

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

MONDAY, 1 NOVEMBER 2004
9.40 a.m.
STATUS CONFERENCE

Before the Judges:

Benjamin Mutanga Itoe, Presiding
Bankole Thompson
Pierre Boutet

For Chambers:

Ms Roza Salibekova
Ms Sharelle Aitchison

For the Registry:

Ms Maureen Edmonds
Mr Geoff Walker

For the Prosecution:

Mr Jim Johnson
Mr Joseph Kamara
Mr Kevin Tavener
Ms Bianca Suciu

For the Principal Defender:

Mr Ibrahim Yillah

For the Accused Sam Hinga Norman:

Dr Bu-Buakei Jabbi
Claire da Silva

For the Accused Moinina Fofana:

Mr Michiel Pestman.

For the Accused Allieu Kondewa

Mr Charles Margai
Mr Yada Williams
Mr Ansu Lansana

1 [Monday, 1 November 2004]
2 [The accused not present]
3 [Status Conference]
4 [Open session]
09:39:07 5 [Upon resuming at 9.40 a.m.]
6 JUDGE BOUTET: Good morning. I will start first by asking for
7 representation. Prosecution, please?
8 MR JOHNSON: For the Prosecution James Johnson, Kevin Tavener
9 and Joseph Kamara.
09:39:26 10 JUDGE BOUTET: Thank you. Presentation for the first accused?
11 MR JABBI: Dr Bu-Buakei Jabbi, and I'm pleased, My Lord, to
12 introduce Claire da Silva, who is the new legal assistant
13 to the team.
14 JUDGE BOUTET: Thank you, welcome.
09:39:49 15 MS DA SILVA: Thank you.
16 JUDGE BOUTET: Counsel for second accused?
17 MR PESTMAN: Yes, for Moinina Fofana it's only me, Michiel
18 Pestman.
19 JUDGE BOUTET: So that's only you. Welcome, as well.
09:40:06 20 MR MARGAI: Charles Margai, Ansu Lansana, My Lord.
21 JUDGE BOUTET: Thank you very much, Mr Margai. So the record
22 should show, again, that none of the accused is in Court
23 this morning. This is the continuation of the first
24 session in that respect, so that none of the accused has
09:40:28 25 deemed it appropriate to attend the proceedings this
26 morning of the Status Conference.
27 I do understand that you have been given a rough
28 copy of the agenda for today -- for this morning's
29 sittings. Prosecution, you have? Defence? Mr Margai, I

1 know you have indicated you do.

2 MR MARGAI: Yes, I have.

3 JUDGE BOUTET: You do, fine. So there be no confusion, as
4 well, as you have noted, we are doing the Status
09:41:09 5 Conference this morning and it is the intent to proceed
6 to start with the first witness tomorrow morning and not
7 this afternoon, so everybody is on the same
8 understanding. So tomorrow morning at 9.30 we're going
9 to move ahead with first witness for the Prosecution.
09:41:30 10 That is what we intend to do that.

11 On the agenda, the first item on the standard agenda
12 items is "Conditions of Detention". I would like to ask
13 you, Mr Margai, because when we left off a while ago, you
14 had then not received -- or you were about to receive a
09:41:51 15 copy of the report prepared by the Principal Defender
16 about the attendance of your client in Court. So do I
17 take it that you have now received a copy of that report?

18 MR MARGAI: We haven't as yet received it, My Lord.

19 JUDGE BOUTET: Well, I will make sure that a copy is -- I had
09:42:09 20 been told that not necessarily you personally, but your
21 team would have received a copy.

22 MR YILLAH: May it please, Your Honour, Ibrahim Yillah appears
23 for the Office of the Principal Defender. Your Honour, I
24 was informed by the Principal Defender and I believe that
09:42:35 25 the report was on co-counsel, Mr Yada Williams, who
26 appears on behalf of the third accused. This is my
27 understanding, My Lord. But I shall, however, endeavour
28 to serve a copy this morning on lead counsel as well, My
29 Lord.

1 JUDGE BOUTET: Mr Yillah, you don't have a copy with you now?
2 MR YILLAH: I have a copy to furnish lead counsel now,
3 My Lord.
4 JUDGE BOUTET: If you could provide them with a copy.
09:43:09 5 MR MARGAI: I appreciate that, My Lord; thank you.
6 MR YILLAH: Very well, My Lord.
7 JUDGE BOUTET: Because at that last session, Mr Margai, I had
8 indicated that indeed an assessment had been made and a
9 report prepared by the Principal Defender. Essentially,
09:43:22 10 the report is to the effect that your client has decided
11 not to attend for his own reasons, and one of which is
12 that, if he attends, he feels that he is being ignored by
13 other co-defendants, and this is a situation he does not
14 appreciate and therefore will not attend. So that is, in
09:43:42 15 a nutshell, what the report is essentially stating.
16 MR MARGAI: Well, during the break we had discussion with our
17 client and we are hopeful that perhaps by the start of
18 tomorrow's proceedings he would have resurfaced.
19 JUDGE BOUTET: Fine.
09:44:04 20 MR MARGAI: Hopefully.
21 JUDGE BOUTET: If that is the case, he is most welcome.
22 MR MARGAI: Thank you.
23 JUDGE BOUTET: Thank you very much. But in the meantime, we
24 will make sure you have a copy of that report.
09:44:15 25 MR MARGAI: I'm grateful.
26 JUDGE BOUTET: I was coming to you, Dr Jabbi. Yes, please, go
27 ahead.
28 MR JABBI: Now, My Lord, I wonder if this is an appropriate
29 stage at which I will give some information from the

1 first accused which I gathered this morning.

2 This morning, My Lord, I had to go into the
3 Detention Centre in order to see the first accused. He
4 informed me that all three CDF accused persons have
09:44:55 5 written to the Court saying that they will stay away from
6 the proceedings at least until the motion of the first
7 accused for service of the consolidated indictment and
8 arraignment thereon has been treated by the Court. He
9 gave me the impression that this was a concerted decision
09:45:33 10 by all three accused persons in this trial.

11 There were other bits of information he gave, which
12 may not be pertinent at this stage, My Lord. Thank you.

13 JUDGE BOUTET: Thank you, Dr Jabbi. I am not aware of such
14 common letter or common -- I'm not sure if it was a
09:45:58 15 motion or a letter or application, but whatever it is, I
16 am not aware of it, I have not seen it and I have not
17 been informed of it. So I take note of what you are
18 saying, Dr Jabbi, and I'll look for it, but I'm not
19 familiar with it. I am aware there is a pending motion
09:46:12 20 by the first accused about the service of an indictment
21 and so on, but not that he will not appear unless and
22 until, but we'll look into that. But we'll get to these
23 motions a bit later in the process this morning.

24 Is there anybody from the Detention facility this
09:46:32 25 morning?

26 MR WALKER: There is, Your Honour. They are available and
27 they are just out in the back of the Court

28 JUDGE BOUTET: Yes. I would like to have a short report from
29 them as to the conditions -- not the condition of the

1 detention, but the conditions of the accused and their
2 health condition, if at all possible.

3 MR PESTMAN: Your Honour, can I use this short lull in the
4 proceedings to explain why my client is not here. He
09:47:06 5 basically has the same reasons as the first accused has.
6 We also filed a motion for service of the indictment for
7 a renewed appearance, and he takes the position that as
8 long as no decision has been taken on that particular
9 issue, he will not be able to attend trial. That's the
09:47:25 10 reason he gave me this morning why he's not able to
11 attend the meeting today. I'm going to have a lengthy
12 discussion with him in the afternoon and maybe I will be
13 able to report more or differently tomorrow.

14 JUDGE BOUTET: Sorry, I cut you off. It's by mistake.

09:47:44 15 MR PESTMAN: I had finished.

16 JUDGE BOUTET: Well, this is fine with me. As I say, I'm
17 familiar that you have filed on behalf of your client
18 such a motion, but we are not through yet. If I'm not
19 mistaken, we may be at the reply stage; I'm not sure.
09:48:01 20 But I know when it was filed -- I think you have to
21 produce the reply at this particular stage; that's where
22 we are. So when this is completed, but I hear what
23 you're saying.

