



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

Special Court Monitoring Program Update # 86
Trial Chamber II – AFRC Trial

Week ending 15 September 2006

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Summary

This week Trial Chamber II has continued to hear testimony from witnesses for the defence in the AFRC case. Twelve witnesses were called to give evidence. These witnesses were all subject to special protection measures pursuant to the Court's decision of 9 May 2006. They were consequently shielded from view from the public gallery while they testified and their identities are not recorded in any court records or transcripts.

Absence of Judge Doherty

Due to illness, Judge Teresa Doherty was unfit to attend court on Tuesday 12 September. An order was issued pursuant to Rule 16(A) of the Rules of Procedure, and the trial was allowed to continue in her absence. Judge Doherty did not return to the Bench for the remainder of the week.

Witness Testimonies

All witnesses this week have testified about events in the Kono District of eastern Sierra Leone. The testimonies concerned attacks in the region carried out by what witnesses identified as RUF rebels. Witnesses reported widespread burning and looting of civilian property, rape, amputations and forced labour in the region's diamond mines. Civilians were also kidnapped and forced to gather food or carry equipment for the RUF.

The witnesses did not, however, implicate any of the accused in the events they testified about. Many had not heard of the defendants prior to the end of the conflict in Sierra Leone. None had observed the accused taking part in the attacks they reported, nor had they heard the attackers refer to any of the accused. This could indicate that the accused

were not commanding any of the armed groups which had brutalised the witnesses heard this week.

The prosecution further enquired into the use of communication equipment by the rebel groups in Kono. None of the witnesses had observed the use of any communication devices. This line of questioning is presumably aimed at establishing whether a command structure existed and whether any such command structure translated into effective control over the armed factions on the ground.

All defence witnesses were called to testify on behalf of all three accused as part of a joint defence strategy.

Prosecution cross-examination

The prosecution kept their cross examination of defence witnesses brief. They attempted to establish whether the armed bands described in testimony consisted solely of RUF soldiers, or of a mixture of RUF and SLA personnel. The prosecution therefore enquired into witness observations of the way in which the rebels discussed were dressed - whether in army uniform, civilian dress or in some type of clothing that would signal that they were with the RUF. Some witnesses were adamant that the rebels they had observed consisted only of RUF soldiers, while others were unable to say whether their attackers may have been a mixed group of RUF and SLA soldiers.

Continuing problems with defence witnesses

The court has this week had to contend with continuing problems relating to the witnesses called by the defence.

On Monday 11 September a witness scheduled to testify failed to appear at court in time for his testimony. Defence council reported that a number of witnesses refused to leave the safe-house where they stay while in Freetown because they claimed not to have been paid the amount they were promised if they came to court and testified. The court was adjourned for a period to allow defence council time to produce the witnesses. Upon returning to court, defence council reported that the Witness and Victims Support Unit (WVS) was responsible for the confusion that had arisen. The head of the WVS appeared in court and explained that any confusion regarding witness remuneration had been cleared up. A defence witness proceeded to take the stand.

The Presiding Judge expressed exasperation with the continued problems and confusion regarding defence witnesses which he claims have been a staple of this trial. He impressed upon defence council that it is their responsibility to manage their witnesses – and if necessary have witnesses on stand-by to fill in if it is not certain that the scheduled witness will be present to testify.

In another telling episode a defence witness was already seated in the court-room ready to testify when the defence discovered they were in fact expecting another witness to

appear. The witness was removed from court and another brought in to give evidence in his place. On Wednesday 13 September the defence requested that the bench should grant an adjournment to allow them time to prepare a witness for his testimony. Defence council cited the witness' late arrival in Freetown as reason why he had not yet been adequately briefed. The Bench did not grant recess, but gave defence council the opportunity to call another witness than the one originally scheduled. Defence council did in the end choose to call the original witness.

Concern over wasted trial-time.

It is clear that the Bench is concerned about the speed at which the trial is proceeding. The Presiding Judge has repeatedly expressed consternation with time wasted as a result of confusion over defence witnesses. The Presiding Judge also urged Mr Graham (council for the first Accused) to change the manner in which he chose to examine witnesses, as the way in which Mr Graham phrased his questions struck the judge as unduly time consuming.

Absence of the Accused

The court experienced interruptions in its proceedings on Thursday 14 September due to unexpected outbursts from the First Accused. These outbursts apparently came as a response to an intervention by the Presiding Judge urging council for the First Accused to alter his interview technique in the interest of time. The Presiding Judge directed the witness to tell his story without interruptions. As the witness recounted the circumstances around the murder of his father he became tearful. Mr Brima then seemed to think the witness was being bullied by the Presiding Judge and rose to his feet with an outcry. Mr Brima's outbursts were quickly accompanied by similar outbursts from the other two defendants. All three defendants were removed from court by security staff.

The Presiding Judge called a halt to proceedings to give defence council time to confer with their clients and advise them on the inappropriate nature of their behaviour in court.

Defence council did, however, return after the adjournment without having been able to communicate with their clients due to an apparent mix-up with court security staff. Council for the Second Accused then expressed concern about whether he could continue to represent his client in court following what had happened. Council for the Second Accused therefore sought an adjournment for the remainder of the day to clarify with his client whether he was still under instruction to represent him. The Bench initially refused this request, Presiding Judge Lussick expressing concern that the trial should not be halted at the whim of the Accused:

'If we grant you an adjournment now, it means that any accused, who wants to call a halt to an international trial, simply has to cause a pandemonium in Court and bring the trial to a halt while various counsel make inquiries as to further instructions. We are not going to allow that to happen.'

When the Accused had not returned to the courtroom after lunch the Bench did, however, decide to adjourn – emphasising the importance of giving the accused an opportunity to be present in court and to allow defence council time to resolve any outstanding difficulties between themselves and their clients.

On Friday 15 September all three Accused chose not to be present in court.