

Case No. SCSL-2004-16-T  
THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
ALEX TAMBA BRIMA  
BRIMA BAZZY KAMARA  
SANTIGIE BORBOR KANU

THURSDAY, 28 APRIL 2005  
9.22 A.M.  
TRIAL

TRIAL CHAMBER II

|   |   |
|---|---|
| Before the Judges:                        | Teresa Doherty, Presiding<br>Julia Sebutinde<br>Richard Lussick           |
| For Chambers:                             | Mr Simon Meisenberg<br>Mr Matthias Reuss                                  |
| For the Registry:                         | Ms Maureen Edmonds  |
| For the Prosecution:                      | Ms Lesley Taylor<br>Ms Melissa Pack<br>Ms Maja Dimitrova (Case Manager)   |
| For the Principal Defender:               | Ms Claire Carlton-Hanciles<br>Mr Elizabeth Nahamya<br>Mr Ibrahim Mansaray |
| For the accused Alex Tamba<br>Brima:      | Mr Kevin Metzger  |
| For the accused Brima Bazy<br>Kamara:     | Mr Wilbert Harris<br>Mr Mohamed Pa-Momo Fofanah                           |
| For the accused Santigie Borbor<br>Kanuu: | Ms Karlijn van der Voort  |

1 [TB280405A - CR]  
2 [Thursday, 28 April 2005]  
3 [Accused entered court]  
4 [Open session]  
09:21:49 5 [Upon commencing at 9.22 a.m.]  
6 PRESIDING JUDGE: Good morning. Ms Taylor, we understand  
7 from our last Court session that you have a witness ready to  
8 proceed?  
9 MS TAYLOR: Yes, we do, Your Honours. That witness is  
09:24:25 10 TF1-272. I do notice Mr Metzger is on his feet.  
11 PRESIDING JUDGE: Mr Metzger, you're on your feet.  
12 MR METZGER: Yes. The Trial Chamber and all interested  
13 parties will have noticed that we are reduced in numbers yet  
14 again today. When we left this building on Wednesday, we were --  
09:24:57 15 PRESIDING JUDGE: Wednesday being yesterday.  
16 MR METZGER: Sorry, Tuesday. I do crave the Court's  
17 indulgence if I'm not as together as --  
18 PRESIDING JUDGE: Don't worry.  
19 MR METZGER: -- I expect I should be. However, as I said,  
09:25:13 20 when we left this Court building on Tuesday we were in the same  
21 position. There are two things, really, that I want to mention  
22 at this point. One is of a personal nature and I shall leave  
23 that until later. More importantly, Mr Manley-Spaine is not  
24 here. We have been unable, despite several attempts across the  
09:25:44 25 board, to make any further contact with him. I am aware of one  
26 telephone call that went through to his personal cell phone that  
27 was answered by someone other than Manley-Spaine who said he was  
28 unavailable.  
29 I am fully aware of our statement on Tuesday that we would

1 file a motion in relation to what had transpired, as it were,  
2 over the weekend. I do apologise, we don't have that motion  
3 ready. There are a number of factors that we've had to consider,  
4 and we wanted to make sure that we also had in our possession  
09:26:34 5 relevant supporting documents to act as annexures to any motion  
6 that we were going to file. Research is and has been ongoing. I  
7 rather suspect that, thus far, our research does not reveal  
8 anything of a similar nature taking place.

9 The position is this: I have this morning, together with  
09:27:14 10 Mr Harris and the assembled Bar, had a very brief opportunity of  
11 speaking with Mr Manley-Spaine's client who is very concerned  
12 about the absence of his lawyer. And more so concerned because  
13 of the circumstances immediately preceding the loss of contact.  
14 He is not content to be unrepresented today. Therefore, I put  
09:27:52 15 that before the Court. I am sorry that we find ourselves in the  
16 same position as we found ourselves, so to speak, on Tuesday at  
17 this point in time. It may be that because yesterday was a  
18 public holiday, which I must confess I hadn't taken into account  
19 at the time, that that has compounded the issues in terms of us  
09:28:25 20 moving as quickly as we would like to. I have this morning asked  
21 a representative of the Office of the Principal Defender if it is  
22 possible to physically send someone to Mr Manley-Spaine's  
23 addresses so that we can have some firm information about what  
24 his position is. Our concerns remain high, in the circumstances.

09:28:59 25 what I am initially asking for at this point in time is for  
26 us not to commence these proceedings immediately. I see  
27 Ms Carlton-Hanciles from the Principal Defender's office coming  
28 in. I know that she may well be the bearer of some news, at  
29 least, in so far as how long it would take for those inquiries to

1 be conducted. Perhaps it would be opportune at this point either  
2 for me to speak to her with your leave or --

3 PRESIDING JUDGE: I think it will be appropriate to do that  
4 before submitting further. I will then ask you to finalise your  
09:29:48 5 address.

6 MR METZGER: I'm very much obliged. I'm very grateful to  
7 the Trial Chamber for the indulgence it has shown us. The upshot  
8 of my communication with Ms Hanciles is that, as we speak,  
9 already the deputy principal defender and an officer of the  
09:31:48 10 Principal Defender's office have left and are on their way to  
11 physically try to make the contact with him at all his known  
12 address points and to bring back as much information as they  
13 possibly can in that regard. I'm told that within two hours they  
14 should have returned. I would therefore be asking, as I say,  
09:32:19 15 regrettably, this Court to adjourn for -- I'm told it would be  
16 more prudent to come back in the afternoon. It seems to me that,  
17 certainly, if the Court would adjourn until the afternoon and  
18 perhaps with the proviso that we have any information that we can  
19 contact Chambers and contact my learned friends so that we can  
09:32:53 20 communicate that information as soon as possible.