24 MR PESTMAN: Yes, and we'll probably not file a reply.

09:48:16 25 JUDGE BOUTET: That's fine, but we'll wait till this time is
26 expired to deal with the motion. All of that to say,
27 that you can expect a decision today, because the delays
28 of filing and replying and responding have just expired
29 or about to expire so -- in your case, which is somewhat

1 different. Thank you.

2 Can you ask the Detention people to move over a bit
3 further up, because I don't see them where they are now.
4 Good morning. Can you identify yourself for the record,
09:49:08 5 please?

6 MR CARDINAL: Morning, Judge. My name is Raymond George
7 Cardinal.

8 JUDGE BOUTET: Yes. And what's your function -- occupation at
9 the Detention facility?

09:49:21 10 MR CARDINAL: Sir, I'm the Acting Chief for the moment,
11 because the Chief is away on leave.

12 JUDGE BOUTET: Can you inform you have, in your capacity as
13 the head of Detention at this particular moment,
14 detainees by the name of Norman, Fofana and Kondewa?

09:49:41 15 MR CARDINAL: That is correct, sir, they are inside the
16 prison.

17 JUDGE BOUTET: Can you inform the Court as to their status.
18 We have noted that they are not in Court this morning.
19 Are you aware of their health condition at this
09:49:52 20 particular moment? Can you inform the Court about their
21 health condition?

22 MR CARDINAL: Yes, certainly. Sir, their condition is normal.
23 Normal association with visitors and their daily
24 activities. Everything is normal.

09:50:08 25 JUDGE BOUTET: Anything you wish to report to the Court as to
26 their condition of detention or complaints that may be
27 outstanding at this particular moment?

28 MR CARDINAL: The only issue that they expressed this
29 morning - not to me directly - is that they wish to be

1 served with summonses by their solicitor or by -- and
2 they want to see Judge Itoe and they would come to Court
3 if that in fact occurred.
4 JUDGE BOUTET: Repeat that, please?
09:50:36 5 MR CARDINAL: Mr Norman and Mr Fofana's reason for not coming
6 to Court this morning - specifically Fofana - he wishes
7 to be served a summons in order for him to attend Court,
8 by his solicitor, and Mr Norman requested to see Judge
9 Itoe and also wanted his stand-by counsel to serve him
09:50:53 10 with document so he would attend Court.
11 JUDGE BOUTET: Okay, we've taken note of that. Any other
12 information that you wish to inform the Court as to their
13 health condition or their overall condition in Detention?
14 MR CARDINAL: I have no reports from, or complaints from them,
09:51:12 15 or from the doctor regarding the status of their health.
16 As far as I can tell, as a layman, that they are normal,
17 no medical problems are reported.
18 JUDGE BOUTET: Thank you, Mr Cardinal. Dr Jabbi, you wish to
19 question the acting Chief of Detention.
09:51:30 20 MR JABBI: Yes, My Lord. Lord, I will just want some
21 clarification on the statement that accused Norman and
22 Fofana wanted to be served a summons --
23 JUDGE BOUTET: I guess it's Fofana more than Norman. My
24 understanding is your client, Mr Norman, is asking that
09:51:52 25 Judge Itoe visits him. I haven't heard about summons. A
26 summons is more --
27 MR JABBI: Well, his first statement -- [Overlapping speakers]
28 JUDGE BOUTET: But, anyhow, you can question him.
29 MR JABBI: Does the summons in question, in fact, refer to the

1 indictment? Is it perhaps the consolidated indictment?
2 MR CARDINAL: I believe, sir, each morning we print out the
3 Cause List that Court Management produces, and the
4 international supervisor delivers that to them to inform
09:52:18 5 them of the appearance in Court for that morning. I
6 believe, sir, that Mr Fofana is referring to that
7 document to be served on him.
8 MR JABBI: Thank you very much.
9 JUDGE BOUTET: Thank you. Mr Pestman, you wish to question
09:52:34 10 the Detention?
11 MR PESTMAN: No, just make an explanatory remark. I think
12 he's referring to -- I don't know what he said, but he is
13 referring to the consolidated indictment. That he would
14 not like it to be served by me, but by the appropriate
09:52:46 15 order in the Court, which would be, as I understand, the
16 Registry and not the Prosecution.
17 JUDGE BOUTET: But this is essentially the motion that you
18 have filed.
19 MR PESTMAN: Yes, yes. And I think he was trying to explain
09:53:00 20 what the contents of the motion was and why he was not
21 coming to Court.
22 JUDGE BOUTET: But you don't wish to question --
23 MR PESTMAN: No, no, I don't.
24 JUDGE BOUTET: Thank you. Mr Margai?
09:53:11 25 MR MARGAI: No questions.
26 JUDGE BOUTET: Thank you. Thank you, Mr Cardinal, thank you
27 very much.
28 MR CARDINAL: Thank you, sir.
29 JUDGE BOUTET: At the last Status Conference on CDF, there

1 were representations made at a time by all detainees, but
2 more specifically by Mr Norman, about their food being
3 served and the diet that they were subjected to. Since
4 then there's been a report that has been filed on
09:53:40 5 detainees' diet. I have a copy in front of me and it is
6 dated 14 October 2004. It has been forwarded to the
7 Chamber by the Registrar, and I will just read a few
8 paragraphs on this.

9 "I attach for your consideration a copy of the
09:53:59 10 report prepared by Mrs S Pyne-Bailey, an independent
11 dietician and nutritionist, who was invited by the Chief
12 of Detention to examine the preparation of the meals
13 provided to the detainees and also to comment on both the
14 quality and quantity of those meals, especially in terms
09:54:17 15 of the nutrition present in the daily and weekly diet.

16 "As can be seen from Mrs Pyne-Bailey's report, all
17 aspects of the provision of meals are satisfactory, with
18 a nutrient content above the average daily intake
19 recommended by the World Health Organisation.

09:54:38 20 "Your Honours will decide how best to handle this
21 report, but in view of the long-running nature of this
22 particular issue, including the significant publicity
23 which it has attracted, you may feel it necessary to
24 order that the report be provided to both the Prosecutor
09:54:52 25 and the Principal Defender and thereafter made available
26 to the public."

27 We will ensure that, indeed, a copy of this report
28 is distributed around to Prosecution, Principal Defender
29 and counsel, as well. So you know the details, and, as I

1 say, this is a fairly detailed analysis of the nutrients
2 and what the detainees are being fed on a daily basis. I
3 hope we will solve this issue for the time being. As
4 this was an assigned matter from the last Status
09:55:18 5 Conference, I felt that you should be informed of what
6 has been done in this respect.

7 So, unless there is any other issue you want to
8 raise about this aspect of detention, we'll move to the
9 second item on the agenda, which is submissions from the
09:55:37 10 head of the Language and Translation Unit.

11 MS EHRET: Thank you, Your Honour. I just wanted to remind
12 everybody here during this trial session that everything
13 that is being said in Court is being translated
14 simultaneously to the witnesses. Except for the
09:56:03 15 dialogues directly to the witnesses, there will be
16 consecutive interpretation.

17 Please, I would like to remind you of the fact that
18 any written documents that are going to be read during
19 the trial session has to be also handed over to me, so I
09:56:24 20 can give it to the interpreters and then they can do
21 sight translation. Which is they're still going to
22 listen to what you're saying and yet they have the text
23 and they will be looking at the text. And, needless to
24 say, that all these documents are being treated with the
09:56:45 25 utmost confidentiality.

26 Then, one thing that is really important for me -
27 because sometimes we have to look for interpreters that
28 do speak other languages than the ones that are most
29 common that my interpreters speak, then I have to look

1 for temporary interpreters - please let me know if there
2 is any order change among the witnesses.

3 I've also been quite successful in finding female
4 interpreters, so I will do training with them doing
09:57:24 5 recess time and assess them and see in how far in the
6 next year we can use them for female witnesses and female
7 lawyers. Thank you very much.

