

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL-2004-14-T
TRIAL CHAMBER I

THE PROSECUTOR
OF THE SPECIAL COURT
V.
SAM HINGA NORMAN
MOININA FOFANA
ALLIEU KONDEWA

TUESDAY, 8 FEBRUARY 2005
9.40 a.m.
STATUS CONFERENCE

Before the Judges:

Pierre Boutet, Presiding

For Chambers:

Ms Sharelle Aitchison
MS Roza Salibekova

For the Registry:

Mr Geoff Walker

For the Prosecution:

Mr James C Johnson
Mr Kevin Tavener
Ms Bianca Suciu
Mr Mohammed Stevens (intern)

For the Principal Defender:

Ms Simone Monasebian
Mr Ibrahim Yillah

For the Accused Sam Hinga Norman:

Dr Bu-Buakei Jabbi
Mr John Wesley Hall

For the Accused Moinina Fofana:

Mr Arrow Bockarie
Mr Victor Koppe
Mr Andrew Ianuzzi
Ms Clare da Silva

For the Accused Allieu Kondewa:

Mr Charles Margai
Mr Yada Williams
Mr Ansu Lansana

1 to ask the counsel for the first accused if you have any
2 comment to make.

3 MR HALL: We have none, Your Honour.

4 PRESIDING JUDGE: Thank you. What about the second accused?

5 MR KOPPE: None.

6 PRESIDING JUDGE: None. Mr Margai?

7 MR MARGAI: None, My Lord.

8 PRESIDING JUDGE: The next item on my agenda, having dealt
9 with the conditions of detention now, has to do with the
10 role of the Principal Defender. I do recall at the last
11 status conference for the CDF when we were going through
12 the agenda I asked the Principal Defender for a report on
13 the role and responsibilities that her office is
14 performing and it had to do more specifically with
15 whether or not the Principal Defender as an organisation
16 could act separate and apart from counsel from accused
17 that are properly and duly represented by counsel and the
18 Chamber requested this report on 17 September 2004. You
19 may have produced it, if you did I have not received
20 it and if you have not I would ask you to do so, or I
21 will ask you for comments if you have any. Comments
22 about the production, not the report.

23 MS MONASEBIAN: Very well, thank you, Your Honour. I am glad
24 to know it was this report, I thought it may have been
25 one of the reports regarding the replacement of counsel
26 or the photocopier and it is my fault for not checking
27 that it was indeed this, but nevertheless I am prepared
28 to briefly give Your Honour an update. Which is that at
29 the present moment - and I think this was mentioned at

1 one of the RUF accused status conferences before Judge
2 Thompson Bankole -- and I apologise to Your Honour for
3 not making sure that all three Trial Chamber judges were
4 independently apprised of this. what we are doing at the
5 moment is - and this has been circulated to the counsel
6 of judges - address the role of the office to some extent
7 by change of a statute, change of the agreement between
8 the Government of Sierra Leone and --

9 PRESIDING JUDGE: I am aware of that, but my concern had more
10 to do not with changes, but with the actual status of the
11 Principal Defender. And one of my concerns as you -- it
12 may have been brought to your attention was specifically
13 with regard to Mr Yillah who has acted, in fact, on
14 behalf of the first accused, not only assisting in doing
15 research, but has acted to represent the first accused
16 and, if I am not mistaken, did some cross-examination.
17 And in those circumstances I and we were getting
18 concerned that if you are acting on behalf of one
19 specific accused and doing representation you are more or
20 less precluded from acting for others. So that is the
21 kind of difficulties that I was raising with that. As an
22 example I am just using that.

23 MS MONASEBIAN: I think that with all respect Your Honour has
24 brought up the essential issue right here and there, the
25 one that is facing us in this trial particularly and now
26 I understand what has revisited this issue so urgently.
27 And I believe was it during Christmas time that Mr Yillah
28 was appearing on a couple of days in cross-examinations.
29 Now, when Mr Yillah consulted me while I was out of the

1 country about this, the reason he was doing this was
2 under the guise of the directive on assignment of counsel
3 which allows members of the Principal Defender's Office
4 to appear where counsel is not available. And in those
5 instances, as Dr Jabbi reported to me subsequently, he
6 was ill and unavailable to attend. I think one of the
7 examinations may have started then Dr Jabbi returned and
8 so Mr Yillah continued in that capacity.

9 Now, because Mr Norman and Mr Yillah have a good
10 relationship and because I believe Mr Yillah is doing a
11 service to this case and has comported himself well, what
12 I have done as a remedial measure is take Mr Yillah off
13 the other cases in the office and that has been made
14 clear to him from the day that he began his examinations
15 in this matter. He is still involved in office matters
16 of outreach and other events that are unrelated to this
17 specific representation of other accused.

