



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

Special Court Monitoring Program Update #78a
Trial Chamber I - CDF Trial
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Summary

No witnesses testified during this, the sixth, week of the CDF trial session. The court reconvened proceedings from the previous week on Wednesday. Proceedings were again adjourned until the following Wednesday, June 14, 2006, as the Norman defence team was unable to arrange for the appearance of any of their remaining witnesses, the two remaining key witnesses to be called being President Kabbah and Major General Abdul-One Mohammed.

A decision on the defence motion for the issuance of a subpoena for President Kabbah¹ is still pending and the Presiding judge indicated that it would not be available before Tuesday of next week. The defence team has informed the court that the Major General is not currently able to travel from Nigeria, where he resides, in order to testify in the current trial session. This is due to his ill health. The team filed a report on the status of this witness with the Trial Chamber.² Dr. Jabbi, lead counsel, indicated that his team was in the process of deciding whether the evidence of Witness 26 (from the team's core list of witnesses) could be submitted under the *92bis* rule, which allows the 'Chamber to admit as evidence, in whole or in part, information *in lieu* of oral testimony'.³

Related to these witness issues, the Norman team filed a motion on the sixth of June asking to defer any further evidence and postpone the closure of the Norman defence case to the following trial session, which will commence in September 2006.⁴ The Trial Chamber has repeatedly voiced its desire to have the Norman defence case completed by

¹See *The Prosecutor v Samuel Hinga Norman, Moinina Fofana and Allieu Kondewa* (SCSL-04-14-T) "Norman Motion for an Issuance of a Subpoena *Ad Testificandum* to President Ahmed Tejan Kabbah", 15 December 2005 and "Fofana Motion for an Issuance of a Subpoena *Ad Testificandum* to President Ahmed Tejan Kabbah", 15 December 2005.

² Report About Prospective Defence Witness Major General Abdu-One Mohammed of Nigeria

³ Rules of Procedure and Evidence, Rule *92bis*: Alternative Proof of Facts, amended 14 May 2005.

Available at <http://www.sc-sl.org/documents.html>.

⁴ Norman Motion to Defer Further Evidence and Closing of his Case to September-December 2006 Trial Session, SCSL-04-14-608, 6 June, 2006.

the end of the current trial session and, subsequently, to have the Fofana defence case commence in September.

The Trial Chamber issued a decision this week related to the requests by the second and third accused for leave to raise evidentiary objections. Defence counsel have repeatedly attempted to intervene during the Prosecution's cross-examination of witnesses that have been called by other Accused (after the completion of their own cross-examination).⁵ The Trial Chamber has indicated that they will assess such interventions in a contingent, context-specific manner. In response to the most recent defence application the Trial Chamber acknowledged that, in such multi-Accused trials, cross-examination may not be strictly limited only to those issues that arise from the direct examination of a witness.⁶ However, the Chamber opined that in such situations, where objections during the cross-examination by the Prosecution were to be raised, counsel can consult with counsel who did call the witness and raise objections through them. In specific cases counsel can seek leave to object to questions raised by the Prosecution in cross-examination and the Chamber would assess such applications on a case-by-case basis, in the interests of justice. The Chamber stated that such a practice was in line with that of other international criminal tribunals and reiterated its earlier, oral rulings of February 9th and 20th, 2006. The procedural aspects of such a joint trial have become major points of controversy in the Trial Chamber I courtroom, with defence counsel feeling increasingly frustrated that they are unable to address issues that they perceive as being in the interests of their client.

⁵ Counsel for the third accused has been a strong advocate in favour of the allowance of such objections. In addition to an oral application made February 9th, 2006, please see "Third Accused's Request for Leave to be at Liberty to Raise Evidentiary Objections During Prosecution's Cross-Examination of Witnesses Not Called by Him", 24 February 2006.

⁶ Decision on the Third and Second Accused's Request for Leave to Raise Evidentiary Objections, SCSL-04-14-T-613, 8 June 2006.