8 JUDGE BOUTET: Thank you. So, again, we're asking your
9 cooperation, both from the Prosecution and the Defence,
09:57:42 10 in this respect, because we have run in some difficulties
11 in the past, and this is not specific to CDF, it has
12 happened with the RUF as well. So try to be a bit more
13 disciplined in this respect and, certainly, if you do
14 have documents that you're reading from, it would be very
09:58:01 15 convenient for the Translation Unit to have a copy of
16 that ahead of time. It would assist everybody in this
17 respect.

18 Yes, Mr Pestman?

19 MR PESTMAN: Yes, just one question. I haven't understood
09:58:13 20 exactly which part of the trial -- or which translation
21 will take place consecutively, because that's important
22 for us to know.

23 JUDGE BOUTET: I think all of it is, but we'll see.

24 MS EHRET: No. We make a difference between simultaneous
09:58:29 25 interpretation and consecutive interpretation.

26 JUDGE BOUTET: I know, but I thought that we were not still at
27 the stage of simultaneous.

28 MS EHRET: No, no, no, we are.

29 JUDGE BOUTET: Okay.

1 MS EHRET: I've been doing training with the interpreters
2 during the summer recess, and since then they're doing
3 simultaneous interpretation for all dialogues except the
4 ones directed to the witness. That is still as it is
09:58:54 5 used all over the world and done in a consecutive mode.
6 So that means, also in consequence of that, that do,
7 please, allow for spaces when you do your
8 examination-in-chief and cross-examination, because we do
9 it consecutively. And also when we do simultaneous,
09:59:14 10 please accommodate the space for the interpreters to
11 interpret simultaneously.

12 JUDGE BOUTET: Mr Pestman, that answer -- we'll get to you, Mr
13 Margai. That answers your question?

14 MR PESTMAN: Yes, and another question: Is there going to be
09:59:32 15 a translation in Mende if the accused are not here?

16 MS EHRET: Well, in actual fact, we always do -- during the
17 CDF trials we always do Mende interpretations plus the
18 one that is being requested due to the witness. And
19 there's also a Krio interpretation for records.

09:59:57 20 JUDGE BOUTET: Mr Margai?

21 MR MARGAI: Yes, My Lord. My Lord, providing documents to the
22 interpreters is a must, but then we on this side are
23 handicapped, notwithstanding the phrase equality of arms.
24 I would, on behalf of my colleagues here, appeal to your
10:00:20 25 logic, and through your logic to the Registry, to provide
26 the Defence team with a photocopier. That will
27 definitely facilitate production and service, of intended
28 documents to be used, on the interpreters.

29 JUDGE BOUTET: Your request will be forwarded to the

1 Registrar's office, but I was under the understanding
2 that with the changes that have taken place with the new
3 building for Defence office, that in that new building
4 there was a photocopy machine. But I haven't visited the
10:00:57 5 place, I'm just reporting -- [Overlapping speakers]

6 MR MARGAI: Well, the changes are still in progress. We have
7 not got to the stage of providing photocopiers. And Your
8 Lordship will recall that we had had similar problems
9 here in Court, with documents being tendered and
10:01:13 10 insufficient full circulation amongst counsel.

11 JUDGE BOUTET: Thank you very much, Mr Margai.

12 MR MARGAI: I would appreciate if an order were made, rather
13 than a request. As My Lord pleases.

14 JUDGE BOUTET: Thank you. So we'll move to the next item on
10:01:37 15 the agenda, which is "Trial Preparation and Logistics".
16 You have been made aware, or should have been aware by
17 now, the detailed judicial calendar for the CDF trial.
18 The Trial Chamber has issued an order on the 8th October
19 2004 detailing such calendar, and this order provided
10:01:58 20 that the fourth and fifth trial sessions of this case
21 will run from the 8th of February 2005 to the 17th of
22 March 2005, and the next one after that will be from the
23 18th of May 2005 to the 27th of June 2005. So this is
24 the forecast for the next sessions of CDF for half of the
10:02:27 25 year 2005 period. So that will take us to the summer
26 2005.

27 You will note that the trial sessions have been
28 extended by certainly a week, and essentially we're
29 trying to go into, rather than four weeks -- we're trying

1 to go in two sessions of six weeks rather than four. So
2 we've extended both ends, so that is specifically what
3 we're moving into. Do you have any questions on that, Dr
4 Jabbi?

10:03:01 5 MR JABBI: None, My Lord.

6 JUDGE BOUTET: Mr Margai?

7 MR MARGAI: It seems I am a loner. I really would have
8 preferred us adhering to the status quo ante; that is,
9 the four weeks. I mean, these trials are quite demanding
10:03:20 10 no doubt, especially starting at 9.30, with a break of
11 about an hour and a half, on to about 6.00, 7.00, 7:30.
12 And I would, for my part, urge Your Lordships to review
13 the calendar and perhaps even my colleagues here to
14 rethink. We're very much anxious to bring this trial to
10:03:45 15 an end, but much depends on the Prosecution, because I
16 understand that they intend calling about 157 odd
17 witnesses.

18 JUDGE BOUTET: That's the next item; we're going to get to
19 that shortly.

10:03:59 20 MR MARGAI: Very well, okay.

21 JUDGE BOUTET: On what you have just raised, I am familiar to
22 an extent that there has been some consultation, because
23 before we proceeded to make these changes, we asked that
24 consultation be made with both Prosecution and Defence.
10:04:16 25 Certainly I know that there has been discussions with the
26 Principal Defender's office. Whether or not there has
27 been separate consultation with each and every Defence
28 team, I cannot say, but I was under the impression that
29 it had been done, maybe through the Principal Defender,

1 and that what we have was essentially a general
2 consensus.

3 But I have taken note of your comments this morning,
4 Mr Margai, because I am a bit surprised at what you're
10:04:43 5 saying. I'm not sure if you or your team has been
6 consulted, but obviously from your comments, you have not
7 been consulted.

8 MR MARGAI: No, I have not. Quite frankly, I was out of the
9 jurisdiction. I went to attend a conference in Senegal.

10:05:03 10 JUDGE BOUTET: We'll look into this anyhow.

11 MR YILLAH: May it please, Your Honour.

12 JUDGE BOUTET: Yes?

13 MR YILLAH: Indeed, there were consultations at a time when I
14 can confirm that learned counsel was out of the
10:05:14 15 jurisdiction attending a conference in Dakar, but we
16 shall get back to him on the arrival of -- on the return
17 of the Principal Defender. But, indeed, there were
18 consultations, and the position of the Principal Defender
19 reflected the views that she received from counsel.

10:05:32 20 JUDGE BOUTET: Thank you. The next item on the agenda is
21 "Witness Issues". Following the Trial Chamber's order
22 that the Prosecution submits a revised witness list, the
23 Prosecution has filed a revised list of Prosecution
24 witnesses on the 8th of October 2004, and the Prosecution
10:05:55 25 does set out, in Annex A to this filing, a list of 100
26 what they call and describe as "core witnesses" that it
27 is intending to call to testify at trial, and in Annex B
28 to the same document, a list of 58 back-up witnesses that
29 the Prosecution intends to call only if it is later

1 deemed necessary at trial.

2 What they really mean by this, I am not sure, but
3 we'll ask them, so we'll have some more clarity on this
4 particular issue. May I ask you, Mr Johnson, to
10:06:27 5 enlighten the Court and Defence counsel on this back-up?
6 MR JOHNSON: Yes, Your Honour. We, of course, were trying to
7 follow the guidance that you had given in the RUF trial,
8 with the order to file both a core and back-up witness
9 list. It's our intention to only call those on the core
10:06:43 10 witness list unless something unusual happens - someone
11 falls out on the core witness list, and things like that.
12 Then we'd like to reserve the ability to go to the
13 back-up witness list. I'll add to that that we are
14 continuing to review the core witness list with the hope
10:07:02 15 - and depending on the progression of this trial session
16 - of even reducing that core witness list further.
17 JUDGE BOUTET: Any effort made in this respect would be
18 gratefully appreciated, I can tell you that. We're not
19 trying to put undue pressure on you, but we would like to
10:07:20 20 put some pressure on you and your team to try and curtail
21 inasmuch as possible without, obviously, trying to
22 interfere with how you are going to proceed with your
23 case as such. But any attempt you make to reduce the
24 list to the bare essential would be much appreciated.
10:07:33 25 MR JOHNSON: Yes, Your Honour. We certainly hear your
26 message, and, of course, we did that with an initial look
27 at the witness list and we're looking further.
28 JUDGE BOUTET: That effort is appreciated. So I hope that
29 this enlightens you, Mr Margai, to an extent at least.