21 Now, there is another dimension which increases our concern  
22 for Mr Manley-Spaine. At the Bar, we have discussed it and we do  
23 not believe that this is the time, and certainly not the place,  
24 to communicate that extra concern. If the Trial Chamber are  
09:33:30 25 wanting to be apprised of that, it seems to me there are two ways  
26 we can do that: either by the way of a confidential document  
27 being filed in the normal way or going into closed session so  
28 that information could be communicated to you. As things stand,  
29 those are the arguments that we put forward to support our

1 application at this point in time not to go straight into  
2 evidence.

3           There is another matter I had indicated of a personal  
4 nature that I wanted to apprise the Court of. It concerns  
09:34:16 5 wednesday of next week. It is a day on which, due to a personal  
6 bereavement, I would like not to come to Court. In terms of my  
7 commitment and duties to my family, I will not be able to come to  
8 Court. Whether that will affect the proceedings -- I hope it  
9 won't -- but it is something that I personally cannot avoid. I  
09:34:50 10 will make arrangements, certainly, because I'm due, in any event,  
11 to travel probably by the end of next week. I have made  
12 arrangements for cover from my co-counsel, certainly from the  
13 point in time when I leave the jurisdiction.

14           PRESIDING JUDGE: Mr Metzger, I'm sorry to hear that. It  
09:35:11 15 is always difficult when you're away from family in these  
16 circumstances. Before I invite Prosecution to reply to your  
17 application and consult with my learned colleagues, there are two  
18 matters which occur to me. One of which is not properly directed  
19 to you, but possibly to the Office of the Principal Defender.

09:35:40 20           Mr and Mrs Knoops were also counsel and there has been a  
21 protracted absence of them before this Trial Chamber, and we are  
22 aware of the undertakings they give to the Special Court when  
23 they undertake these briefs. Now, why are they not here? Again,  
24 it is not properly addressed to you, possibly to  
09:36:11 25 Ms Carlton-Hanciles. I also recall a comment by your learned  
26 junior saying that in your absence there is 40 years experience  
27 and they were more than -- I would have to look up my notes to  
28 get the correct wording, but more adequate to carry on. Again,  
29 not directed entirely at you, but these are two comments I make

1 before inviting the Prosecution. Perhaps Ms Carlton-Hanciles  
2 could enlighten us as to what the situation is with the Knoops.  
3 You have no responsibility for them.

4 MR METZGER: I have, however, been in constant  
09:36:53 5 communication with them. I'm fully aware of the reason why they  
6 are not here. Due to professional commitments elsewhere, I know  
7 when they are due to come to Court and we, as a team generally,  
8 have tried, with the exception of the first part of this session,  
9 to make sure at least one lead counsel from all of the teams,  
09:37:19 10 taken together, is here. As I understand it, the contracts that  
11 we signed provide for representation within the spectrum rather  
12 than for lead counsel to be here at all times. Therefore, as  
13 regards Mr Manley-Spaine, it seems to me these are extraordinary  
14 circumstances and that he has been at Court and when he hasn't  
09:37:48 15 been at Court, proper and prior arrangements have been made to  
16 cover the interests of Mr Kanu. These are extraordinary, we  
17 would submit, circumstances, which none of us ought to properly  
18 have foreseen, if I may put it in that way. I don't know if that  
19 answers certainly the questions, but, of course, you still have  
09:38:19 20 Ms Carlton-Hanciles here.

21 JUDGE SEBUTINDE: Could we hear from the Public Defender's  
22 office, please.

23 MS CARLTON-HANCILES: The Knoops indicated to the office  
24 that they already -- unfortunately, I have to speak of the team  
09:38:35 25 arrangements which I explained at the start of this session, that  
26 Mr Manley-Spaine is going to handle the case until 12 May. They  
27 are going to be in country on 12 May and the reason given to us,  
28 although we had a lot of exchange of emails on that issue, is  
29 that, as Mr Metzger has said, as they have to be in Sierra Leone

1 for a very long time, they want to make sure that they are able  
2 attend to some of their professional commitments elsewhere and be  
3 able to leave a locum to stand in whilst they will be in country  
4 until this session ends. As such, we are expecting them to be in  
09:39:26 5 country on 12 May. They have already sent the legal assistant of  
6 the team who is here with me, Karlijn van der Voort, to work with  
7 Mr Manley-Spaine until they come.

8 In addition, I want to draw Your Honours' attention to  
9 Article 25 of the directive on the assignment of counsel.  
09:39:57 10 Article 25(E) deals with replacements. If Your Honours permit, I  
11 may read the said section, "If assigned counsel is temporarily  
12 not available for any appearance on behalf of his client before  
13 the Special Court, all other counsel in the Defence team shall  
14 assume responsibility for their appearance and carriage of the  
09:40:25 15 client's case for such time as assigned counsel is unavailable.  
16 In exceptional circumstances, if other counsel in the Defence  
17 team is also unavailable for their appearance, duty counsel may  
18 appear to apply for suspects or accused upon receiving  
19 instructions from the assigned counsel." For the purposes of  
09:40:45 20 today, I am appearing for the second accused.

