



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

Special Court Monitoring Program Update # 79
Trial Chamber II –AFRC Trial
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Summary

This week saw Charles Taylor transferred to the Hague, following a decision released by the President of the Special Court on Monday. The status conference scheduled for Wednesday proceeded in his absence but did not address any substantive issues relating to his case.

Meanwhile in the AFRC trial, the First Accused completed giving evidence-in-chief and was cross-examined by counsel for the Second and Third Accused. The hearing was adjourned on Thursday afternoon until next Wednesday following an application by the Prosecution to allow them to prepare for cross-examination.

Taylor Status Conference

Charles Taylor's counsel, Mr Karim Khan made a number of, "observations" to the Trial Chamber following the transfer of his client to the Hague on Tuesday, one day before the scheduled status conference. The transfer was ordered by the President of the Special Court in a decision issued on Monday 19 June 2006, following the Appeals Chamber decision on 29 May 2006 that the issue of transfer formed part of the administrative and diplomatic function of the President and was not within the jurisdiction of the Trial or Appeals Chambers. The Appeals Chamber in that decision therefore dismissed the Defence motion requesting audience before a decision was made regarding the Accused's transfer. Mr Khan suggested pointedly that, while "politicians had been given the right to be heard, the accused has been denied that right" and that the decision of the President should be subject to review. Mr Khan further submitted, "*an important opportunity for international legal procedure has been lost*". In particular he noted that Rule 23, which requires the President to consult with the Council of Judges on all major questions or matters relating to the functioning of the Court, was a legal safeguard to which no reference had been made in the President's decision.

Mr Khan submitted to the Court that, "*the proper administration of justice should prevail over diplomatic or political expediency*" and the Appeal's Chamber decision of 29 May 2006 contained an implied right of habeas corpus.

In relation to more practical issues, Mr Khan also expressed frustration at the fact that he had not been contacted by anyone within the Registry to inform him that his client had arrived safely. Nor had he been given any means of contacting his client in his new place of detention, the detention facility of the International Criminal Court (ICC). Mr Khan told the Court he had to find the telephone number for the ICC detention facility himself and that when he had attempted to call he had been refused access to speak to his client.

Mr Khan therefore sought directions from the Court in line with Security Council Resolution 1688 (2006), which provides that the Court consult with the Secretary General to ensure that “all necessary legal and practical arrangements” for Taylor’s trial are implemented.¹ In particular, Mr Khan said he wanted to assure the Accused’s family had access to the ICC detention facility, which required them being granted visas to go to the Hague. Furthermore, Mr Khan sought a direction from the Court ordering that the Accused be entitled to the same telephone rights as those previously provided to him in the Special Court detention facility.

The Presiding Judge noted that the rules of detention provided for the Head of the Detention facility to have authority over telephone calls. While there was a right to appeal a decision of the head of the detention facility, that appeal would be heard by the President as the administration of the accused’s detention formed part of the Registry’s mandate. His Honour therefore questioned the authority of the Trial Chamber to rule on the matter. Mr Khan responded that the Trial Chamber had inherent jurisdiction by virtue of Article 17 of the Court’s statute.

Justice Doherty also asked for further submissions on the legal basis under which the Trial Chamber could direct that visas should be issued. Mr Khan submitted that under Rule 54 of the Court’s rules, alongside the inherent power under Article 17, the Trial Chamber has the authority to direct the Registry to take all necessary steps to facilitate the issuing of visas.

In response, the Prosecution supported Defence Counsel’s request for a direction ensuring access to the Accused. However, the Prosecution submitted that the visa issue raised by the Defence did not form part of the Accused’s inherent fair trial rights and was not within the jurisdiction of the Trial Chamber. The Prosecution also submitted that the issues relating to the President’s decision had already been dealt with by the Appeals Chamber and therefore could not be re-litigated in the Trial Chamber.

The Trial Chamber issued a decision on 23 June 2006, in which it directed the Registrar to ensure the Accused had access to his legal counsel as a matter of urgency and to ascertain the earliest possible date for a status conference to be held in the Hague and notify the Trial Chamber. However the Trial Chamber refused to make a direction in relation to the Accused’s family obtaining visas to go to the Netherlands, holding that this was not an issue that affected the Accused’s right to a fair trial enshrined in Article 17 of the Court Statute.

The Principal Defender, who was also present in court for the Status Conference, informed the Trial Chamber that the composition of Taylor’s defence team was in the process of being finalised, but that this had been delayed by the sudden transfer of the Accused.