1 MR MARGAI: Yes, it does, My Lord, and I join Your Lordship in
2 that hope and look forward to a positive response --
3 something significant.

4 JUDGE BOUTET: So the 100 witnesses in the core list does
10:08:12 5 include -- in other words, we have heard, if I'm not
6 mistaken, 17 or 18 witnesses up to this particular moment
7 in the CDF. So there is, essentially, 82 or 83 witnesses
8 left in the core list.

9 MR JOHNSON: Yes, Your Honour, that's correct.

10:08:26 10 JUDGE BOUTET: Okay, thank you. Dr Jabbi?

11 MR JABBI: My Lord, we just want to plead with the
12 Prosecution, in the process of reviewing the core witness
13 list, to ensure that adequate notice is given to the
14 Defence where changes are going to occur in the order of
10:08:47 15 witnesses to be called.

16 JUDGE BOUTET: Thank you. Mr Pestman?

17 MR PESTMAN: Yes. Well, of course, I am pleased to see the
18 list reduced and I would applaud -- or I would welcome
19 further reductions.

10:09:09 20 But as far as my client is concerned, the only list
21 we have at this moment is the core list. That means that
22 a so-called back-up list does not exist. We take the
23 position that if the Prosecution wants to call witnesses
24 which are not on the core list, but only on the back-up
10:09:27 25 list, they will have to ask the Court for permission to
26 do so pursuant to Rule 73bis(E). So it cannot be a
27 unilateral decision of the Prosecution. We want to be
28 consulted and we take the position that the Court, in the
29 end, will have to take the decision whether the

1 enlargement of the list -- or the review of the list is
2 allowed or not.

3 JUDGE BOUTET: I'm not sure I fully understand your position
4 on this. You're saying that is fine with Annex A, but,
10:10:01 5 so far as your client is concerned, you consider Annex B
6 as nonexistent. That is specifically what you are
7 saying?

8 MR PESTMAN: I'm trying to understand the position of
9 Prosecution. They say we will limit ourselves to the
10:10:11 10 list of core witnesses. Only in exceptional
11 circumstances we will refer to the --

12 JUDGE BOUTET: But bearing in mind, as before they were
13 ordered to produce a list of core witnesses, they had
14 indicated -- in fact, clearly on the record they had
10:10:26 15 indicated they were calling 158 witnesses.

16 MR PESTMAN: Yes.

17 JUDGE BOUTET: We said, 'Well, please look at that and tell us
18 of these 158 how many you really intend, because we've
19 been told at one of those Status Conference that these
10:10:43 20 158 -- there were included in that some back-up
21 witnesses.' In other words, they were there in case.
22 And so they've divided that along the list as Annex A and
23 Annex B, but their witness list at the outset was a
24 witness list of 158.

10:10:58 25 MR PESTMAN: Yes, it's not anymore.

26 JUDGE BOUTET: Well, it is to -- [Overlapping speakers]

27 MR PESTMAN: It's been reduced to 100.

28 JUDGE BOUTET: Well, I don't want to get into these arguments.

29 MR PESTMAN: Yeah, but we have to know whether they want to

1 call these back-up witnesses or not, because we have to
2 prepare our defence. We assume now that there'll only be
3 those 100 witnesses, which means that if they decide to
4 change that list -- to review their core list of 100
10:11:13 5 witnesses, that they should ask us for our opinion and
6 they should ask the Court for permission pursuant to Rule
7 73bis(E). That's our position.

8 JUDGE BOUTET: We'll ask the Prosecution if they have any
9 comment in this respect obviously. Mr Johnson, you wish
10:11:36 10 to comment on this?

11 MR JOHNSON: Well, Your Honour, certainly taking that position
12 does not encourage us to continue to reduce our witness
13 list. We certainly intend to do that anyway, but it
14 certainly does not provide us any encouragement to do so.

10:11:57 15 We would certainly oppose what the Defence is
16 saying. I mean, I assume that what the Defence is asking
17 is that it would be the equivalent of seeking good cause
18 to add a back-up witness back to our core list, much as
19 if we're required now to seek good cause of the Court to
10:12:17 20 add to the list that we submitted back in late April or
21 May.

22 Again, we are making every effort to reduce our
23 witnesses and we intend to continue to do that. We
24 certainly understand and appreciate our disclosure
10:12:35 25 obligations beyond that, and that when we're required to
26 provide unredacted witness statements to the Defence,
27 when we're required to present the witness order to the
28 Court, and when we're required to provide unredacted
29 witness statements to the Court. And in this particular

1 session we have combined those last two; that when we
2 provided the witness order, we've gone ahead to provide
3 the unredacted witness statements to the Court, although
4 we are not required to do that until seven days before
10:13:09 5 they testify.

6 And so all I can say is that we would oppose that.
7 We are making every effort to reduce the witness list; we
8 will continue to provide unredacted disclosures, as we're
9 required to, of course; and to provide the witness orders
10:13:20 10 we're required to by the order before the last trial
11 session.

12 JUDGE BOUTET: Thank you. This is certainly not my
13 understanding of the position you have taken, Mr Pestman,
14 but in due course if you want to raise that we'll listen
10:13:40 15 to it. But I can tell you, I am not tempted to support
16 your views in this respect, but this will be a Chamber's
17 decision, not only my decision. But we have asked the
18 Prosecution to produce this core list and they have
19 responded to our order in this respect, and I don't think
10:13:57 20 we can and should penalise them in any way, shape or
21 form, because we are asking them to cooperate with the
22 Court in trying to cut down on the number of witnesses.
23 But I've heard what you've said and we'll deal with that
24 issue if and when it comes, but you know my point of view
10:14:13 25 on it at this moment.

26 Dealing with witnesses again, on the 15th of October
27 the Prosecution has filed an order of witnesses to be
28 called in the third trial session. This filing sets out
29 the list of the first ten witnesses that the Prosecution

1 intends to call, and the Trial Chamber appreciates that
2 this filing has complied with the request that was made
3 at the Status Conference on 7 September to include in the
4 order of witnesses the protective measures that apply to
10:14:47 5 each witness that will testify. On this list the
6 Prosecution have indicated that they anticipate applying
7 for closed session for witness TF2-201, the second
8 witness to testify in the third session; and that they
9 anticipate applying for a partial closed session for
10:15:07 10 witness TF2-008.

11 On the 27th of October 2004 the Prosecution filed a
12 further order of witnesses to be called in the third
13 trial session, providing a list of the next eight
14 witnesses the Prosecution intends to call in this trial
10:15:21 15 session. On this list the Prosecution have indicated
16 that they anticipate applying for a closed session for
17 witness TF2-017 and for witness TF2-068.

18 Am I right in my assumption and description,
19 Mr Prosecutor?

10:15:38 20 MR JOHNSON: Yes, Your Honour, you are correct. If I could
21 possibly start on the top of the list with witness 19,
22 TF2-021, we had indicated on that that that would be
23 closed circuit television. There is not a need for that.
24 This is witness is of adequate age and can testify
10:16:07 25 without the need for that. So we would be seeking just
26 the basic protections on that witness.

27 JUDGE BOUTET: That's fine. So we're not talking of a closed
28 session for that particular witness.

29 MR JOHNSON: That's correct, Your Honour.

1 JUDGE BOUTET: Okay.

2 MR JOHNSON: We are going to seek the closed session and the
3 partial closed sessions on witnesses 201 and 008, as you
4 have indicated. I can let you know at this particular
10:16:33 5 time that, if you go down to witness TF2-147, whereas we
6 had listed the basic protection for that witness, it
7 looks like now that we will be seeking and asking the
8 Court's permission for that witness to be testifying in
9 open session, without any protective measures.