21 I want to plead with Your Honours it is a very exceptional  
22 circumstance and, as such, I do not have instructions from  
23 assigned counsel. Being that it has been due to an event which  
24 has been unforeseen, circumstances which are beyond our control,  
09:41:09 25 we are endeavouring -- as Mr Metzger has said, the Deputy  
26 Principal Defender and another legal officer has already left the  
27 Defence office to go and do a physical search and hold  
28 discussions with Mr Manley-Spaine. That is why this morning I am  
29 representing, based on Article 25 of the directive of the

1 assignment of counsel. But, be that as it may, that we will use  
2 our best endeavours to get to him because, up till now, we cannot  
3 actually pinpoint any particular reason, save what he told me on  
4 the phone two days ago. So, as such, I am here as duty counsel,  
09:41:55 5 stepping in the shoes of assigned counsel. Unfortunately at this  
6 stage, because of the precipitative nature of events, without  
7 instructions.

8 [Trial chamber confers]

9 PRESIDING JUDGE: Ms Taylor, you have a reply?

09:43:07 10 MS TAYLOR: Thank you. Your Honours, may I say by way of  
11 preliminary remarks that nothing I say is to be taken as the  
12 prosecution suggesting for one moment that the trial proceed in  
13 any way that affects the rights of the accused to an adequate  
14 representation.

09:43:22 15 Having said that, the Prosecution would submit that  
16 Mr Manley-Spaine, as an officer of this Court, has an obligation  
17 to inform this Court if he cannot attend for any particular  
18 reason. The reason given on Tuesday for his non-appearance was  
19 that he was traumatised and that he could provide a medical  
09:43:46 20 certificate, if necessary, and he would be present in Court on  
21 Thursday. If he is ill, he has an obligation to inform this  
22 Court, and if he is so ill that he is unable to do that, then  
23 obviously inquiries need to be made, but the concern for  
24 Mr Manley-Spaine by the rest of Defence counsel was expressed on  
09:44:08 25 Tuesday. In those circumstances, it seems very odd that a  
26 physical search for Mr Manley-Spaine was not instituted until  
27 this morning and that no effort was made yesterday to go and find  
28 him.

29 I do note that Ms Van der Voort is robed and present in



1 Court. She is a member of the Kanu Defence team. Ms Hanciles  
2 has indicated she appears as duty counsel, but doesn't have  
3 instructions. Mr Knoops is the assigned counsel, and presumably  
4 a telephone call can be made, and that she can get instructions  
09:44:49 5 from his assigned counsel to appear for the third accused so that  
6 this trial may proceed. Those are my submissions, Your Honour.

7 PRESIDING JUDGE: Thank you, Ms Taylor, we will consult.

8 MR METZGER: Just two matters by way of, hopefully,  
9 assisting. First and foremost, I can understand Your Honours'  
09:45:24 10 concern in terms of the hiatus, if you like, in the trial at this  
11 point in time and inquiries into the absence, if you like, of  
12 lead counsel at a time like this, although that has not affected  
13 proceedings in the past. I should point out and, certainly, I'm  
14 of the view the Prosecution are fully aware of this, on the  
09:45:56 15 principle of equality of arms, at the very least, that the  
16 Defence budgets are not open-ended. As I understand it, they  
17 are, in fact, very closed and have been very tight to manage. So  
18 the provision of counsel, certainly lead counsel, over the  
19 lengthy session that we have would not, in fact, pay for lead  
09:46:19 20 counsel to be present at every single session. It would be  
21 impossible, as well as having co-counsel. Because of the length  
22 of these proceedings and the volume of papers, we cannot proceed  
23 with only just one counsel.

24 Now, that isn't a complaint. We haven't complained about  
09:46:38 25 it in the past, although the doctrine of equality of arms has  
26 been mentioned. We have simply buckled down, put shoulders to  
27 the wheel and continued. Secondly, whilst I appreciate the  
28 Prosecution stance in wanting to have the trial proceed and not  
29 wanting to infringe the rights of any of the accused, some would

1 say it is disingenuous in the particular circumstances of this  
2 case to opt for simply what must be the case that  
3 Mr Manley-Spaine may simply be too ill to attend here or he  
4 simply ought to have called us. I'm fully aware --

09:47:30 5 JUDGE SEBUTINDE: Mr Metzger, can I interrupt. As I  
6 understand it, you are replying to Ms Taylor's submissions.

7 MR METZGER: Indeed.

8 JUDGE SEBUTINDE: Therefore we would appreciate, rather  
9 than reopen your initial motion, if, for instance, you could  
09:47:43 10 address us on the issue of why you think the inquiries into  
11 Mr Manley-Spaine's conditions and whereabouts have been  
12 instituted this morning rather than on Tuesday when Court  
13 adjourned, or when the Defence first knew this matter. I think  
14 that really is the only thing you need address us on, rather than  
09:48:07 15 expand on your earlier submissions.

16 MR METZGER: With respect, I was in the preamble because,  
17 as I recall it, my learned friend Ms Taylor used words to the  
18 effect of "if Mr Manley-Spaine is unwell", because that was the  
19 last news we had. Now, I wanted to bring it into context. Just  
09:48:33 20 before the last news we had, I addressed the Court on the fact  
21 that Mr Manley-Spaine's clerk, who works with him had been, and I  
22 use the terms, as it were, in parenthesis, arrested by military  
23 police, as far as we understand, armed and his premises had been  
24 searched. In the circumstances --

09:48:57 25 PRESIDING JUDGE: Excuse me, Mr Metzger, I don't  
26 recall that being your --

27 MR METZGER: When I said arrested in parenthesis --

28 PRESIDING JUDGE: I understood that his premises were  
29 searched, it was another person who was arrested, as I recall you

1 telling us.

