



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

Special Court Monitoring Program Update # 85
Trial Chamber II – AFRC Trial
Week ending 4 August 2006

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SUMMARY

This week saw the end of this trial session. The Court will now be in recess until 4 September 2006.

The Court only sat half day on Tuesday, Wednesday and Friday due to a lack of available defence witnesses. The First Accused also waived his right under Rule 60 and was not present in Court for most of the week. The Court has ordered that the Defence provide a final witness list by 24 August 2006.

Counsel for the First Accused have also filed a notice defence of alibi notice pursuant to Rule 67(A)(ii) this week and have been ordered by the Court to provide any further details regarding the places witnesses can attest to the First Accused being in support of this alibi defence by 7 August 2006.

The Defence has also indicated its military expert report is ready and will be filed shortly. While the Prosecution sought an order that this report be provided by the end of the day on Friday, the Court simply stated that it expected compliance with the 21-day disclosure period set out in Rule 94*bis*.

DEFENCE NON-COMPLIANCE WITH COURT ORDERS

On Tuesday the Prosecution sought an adjournment to prepare for the cross-examination of witness DAB-023. Counsel for the Prosecution referred again to the failure on the part of Defence to comply with the 21-day disclosure period ordered by the Court. Counsel also referred back to the status conference on 26 July 2006 when the Court was put on notice that the Prosecution may seek an adjournment where insufficient notice was given of insider witnesses. Counsel noted that the Prosecution had only been provided with

information regarding the identity of witness DAB-023 ten days prior to him testifying and the final witness summary was only received five days prior to his appearance in Court. Counsel for the First Accused responded by submitting that the adjournment was unnecessary as the evidence that had been given by the witness did not refer to matters new or unknown to the Prosecution. Counsel for the First Accused also submitted that should an adjournment be granted to the Prosecution, then an adjournment would also be requested by the Defence for the reasons outlined the week before regarding difficulties in arranging witnesses to appear. This submission was not accepted by the Court and the Bench expressed some exasperation at the approach taken by Defence counsel.

PROSECUTION APPLICATION FOR DEFENCE WITNESS STATEMENT

The Prosecution also made an application on Tuesday for access to the witness statement of witness DAB-023 on the basis that the summaries that had been received lacked sufficient detail to allow the Prosecution to test the credibility of the witness. Counsel for the Prosecution submitted that the summaries that had been provided failed to meet the requirements set out in Rule 73*ter* and, following the decision of the ICTY Appeals Chamber in *Prosecutor v Tadic* (IT 911A, Appeals Chamber decision, 15 July 1999, para. 319) the Court could therefore order that a copy of the witness statement be provided to the Prosecution.

Counsel for the First Accused submitted that both Trial Chambers of the Court had held that the Prosecution did not have a right of access to Defence witness statements. Counsel submitted that, particularly in light of the adjournment that had been granted to the Prosecution, no irreparable prejudice had been demonstrated by the Prosecution to make necessary an order for the witness statement to be provided. Counsel submitted that the test should be:

Disclosure in respect of witness statements is a discretionary exercise by the Court upon prima facie evidence that failure to disclose such Defence witness statements will result in the Prosecution suffering either undue or irreparable prejudice.

Counsel for the First Accused went on to submit that much of the detailed oral testimony provided by the witness was not contained in interview notes or in the statement taken by the Defence.

In response to the test articulated by counsel for the First Accused, counsel for the Prosecution sought to draw a distinction between the “irreparable harm” test associated with Rule 73*ter*, which applies to applications for the statement to be provided *prior* to the witness giving evidence and the present situation, which like in *Tadic*, involves the provision of a statement after oral evidence has been given.

By way of legal clarification of the Prosecution’s submission, the Court noted that Rule 73*ter* did not in fact place any obligations on the Defence. Rather, it was the order of the

Court made pursuant to Rule 73*ter* that set the minimum requirements for the content of the witness summaries. In any event, following a brief adjournment, the Court granted the Prosecution's application and ordered the witness statement for Defence witness DAB-023 be provided to the Prosecution. The Court held that only the witness statement and not the interview notes were required to be handed over. The Bench had previously expressed an opinion that the interview notes would most likely be covered by legal professional privilege.

FIRST ACCUSED'S CONFIDENTIAL ALIBI NOTICE

A confidential notice pursuant to Rule 67(A)(ii) was filed on behalf of the First Accused on Thursday this week. Rule 67(A)(ii) provides:

(ii) The defence shall notify the Prosecutor of its intent to enter:

(a) the defence of alibi; in which case the notice shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi.