10:16:54 10 Yes, Your Honour, that's correct, we are reviewing
11 witness TF2-004. We are reviewing right now with Witness
12 Protection Unit if there is a need for closed circuit
13 television on that witness, and we will be back very
14 shortly on that witness. The witness, of course, is
10:17:15 15 older now, but there may still be some concerns and we're
16 discussing that with Witness Protection.

17 JUDGE BOUTET: Thank you. I was asking that just for more
18 clarity and better information, but I would like to
19 advise the Status Conference that applications for a
10:17:27 20 closed session or no closed session, whatever it may be,
21 will be dealt with at a time that these witnesses will be
22 called to testify, and obviously you will make your
23 application and we will hear from Defence accordingly in
24 each and every case. So we won't dispose of that today.

10:17:43 25 I'm just raising the issue so everybody is familiar with
26 that, and we'll deal with it whenever it happens.

27 MR JOHNSON: Yes, Your Honour. I believe that your preference
28 is still that we would bring these applications up in
29 time so that they could be argued normally on a Friday.

1 JUDGE BOUTET: Yes. What I mean by this is I am not to
2 dispose of this today at this Status Conference.

3 MR JOHNSON: Certainly, Your Honour, but with that if I could
4 just add one thing. Since the first witness that we will
10:18:15 5 be seeking a closed session on is the second witness of
6 this session, that witness will certainly be testifying
7 before Friday. And so it might be best if we would bring
8 that application first thing tomorrow morning, so that we
9 can discuss that application. If Defence would be
10:18:32 10 prepared to do that first thing tomorrow morning or
11 perhaps right after lunch tomorrow, so there would be
12 time for the Chamber to consider that application before
13 that witness could testify.

14 JUDGE BOUTET: It sounds fair to me, but I am not a presiding
10:18:48 15 judge of the trial. So I will discuss that with the
16 Presiding Judge and will inform you accordingly tomorrow
17 morning before we proceed. But, for the Defence, be
18 ready in case we do proceed.

19 Next item on the agenda is "Expert Witnesses". On
10:19:11 20 the 1st of October the Trial Chamber --

21 MR JOHNSON: Excuse me, Your Honour.

22 JUDGE BOUTET: Yes?

23 MR JOHNSON: I'm sorry, I should have brought this up just a
24 moment ago. The witness that we have indicated as
10:19:22 25 witness number 26 on the order -- the first order that
26 was filed, we're going to be seeking -- and this is
27 basically I just wanted to give you notice and so the
28 Defence would have notice. We're actually going to be
29 seeking to move that witness to testify three witnesses

1 later, after witness number TF2-071. And so, again, that
2 is at least a week or two down the line, but I just
3 wanted to provide notice to you and to Defence.
4 JUDGE BOUTET: So that witness was number -- I don't have the
10:19:57 5 list with me.
6 MR JOHNSON: It's number 26 currently.
7 JUDGE BOUTET: So that's TF2-092?
8 MR JOHNSON: Yes, Your Honour. We would be seeking to move
9 that witness about three witnesses later than what the
10:20:25 10 witness is currently listed.
11 JUDGE BOUTET: So that is the only change in the order?
12 MR JOHNSON: Yes, Your Honour.
13 JUDGE BOUTET: So it would move from 26 to 29, and 27 will be
14 called before?
10:20:31 15 MR JOHNSON: Yes, yes.
16 JUDGE BOUTET: Okay.
17 MR JOHNSON: Thank you, Your Honour.
18 JUDGE BOUTET: Just so we know a little bit more, on the
19 order, as such, other than this being witness 26, when
10:20:44 20 were you expecting that witness to be heard? In two
21 weeks time or at the end of this week?
22 MR JOHNSON: I think it would be --
23 JUDGE BOUTET: A rough estimate here.
24 MR JOHNSON: Rough estimate -- sometime possibly the end of
10:20:57 25 next week I think we would be to that witness, would be a
26 rough estimate, Your Honour. And we will file a revised
27 list, but I wanted to give you and Defence notice.
28 JUDGE BOUTET: Which means that now, with that revised list,
29 witness number 27 is likely, if things work normally and

1 smoothly, to testify by the end of next week?

2 MR JOHNSON: We certainly hope so, yes, Your Honour.

3 JUDGE BOUTET: Any comments from the Defence? Dr Jabbi?

4 MR JABBI: No, My Lord.

10:21:30 5 JUDGE BOUTET: Second accused, no comments? Mr Margai, any
6 comment?

7 MR MARGAI: No, My Lord.

8 JUDGE BOUTET: Thank you. So we are coming back to the expert
9 witness. This Chamber issued a decision granting a
10:21:45 10 Prosecution request for leave to call additional expert
11 witness, Dr William Haglund, and to add him to the
12 modified witness list. That was done on the 1st of
13 October. By consequential order of the same day, the
14 Trial Chamber ordered the Defence to file on or before
10:22:03 15 the 15th of October 2004 a notice to the Trial Chamber
16 indicating whether it accepts the expert report and
17 whether it wishes to cross-examination the expert
18 witness, and to file submissions concerning the
19 admissibility of the said report.

10:22:15 20 The Trial Chamber has only received notice from the
21 Defence of the second accused on the 12th October 2004,
22 advising that it does not accept the expert's report and
23 that it wishes to cross-examine the expert witness.
24 Furthermore, the Defence notes that only part of the
10:22:33 25 expert report seems to be of possible importance to the
26 case of the second accused, and it submits that the
27 Prosecution should first specify which parts of the
28 report it or the expert witness intends to rely upon in
29 the case against the second accused, and only then will

1 the Defence make submissions on the relevance and the
2 admissibility of the report under Rule 89(C) of the
3 Rules.
4 Have I stated your position quite clearly,
10:23:03 5 Mr Defence Counsel?
6 [Mr Pestman nodded]
7 JUDGE BOUTET: You wish to speak to that at this moment,
8 Mr Johnson?
9 MR JOHNSON: Well, Your Honour, only to the extent that we
10:23:13 10 believe that the report is fairly self-explanatory, and
11 the portions of the report that would deal with this
12 particular case are self-explanatory and the Defence
13 should be able to pick those out.
14 JUDGE BOUTET: Thank you. Mr Pestman?
10:23:28 15 MR PESTMAN: I believe they're not self-explanatory and I am
16 not able to pick them out, so I would like the
17 Prosecution to assist me in this issue.
18 JUDGE BOUTET: Mr Johnson, maybe some discussion between the
19 two of you - that is, the Prosecution and counsel for the
10:23:49 20 second accused - may help to advance this issue rather
21 than discussion here.
22 MR JOHNSON: That's fair, Your Honour. Let us get together
23 and talk and try to sort this out among ourselves, and if
24 we can't then we'll come back.
10:24:03 25 JUDGE BOUTET: Please come back. Yes, thank you. As I have
26 indicated, according to the record, the first accused and
27 the third accused have not responded to this order, so
28 the only response we have received, that we are informed
29 of, is from the second accused. So Dr Jabbi, you wish to

1 comment?

2 MR JABBI: My Lord, I'm sorry, all I can say at this moment is
3 that we will consider this report and will crave your
4 indulgence for a little bit more time to respond.

10:24:33 5 JUDGE BOUTET: Thank you.

6 MR JABBI: Thank you.

7 JUDGE BOUTET: Mr Margai?

8 MR MARGAI: My Lord, I'm a bit surprised. As far as I can
9 recollect, we did file a notice of intention to
10:24:43 10 cross-examine the witness. But we shall verify that. I
11 believe we did.