2 MR METZGER: Then you misunderstood me. You misunderstood  
3 me. Our information is not only the first person whose name was  
4 mentioned, but the clerk to Mr Manley-Spaine's address was  
09:49:21 5 searched and, although he was not arrested, these were my words:  
6 he was not free to leave and use the convenience, I said, and let  
7 me use perhaps a more understandable word -- I was perhaps being  
8 euphemistic -- to use the toilet without being accompanied by  
9 somebody, as we understand it, who was armed. In the face of  
09:49:51 10 those circumstances, after Mr Manley-Spaine was spoken to,  
11 Ms Carlton-Hanciles addressed this Chamber and said he was  
12 traumatised. That trauma may well not relate only to what  
13 happened to his clerk; that is our concern.

14 Now, I address the issue as to why no attempts have been  
09:50:16 15 made to contact Mr Manley-Spaine. Well, in fairness, I don't  
16 think that is what my learned friend was saying. I think  
17 Ms Hanciles will address you on that. From my point of view --  
18 certainly counsel's point of view -- all day yesterday and all  
19 Tuesday afternoon, we were constantly calling Mr Manley-Spaine's  
09:50:39 20 telephone number. Transport, certainly for the Bar -- it's not  
21 as easy to get around here for us, unless you have private means  
22 or private vehicles at your disposal, and that is not always  
23 possible. I leave the matter there, because in so far as the  
24 specific matter of perhaps the Principal Defender's office  
09:51:11 25 failing to institute a personal search for the person of  
26 Mr Manley-Spaine in the intervening period, maybe  
27 Ms Carlton-Hanciles can enlighten the Trial Chamber.

28 MS CARLTON-HANCILES: Your Honours, it is unfortunate that  
29 we could be in this state of affairs this morning. When I

1       communicated to the Chamber on Tuesday, the impression I had from  
2       speaking to Mr Manley-Spaine on the phone was that he would get a  
3       medical on Tuesday afternoon and, in fact, he could be able to  
4       come to the Court. As such, we were here for the whole day on  
09:51:51 5       Tuesday. I made a personal phone call to him again in the  
6       afternoon. He told me that he was going to see a doctor, that he  
7       will try to come. That was all he said. We left here about 7.30  
8       on Tuesday.

9       Unfortunately, Wednesday was a public holiday and I was at  
09:52:10 10       home. In fact, from my home, I phoned all counsel concerned with  
11       this matter, trying to know whether they had been in touch with  
12       Mr Manley-Spaine, because I phoned him and his phone was off. It  
13       was just saying, "No mailbox." Unfortunately, it was a public  
14       holiday. I do not personally know Mr Manley-Spaine's home  
09:52:32 15       address, that is why, had it been a working day yesterday,  
16       Your Honours, definitely the Defence office would have gone all  
17       out to solve this situation. That is why first thing this  
18       Thursday morning we have not only relied on the telephone, we  
19       have people who have left their offices and have gone to speak to  
09:52:52 20       him.

21       Your Honours, all I would say at this stage is that we have  
22       done our best to make sure he comes before this Court, and we  
23       still have to report, because, as I said, the Deputy Principal  
24       Defender is out of the office in search of him. She has  
09:53:07 25       indicated at the moment she comes back to the office, she is  
26       coming straight to this Court, providing we are still sitting.

27       PRESIDING JUDGE: Thank you, Ms Carlton Hanciles.

28       JUDGE LUSSICK: Mr Metzger, you mentioned earlier there was  
29       another dimension that can't be mentioned in open Court.

1 MR METZGER: We would prefer not to.

2 JUDGE LUSSICK: Does that throw any further light on the  
3 non-appearance of Mr Manley-Spaine, or would that dimension no  
4 longer be applicable if your inquiries came up with something  
09:53:45 5 concrete this morning?

6 MR METZGER: It would no longer be applicable because it  
7 would be, as it were, steeped in the past, and it would be  
8 something that Your Honours may not necessarily know of. It  
9 requires a knowledge of this country, I would think, between 1997  
09:54:09 10 and certainly 1998.

11 JUDGE LUSSICK: Thank you.

12 PRESIDING JUDGE: We will adjourn in order to discuss this.  
13 We will endeavour to give counsel about five minutes' notice when  
14 we intend to come back into Court.

09:54:46 15 [Break taken at 9.53 a.m.]

16 [On resuming at 10.30 a.m.]

17 [TB280405B - SGH]

Principal 18 PRESIDING JUDGE: We understand that the Deputy  
19 Defender, Ms Elizabeth Nahamya is within the precincts of the Court.

10:32:47 20 MS NAHAMYA: May it please, Your Honour. I would like to  
21 report to you that we were unable to reach Mr Manley-Spaine this  
22 morning. I went specifically to look for him at his residence  
23 and I saw him. He has some discomfort and he says he is running  
24 high blood pressure. He was preparing himself to go to see the  
10:33:12 25 doctor at 10.30. And he says if he is through with the doctor he  
26 will endeavour to come and explain his position before this  
27 Court. The Defence Office reminded him that he is under an  
28 obligation to be available to appear for his client and he said  
29 indeed he is not dropping out of the case. And he will do

1 everything possible to continue with that case. Much obliged.

2 PRESIDING JUDGE: Thank you, Mrs Nahamya for that  
3 information. I will now give the ruling of the Trial Chamber on  
4 the application made by Mr Metzger.