The first part of Rule 67(A) requires that such a notice be filed, "as early as reasonably practicable and in any event prior to the commencement of the trial" but in this instance the Court has allowed the notice to be filed at this late stage of the proceedings. The application made by counsel for the First Accused was confidential so no further details are available publicly, however it appears the Court has taken a lenient approach in favour of protecting the rights of the accused.

The Prosecution submitted that the information provided identifying the witness' addresses was insufficient, however this argument was not met with a great deal of sympathy by the Bench. The Court noted that there existed case law which stated Rule 67 simply required the Defence to provide as much detail as possible and that account needed to be taken of the fact that detailed addresses were often difficult to provide in the context of West African villages. Counsel for the First Accused stated that much of the information was contained in the testimony provided by the First Accused's but agreed to provide any further information he was able to obtain as soon as possible. The Court therefore ordered that this be done by next Monday.

SUMMARY OF WITNESS TESTIMONY

DAB-023

This witness testified as an insider witness. He is a Kono and a Christian. He told the Court that he had worked first as a vigilante and then joined the Sierra Leonean Army ("SLA"). He testified that he had been in Kono at the time of the AFRC coup and had heard about it on the radio. He stated that he then went to Freetown, to the army headquarters at Cockerill where he served as a bodyguard to a Colonel Williams and then to a commander called "FAT". He testified that he and FAT remained in Freetown until ECOMOG forces took the city and he saw civilians capturing and killing soldiers, at

which time he fled. He testified that he went to Masiaka and identified SAJ Musa, Superman, Rambo, Johnny Paul Koroma and Mosquito as the individuals he knew to be AFRC/RUF leaders. He also stated that following the ECOMOG re-capture of Freetown the AFRC ceased to exist and all those associated with the regime fled for their lives. He gave evidence about being captured by an RUF commander called Scorpion who took him to Sewafe and handed him over to Superman. In Sewafe he stated he had been armed and required to fight with the RUF. When asked about the “boys” he said he fought alongside, he stated they were not that young – mostly between 20 and 30 years old. He also named “Issa” as over-all commander of the RUF in Kono and a member of the SLA called “Savage” who was head of the “task force” for the RUF in Kono.

The witness gave evidence about some killings of civilians and stated they had been committed by Savage and RUF forces. He also gave evidence about the SLA command structure and identified SAJ Musa, O-Five and Junior Lion as the commanders under whom he served. He testified that it was Commander O-Five who had led the SLA forces into Freetown on 6 January 1999.

Cross-examination of this witness was conducted in closed session.

DAB-088

This witness was due to be called on Tuesday but counsel for the First Accused informed the Court that in a briefing session with Witness and Victim Support (“WVS”) upon the witness’ arrival at the Court on Monday she appeared to no longer recall the events contained in her original statement. She was therefore no longer able to be called as a witness.

DAB-063

This witness is a Kono. He currently resides in Makeni, where he works as a cleaner. He is illiterate. In evidence led by counsel for all three of the accused he told the Court about the time he spent as a soldier in the SLA and as a bodyguard to Johnny Paul Koroma. In particular he testified about a period he spent travelling and fighting in the Kono and Kailahun Districts with RUF/SLA forces. He testified that the forces were under the control of the RUF commander Sam Bockarie, also known as Mosquito and they comprised a mixture of RUF fighters and SLA soldiers who no longer had officers to lead them. He also testified that Issa Sesay had been in control of RUF forces in Kono District and Superman had held control of Makeni.

In cross-examination the witness stated that whilst working as Johnny Paul Koroma’s bodyguard he had heard the names Tamba Brima, Ibrahim Bazy Kamara and Five-Five as individuals associated with the coup but he had never seen any of these people. He testified that he had been in the village of Mile 91 when the coup took place and he had heard it announced on the radio by Corporal Gborie. He stated that he knew Tamba Brima and Five-Five were also “honourables” in the AFRC government but he did not know about Ibrahim Bazy Kamara. He denied that there had been joint SLA-RUF

mining of diamonds in the Kailahun District, stating he only knew of diamond mining conducted by the RUF under Sam Mosquito Bockarie in Tongo. He also denied that SLA soldiers had fought alongside Superman in Makeni during a confrontation against Issa Sesay and Mike Lamin.