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

Special Court Monitoring Program Update #80
Trial Chamber II – AFRC Trial
30 June 2006

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Summary

The Prosecution commenced its cross-examination of the First Accused on Wednesday, following an adjournment from the previous Thursday.

Prosecution's Cross-Examination of First Accused

The Prosecution sought to establish through cross-examination both the chain of command within the Sierra Leonean Army and a system whereby soldiers were aware that certain acts constituted crimes and that they would be punished. This is presumably to assist with the establishment of the command responsibility charge under Article 6(3) of the Statute of the Special Court against the First Accused contained in the indictment.

Furthermore, the Prosecution put to the First Accused that he had in fact been promoted during the AFRC regime, and held the rank of brigadier alongside the Third Accused until the time of his retirement from the military. The Prosecution suggested that the First Accused's army discharge book only identified him as a corporal because upon President Kabbah's return to power in 1998 all promotions made during the AFRC regime were annulled. While the First Accused conceded that all promotions made during the AFRC regime were annulled, he denied that he or the Third Accused had ever held high ranks. He stated that it was his brother (who he claims is the real Gullit) who had been promoted to the rank of sergeant during the AFRC regime and insisted that he had always remained a low-ranking officer. He testified that the witnesses who referred to him holding a higher rank were simply paid witnesses who had lied to the Court. In particular, he told the Court that Lieutenant-Colonel John Petrie had only testified against him because the First Accused had refused the Lieutenant-Colonel's request, made on behalf of the Prosecution, to give evidence against Johnny Paul Koroma in the event of Koroma being tried before the Special Court.

The Prosecution attempted to ask why this information had not been used in cross-examination of Lieutenant-Colonel Petrie by defence counsel but were unable to get a response and were eventually stopped by the Court for entering into areas that were covered by client-lawyer privilege.

Addressing the First Accused's defence of mistaken identity, the Prosecution showed the First Accused a number of documents from the time of his arrest where he had signed his name "Alex Tamba Brima". The First Accused insisted that he had been forced to sign documents but that he had never written "Alex" as his name is Tamba Brima. The Prosecution also put it to the First Accused that he had only started arguing that it was his brother who was known as 'Gullit' after he had heard the Prosecution's case.

The First Accused repeatedly stated in cross-examination that the Prosecution witnesses had only testified in exchange for payment and special treatment (for example immunity from prosecution themselves). This is an ongoing accusation that the defence teams have made in relation to Prosecution witnesses. In the RUF trial the defence has argued repeatedly that the Prosecution has paid witnesses.

The Prosecution also cross-examined the First Accused on his evidence that his father had been killed by a bomb dropped by Nigerian ECOMOG forces in May 1997. The Prosecution provided the First Accused and the Court with documentation from a hospital which stated that the First Accused's father had in fact died from diabetes and hypertension related causes. One of the documents, an in-patient care booklet, was tendered with a page missing. The Prosecution stated this was due to the fact that the page was not relevant (it contained a blank chart) but the Court requested the additional page also be provided to dispel any suggestion of selective presentation of evidence on the part of the Prosecution.

The trial was adjourned on Friday afternoon as the First Accused complained of headaches and back pain and required medical attention.

Throughout the cross-examination there has been a fair amount of intervention on the part of the Bench. This appears to be because the judges have felt that the Prosecution trial attorney has at times been confusing in his questioning and labored points which the First Accused has already answered.

Right of Counsel for Second Accused to object in relation to cross-examination of a witness that he did not call

During the cross-examination, Counsel for the Second Accused raised an objection to a question posed by the Prosecution. The Prosecution submitted to the Court that this was not permissible as the First Accused was not a witness called by the Second Accused. The previous week when Prosecution had

requested that the Court order the First Accused be treated as a common witness, the Trial Chamber had declined to make such an order. Furthermore, when the Prosecution had sought to object during the cross-examination by Counsel for the Second and Third Accused the Court had ruled that this was not permissible.

However, in this instance the Trial Chamber decided that objections should be allowed from counsel for the other two accused. In explaining why this distinction was to be drawn, the Trial Chamber stated:

"…under Rule 90(F) the Trial Chamber has the responsibility of controlling the mode and order of interrogating witnesses and presenting evidence so as to: One, make the interrogation and presentation effective for the ascertainment of the truth and; two, avoid the wasting of time.

We hold that since the testimony of the witness currently being cross-examined may operate for or against all of the accused, that it is in the interests of justice to allow counsel for an accused to object to a Prosecution question, even though he himself has not called that witness and that will be the case."

Admissibility of the Statement of Alfred Abu Sankoh

On Thursday the Prosecution sought to tender the statement of Alfred Abu Sankoh, alias "Zagalo", one of the plotters of the coup who was later executed by the Kabbah government after its restoration. In that statement there is reference made to the First Accused as a footballer and as one of those involved with plotting and carrying out the AFRC coup. Counsel for the First and Third Accused objected to this statement being tendered. Counsel for the First Accused submitted that the statement should not be admitted into evidence because it firstly related to treason charges for which the maker of the statement was tried and ultimately executed, while the First Accused was not being tried for treason. Further, the reliability of the statement was unclear; it was not made at a police station, nor were the pages signed. Finally, counsel submitted that the statement did not contain any new information as it simply referred to details regarding the coup that were already before the Court in the form of Prosecution witness testimony. In support of her submission, counsel referred to the ICTY cases of *Kordic* and *Cerkez* in which the Trial Chambers refused to admit evidence that was *"cumulative or repetitive"*.

The Prosecution responded that this statement was a highly relevant document as it referred to events in which other witnesses, while having knowledge of, were not directly involved. Furthermore, the Prosecution submitted that the document could not be said to have no foundation or reliability as it was referred to in the Truth and Reconciliation Commission report. The Prosecution argued that this statement formed part of the same category of document as that

considered by the Appeals Chamber in the *Fofana* decision[1] and that, in accordance with Rule 89(C) which provides, *"A Chamber may admit any relevant evidence"*, the statement should be admitted into evidence.

In the *Fofana* decision the Appeals Chamber interpreted Rule 89(C) broadly, stating:

"Rule 89(C) ensures that the administration of justice will not be brought into disrepute by artificial or technical rules, often devised for a jury trial, which prevents judges from having access to information which is relevant."[2]

The Appeals Chamber went on to state that the fact that a document was unauthenticated did not automatically make it unreliable .[3]

Following an adjournment for lunch the statement was admitted into evidence. In deciding this, the Court stated that the weight given to the document was for the judges to decide at a later stage but that:

"We find that the document is relevant and in view of the interpretation put on Rule 89(C) by the Appeals Chamber [in the *Fofana* decision] *we are of the view that we are not entitled to reject it."*

Introduction of Documents by the Prosecution During Cross-Examination

Defence counsels also objected to documents being put to the First Accused by the Prosecution, which they had not been provided access to in advance. The Prosecution responded that it was not general practice to provide copies of documents to be used in cross-examination well in advance. Furthermore, the Prosecution submitted that these documents had only very recently been obtained. The Trial Chamber held that, as these documents were not being used to admit new evidence but simply to challenge the evidence of the First Accused already on the record, it was appropriate for the Prosecution to not provide copies in advance.

[1] *Fofana –Appeal against Decision refusing Bail,* Case No. SCSL-2004-14-AR65, Appeals Chamber decision, 11 March 2005.
[2] Fofana Decision, para. 26.
[3] Fofana Decision, para.27.

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