



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

Special Court Monitoring Program Update #54
AFRC Trial -- Contempt Proceedings in Trial Chamber I
Covering week ending September 23, 2005

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Summary Comment

Following the proceedings which began in Trial Chamber I on 27 July, 2005, the contempt case against the wives and a friend of the AFRC accused continued this week on Wednesday. During the morning session, the court heard the final argument of counsel for one of the contemnors, Anifa Kamara. All four accused in the proceedings pleaded guilty to the charge of contempt of court. The sentencing hearing followed that afternoon, and Judge Boutet, who has been the single judge presiding over the proceedings, pronounced the sentence against the accused shortly afterwards.

Procedural History

As has been discussed at length in a previous report, on 10 March, 2005, during the course of her testimony, Witness TF1-023 addressed the court and reported that her identity had been disclosed by the three wives and a friend of the AFRC defendants who had been attending the trial in the public gallery [1]. The witness was categorised as a Category A witness, (Victim of Sexual Assault), and the court had adopted protective measures to ensure her identity was not revealed to the public. She informed the court that the previous day after the court hearing, the four women had shouted out her name and yelled threats against her when she passed them by sitting in a court vehicle with tinted windows. The incident took place within the court compound.

These proceedings follow a separate contempt case against a former defense investigator alleged to have revealed the identity of the witness to the contemnors in this case. That investigator has subsequently been suspended [2].

In accordance with Rule 77(C) (iii)[3], an independent investigator was appointed and following his findings, contempt proceedings were initiated against the defense investigator, and the three wives and a friend of the AFRC accused, respectively, in two separate trials. Trial Chamber II assigned the matter to Trial Chamber I to be heard before Judge Pierre Boutet.[4] The four women were jointly indicted for violating Rule 77(A)(iv) of the Special Court Rules.[5] Three of the contemnors (Margaret Fomba Brima, Neneh Binta Jalloh, and Ester Kamara) entered guilty pleas on 27 July 2005.[6]

Contempt hearing Anifa Kamara, Wednesday 21 September 2005

During the course of the contempt hearing scheduled for that day, the last contemnor, Anifa Kamara (the wife of Brima Bazzy Kamara) changed her plea to guilty. The proceedings consequently continued without the hearing of evidence in accordance with Rules 61(v) and 62. Judge Boutet adjourned the trial to the afternoon for a joint sentencing hearing for all four contemnors [7].

Sentencing Hearing

In her submission, the independent counsel, who prosecuted the contemnors, submitted that a conditional discharge without punishment was an appropriate sentence. She suggested that the conditions of discharge include an order binding the contemnors “to keep the peace and good behaviour” for one year. The independent counsel noted that, while it was important not to trivialise the offence the contemnors had committed, two mitigating factors should be considered: all the contemnors in the present case were first offenders, and they had voluntarily cooperated with the court while entering guilty pleas. She also acknowledged the emotionally difficult situation caused by the indictment against their husbands and friend.

The Principal Defender and the defense counsels for each of the four accused concurred with the suggestions of the independent counsel. All of them argued that the cooperation shown by their clients should be seen as a mitigating factor to their sentencing, as set out in Rule 101(B)(ii). In further agreement with the independent counsel, they pointed out that the trial of their client’s husbands and friend was a traumatic experience for each of them and urged the Court “to temper justice with mercy”. All four contemnors expressed their remorse and declared that they would “never do such an act again”.

After a brief adjournment to deliberate, Judge Boutet read his sentencing judgement. The Presiding Judge stressed that any violation of the rules on protective measures must be seen as a very serious offence and that the contemnors as well as the public must understand the absolute necessity of respecting the Court’s orders on protective measures [8]. On the other hand, he further acknowledged the arguments put forward by the independent counsel and opined that the cooperation of the contemnors and their guilty plea should be considered mitigating factors in his determination [9]. He also took into account the expressed remorse and apologies [10]. Balancing all the above-mentioned considerations, the Presiding Judge concluded that neither a fine nor imprisonment would be an appropriate sentence in the present contempt case [11]. He then relied on an ICTY Appeals Chamber Decision in the *Tadic* case [12] to conclude that Rule 77 “was not intended to limit the Special Court’s inherent contempt of court powers” nor did it limit determinations for sentencing made by the judges when exercising this power. Hence, following the joint submissions presented by the independent counsel, the Principal Defender, and all defense counsels, the Presiding Judge pronounced a sentence of conditional discharge. This included requiring the defendants to keep the peace and be of good behaviour and to respect all conditions imposed by the Special Court for Sierra Leone in the public gallery of the Court and by the court’s Detention Services Unit [13].

