence is arguing that there could be no clear structure of command and control nor could those involved in the conflict be seen as acting in any co-ordinated or regulated fashion. Troops were loyal only to their specific regional commanders and no overall command structure existed. Furthermore, the Defence intends to argue that there is no evidence of the RUF and AFRC working together.

The Defence also stated that it would be calling a military expert to testify to this.

At various stages, counsel appeared to be straying into legal submissions and had to be reminded by the Bench and Prosecution that Rule 84 allows only for opening statements to set out the evidence that the party intends to put before the Court.

Counsel for the First Accused gave a summary of the First Accused's case, which is based largely on denying that he was in many of the places contained within the indictments. Counsel also asserted that the First Accused did not have command and control over a number of the regions, even if he was present and there had been no collaboration between him and the RUF commanders. When detailing the First Accused's case in relation to each of the districts contained within the indictment, counsel stated that he was unable to provide detailed information regarding evidence for Port Loko, Bo and Kailahun. He told the Court this was due to "operational constraints" which had impacted on the ability of the Defence to access these areas. Counsel went on to refer back to the previous submissions that have been made to the Court regarding financial and resource limitations the Defence has argued have infringed Article 17, protecting the rights of the Accused.

Counsel for the Second Accused told the Court that his case would demonstrate that the Second Accused was a low-ranking officer who was being made a scapegoat, that he did not bear the greatest responsibility and that the Prosecution had failed to show a direct link between the alleged crimes and the Second Accused. Counsel submitted that the evidence he intended to lead would show that during the period relevant to the indictment the Second Accused was in fact unarmed, the Sierra Leonean Army having been unlawfully disbanded, and was being hunted by pro-government and ECOMOG forces.

Testimony of First Accused

The testimony of the First Accused given this week has been in relation to events up until end of June 1998.

His evidence is largely dominated by his submission that there has been a mistake of identity. He claims that "Gullit" was in fact his brother, Komba Brima, who was also a soldier in the Sierra Leonean Army and was killed in May 2000.

The First Accused claims he only received his position on the council after the AFRC coup by virtue of the high esteem in which his father was held during his service in the Sierra Leone Army. He asserts that he was in hospital both at the time of the coup and on and off during the period afterwards. He told the Court he therefore could not say much about the relationship between the RUF and AFRC up until December 1997, except that members of the Sierra Leonean Army considered the RUF as civilians, not combatants, as they did not have a clear structure and system of ranks. After this time he told the Court that the relationship between the two groups was problematic and strained. He denied any involvement in mining during the period of AFRC control and that he had shared any common plan or purpose with the RUF accused, as set out in the indictment. He gave evidence that he had been held under arrest by the RUF from mid January 1998 until the end of June 1998 and asserts that it was not he but the RUF and Sam 'Mosquito' Bockarie who held control of Kailahun during this time.

It seems Defence Counsel for the First Accused at times had some difficulties controlling the course of the evidence given by his client. At one stage, he asked the Court if he could re-ask the question as he had not received the response he expected. This has resulted in him leading evidence in the form of leading questions, to which the Prosecution has frequently objected. The Court has however allowed a number of the questions on the basis that they are necessary to obtain the information as quickly and clearly as possible.

Contact Between Defence Counsel and First Accused During Testimony

During the afternoon session of the first day of the First Accused's testimony Defence Counsel informed the Court that, while attempting to contact the Detention Facility to obtain information as to his client's health, he had accidentally been put through to his client. The Prosecution accepted that this had been an accident and not intentional on the part of Defence Counsel and refrained from making an issue out of the incident, in spite of the fact that the First Accused was still in the process of testifying.

First Accused's Military Discharge Book

During evidence-in-chief on 6 June 2006, counsel referred to a military discharge book. The Prosecution objected on the basis that it had not seen a copy of this book and went on to object as leading when defence counsel indicated that he intended to ask the First Accused questions relating to the book.

The Presiding Judge overruled the objection, stating that it was unreasonable to expect the First Accused to remember all the details in the book relating to events that had transpired five years earlier. The Prosecution responded that the book had been in the possession of the First Accused during the entire time. It seems the book was held by the wife of the First Accused in order to obtain his pension. Defence Counsel told the Court they had been attempting to obtain the book for some time but had only received it the Sunday before the resumption of the trial.

The Court decided to allow the tendering of a copy of the discharge book, ordering that the Prosecution also have access to the book subject to the wife of the First Accused requiring it to access the First Accused's pension.

Evidence Related to Protected Witnesses

In evidence led from the First Accused regarding the testimony of Prosecution protected witness TF1 334, certain information was given in open court relating to the circumstances under which this witness knew the First Accused. There was some discussion as to whether the information given had been led from the protected witness during a closed or open session, with the Prosecution seeking an order that the transcript be redacted. The Court decided to err on the side of caution and made the order sought by the Prosecution as well as an order that all those in the public gallery not discuss this information outside of the courtroom.

Health of First Accused

The First Accused is apparently suffering from high blood pressure and has required medical attention at various stages this week. He told the Court that he has been attending the detention facility clinic every morning to have his blood pressure checked. The hearing was adjourned on Friday after the Court received word from the Court medical officer that the First Accused would not be fit to attend and give evidence.

First Accused's Complaint Regarding Detention Facilities

On Thursday 8 June the First Accused began his evidence by telling the Court he wanted to raise some issues regarding the bathroom facilities in the detention centre. He told the Court that the nine detainees currently only had access to two bathrooms. In light of the fact that their detention area is opened at 7am each morning, and one of the other detainees is seriously ill and requires longer in the bathroom, the First Accused told the Court that he did not have enough time in the morning to visit the doctor to have his blood pressure checked and be in Court by 9:15am. He stated that he had written to the head of the detention facility asking for more bathrooms.

The Court noted his complaint and informed him that it would be forwarded to the Registrar who has responsibility for such issues.