12 JUDGE BOUTET: I'm just reporting what I have been informed
13 of.

14 MR MARGAI: I appreciate that, but I believe we did.

10:24:55 15 JUDGE BOUTET: Well, if you did, then it is not showing in the
16 record. We have to make sure that this is properly --
17 [Overlapping speakers]

18 MR MARGAI: [Overlapping speakers] -- reflected.

19 JUDGE BOUTET: That's right.

10:25:07 20 MR MARGAI: As My Lord pleases.

21 JUDGE BOUTET: Yes, I'm told that there has been, indeed, a
22 conditional filing.

23 MR MARGAI: As My Lord pleases.

24 JUDGE BOUTET: That appears to be the case, but we'll look
10:25:36 25 into the matter.

26 MR MARGAI: Very well.

27 JUDGE BOUTET: But I would like to ask counsel for the first
28 accused whether or not you can indicate to the Court
29 whether you are prepared to accept the expert's report or

1 you will wish to cross-examine this report -- this
2 expert.

3 MR JABBI: My Lord, as I said, I will crave your indulgence
4 for time to look at this issue and I will get back on it,
10:26:05 5 My Lord.

6 JUDGE BOUTET: Thank you, but indulgence has limitation as
7 well.

8 MR JABBI: Indeed, My Lord. I will try and make it as early
9 as possible.

10:26:17 10 JUDGE BOUTET: Thank you. Mr Margai, I know your submission
11 was conditional from what I understand of the filing, but
12 will it be your intention to cross-examine the expert and
13 have the expert called as a witness, or you're prepared
14 to make some admission?

10:26:38 15 MR MARGAI: Well, My Lord, we intend to cross-examine the
16 expert witness only on issues that are contentious.

17 JUDGE BOUTET: Very well. So I wish to inform the parties
18 that the Chamber will rule as to the admissibility and
19 about the admissibility of the expert report only at the
10:27:10 20 time that the expert is called to testify, and, given the
21 position taken, it will not be appropriate at this time
22 to deal with that matter. So we will wait until that
23 expert is called to testify.

24 The next issue about expert witness is ruling on a
10:27:35 25 Defence request for disclosure of the identity of a
26 possible Prosecution expert witness on the 1st of October
27 2004. Dismissing the motion of Principal Defender on
28 behalf of all three accused for the Trial Chamber to
29 issue an order for the Prosecution to disclose the

1 identity of the third expert witness, considering that
2 there was no guarantee at that time that the Prosecution
3 would call the expert witness, and that the disclosure of
4 the identity of the witness was of no assistance for the
10:27:56 5 budgetary planning of the Principal Defender, and that
6 the Prosecution was in no breach of any statutory
7 provision at this stage with respect to disclosure of the
8 proposed third expert witness.

9 The Trial Chamber would like, however, to know from
10:28:10 10 the Prosecution whether it has clarified this position
11 with respect to calling the third expert witness. And I
12 would add that it is my clear recollection at the time of
13 the Status Conference that it was from you, Mr Johnson,
14 that it was a question of a week or two, if I'm not
10:28:31 15 mistaken, maybe three weeks, you would be in a position
16 to say yes or no. So I'm putting it to you. What
17 information can you provide the Court with and your
18 colleagues on the Defence side in this respect?

19 MR JOHNSON: Well, Your Honour, probably to even add a little
10:28:50 20 aggravation, I believe that my colleague towards the end
21 of the last trial session stated that we certainly hope
22 that we would be able to provide that information within
23 two weeks from that time, and, of course, we're at least
24 two weeks past that time. Your Honour, all I can say is
10:29:12 25 that there's more red tape here involved in getting the
26 permissions for this person that we intend to seek to add
27 as a witness, and to seek good cause to add as a witness,
28 and we never intended or imagined that it would be.
29 We're dealing with international organisations and this

1 is a much more drawn out process than what we ever
2 imagined it would be.

3 The bottom line, to answer your question, is we
4 still have not secured permissions to use the person or
10:29:47 5 to even reveal the name of that person, even in a
6 confidential way. We sought permission to reveal the
7 name of that person from the employing organisation in a
8 confidential way to Defence, so that that would allow the
9 Defence to start some preliminary preparations and to
10:30:05 10 know who the witness is and possibly even contact -- or
11 know who the potential witness is and possibly even
12 contact the potential witness. We're still pushing as
13 hard as we can to secure those permissions. We have not
14 yet been successful, Your Honour.

10:30:23 15 JUDGE BOUTET: Well, I can only urge you to do the utmost to
16 make it happen, because it may not be of any urgency at
17 this particular session, but as we move along, it may
18 become a problem. And, therefore, I would not like to
19 see the trial be postponed and adjourned simply because
10:30:41 20 we are unable to provide this information in due course
21 to the Defence, and they are certainly entitled to have
22 this information, as you know, and the sooner the better.

23 MR JOHNSON: I respect that, Your Honour, and I'm very
24 embarrassed to stand up and relate this to you here
10:30:56 25 today. We will endeavour to do that. We will push to do
26 that and we are trying. The only consolation I have, for
27 whatever it may be worth, is we would certainly not be
28 looking to call this witness before the trial session
29 beginning in mid-May.

1 JUDGE BOUTET: But, as you know, even though you would call
2 that witness only in mid-May, let's assume that would be
3 the case, for the Defence to be fully prepared for this
4 witness, not only it is of importance that they have the
10:31:30 5 name of the particular witness, but that they be fully
6 prepared and that they be able to consult, in this
7 respect, maybe some other expert witness to cross-examine
8 and examine this particular witness. It requires time.
9 So that's what I mean by having to postpone whatever
10:31:49 10 simply because you're unable to secure this information.
11 We'll see how it goes for now, but I'm telling you that
12 as time goes by, we may put a bit more direct pressure to
13 get on with it.

14 MR JOHNSON: Yes, Your Honour, thank you; I understand.

10:32:15 15 JUDGE BOUTET: Looking at the next item on the agenda,
16 "Pending Motions and Decisions". The first that I have
17 on my agenda is the reference to the first accused's
18 motion filed on the 21st September 2004, requesting
19 service and arraignment on the consolidated indictment,
10:32:39 20 and this is the issue that has been raised this morning
21 as I understand it. I can only say that this decision is
22 in progress at this time. We expect to be able to file a
23 decision shortly. When I say shortly, I was hoping that
24 we would be able to do that before the start of the
10:32:57 25 session, but it may have to be during the session, but it
26 will be shortly produced. That's the best I can tell you
27 on this one.

28 The second accused filed a motion on 21st of October
29 2004, requesting service and arraignment on the

1 consolidated indictment. The Prosecution response was
2 filed on the 28th of October and the Defence reply is due
3 tomorrow. The Trial Chamber will issue a decision on
4 this issue when it has received all filings from the
10:33:29 5 parties. Mr Pestman, you've said you will not file, but
6 we still have to wait until tomorrow. And we'll get on
7 with it afterwards.

8 And although motion was made by Ms Quincy Whitaker
9 during trial on the 17th of September 2004 for a voir
10:33:47 10 dire to be held to ascertain the need for protective
11 measures for particular witnesses who testify, on the
12 27th of September 2004 the Defence for the first and
13 second accused filed a joint request for variation of
14 protective measures of Prosecution witnesses. This
10:34:04 15 decision is under advisement at this particular moment.
16 We expect that decision to be filed this week. It may be
17 by the end of the day today, but certainly this week.
18 That's the best I can tell you on this one, but it's
19 quite shortly.

10:34:37 20 A decision was delivered by the Trial Chamber on the
21 28th of October 2004 requesting the Prosecution to submit
22 highlighted maps of all areas covered in the indictment,
23 including regions and towns. The Prosecution are
24 required to file, by the 2nd of November, all highlighted
10:34:53 25 maps requested by the Trial Chamber. Any response from
26 the Defence should be filed by the 9th of November 2004.
27 So what we're asking, essentially, is to assist the Court
28 in understanding the case for the Prosecution. And I
29 would think that it will assist the Defence to understand

1 what it is too, because, as we move along from village to
2 village and towns to towns, as such, at times it gets to
3 be confusing with names and so on. So that will
4 hopefully assist everybody, so that is why we've asked
10:35:25 5 that. We would appreciate any assistance in this
6 respect. As I say, the Defence will be able to provide
7 response if they wish to by the 9th of November. You may
8 feel that it is not adequate, not sufficient, or too
9 much; whatever. Anyhow, you will be invited to respond
10:35:41 10 should you wish.