18 PRESIDING JUDGE: That is fine with me. My concern was from
19 the moment he has acted to officially do representation
20 on behalf of one specific accused in this case, he more
21 or less became precluded from acting for others, other
22 accused in this particular case. So that was my concern.
23 So if you are confirming that he has now been assigned
24 essentially to the first accused, that is okay.

25 MS MONASEBIAN: If I could just say one other thing, Your
26 Honour. At one point it was Your Honours who assigned
27 Mr Yillah --

28 PRESIDING JUDGE: Yes.

29 MS MONASEBIAN: And Your Honours have had longer experience of

1 Mr Yillah than I have because Mr Yillah was involved with
2 this case from day one, along with Your Honours.

3 PRESIDING JUDGE: Indeed.

4 MS MONASEBIAN: But one thing I do want to point out as well,
5 I do take Your Honour's point - and I believe all three
6 Trial Chamber judges are unified on this issue - that we
7 have to avoid at all costs the possibility of a conflict
8 of interest. I don't agree - and in all due respect it
9 is not my office's position - that there is automatically
10 a conflict of interest and the suggestion that I would
11 make to Your Honours is that in some instances it may be
12 that one counsel, be it Mr Margai or one of the other
13 lawyers, may be examining an expert witness or a lay
14 witness for all of the accused. There may be instances
15 where somebody can appear doing an examination or working
16 on an expert witness that touches and concerns more than
17 one accused. I will for the time being though, out of
18 an abundance of caution, continue keeping Mr Yillah out
19 of the other two cases just to avoid the appearance of
20 impropriety, but I don't believe there is an actual
21 conflict in this situation.

22 The only other thing very briefly to tie up what
23 Your Honour has mentioned, regarding the opportunity -
24 and I think it was Your Honour who was kind enough to
25 offer it to me when I was beseeching Your Honour to give
26 it to me - the opportunity to give that report to Your
27 Honours about why this office is different than the
28 administrative fee paying offices in the other tribunals
29 was something that I was asked to present to Your

1 Honours. I don't think a timeline was set. In fact, I
2 recall that a timeline was not set and it was at my
3 request to bring those issues to the Court and give the
4 Prosecution an opportunity to respond to it. We are
5 working on that in the office along with many other
6 competing and pressing interests and we shall have that
7 before Your Honours and the Prosecution as soon as
8 possible. So I thank Your Honour for that.

9 PRESIDING JUDGE: Thank you. Looking now at trial preparation
10 and logistics, which is the next item on the agenda. So
11 according to the judicial calendar for the CDF trial, the
12 further trial session, this is the one that we will start
13 tomorrow morning, will run from 8th February until 17th
14 March 2005. So this is still what we have on the agenda
15 for now.

16 I should tell you that we might do some slight
17 changes in the fifth session, but we have not decided yet
18 what they might be. But we may have to do some
19 re-adjustment on the scheduling depending as to how the
20 CDF and the RUF do progress. So this is just a warning
21 at this time that there might be changes, but it is not
22 to this session. If we do have changes, it might be in
23 June.

24 I am certainly satisfied that the Principal
25 Defender's office and defence counsel have been properly
26 supplied, I am told, with a photocopier. The Court
27 itself has not received one, but I am told that your
28 office has and at least a photocopy machine is now
29 available for all defence counsel. Therefore, I can only

1 encourage you to make use of it for your needs and that
2 should avoid some of the problems we have experienced in
3 the past. So, Mr Margai, there is a photocopying machine
4 now in the defence office.

5 MR MARGAI: I am grateful. Thank you very much.

6 PRESIDING JUDGE: I am addressing that to you because you were
7 the one complaining about it, amongst others as well. It
8 took a while, but apparently it has been finally
9 achieved.

10 MR MARGAI: The end justifies the means anyway. Thank you.

11 PRESIDING JUDGE: Thank you. The next item I have has to do
12 with voice distortion. We have experienced in the
13 previous session with the RUF some changes with the voice
14 distortion system and I am told that the technicians are
15 available if you want to see what it means now. The
16 changes have been essentially to adjust the pitch of the
17 distortion so it does not give a squeaky voice to whoever
18 is being heard at that time, but to have the system to
19 work properly we are instructed that the witnesses have
20 to speak very close to the mike when they are sitting in
21 the witness box; whilst others have to speak away from
22 the mike so the witness will have to be close and
23 therefore that is the best possibility to achieve that.
24 But, as I say, if you are interested - and I do encourage
25 you to come and test it this afternoon - the technicians
26 from the IT organisation will be on hand and they can
27 show a display to you this afternoon if you are
28 interested.

29 You may remember we had the system of speakers on

1 the desks as such and that was causing more problems than
2 solving the difficulties, so we have done away with that
3 and we have used it in the last session with the RUF with
4 the new system and it seemed to be working well. So I
5 hope it does the same in this particular session so we
6 have no further problem with this.