AFRC Trial

Counsel for the Second and Third Accused cross-examined the First Accused (Santigie Borbor Kanu, aka “Five Five”) this week. Counsel for the Second Accused concentrated on the First Accused’s relationship with the Second Accused and his knowledge of the Second Accused’s role in the army. The First Accused testified that he did not believe the Second Accused had been involved in any criminal activity whilst in the army and that he was a loyal soldier. He also testified that the Second Accused had only ever been a junior officer and that, as far as he was aware, the Second Accused had played no role in plotting the 1997 AFRC coup. He did however testify that the Second Accused had been appointed a principal liaison officer by the AFRC council. He told the Court he did not know why the Second Accused had been chosen for this position. He also told the Court that the position of principal liaison officer was not equivalent to a ministerial position and that the Second Accused had never held a senior position within the AFRC, as he had never been a member of the Supreme Council.

¹ Sec. Res. 1688 (2006) SC/8755, at operative paragraph 5. Available on line at: <http://www.un.org/News/Press/docs/2006/sc8755.doc.htm>

The First Accused was again asked to react to the testimony of Witness TF1-334 and testified that the witness's testimony in relation to events within the AFRC meetings could only be false, because the witness was not himself a member of the council and therefore unable to attend meetings. The First Accused once again told the Court he believed the witness had been paid for his testimony.

The First Accused was also led by Counsel for the Second Accused through the indictment and stated that the Second Accused had not committed any of the crimes alleged therein. Counsel for the Second Accused was asked by the Bench how the First Accused could be expected to know every act of the Second Accused for the whole of the period of the indictment. Counsel submitted that, as the two were charged with having jointly committed these crimes, this line of questioning was reasonable. He was allowed to proceed. However, in a slightly different context the Bench has expressed some frustration at Counsel for Second Accused for embarking upon what it described as "fishing expeditions", which have involved counsel reading lengthy sections of the transcript to the First Accused that, according to his testimony, did not relate to him or related to events of which he said he had no knowledge.

Counsel for the Third Accused concentrated his cross-examination of the First Accused on his and other soldiers in the Sierra Leonean Army's (including the Third Accused's) knowledge of (or training in) the Geneva Conventions. The First Accused was also asked whether he or the Third Accused had at any stage been associated with Charles Taylor. The First Accused denied having ever had any contact with Charles Taylor. The First Accused also gave evidence that there had been a soldier by the name of Sergeant James Conteh who had played on the army football team and been known as 'Five Five' due to his army identification number ending in those two digits.

Following the conclusion of cross-examination by counsel for the Third Accused, the Prosecution requested an adjournment until the following Wednesday. The Prosecution made this application on the basis of an observation by the Trial Chamber during the status conference on 25 May 2006. At that time the Trial Chamber had stated that, rather than require a more detailed witness summary from the First Accused, should new information arise out of the First Accused's testimony, the Prosecution could seek some time to prepare for cross-examination. The Prosecution submitted that the First Accused's evidence regarding his escapes from Kailahun and Kono, his capture at Yar-ya by Commander O-Five, his time in custody in Colonel Eddie Town, and the fact that he claims to have been in Makeni, not Freetown, during the January 1999 invasion, all constituted new matters of which the Prosecution had previously been unaware. The Prosecution also informed the Court that it was in the process of obtaining a number of documents, which it intended to put to the First Accused during cross-examination.

The Defence did not object to the request and Counsel for the First Accused told the Court that an adjournment may also be in the interests of his client who had been giving evidence for the past three weeks. The trial has therefore been adjourned until next Wednesday 28 June 2006.

Power of the Court to Order a Witness Be Treated as a Common Witness

On a number of occasions the Prosecution attempted to object to a question posed by counsel for the Second Accused but the Bench held that the Prosecution did not have the right to object, as this was cross-examination not evidence-in-chief.

The Prosecution therefore made an application on Wednesday morning that a clear distinction be drawn between instances when the First Accused was being cross-examined and when in fact evidence was being led. In the case of evidence being led, the Prosecution submitted that the Second and Third Accused should be required to adopt the First Accused as a common witness. When asked by the Bench under which rule this would be possible the Prosecution submitted that the Trial Chamber could make an order under Rule 54 of the Court's Rules of Procedure and Evidence. Rule 54 is a general rule allowing a Judge or a Trial Chamber to issue orders (among

other things), *“as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial”*. The Bench, while accepting that the cross-examination was unusual in that it was not aimed at undermining the credibility of the witness, rejected the application stating that it did not believe the Trial Chamber had the power to make such an order. The Bench referred to Rule 90(F) of the Court’s Rules of Procedure and Evidence, which gives the Trial Chamber power to exercise control over the mode and order of interrogating witnesses and presenting evidence. In this case the Trial Chamber held that this rule did not extend to ordering any of the accused to treat a witness they had not called as a common witness. In rejecting the application, the Presiding Judge noted:

“If an accused chooses to give evidence, then that is a right that he has. But the other two accused cannot be forced to adopt the first accused as their own witness. If the first accused chooses to give evidence, then it is only correct that the other two accused should have the right to cross-examine him.”