11 The Prosecution filed a submission in response to
12 Trial Chamber's ruling on disclosure of witness
13 statements date the 1st of October 2004 where the Trial
14 Chamber ordered the Prosecution to provide copies of all
10:35:55 15 written interview notes taken for and from witness
16 TF2-162.

17 [011104B 10.40 a.m.]
18 The Prosecution stated that two interviews were conducted
19 for this witness -- one by Christopher Santora and the
11:38:57 20 other by Charles Caruso, a former trial attorney with the
21 Office of the Prosecutor. The Prosecution attached a
22 declaration made by Christopher Santora stating that, in
23 accordance with OTP policy, he believes he had destroyed
24 his handwritten notes of the interview after transferring
11:39:13 25 all information from these notes into the interview
26 report.

27 He believed this to be true, although he did not
28 have a specific memory of destroying the notes. He
29 advised that he had searched his files and records and

1 did not find any handwritten notes pertaining to this
2 witness. The Defence response, if any, was due by
3 Wednesday, 27 October 2004, and we have not received and
4 not seen any response in this respect.

11:39:42 5 A confidential motion on detention issue was filed
6 by the Defence on 6 August, and a decision on this issue
7 will be delivered in due course. It has not been
8 delivered yet.

9 That's it for the outstanding or pending motions.

11:40:01 10 As I say, we expect at least two of those to be delivered
11 soon and, in all likelihood, this week. "Agreed facts"
12 is the other item on the agenda.

13 MR JOHNSON: Your Honour, the Prosecution filed a motion early
14 last week regarding potential violation of protective
11:40:27 15 measures and/or contempt. You just did not mention that.

16 JUDGE BOUTET: That's right; we have received a copy. I think
17 we got it on either Thursday or Friday, was it?

18 MR JOHNSON: I think it was a little earlier that we filed it,
19 but that may be right.

11:40:46 20 JUDGE BOUTET: But, as you know, last week was a bit
21 difficult. For those who were not here last week, we had
22 power shortages a for few days in the week and things got
23 a little confused for a while, but we hope that situation
24 has been clarified for this upcoming session.

11:41:04 25 MR PESTMAN: With regard to our motion on the variation of
26 protective measures, I hope that the decision is going to
27 be issued soon --

28 JUDGE BOUTET: I hope so, too.

29 MR PESTMAN: -- at least before we start hearing the first

1 witness. That voir dire would be very helpful to
2 establish not only whether the protective measures are
3 necessary, but also to establish in which category that
4 particular witness falls. So far, we have had to rely on
11:41:34 5 the Prosecution, which is telling us that a certain
6 witness has to be considered as an insider witness and
7 therefore falls within category C, or alternatively, the
8 witness is a minor and therefore falls within category A.
9 We would like to be able to challenge the
11:41:53 10 categorisation - I don't know whether that's a real
11 word - but we would like to be able to challenge the way
12 that the Prosecution puts witnesses into categories, or
13 into a certain category.

14 For example, I know that the next witness was
11:42:09 15 initially going to be heard as a minor. I now understand
16 that that is not going to be the case. There was a
17 serious issue there as to whether or not the next witness
18 - the witness who is going to be heard tomorrow - was
19 indeed 18. We want to be able to raise these issues
11:42:24 20 before that particular witness is heard with additional
21 protective measures.

22 JUDGE BOUTET: I can only repeat what I've stated as to when
23 that decision will be delivered -- hopefully, before the
24 first witness is called.

11:42:42 25 MR PESTMAN: Okay, thank you.

26 JUDGE BOUTET: The next item is the "Agreed facts between the
27 parties". On 15 October the parties filed a ninth status
28 report on the statement of agreed facts. This status
29 report declared that the parties were unable, at the

1 present time, to agree on any additional points of law or
2 fact. Given the lack of progress in this respect,
3 perhaps we should vary this particular comment and state
4 that it should be produced only once every session, or at
11:43:30 5 the end of each session rather than doing it the way
6 we're doing it, because nothing has been added to that
7 for quite a while.

8 So we will issue an instruction in this respect and
9 to do that at the end of each session rather than as it
11:43:46 10 is now. Do you have any objection to that,
11 Mr Prosecutor?

12 MR JOHNSON: No.

13 JUDGE BOUTET: Defence Counsel, first accused?

14 MR PESTMAN: No, I haven't.

11:43:57 15 MR JABBI: No.

16 MR MARGAI: No.

17 JUDGE BOUTET: That concludes my agenda, but I would like to
18 ask if the Prosecution has any other matter that it would
19 like to raise in this Status Conference at this
11:44:09 20 particular moment -- nothing?

21 MR JOHNSON: No, Your Honour.

22 JUDGE BOUTET: Thank you. Dr Jabbi, do you wish to raise any
23 other matter that has not been addressed at this moment?

24 MR JABBI: Yes, My Lord. I just want to draw attention to
11:44:25 25 this issue that constantly continues to come from the
26 accused persons concerning the designation - and perhaps
27 one should say the status - of counsel who have been
28 standby counsel and were later redesignated
29 Court-appointed counsel.

1 I believe letters have been written -- one or two or
2 more -- to the Principal Defender. One would have
3 expected that perhaps copies were also directed to the
4 Registry raising that issue from their side. It is an
11:45:17 5 issue on which I am not aware of any motions having been
6 filed in the court, but it keeps coming up, and it may
7 well be that it is necessary to deal with it, insofar as
8 addressing the accused persons on those issues.

9 I have a copy of a letter, for instance, dated
11:45:43 10 29 October 2004, signed by all three CDF accused persons,
11 with the third accused person signing it with a
12 thumbprint, and it is headed "Re: A. Imposing counsel on
13 the accused; B. Wrongful application of Rule 60(A)(1) of
14 the Rules, initial appearance." It is addressed to the
11:46:17 15 Principal Defender, and there is a long list of those to
16 whom copies have been sent and included there, there is
17 one entry "Honourable Judges of the Appeals Chamber;
18 Honourable Judges of the Trial Chamber; the Registrar,
19 Special Court for Sierra Leone." There are others, but
11:46:47 20 those are the ones I would want to mention insofar as
21 information to other areas of the court are concerned.
22 As I say, I just want to mention it, My Lord, because
23 it's a very live issue in the mind of the accused
24 persons, and on my part I have tried to talk to the first
11:47:09 25 accused on this matter -- and the implications. It seems
26 there is some concerted effort on their part to continue
27 making representations on the issue.

28 JUDGE BOUTET: Before I ask the representative from the
29 Principal Defender about this issue, I can only say that

1 we have issued what I thought - and still think - is a
2 very clear decision on this matter, and we do not intend
3 to review that decision. As far as we are concerned, you
4 and your colleagues have been duly appointed by the court
11:47:48 5 to act on their behalf, and the first accused has
6 decided not to come to court anymore. We have taken the
7 action that was, we feel, justified in the circumstances.

8 Now, they may agree or disagree with that, that's
9 their choice, but there is a process if you want to
11:48:09 10 appeal and review and so on, and there are time lines in
11 this respect. But what I can also add to that is that
12 I certainly have given an instruction, and will repeat
13 these instructions, that I do not want to receive any --
14 and, I repeat, any -- letter or correspondence from any
11:48:25 15 of the detainees. This is not proper and I will not
16 entertain any such correspondence with any of the
17 detainees.

18 If they want to write to the Principal Defender and
19 the Principal Defender wants to convey some information
11:48:37 20 to us, the Trial Chamber, that's fine, but they have to
21 do that in accordance with the procedure that is in
22 place. So I refuse - and I will reiterate my clear
23 instruction - that I don't want to be a recipient of any
24 correspondence from any detainees. It is not proper to
11:48:55 25 do that. I have not seen that letter that you've
26 mentioned, I was not aware of it, and I don't want to see
27 it, either.