7 With the new system, those sitting here in the
8 courtroom per se will hear the voice as they are, it is
9 only -- the distortion will only be for the public
10 gallery as such and, as I say, what we are trying to
11 achieve now is to have the minimum possible distortion,
12 but sufficient to disguise the voice of the witness, but
13 if I speak or anybody else speaks, our voice will be
14 distorted in the public gallery, but if you speak away
15 from the mike the distortion of your voice will be
16 minimised. But the perception certainly when sitting in
17 the gallery does not give the impression of a very funny
18 voice which we are doing away with.

19 So on this distortion issue if you are interested I
20 would ask you to inform maybe the Principal Defender and
21 she will be making the necessary contact with the audio
22 visual unit and they will come and do the demonstration
23 for you this afternoon.

24 Closed session is the next item on the agenda. What
25 we are trying to do now is trying to find a mode of
26 operation that will not slow down the process too much.
27 So what we are advising the parties of is -- this is the
28 procedure that we are suggesting now. The party or the
29 parties making a submission on the issue of a closed

1 session, they should advise the Trial Chamber as to
2 whether or not it is possible to make the application for
3 closed session in open court without revealing the
4 identity of the witness and certainly without giving
5 indications that would reveal the identity of the
6 witness.

7 So where this is possible, the Trial Chamber will
8 hear the application for closed session and a response in
9 open session. If it is not possible I would ask you to
10 so indicate in open session, then go in closed session
11 and if the decision is to proceed in the closed session,
12 we will proceed with a closed session until the end and
13 obviously when I say we will proceed, we will announce
14 the decision in a closed session and when we come back in
15 the open session at the end of open session we will just
16 repeat the decision has been rendered because the
17 regulations provide that the decision about closed
18 sessions shall be made publicly and therefore to do so we
19 have to be in open session.

20 So rather than, as we were doing at the end of the
21 submission, make a decision, we would open the session,
22 render a decision, then close the session again and then
23 go in the closed session. It got to be fairly heavy, so
24 we are trying to go ahead without having to open and
25 close and open and close. So is that well understood,
26 Prosecutors? Mr Johnson?

27 MR JOHNSON: Yes, Your Honour, I think so. We will endeavour
28 to try to form our applications in such a way that they
29 can be made in open session and I assume you would still

1 like us to do that and maybe possibly, just to give you
2 an example, we anticipate right now that the second
3 witness we will be seeking a closed session on. That
4 perhaps at the start of tomorrow's session before we
5 begin with the first witness, that would perhaps be the
6 time to make the application for closed session on the
7 second witness and again we will -- I think we can
8 fashion the application in such a way that it can be
9 heard in open session.

10 PRESIDING JUDGE: Thank you.

11 MR MARGAI: May I be heard, My Lord?

12 PRESIDING JUDGE: I was coming to you, sorry.

13 MR MARGAI: Sorry.

14 PRESIDING JUDGE: I have not forgotten about you, Mr Margai.

15 First accused, do you have any comment on that?

16 MR HALL: None at all, Your Honour, no.

17 PRESIDING JUDGE: Mr Margai.

18 MR MARGAI: I was going to suggest that perhaps it might be
19 better for the Prosecution to apprise the Defence of
20 their intention to make an application for closed session
21 and stating the reasons for such an application. And at
22 least perhaps for us to be given at least 36 hours
23 notice. If we cannot then agree then we could come to
24 court and make the application, because a lot of these
25 things could be resolved amongst ourselves if only we
26 could dialogue more often.

27 PRESIDING JUDGE: I can only say that I fully and completely
28 agree with you. I can only encourage both sides to seek
29 the maximum cooperation as such and certainly any such

1 application, for example, whether this is an application
2 for a closed session or any other matter as such, there
3 shall be an exchange of information between the
4 Prosecution and the Defence so you are not caught by
5 surprise and caught by surprise will normally cause
6 unnecessary delays, which in those circumstances may be
7 justified. So whatever we can do to speed up the process
8 it would certainly be appreciated and I welcome your
9 comments in this respect.

10 MR MARGAI: As My Lord pleases.

11 MR JOHNSON: No, Your Honour, I was just going to say we
12 welcome that. I think that in the past session we
13 started to get a little better at coordinating these
14 things before and except for maybe the first witness,
15 because that will come within 36 hours, I think that we
16 may be able to do that as well to give you as much
17 advanced notice as possible of closed sessions and we can
18 sort out some of the issues beforehand.

19 PRESIDING JUDGE: And on this notion of --

20 MR HALL: In the last session there were at least two
21 witnesses, I think, all the defendants agreed that that
22 witness could be in closed session, but we tried to
23 stipulate to it so that the Court would not have to go
24 through the effort of making a finding, but the Court
25 ended up doing that anyway. I think if the Court will
26 allow us to agree we can save the Court the time of
27 having to do that.

