

The Defence of Morris Kallon brings this motion before the Honourable Trial Chamber 1 praying the Honourable Trial Chamber to:

1. Order or direct the prosecutor to respect his disclosure obligations henceforth making reasonably consistent disclosure of witness statements and supplemental witness statements to the Defence within a reasonable period prior to the testimony of prosecution witness.
2. This application is informed or actuated by the persistent practice by the prosecution in disclosing supplementary witness statements pursuant to his continues obligations late.
3. A case in point amongst many is that of Witness TF1-045 who came to testify before the honourable Trial Chamber on the 18th, 21st, 22nd and 23rd of November 2005.
4. The Trial Session for which Witness TF1-045 who came to testify was first fixed for 18th October 2005.
5. The Trial Session was thereafter adjourned to commence by the Honourable judges to 1st November 2005.
6. On 31st January 2005, Witness TF1-045 recorded a statement with the Office of the Prosecutor.
7. On 28 February 2003, the Prosecutor interviewed Witness TF1-045.
8. On 1 March 2005, the Prosecutor recorded another statement from Witness TF1-045.

9. On 14, 15 and 28 April 2005, the Prosecutor interviewed the witness and prepared the interview notes which were served on the defence.
10. On May 7 2005, the Prosecutor again interviewed the witness and prepared a memorandum of the interview notes which were served on the defence.
11. On 16, 20 and 23 June 2005, the Prosecutor again interviewed the witness TF1-045 and recorded additional information to his earlier statements.
12. On 13, 14, 15, 21, 24 and 25 October 2005 the Prosecution again recorded additional information from the witness and notified the defence.
13. In the transcript of 22 November 2005, the issue of late disclosure was raised before the Honourable Trial Chamber at pages 19 to 20.
14. In the transcript of 22 November 2005, the Honourable Justice Benjamin Itoe asked the learned prosecuting counsel why it was necessary for the Prosecution to obtain the supplementary information from the witness after he had testified in another trial (p 196, 18 – 27).
15. The Learned Counsel stated *inter alia* that the testimony in the AFRC trial was tailored or significantly designed for the accused in that case and that after the testimony of the witness it was necessary to conduct subsequent interviews with specific focus on evidence to be led by Trial Chamber 1.
16. The Learned Prosecuting Counsel also admitted that in the course of the said interview, new information emerged and therefore the office of the Prosecutor had a duty to disclose such new evidence to the Defence in the form of supplementary statements.

17. The above answers to the questions posed by his Lordship the Honourable Justice Benjamin Itoe by the Learned Prosecuting Counsel about eliciting new evidence after the witness has already testified before a Trial Chamber about the subject matter of his testimony before this Trial Chamber is highly prejudicial to Mr. Morris Kallon for three reasons:
- a. Many witnesses have taken the opportunity to change focus their evidence to the case after testifying before another Trial Chamber of the Special Court.
 - b. By eliciting new allegations as the Learned Counsel admitted, Mr. Morris Kallon is often not put on fair notice to confront his accuser like in the case of Witness TF1-045 and several witnesses before and after him.
 - c. The late disclosure too close to the date of the testimony of the prosecution witnesses, as it has become customary in this case deprives the Trial Chamber and the Defence the opportunity of having adequate time and notice to prepare for the trial.

In this regard, two decisions of the International Criminal Tribunal for the Former Yugoslavia (ICTY) are relevant;

- (i) Trial Chamber II of the ICTY in *Prosecutor v. Dokmavovic* on 28 November 1997 ordered that witness statements be presented to the Chamber before trial, not as evidence, but to enable the Chamber to familiarize itself with the case. See also Scheduling Order of 3 December 1997 by Trial Chamber 1 in *Prosecutor v. Aleksovski*.
- (ii) In *Prosecutor v. Delalic et al¹*, Decision on Applications for Adjournment of the Trial date, the chamber held:

¹ IT-96-21-T, 3 February 1997

“The Trial Chamber is cognizant of the fact that unless there is prompt and proper disclosure to the Defence, the Defence cannot make a decision on what evidence it will use at trial, and cannot therefore be adequately prepared for trial.”

18. The Defence for Morris Kallon recognizes the importance of the duty and obligation to effect continuous disclosure.
19. The Defence however, submits that reasonable cause must be shown as to why the supplementary statements and additional information was not obtained and disclosed within a reasonable time.
20. The proliferation of interview notes and supplementary statements in this case coming after some witnesses have testified before another Trial Chamber of the Special Court permits witnesses the possibility to recount parts of their earlier statements or to tailor their testimony to fit the allegations in the indictment against the accused.
21. The late scheduling of the interviews leading to late disclosures are very prejudicial to the accused and violate his rights guaranteed by Article 17 (4) (a) (b) of the Special Court.
22. In the result, the Defence prays the Honourable Trial Chamber to grant this motion and order the following relief;

Relief sought:

That the Hon Trial Chamber orders the Prosecutor to henceforth effects reasonably consistent disclosures to the Defence within a reasonable time frame to enable the Defence to Prepare for the trial.

Counsel for the Second Accused



PP Charles Taku

PP Shekou Touray

PP Melron Nicol-Wilson

PP Rachel Irura