The Presiding Judge ruled further that “any failure by any of the said contemnors to comply with [the relevant] conditions is to operate as a suspension of the probation and a revocation of the conditional discharge.” As a consequence, the conditional discharge would be converted automatically to a criminal conviction, and a further sentence may then be imposed. A written and publicly filed version of Judge Boutet’s sentencing judgement was issued shortly after the oral decision was delivered [14].

Comment

In light of the significance placed on witness protection under the Special Court's Statute and the measures the court has taken throughout the proceedings to guarantee the safety and security of its witnesses, the eventual sentencing imposed by Judge Boutet in this case seemed lenient. It seems likely that the remorse expressed by the accused and their ultimate admission of guilt and the recommendations of counsel factored strongly in the underlying rationale of Boutet's sentencing. Given the Special Court is housed in the country where the conflict itself occurred, it may be that Judge Boutet also considered whether a severe sentence could lead to further unrest surrounding the proceedings when making his final determination.

The present case illustrates the opposing interests that may be involved in contempt proceedings dealing with threats to witnesses and the disclosure of sensitive information to the public where the accused persons are themselves personally affected by the trial. On the one hand, as the Court is based within Sierra Leone, a high standard of protective measures for witnesses and victims is important to guarantee their security. Furthermore, should the Special Court fail in providing effective protective measures, potential witnesses might be discouraged from testifying for fear for their well-being. Yet on the other hand, the court must be continuously mindful of the context within which the proceedings themselves take place. Furthermore, the rights of the accused persons must be given due recognition in all proceedings before the court.

- 1.) See Special Court Monitoring Program Update No.26, dated 11 March 2005.
- 2.) See Special Court Monitoring Program Update No.26, dated 11 March 2005 ; Update No.29, dated 25 March 2005; Update No.33, dated 29 April 2005; Update No.36, dated 13 May 2005.
- 3.) Rule 77(C) says: "When a Judge or Trial Chamber has reason to believe that a person may be in contempt of the Special Court, it may: (iii) direct the Registrar to appoint an experienced independent counsel to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings. If the Chamber considers that there are sufficient grounds to proceed against a person for contempt, the Chamber may issue an order in lieu of an indictment and direct the independent counsel to prosecute the matter."
- 4.) Pursuant to the *Order Designating a Judge for Contempt Proceedings* of 2 nd of May, 2005.
- 5.) Rule 77(A)(iv) says: "The Special Court [...] may punish for contempt any person who knowingly and willfully interferes with its administration of justice, including any person who: threatens, intimidates, causes any injury of, offers a bribe to, or otherwise interferes with, a witness who is giving [...] evidence in proceedings before a Chamber [...]." See Special Court Monitoring Program Update No.33, dated 29 April 2005.
- 6.) Rule 62 governs the procedure to be followed upon entering a guilty plea.
- 7.) The provision applicable on sentencing hearings is set out in Rule 100(B).
- 8.) Judge Boutet quoted a passage from *Prosecutor v. Kondewa*, SCSL-03-12-PT, Ruling on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure and Urgent Request for Interim Measures until Appropriate Protective Measures are in Place, 10 October 2003, para. 24.
- 9.) Namely: ICTY Case *Prosecutor vs. Blaskic*, IT-95-14, Judgement, TC, 3 March 2000, para. 777.

10.) Article 19 (2) of the Statute reads as follows: “In imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.”

11.) Rule 77(G) says: “The maximum penalty that may be imposed on a person found to be in contempt of the Special Court [...] pursuant to Sub-Rule (C)(iii) shall be a term of imprisonment for seven years or a fine not exceeding 2 million Leones, or both.”

12.) *Prosecutor vs. Tadic*, IT-94-1, Judgement on Allegation of Contempt Against Prior Counsel, Milan Vujin, 31 January 2000, para. 18.

13.) The conditional discharge included the following conditions: (1) Keep the peace and be of good behaviour; (2) Not to reveal the identity of Prosecution Witness TF1-023 to any persons whatsoever; (3) Not to seek to obtain the identify or location of any Prosecution witness before the Special Court for Sierra Leone; (4) Not to communicate, directly or indirectly, with any Prosecution witness before the Special Court for Sierra Leone; (5) Not to take part in any action that threatens, either directly or indirectly, a witness before the Special Court for Sierra Leone; (6) To respect all conditions imposed by the Special Court for Sierra Leone in the public gallery of the Court; (7) Respect all conditions imposed by the Detention Services Unit of the Special Court for Sierra Leone.

14.) Sentencing Judgment in Contempt Proceedings, Independent counsel against Margaret Fomba Brima, Neneh Binta Jalloh, and Ester Kamara (Case No. SCSL-2005-02) and against Anifa Kamara (Case No. SCSL-2005-03), dated 21 September 2005.