28 PRESIDING JUDGE: I agree with you. So I can only encourage
29 you to continue on and, for the time being at least, it

1 will shorten the argument portion of it if you agree. So
2 I am not promising to you that that will make the
3 decision right away, but it may assist.

4 On this notion of cooperation, Mr Prosecutor, I
5 would like to remind the Prosecution Office to their
6 obligation of disclosure under Rules 66, 67 and 68, and I
7 would like to remind you of the obligation to exercise
8 this duty with due diligence, to avoid any unnecessary
9 delays and you know what I am not necessarily speaking of
10 CDF, I am speaking overall. In some other sessions we
11 have had problems related to disclosure and I can only
12 ask you to ensure that disclosure problems are
13 non-existent if at all possible and feasible. Yet again
14 it may happen, if you do I can only ask you to seek
15 maximum cooperation with the Defence and disclose
16 whatever you have, even though it may be at a late stage,
17 so nobody is caught by surprise at the very last moment.
18 So you understand what I mean, Mr Johnson?

19 MR JOHNSON: Yes, Your Honour, we understand.

20 PRESIDING JUDGE: Thank you.

21 MR MARGAI: My Lord, I am sorry, I wish whilst on the question
22 of cooperation, because we are ready to move as fast as
23 we possibly could during this session -- whilst on the
24 question of cooperation I would only expect that this
25 would also extend to the interposition of witnesses so
26 that the Defence is given adequate notice.

27 PRESIDING JUDGE: My next issue is the witness issue.

28 MR MARGAI: Very well. Sorry for --

29 PRESIDING JUDGE: I will hear you on that. If I have not

1 taken your point in the order as such I will certainly
2 entertain any comment.

3 Having dealt with the disclosure issue for now, I
4 would like to move to the witness issues. The
5 Prosecution have filed a list with the order of the next
6 ten witnesses to be called in the trial session and they
7 have done that on 25th January 2005. On this list the
8 Prosecution have indicated that they anticipate applying
9 for closed session for two witnesses. You have already
10 indicated earlier this morning that the second witness is
11 likely to be in a closed session and these witnesses are,
12 as I have them described, are TF2-190 and TF2-005. And
13 both witnesses will testify with voice distortion. Is it
14 my proper understanding of the position of the
15 Prosecution with respect to these two witnesses? I am
16 talking again of TF2-190 and TF2-005.

17 MR JOHNSON: Yes, Your Honour. Of course if they go into
18 closed session there will be no need for the voice
19 distortion.

20 PRESIDING JUDGE: Yes, is the -- well, my follow-up question
21 now then is would the application for closed session be
22 for the entirety of the evidence or for parts of the
23 evidence? Because most of the time when we have had
24 closed session it is in very rare cases that the totality
25 of the evidence of a witness has been in a closed
26 session, but it is not impossible.

27 MR JOHNSON: I think right now these two witnesses, it would
28 be the totality of their testimony, Your Honour, yes.

29 PRESIDING JUDGE: Therefore, if it is the totality there will

1 be no need, I agree with you, for voice distortion if
2 granted.

3 Carrying on, witness issues on 3rd February 2005 you
4 or the Prosecution has filed a revised list of
5 Prosecution witnesses which presents a revised table
6 listing all core witnesses that the Prosecution intends
7 to call to testify at trial and a revised table listing
8 all back-up witnesses that the Prosecution intends to
9 call only if it later deems it necessary at trial.

10 The Trial Chamber takes note that 18 witnesses have
11 been moved by the Prosecution from the core list, that
12 has been filed on 8th October 2004, to the back-up list.
13 This makes the total number of witnesses on the core list
14 to be 82 and the total number of witnesses on the back-up
15 list to be 76. Am I accurate in my description of what
16 is what? But I take it, Mr Johnson, that the last filing
17 or the revised list removes 18 witnesses from that list
18 as you had it at that time prior to 3rd February.

19 MR JOHNSON: Yes, Your Honour, that is certainly correct. I
20 can certainly attest the Court list is now at 82 and we
21 have already heard from 38 of those witnesses, I believe,
22 and I will take your word for it on the number on the
23 back-up list.

24 PRESIDING JUDGE: That is my information, but I may be
25 mistaken. But we not too concerned about the back-up
26 list, we are more concerned with the witnesses on the
27 core list and the remaining number of witnesses to be
28 called. So on the Defence side, any comments? As I say,
29 the good news is that there is 18 less witnesses on the

1 list of core witnesses to be called, so that should
2 shorten it in part. Yes, Mr Johnson.

3 MR JOHNSON: I can only add to that, Your Honour, that we are
4 endeavouring, as the trial progresses, to delete or
5 transfer more witnesses if we can and we will continue to
6 endeavour to do that as we progress.