10:33:54 5 [Ruling]

6 PRESIDING JUDGE: This Trial Chamber is conscious of the  
7 duty of both ensuring an expeditious trial and the duty to ensure  
8 the rights of the accused are upheld in accordance with Article  
9 17. We will grant an adjournment as sought until 2.00 p.m. and  
10:34:17 10 we expect to continue the trial in the light of the undertakings  
11 by the Office of the Principal Defender. Madam Court Attendant,  
12 please have the Court stand adjourned until 2.00 p.m.

13 [Luncheon recess taken at 10.34 a.m.]

[On resuming at 2.05 p.m.]

14:07:38 PRESIDING JUDGE: Before I invite Prosecution to call their  
16 witness or open their case there is a matter which the Trial Chamber  
17 wishes to have clarified. The Trial Chamber has had brought to its  
18 notice three articles as follows from the Awoko of Tuesday, 26th  
19 April 2005; the we Yone newspaper of Thursday, 28th of April 2005; and  
14:08:13 20 the New Vision of Thursday, 28th April 2005. Two of these are ascribed  
21 to the authorship of one of the counsel in this Court, and the other is  
22 attributed to him. I therefore, Mr Harris, call upon you to ask if  
23 indeed the content of those three publications are correctly ascribed to  
24 you?

14:08:48 25 MR HARRIS: I have not seen two of the three which you have  
26 referred. I have seen one and that was brought to my attention  
27 by Mr De Silva in a letter addressed to those who are the  
28 Principal Defender. It is correct that that is ascribed to me.

29 PRESIDING JUDGE: Did you say that you had not seen two of

1 them?

2 MR HARRIS: No, I have not.

3 PRESIDING JUDGE: Please identify which two, in which case  
4 copies will be made available for you to answer the question put  
14:09:38 5 to you by the Bench.

6 MR HARRIS: I have seen one which came to the press  
7 clippings, Awoko? Whatever, I have seen that. I have not seen  
8 the other two.

9 PRESIDING JUDGE: Very well, Mr Harris, a copy of the other  
14:10:00 10 two to which I have referred will be made available to you and  
11 you will be called upon to answer the Bench's question.

12 MR HARRIS: Well, I could answer the question -- very well.

13 PRESIDING JUDGE: I can indicate to you that the two are in  
14 similar terms. In fact I think they are virtually the same  
14:10:25 15 without going through them word for word. I will ask that both  
16 be made available to you now and you can indicate to us when you  
17 are ready to answer in the Court after you have had an  
18 opportunity to look at them, which I anticipate, since we are now  
19 about to go into trial, will not be immediately.

14:10:47 20 MR HARRIS: Your Honour, I am grateful. Fine.

21 PRESIDING JUDGE: Counsel, I am about to call on the  
22 Prosecution. Do you wish to deal with it now?

23 MR HARRIS: It is entirely a matter for the Court it seems.  
24 If you wish me to deal with it now, certainly.

14:11:42 25 PRESIDING JUDGE: I wish, Mr Harris, for to you have  
26 sufficient time to be able to answer us competently.

27 MR HARRIS: I can assure you that I have seen two, the  
28 third I have not seen, but the substance -- if you are saying the  
29 substance is correct, I am entirely prepared to accept that what

1 you are saying in substance is correct. There is absolutely no  
2 reason for me not to do otherwise than to accept wholly what you  
3 have said.

4 PRESIDING JUDGE: So all three publications are ascribed to  
14:12:23 5 you; that is a correct authorship?

6 MR HARRIS: Yes.

7 PRESIDING JUDGE: well, this Trial Chamber wishes it to be  
8 noted, Mr Harris, that we find this publications both offensive  
9 and contrary to the interests of justice, and we hereby give you  
14:12:39 10 a warning pursuant to the provisions of Rule 46(A) of the Rules  
11 of Procedure and Evidence.

12 MR HARRIS: What does the rule say. If you give me a  
13 moment, I will look at it.

14 JUDGE LUSSICK: It says you have misconducted yourself,  
14:12:53 15 Mr Harris.

16 MR HARRIS: Oh, all right. would you just give me one  
17 moment, please, I need to speak to counsel. I thank you for the  
18 time. My learned friend, Mr Metzger, will deal with the issue  
19 raised as to Rule -- is it Rule 42? 46.

14:13:43 20 PRESIDING JUDGE: Mr Harris, this is nothing to do -- this  
21 is between you and the Court. I have spoken and I will now call  
22 upon Prosecution to open their case. If you feel there is some  
23 comment you wish to make, it would be proper to allow you time to  
24 formulate your --

14:14:03 25 MR HARRIS: Yes, I will raise it. The position is this.  
26 If we look at Rule 42, 46, my conduct you say you found offensive  
27 under Rule 46(A); is that correct?

28 PRESIDING JUDGE: Yes.

29 MR HARRIS: What is the offensive nature, if I might ask,



1 of the content of the document?

2 PRESIDING JUDGE: Do you see the heading of one of them?

3 MR HARRIS: Which one are you referring to?

4 PRESIDING JUDGE: New Vision. And it is the understanding  
14:14:55 5 of this Trial Chamber, Mr Harris, that you are a member of the  
6 Bar of England and Wales and we therefore remind you of the  
7 provisions of Rule 709.1 of that Bar.

8 MR HARRIS: Well, the rule of the Bar of England and Wales  
9 does not preclude me from writing or speaking to the press. And  
14:15:16 10 the rules here -- the rules, the present rules, of this Special  
11 Court does not preclude me from speaking to the press. It  
12 specifically does not preclude me from speaking to the press. So  
13 I am not sure what we are getting at or where we are going. I  
14 have not committed any breach of any rule that I know.

14:15:51 15 MR METZGER: May I respectfully address the Chamber on a  
16 point of information?