7 PRESIDING JUDGE: Yes, well you are certainly welcome to keep
8 moving in that direction because any progress we make in
9 this respect will mean that we may see the end at some
10 time, so we certainly encourage you to do so.

11 Counsel for the first accused, any comments?

12 MR HALL: We thank the Prosecution for narrowing down the
13 witness list and perhaps they could tell us when they
14 expect to rest their case. If by the end of the June
15 session or July whenever, if it is moved back.

16 PRESIDING JUDGE: When I was alluding earlier in my comments
17 about possible changes, depending as to how this session
18 moves and if we can see that we are getting close to the
19 end of something we may have to do some reshuffling to
20 see that, because what we would like to see is achieved
21 some stages in one of the two trials. So if the CDF
22 trial is moving in such a way that we see that prolonging
23 by, I don't know, three weeks, for example, we may see
24 the end of the Prosecution's case we might do so. But
25 this is only a warning at this time, nothing has been
26 decided. We will have to see how this session moves and
27 after that we will advise accordingly. But we will tell
28 you ahead of time so nobody is taken by surprise and so
29 that you can have your preparation done in due course and

1 that applies to the Prosecution as well.

2 Counsel for the second accused, any comment? Thank
3 you. Mr Margai --

4 MR MARGAI: My Lord.

5 PRESIDING JUDGE: You had comments before about witnesses, so
6 I don't know if you still have the same comments.

7 MR MARGAI: Yes, My Lord, what I was saying was that we on
8 this side would appreciate very much if the Prosecution
9 could give us sufficient notice of any intention to
10 interpose witnesses.

11 PRESIDING JUDGE: It is a welcome comment because in other
12 sessions, not CDF again, it does happen at times, maybe a
13 witness is sick or whatever it is that they need to -- or
14 a witness takes longer than expected and they need to do
15 some reshuffling. I think on the one hand we ask the
16 Prosecution to have all the time at least one stand-by
17 witness and I say at least because preferably two, but
18 those stand-by witnesses, you should be informed who they
19 are so that you know that if witness A does not function
20 for whatever reason the next one will be witness B and
21 you know who witness B will be. So, yes, whatever
22 information the Prosecution has in this respect, they
23 should convey that to you as soon as possible so you are
24 not caught by surprise.

25 MR MARGAI: At least within 24 hours.

26 PRESIDING JUDGE: Yes.

27 MR MARGAI: Because we too need to strategise.

28 PRESIDING JUDGE: Absolutely. Absolutely.

29 MR MARGAI: As My Lord pleases.

1 PRESIDING JUDGE: Yes, thank you very much. Now, Mr Johnson,
2 I can only say and encourage you to have the best
3 possible communication with the Defence, especially on
4 matters of that nature. So whatever advance notice you
5 can give to the opposite side of changes is -- should be
6 done at the earliest possible opportunity so that we
7 avoid unnecessary dealings.

8 MR JOHNSON: No, Your Honour, and again I think we started to
9 develop that system in the last session and as soon as we
10 know or can anticipate a possible change in the witness
11 order as we file, we will discuss those things with
12 Defence and without -- if you will please indulge me and
13 let me just jump ahead to the recall of witnesses, we
14 know that we have some witnesses in the last session, one
15 recall and two investigators, and again we were intending
16 to sit down here with Defence in the first day or two of
17 this session and talk to Defence about the first -- about
18 the best place to bring those witnesses into this session
19 to put on the stand, you know, as early as we can get
20 them up on the stand, but again, coordinate with the
21 Defence on the best time to bring these witnesses in.

22 PRESIDING JUDGE: And I can see on this that it was one of the
23 next items on the agenda, but I can speak to that too.
24 The sooner the better in this respect, because these
25 witnesses, I mean, they are coming to complement evidence
26 of some other witnesses that have been heard, the closer
27 it may be to the evidence already given by these
28 witnesses the better it will be for everybody and we
29 expect that these witnesses will not be too long. So,

1 yes, if you can discuss with the Defence side to see
2 where and when so you can plan the coming onto the scene,
3 then I can only ask you to do that if you can do that
4 today. So we can fit them in the agenda for this
5 session. So they should come in this session as a
6 minimum.

7 So any comment on this recall of witnesses? Recall
8 of witnesses I will remind you is consecutive to some
9 applications that the Defence have made to have some of
10 these witnesses recalled. And the two that we are
11 talking about, Virginia Chitanda and Gbekie, if I am not
12 mistaken. And we have also ordered, on 7 December, the
13 recall of witness TF2-057, so in fact there are three
14 witnesses to be recalled. So again please discuss with
15 the Defence to see where and when it is best to do that
16 and I can only invite you to do that as soon as possible.