17 PRESIDING JUDGE: This is Mr Harris' matter, Mr Metzger.  
18 If it is a matter in which you indicate that you had some hand in  
19 this only -- we have not addressed you, nor have we ascribed  
14:16:09 20 anything to you.

21 MR METZGER: I appreciate that, Your Honour, but we operate  
22 as a joint team and in terms -- if Mr Harris is sanctioned in any  
23 way, it affects, in our respectful submission, the whole of the  
24 AFRC Defence team. And we would respectfully urge the Trial  
14:16:28 25 Chamber to consider very carefully that which has been said in  
26 this Court because in terms - and this can be checked, I am sure,  
27 with anybody in this jurisprudence - that there have been remarks  
28 off-the-cuff of a cutting and biased nature coming from the very  
29 mouths of the top of the Prosecution in this case in the local

1 and international press. They have never been sanctioned. In  
2 terms, there is no code of conduct. It is expressly removed from  
3 the code of conduct that concerns the Bar that is appearing in  
4 this jurisdiction. And in those terms, we would respectfully  
14:17:19 5 submit that it would be - I think there is no other way of  
6 putting it - wrong to sanction someone for doing exactly what it  
7 is, except on the side of the Defence, has been done by the  
8 Prosecution ad infinitum, freely and without any repercussions  
9 whatsoever. It will give a cause for concern as to the question  
14:17:47 10 of fairness, and over and above that, in our respectful  
11 submission, there is nothing that was contained within that  
12 article ascribed to Mr Harris that he has not said in open court  
13 in this building, at which point in time the Bench has not said  
14 to him that anything he said was offensive or contumacious in any  
14:18:08 15 event.

16 PRESIDING JUDGE: Mr Metzger, on the point you raise. The  
17 first I would say, as I am not aware of the publications to which  
18 you refer, and therefore we would request that those publications  
19 are made available to us.

14:18:28 20 MR METZGER: I am sure that can be done.

21 PRESIDING JUDGE: In which case we will, of course,  
22 consider them. That is number one. Number two, what is said  
23 within the precincts of the Court where the Court is subject to  
24 submission, reply et cetera, is one matter. It is a different  
14:18:46 25 matter to publish in the press matters such as, "The real  
26 question is whether justice is or could be seen to be done. The  
27 answer unhappily must be in the negative," and then say that  
28 detainees have been met -- families of detainees have been unable  
29 to gain access et cetera, et cetera, I will not go into the

1 detail when factually when it was made known that that was  
2 inaccurate.

3 MR HARRIS: Well, with the greatest respect, it is not --  
4 there is absolutely nothing in this document which is inaccurate.  
14:19:28 5 Let us not confuse the issues that I have in mind. The issues  
6 which we have in mind --

7 PRESIDING JUDGE: [Microphone not activated] Excuse me, I  
8 was listening.

9 MR HARRIS: The issues which we have in mind are these:  
14:19:52 10 There was a complaint, I think on 6th March, relating to all  
11 three defendants and their very close families. By that I mean  
12 the wives and I think it was the sister of my defendant. An  
13 inquiry was conducted into that and also into the suspension of  
14 the investigators.

14:20:23 15 PRESIDING JUDGE: I am sorry, Mr Harris, the trial did not  
16 open until the 7th. I am sorry, I am not aware of anything that  
17 occurred prior to this.

18 MR HARRIS: Well then, I have got the date wrong, but the  
19 substance is correct. There was an inquiry conducted. They  
14:20:46 20 remain suspended. The real question is why? And this is what  
21 the defendants are asking. Are they being punished? I read a  
22 letter to you to the Court on but a few hours wherein they said  
23 exactly the same thing, and then I was very surprised to learn  
24 that the Court was thinking along the lines of exclusion at the  
14:21:18 25 facility. I have never raised an issue about the facility. I  
26 have never once said to this Court that the facility has refused  
27 the wives of these defendants. I raised with you at each stage  
28 the issue about the access to this Court hearing. By virtue of  
29 your order they have not been able to do or to have or to enjoy.

1 I thought I made that abundantly clear a day or two ago, I am  
2 sure I did. So that is correct. The next that is equally  
3 correct is that persons attempting to visit the defendants in the  
4 facility have been denied access. It is not within your province  
14:22:25 5 to deal with that. And the relationship that I have got, if I  
6 might say so, with the facility is an excellent one and the  
7 difficulties which have been brought to my attention I have  
8 raised and dealt with at the facility. So I did not see and at  
9 no stage do I seek your assistance so far as the facility is  
14:22:56 10 concerned. I seek your assistance so far as the order you have  
11 made is concerned which denies them access to this Court. That  
12 is correct. I am not sure what is the next passage which is of  
13 an offending nature.

14 PRESIDING JUDGE: The document headed, "Opinion by Wilbert  
14:23:19 15 Harris, lead counsel," says inter alia, "As I understand it  
16 applications by them," meaning apparently family. "By named  
17 persons have not been approved for several months. Attempts to  
18 gain entry to see the detainees are met with refusal at the gate  
19 of the entry. Intended visitors are told that entry is denied  
14:23:42 20 unless courts approve."