17 The Trial Chamber would like to remind the
18 Prosecution to be mindful when presenting witnesses of
19 its -- that the Court has rendered a decision on the
20 first accused motion for service and arraignment on the
21 consolidated indictment on 29 November 2004 and ordered
22 that the identified portions of the consolidated
23 indictment that are material and embody new factual
24 allegations against the first accused and we have made a
25 specific order in this respect, and when you are calling
26 witnesses, we can only ask you to be mindful of that
27 decision in determining the witnesses that are to be
28 called, so we don't end up with all sorts of difficulties
29 because of that decision. So I am just asking you to

1 look at that decision very carefully and with the
2 witnesses you are intending to call to make the proper
3 determination in this respect.

4 My next item is expert witnesses. The Trial Chamber
5 notes that in the Prosecution request for leave to call
6 additional expert witness, filed on 28 July 2004, the
7 Prosecution stated its intention to call two additional
8 expert witnesses to testify in the CDF trial. The
9 Prosecution states that upon receipt of these expert
10 reports it will follow the procedure ordered by the Trial
11 Chamber in its order for compliance of prosecution with
12 Rule 94 bis and seek leave to add the additional
13 witnesses on the list and so would cause them to disclose
14 their full statements outside the time limits prescribed
15 in Rule 66(A)(ii).

16 The Trial Chamber notes that one expert namely,
17 Dr Haglund, is included in the revised list of
18 Prosecution witnesses filed by the Prosecution on
19 3rd February 2005. The Trial chamber would like to know
20 whether the Prosecution still intends to call two further
21 expert witnesses to testify in the CDF trial, or to
22 submit further expert reports. The Trial Chamber would
23 also like to be informed as to whether the Prosecution
24 has disclosed or is in a position to disclose to the
25 Defence the identity of the third expert witness that it
26 intends to call to testify and this was discussed at the
27 last status conference on 1st November 2004 and I vividly
28 recall, Mr Johnson, that you made some engagement, if not
29 promises, at that particular status conference. So,

1 Mr Johnson.

2 MR JOHNSON: Well, Your Honour, I can at least happily report
3 that for the first time I can report some progress on
4 that, and I certainly was not able to keep my other
5 promises on providing a name, but as of this morning I
6 did finally get the authority to do just that. And so --
7 PRESIDING JUDGE: This is substantial progress.

8 MR JOHNSON: You would not believe it, Your Honour. But at
9 any rate, we will provide this afternoon to Defence the
10 name and contact information for the third expert that we
11 are looking at to at least give the Defence the ability
12 to react and have that information. We do still intend
13 to seek good cause for these two remaining experts,
14 although I still don't have final reports from either of
15 them, but I am finally in a position to seek good cause,
16 I have enough information to do that, and we plan, I
17 think, by Monday to file a motion for good cause seeking
18 to add those two witnesses to our witness list, Your
19 Honour.

20 PRESIDING JUDGE: [Microphone not activated] Monday next
21 week.

22 MR JOHNSON: Yes, Your Honour.

23 PRESIDING JUDGE: Okay, thank you. Any comments from the
24 Defence in this respect, Mr Hall?

25 MR HALL: None for the first accused, Your Honour.

26 PRESIDING JUDGE: Thank you.

27 MR KOPPE: No, thank you.

28 PRESIDING JUDGE: Mr Margai.

29 MR MARGAI: None, My Lord.

1 PRESIDING JUDGE: Thank you. we are running through the
2 agenda fairly quickly, so it shows that we are making a
3 lot of progress.

4 Pending motions and decisions. Still pending we
5 have a motion for immediate cessation of violations of
6 the orders for protective measures for witnesses and for
7 [inaudible] this motion was filed on 25th October 2004.
8 We still have to [inaudible] and it should be shortly
9 with a decision on this with respect to this matter. And
10 the motion about the detention issue is also under active
11 consideration at this particular moment and we expect as
12 well a decision soon.

13 The decision seeking permission for Defence
14 investigators to sit in the Court during closed session,
15 hopefully we should be delivering a decision this week on
16 that to allow the Defence to know exactly where they
17 stand in this respect, because I think either way,
18 whether it is granted or denied, at least you will need
19 to know how you are to proceed in this respect. So I am
20 not making a commitment as to which way it will go, but I
21 am just saying that you need to know.

22 The decision about witness TF2-057 has already been
23 given orally, but we will follow up with the written
24 decision, but it is less urgency to deal with that one
25 because the decision is already made. So these are, as
26 far as I know, the outstanding issues that are to be
27 dealt with and hopefully most of them should be disposed
28 of shortly. The one on investigators, as I say, is
29 probably the first one to be dealt with because of the

1 urgency of that decision. So, Mr Johnson, yes.

2 MR JOHNSON: Yes, Your Honour, I believe there is still our
3 motion for amendment of the indictment against the first
4 accused is still pending and --

5 PRESIDING JUDGE: Yes, I know it is pending, but is it
6 complete in the sense are we through the response and
7 reply on this?

8 MR JOHNSON: Yes.

9 PRESIDING JUDGE: It is?

10 MR JOHNSON: Yes, Your Honour, I am sure it is.

11 PRESIDING JUDGE: The reason why it is not on my list, I am
12 just reminded, that this whole issue is under appeal, not
13 your application for amendment, but the application for
14 amendment is consecutive to the decision of this Court on
15 the application by the first accused and that application
16 has been appealed by both Defence and Prosecution and
17 therefore it will not be proper for this Trial Chamber to
18 make a decision on that until we have a decision from the
19 Appeals Chamber as to where we stand on this. So that is
20 why we have not dealt with this application yet, Mr
21 Johnson.

22 MR JOHNSON: Okay, thank you, Your Honour. Let us -- we will
23 think about that a little bit. We would only like to add
24 that something that you mentioned earlier about us being
25 able to adjust our witnesses. In light of the appeal
26 and, of course, the possible amendment and things like
27 that -- well, I am not sure I can get through this trial
28 session until getting to some witnesses that would affect
29 that and so I would just like to point that out as the

1 trial session progresses and we see how quickly we can
2 get through some of the witness we will adjust and keep
3 the Court informed and have some dialogue on this.

4 PRESIDING JUDGE: I think it is very, very important that you
5 have some dialogue with the Defence on these matters as
6 such and that is why I raised the matter with you. So
7 your application, the admission by the Prosecution on
8 amendment, as I say, is on the back-burner and we are
9 waiting for a decision from the Appeals Chambers, because
10 whichever way we go with your application it would not be
11 proper for us to deal with that until we know the
12 decision on this and, as you know, it may go and could go
13 to jurisdiction. So we have to wait and see what the
14 decision from the Appeals Chamber will be in this
15 respect.

16 Yes, Dr Jabbi, you had comments to --

17 MR JABBI: Your Honour, I just wanted to indicate that in
18 light of the decision to proceed with the trial on the
19 basis of the stay provisions made by the Trial Chamber in
20 their decision of 29th November 2004, it may be necessary
21 to have a decision, appealed decision, on that decision.
22 All the appeal aspects of that decision to be decided as
23 early as possible, because obviously as we proceed on the
24 basis of the stay provisions, there are implications in
25 those appeal decisions and the earlier they come the
26 better for all of us so as to be sure how to proceed in
27 respect of witnesses against specified pieces of
28 evidence.

29 PRESIDING JUDGE: I take no issue with you on this, Dr Jabbi.

1 I agree, the sooner the better, but the Appeals Chamber,
2 as you know, is independent from the Trial Chamber. They
3 determine what their agenda is and we don't. So we will
4 have to wait for their decision in this respect and I can
5 certainly say that in this case a decision sooner than
6 later would certainly be in the interests of all
7 concerned, including ourselves. So we hope that this is
8 the right approach at this particular moment. Just for
9 your instruction, Mr Johnson, I have been reminded that
10 the Rule that is applicable in this respect is Rule
11 73(C), it says, "whenever the Trial Chamber and the
12 Appeals Chamber ... are seized of the same Motion raising
13 the same or similar issue or issues, the Trial Chamber
14 shall stay proceedings on the said Motion before it until
15 a final determination of the said Motion by the Appeals
16 Chamber." So this is really related to the amendment,
17 you have challenged that particular part for the
18 Prosecution. So we cannot dispose of it for the time
19 being.

20 Do you have any other matter to raise, Mr Johnson,
21 before I ask your colleagues on the Defence side?

22 MR JOHNSON: No, Your Honour.

23 PRESIDING JUDGE: So you are prepared to proceed tomorrow
24 morning with your first witness?

25 MR JOHNSON: Yes, Your Honour.

26 PRESIDING JUDGE: Thank you. Dr Jabbi or Mr Hall, any
27 comments, for the first accused. Mr Hall?

28 MR HALL: The only matter we have is getting a full complement
29 of lawyers and the Principal Defender is prepared to talk

1 to that issue because we are short one lawyer and that is
2 why Mr Yillah had to sit in and perhaps he will fill that
3 role, I am not sure yet, but we are hopeful he will. So
4 we can have three lawyers on full time.

5 PRESIDING JUDGE: I hope for you that he will. As I stated
6 earlier this morning, as he has already made some
7 representation on behalf of the first accused. On the
8 one hand to my knowledge he has been involved with CDF
9 for a long, long time and therefore he is very much au
10 fait of the file and what it is in the background. So I
11 think it would be preferable than a completely new lawyer
12 in the picture, but I don't control the decision-making
13 process of the Principal Defender's office, but I can
14 only encourage them to move in that direction.