21 MR HARRIS: Yes, that is true. How could that be offending  
22 to the court? How could that be a course of conduct by counsel  
23 before a court with the greatest respect? This is something  
24 which is outside the ambit of the court, it is outside the  
14:24:06 25 perimeter of the court. You have no control over the decisions  
26 made by the detention, as I understand it, if indeed you do, then  
27 I withdraw the observation. And again, I repeat, my relationship  
28 with the security forces, by that I mean the detention officers,  
29 is as warm as I would like it to be. And to raise that issue was

1 not directing itself to any aspect of this Court. It simply was  
2 asking the question as I raised it: Has there been or is there  
3 equality of arms? That is the question. If the answer is no,  
4 then the delicate balance of any society is affected. The  
14:25:07 5 delicate balance of justice is affected. And if that is affected  
6 then the defendants can say -- and that's their problem, they are  
7 saying, "Hey, because the scales have gone tilted the other way,"  
8 then that question as to whether I have justice or could get  
9 justice - I think someone raised the issue the other day - does  
14:25:44 10 in fact apply. And we need to apply your minds to. I think that  
11 is all that this article says. I don't think it says anything  
12 else.

13 PRESIDING JUDGE: If you pause, please. That is your  
14 reply?

14:26:00 15 MR HARRIS: I pause -- I wait for you. The other issue  
16 about -- in fact I have researched the question as to whether  
17 there is a code of conduct which governs counsel speaking to the  
18 press. With the greatest respect, I can't find it. I need to be  
19 directed. Someone must direct my mind to that code of conduct  
14:26:30 20 which says counsel cannot speak to the press.

21 JUDGE LUSSICK: Mr Harris, we go to the eighth edition of  
22 the code of conduct of the Bar of England and Wales. Now just a  
23 minute, I have something more.

24 MR HARRIS: I am really sorry, I should not --

14:26:53 25 JUDGE LUSSICK: I will quote you Article 709.1, "A  
26 barrister must not in relation to any anticipated or current  
27 proceedings or mediation in which he is briefed or expects to  
28 appear or has appeared as an advocate, express a personal opinion  
29 to the press or other media in any other public statement upon

1 the facts or issues arising in the proceedings." Now, firstly,  
2 it would defy all logic to say that barristers appearing in the  
3 Special Court are not bound by any code of conduct because there  
4 is no specific Special Court code of conduct. Further, to  
14:27:43 5 demonstrate that the code of conduct in your own Bar at home, to  
6 which you are bound, to demonstrate that that is binding on you  
7 here can be seen from Rule 46. If you look at 46(D) if we decide  
8 to sanction you in any way - and I might say that we have not  
9 decided that, we have just decided to give you a warning --

14:28:08 10 MR HARRIS: 46(D).

11 JUDGE LUSSICK: 46(D) "A judge or a chamber may also, with  
12 the approval of the president, communicate any misconduct of  
13 counsel to the professional body regulating the conduct of  
14 counsel in his state of admissions." So you are bound by a code  
14:28:31 15 of conduct.

16 MR HARRIS: I am not saying for one moment -- please, I am  
17 not saying for one moment, that there is not a code of conduct  
18 existing which governs the appearance before this Court. That is  
19 not what I am saying. I am saying the code of conduct which  
14:28:51 20 governs the appearance before this Court does not exclude  
21 speaking to the press in fact in the manner I speak to them, or  
22 in an interview.

23 JUDGE LUSSICK: well, we say it does, Mr Harris. If you  
24 express opinions in the case in which you are appearing and you  
14:29:19 25 have done so in this particular case.

26 MR HARRIS: Yes, I have.

27 JUDGE LUSSICK: I think your Bar rules are quite clear on  
28 that.

29 MR METZGER: Can I assist in the sense that I would not

1 want this Court to mislead itself by applying the code of conduct  
2 for the Bar of England and Wales. This is a matter, I think, at  
3 a plenary was discussed and specifically excluded from the codes  
4 of conduct as far as the Special Court is concerned. And again,  
14:29:55 5 I would remind the Court of what David Crane, the Chief  
6 Prosecutor, has done in relation to speaking to the press. And  
7 perhaps that very reason calls for it to be removed because to do  
8 otherwise would be to defeat that fundamental pillar of justice  
9 within the international jurisprudence that we refer to as  
14:30:21 10 equality of arms. And therefore, we would submit - and this is a  
11 matter we say that can be easily researched. I think all heads  
12 of sections, certainly the Principal Defender, the Registry  
13 attend at plenaries and when decisions are made as to what to  
14 include and what not to include in the rules, that particular  
14:30:41 15 aspect referring to 709 was struck out specifically from the  
16 codes of conduct relating to conduct of counsel at the Special  
17 Court. And in those circumstances, we would be very concerned  
18 indeed if any one of us were censured, not necessarily  
19 sanctioned, but censured, because to the world at large we would  
14:31:09 20 respectfully submit the message is what the Prosecution wants to  
21 do they can, but what the Defence wants, it can't. Even though  
22 they may be the same thing, as it were, each one batting for his  
23 own side. We would urge extreme caution in that approach indeed  
24 by virtue of that which I have most humbly and respectfully  
14:31:35 25 submitted to you.

26 JUDGE LUSSICK: well, as the Presiding Judge has indicated,  
27 Mr Metzger, those articles relating to the Prosecution certainly  
28 have not been drawn to our attention. And I personally was not  
29 aware of the mention of the British Bar rules at plenary.

1 Needless to say that none of us have ever been a plenary, but we  
2 will certainly look into it.

3 MR METZGER: That is why I thought it prudent to bring it  
4 to the Trial Chamber's attention before we strayed into matters  
14:32:08 5 that perhaps might cause further complications in due course than  
6 absolutely necessary.

7 PRESIDING JUDGE: Mrs Nahamya is on her feet.

8 MS NAHAMYA: Your Honours, I would like to bring it to your  
9 attention that the code of conduct for counsel appearing before  
14:32:28 10 this Court is in the process of being effected. The next plenary  
11 is going to adopt a code of conduct. At the moment the code is  
12 circulating and we are making amendments to it. I am much  
13 obliged.