15 MR HALL: Well the thought of bringing a new lawyer into the
16 case at this point almost seems impossible and Mr Yillah
17 has done a great job and he has been fully informed of
18 this case all along, but very helpful to us and we are
19 glad to have him working for us.

20 PRESIDING JUDGE: Thank you. We will go through the defence
21 counsel and I will come to you, Madam Principal Defender.
22 Counsel for second accused.

23 MR KOPPE: Yes, Your Honour, I would just like to tell this
24 Court that there has been a change in the team of the
25 second accused. You are aware of that already, I think.
26 All legal services contracts now have been signed and as
27 of 1st January this year I am now lead counsel and my
28 colleague, Michiel Pestman, is still in the team as a
29 co-counsel.

1 PRESIDING JUDGE: I had heard that there were discussions
2 on-going at that time about that, but I didn't know it
3 had been confirmed, but is okay.

4 MR KOPPE: As far as I can see, everything has been taken care
5 of now in respect of contracts. So as of 1st January I
6 am lead counsel.

7 PRESIDING JUDGE: That is good. So welcome. Mr Margai.
8 Mr Williams.

9 MR WILLIAMS: Yes, My Lord, we realise that Your Lordship has
10 inadvertently omitted to mention a motion, a joint
11 motion, filed on 6 August 2004, My Lord, which is for
12 conjugal visits.

13 PRESIDING JUDGE: [Microphone not activated] I may have
14 mentioned it.

15 MR WILLIAMS: Sorry, My Lord.

16 PRESIDING JUDGE: Sorry, I have mentioned it. I used the word
17 "detention issue", that is what I meant by that. So I
18 may have mis-described that particular motion, but by
19 "detention issue" I meant the one on conjugal visits.

20 MR WILLIAMS: My Lord, that is of paramount interest for the
21 third accused. I mean, for reasons mentioned in the said
22 motion, My Lord.

23 PRESIDING JUDGE: Thank you. Any other comment Mr Williams or
24 Mr Margai?

25 Madam Principal Defender, you would like to respond
26 to the invitation made by counsel for first accused to
27 confirm?

28 MS MONASEBIAN: I can only inform Your Honours that I spoke
29 with Mr Norman yesterday - and I will not go into the

1 nature of those conversations - but that we are keeping
2 Mr Norman well aware of the various configurations that
3 might require either Mr Yillah staying on by himself or
4 Mr Yillah in combination with a British barrister joining
5 the case. But I am happy to say to Your Honours that all
6 counsel standing before Your Honours in the last session
7 worked very hard to regularise their contracts and to
8 appear pursuant to Your Honours' orders despite very
9 difficult circumstances of their clients, in some
10 instances instructing them or trying to instruct them
11 otherwise and I am very grateful to counsel as I am sure
12 Your Honour is and the Prosecution is for comporting
13 themselves in such a professional manner.

14 PRESIDING JUDGE: Thank you very much. I am certainly very
15 pleased to hear that situations that were unclear as to
16 contracts and so on have been taken care of and, as I
17 said earlier this morning about Mr Yillah, I would find
18 it difficult, certainly from a perception point of view
19 that Mr Yillah would be assisting other counsel for other
20 accused as such and, therefore, I think that justice will
21 be best served if Mr Yillah from now on will be assigned
22 essentially, exclusively, to the team of the first
23 accused. Whether he will be a full-fledged, full-time,
24 member of that team is for you to make that determination
25 not for me. Obviously, I can only ask you to provide
26 whatever assistance they may need and I thank you very
27 much for that effort.

28 MS MONASEBIAN: I thank Your Honour and [Microphone not
29 activated] agree with Your Honour and Mr Hall.

1 PRESIDING JUDGE: Your mike, please.

2 MS MONASEBIAN: Thank you. I very much agree with Your Honour
3 and Mr Hall on the representations made about Mr Yillah
4 and it won't be only from today, that goes back already
5 since the end of the last session in that Mr Yillah has
6 agreed to the instruction to only assist with regard to
7 Mr Norman's case. Thank you.

8 PRESIDING JUDGE: Thank you. I hope that responds at least in
9 part to your requirements and your needs, Mr Hall, and
10 the needs of the first accused. If there is any problem,
11 please let us know as we move along.

12 So that concludes this status conference. By the
13 shortness of the status conference it is a good
14 indication that things are moving on and I invite you to
15 keep that spirit and certainly the spirit of cooperation
16 so we can see through this trial as soon as we can.

17 Thank you very much and we will see you tomorrow
18 morning. Thank you.

19 [Whereupon the Status Conference adjourned at 10.30 a.m.,
20 the Trial to be reconvened on Wednesday, the 9th day of
21 February 2005 at 9.30 a.m.]

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