14 PRESIDING JUDGE: Thank you.

14:32:43 15 JUDGE SEBUTINDE: Ms Nahamya, does that mean there is not a  
16 code in place yet for the Special Court? There is in fact just a  
17 draft?

18 MS NAHAMYA: Positive, Your Honour.

19 JUDGE SEBUTINDE: So then, for the record, in the absence  
14:32:59 20 of a code of conduct for the Special Court, the codes of conduct  
21 for the respective jurisdictions apply?

22 MS NAHAMYA: They should apply. They should apply, but we  
23 are not applying them right now. We are not applying the codes  
24 of conduct for that because we are coming up with our own code  
14:33:21 25 for the Court. However, if there is gross misconduct it will  
26 revert to the Bar associations of the countries where they come  
27 from, but not necessarily the Bar where the code is applicable.  
28 But that conduct can be sent -- I mean, you can make a report to  
29 their various Bar associations.



1           PRESIDING JUDGE: Ms Taylor, please proceed.

2           MS TAYLOR: Thank you, Your Honour. The next witness will  
3 be TF1-272. That witness will give evidence in English. The  
4 witness will be led by Ms Pack and she has an application to make  
14:35:10 5 in respect of that witness in advance of the witness being called  
6 into the courtroom.

7           PRESIDING JUDGE: Please proceed.

8           MS PACK: Your Honour, I apply to have the witness's  
9 evidence heard entirely in closed session, and I would ask that  
14:35:39 10 that application be heard in camera according to Rule 75(B).  
11 There are matters which I will need to explain that will lead to  
12 the witness being identified should I mention it in open court.

13           PRESIDING JUDGE: Please refer me to the rule again.

14           MS PACK: Rule 75(B). It specifically states, "A judge or  
14:36:08 15 a Chamber may hold an in camera proceedings to determine whether  
16 to order measures to protect" and so on. And so I would ask for  
17 the hearing to be heard in camera because what I will state may  
18 well lead to the witness being identified in support of my  
19 application for closed session.

14:36:29 20           PRESIDING JUDGE: There has been some preliminary  
21 indication of this, Mr Metzger and other counsel. However,  
22 before we proceed on to rule, is there any response to counsel's  
23 application to have the matter -- the application heard?

24           MR METZGER: It could be that I am a little confused. The  
14:36:50 25 notice, as I recall it, was that it was the Prosecution's  
26 intention to make an application for protective measures in  
27 relation to this witness, which we did not oppose, because we  
28 understood that although we could see no reason for it that  
29 others were being protected similarly and there was no reason for

1 us to get in the way. But when it comes to a closed session, I  
2 believe I am taken somewhat by surprise.

3 PRESIDING JUDGE: Now, Mr Metzger, I am saying this without  
4 the documents right in front of me.

14:37:24 5 MR METZGER: Likewise.

6 PRESIDING JUDGE: But my recollection is - and I could be  
7 corrected - that the application originally included an  
8 application for a closed session and the Bench's ruling was that  
9 that particular application was premature at that time.

14:37:38 10 MR METZGER: Indeed.

11 PRESIDING JUDGE: I think our wording was "at that stage".  
12 So in the light of that I am not altogether -- I can only say  
13 surprise was not a word I would have used. Are you aware of the  
14 ruling and the application to which I refer?

14:38:08 15 MR METZGER: I am aware of the ruling. And it may well be  
16 that I also recall the phrase "premature at this time". But I am  
17 now somewhat in the dark as to any reasons, if they were given in  
18 the Prosecution motion, as to having a closed session. And if it  
19 was premature at the time of making the application and it is now  
14:38:37 20 mature, then perhaps there would be a slight difference in the  
21 approach. We would simply like not to be unnecessarily ambushed  
22 and perhaps if we could have a little time to discuss that.

23 PRESIDING JUDGE: Let us deal with the application first of  
24 all in closed session. If it is necessary for you to have some  
14:38:57 25 time we will hear you on the point at the end of the  
26 Prosecution's applications. So we will entertain -- excuse me,  
27 just a moment, please. Yes, the consensus is that we will  
28 entertain the application and hear submissions in closed session  
29 and in the light of those, we will then deal with any matters

1 that arise. Therefore, counsel for the Prosecution is at liberty  
2 to make their application in closed session. We will then hear  
3 submissions.

4 MR METZGER: We may, of course, not be in a position to  
14:39:44 5 respond to that application until we have heard it and had mature  
6 reflection.

7 PRESIDING JUDGE: We likewise will wait and hear what is  
8 said.

9 MR METZGER: So be it.

10 PRESIDING JUDGE: Madam Court Attendant, there will first  
11 of all be an application in closed session and then we will  
12 direct in accordance with what is decided. So please have this  
13 part made in closed session. Counsel, we have had an indication  
14 that it will take five minutes to get this set up. So we will  
14:41:37 15 retire and allow you to have some breathing space. Madam Court  
16 Attendant, just adjourn for five minutes.

17 [Break taken at 2.40 p.m.]

18 [On resuming at 2.52 p.m.]

19 [At this point in the proceedings, a portion of the  
20 transcript, pages 28 to 36, was extracted and sealed under  
21 separate cover, as the session was heard in camera.]

22 [Whereupon the hearing adjourned at 4.08 p.m.,  
23 to be reconvened on Friday, the 29th day of  
24 April, 2005, at 10.30 a.m.]

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