28 MR JABBI: That point is taken. Just as a light - I would not
29 want to call it a correction, but a variation of a

1 statement that you made just now that the first accused
2 has decided not to come to the court anymore,
3 I believe --
4 JUDGE BOUTET: Up until this moment, for sure, anymore --
11:49:23 5 we'll see in the future. I cannot speak for next week or
6 in two months time, but as far as we know now, he's not
7 here this morning, he has not been attending most of the
8 last session, and so that's the status quo as far as
9 we're concerned. Certainly, he is most welcome if he
11:49:39 10 wants to come back at any time. We will certainly not
11 preclude him from coming back, if he wants to come back.
12 MR JABBI: I'm sure, My Lord, his position has always been
13 stated in a conditional way.
14 JUDGE BOUTET: Yes, but as you know, it is not for an accused
11:49:52 15 to impose conditions on the court. There are rules and
16 procedures, and these are the ones that are governing the
17 process and not what the accused says should be governing
18 the process.
19 MR JABBI: As Your Honour, please.
11:50:07 20 MR YILLAH: May it please you, My Lord.
21 JUDGE BOUTET: Yes.
22 MR YILLAH: My Lord, on this issue of the correspondences that
23 have been written by the first accused, My Lord, the
24 Defence office is mindful of the provisions of the rules
11:50:17 25 of detention which prohibit communication -- all forms of
26 communications -- with the outside except through the
27 Registry. We have been receiving such correspondences
28 and handing them over to counsel for the first accused,
29 together with the rules of detention, drawing his

1 attention to the relevant provisions which prohibit such
2 communications. That is what we have been doing at this
3 stage, My Lord.

4 When once we receive the correspondences, we serve
11:50:50 5 them - all of them - on counsel for the first accused
6 Dr Jabbi, together with the rules of detention, drawing
7 his attention to the relevant provisions which prohibit
8 such communications except with the approval of the
9 Registrar. That is perhaps why, My Lord, the Principal
11:51:08 10 Defender may not have been making representations
11 regarding some of the scope and contents of this
12 correspondence to the Trial Chamber. Thank you.

13 JUDGE BOUTET: Thank you very much.

14 MR MARGAI: My Lord --

11:51:22 15 JUDGE BOUTET: Counsel for second accused, do you wish to
16 raise any matter at this particular moment, other than
17 what you have raised already?

18 MR PESTMAN: I can't remember what I've raised already.
19 I want to raise, I think, a new point. I'm not familiar
11:51:41 20 with this letter, so there's not much that I can say
21 about that letter. I now understand why it was not
22 forwarded to me.

23 I would like to make some remarks about the order to
24 appoint me as counsel to my client. I have also read the
11:52:01 25 consequential order, which gives a fair explanation of
26 what my tasks are as a counsel, but I foresee a problem,
27 which I could have warned you of but I was not consulted
28 when that decision was taken.

29 The problem is that as a civil lawyer, under my

1 Dutch code of conduct I am only allowed to represent the
2 interests of my client. The interests of my client are
3 the only purpose I am supposed to serve. I know that it
4 is different in common law systems. I do not consider
11:52:38 5 myself to be an officer of this court - that is a
6 completely alien concept to me. If anything, I'm an
7 officer of my client. That means that if my client tells
8 me that he does not want to come to court, I have to
9 respect the decision. If my client tells me that he does
11:52:54 10 not want me to come to court, I also have to respect that
11 decision.

12 So far, he has not yet made that request, but I do
13 not exclude that, sooner or later, he will do that. If
14 I don't appear in court tomorrow, that is because my
11:53:10 15 client has asked me not to represent him in court. It
16 does not mean that he has asked me not to represent him
17 in any other matter, but if he instructs me not to come
18 to court, I have to follow that instruction as long as
19 I remain his counsel.

11:53:25 20 JUDGE BOUTET: Well, on that issue, I don't want to get into a
21 debate. All I can ask you to do is to read carefully the
22 order and read carefully the regulations, the rules and
23 procedures as such. You have been assigned counsel to
24 that particular accused in accordance with our Rules of
11:53:43 25 Procedure as well. You accepted that at the time,
26 because you have acted on his behalf, and therefore I'm
27 just asking you to be prudent in your assessment and in
28 your decision. But I can only ask you to be very, very
29 careful as to how you act and, even though you say you're

1 not an officer of this court, I will say to you that you
2 are an officer of this court -- that's why you're here
3 today.

4 So an "officer of the court" does not necessarily
11:54:10 5 mean that you are working for the court, but you are
6 working in this court for the interests and to the
7 benefit of your client. So, in a nutshell, that is
8 essentially what it is, but before you make any decision,
9 I can just again invite you to be very careful about
11:54:27 10 that.

11 MR PESTMAN: Just in response to that, I know what your
12 position is, and I can only reiterate that I don't
13 consider myself to be an officer of this court. I will
14 consult with the Dean of the Amsterdam Bar this afternoon
11:54:41 15 and ask him whether he has any useful advice on this
16 matter, but I just want to state and to make clear that
17 I cannot act in contravention of my own local code of
18 conduct and, as far as I know, there is no code of
19 conduct before this court, so I have to rely on that code
11:54:59 20 of conduct only. I will consult my Dean in Amsterdam.
21 I will try to reach him this afternoon to ask him for
22 advice on this matter if the situation arises -- which
23 I hope, of course, it will not.

24 JUDGE BOUTET: We hope so, too. Thank you. Mr Margai.

11:55:14 25 MR MARGAI: I think on that issue our position is very clear.
26 There is no ambiguity. I think the Rules are quite clear
27 with regard to our representation, and as confirmed by
28 the third accused, that whether or not he was in
29 attendance, he had reposed confidence in us and that we

1 should pursue his defence.

2 Commenting on the letter that Dr Jabbi referred to,
3 I can only say that I am a little worried about letters
4 being written on behalf of my client without my
11:55:54 5 knowledge, because I am here to protect the interests of
6 that client. And I believe no individual has the right
7 or authority to write any letter on his behalf,
8 especially when one takes into consideration the fact
9 that he is stark illiterate -- he cannot read, he cannot
11:56:16 10 write. He does not even understand Krio, and I have not
11 seen that letter, but I believe there is only a
12 thumbprint here, which means nothing, as far as the law
13 is concerned. If a man is illiterate and you want to
14 rely on his thumbprint, there should be an illiterate's
11:56:39 15 protection clause here. So I would only observe that
16 such practices --

17 JUDGE BOUTET: I presume, Mr Margai, that the letter in
18 question is in English, too.

19 MR MARGAI: Precisely; that's what I'm saying. There is
11:56:51 20 nothing before this court -- or to convince me as his
21 counsel that he was a party to the contents of that
22 document, or that he understood what in fact was written
23 in that document. I only wish to make this observation,
24 and I hope I will not have cause to bring it up again.

11:57:08 25 If my client wishes a letter to be written, either he
26 comes through me, or he goes through the Principal
27 Defender's Office. That is all, My Lord.

28 JUDGE BOUTET: All I can say to you, Mr Margai, is that we
29 cannot preclude one individual from claiming that he is

1 writing on behalf of who ever. We do not recognise that
2 authority to that person [overlapping speakers] --
3 MR MARGAI: I just do not want the records to be distorted.
4 JUDGE BOUTET: Your point is taken. That concludes this
11:57:42 5 Status Conference, unless there is any other matter.
6 I thank you all for your attendance and your cooperation
7 this morning. We will see you tomorrow morning at 9.30.
8 MR YILLAH: Just to make the records clear, My Lord, I want to
9 bring two issues to your attention, My Lord.
11:58:04 10 JUDGE BOUTET: On behalf of?
11 MR YILLAH: On behalf of the Office of the Principal Defender,
12 My Lord -- two issues that have been raised here, to
13 clarify the records. One is the service of the findings
14 of the investigation that you ordered the Principal
11:58:19 15 Defender to carry out as a result of complaints made by
16 counsel for the third accused. My Lord, it is my
17 understanding that such findings were served on counsel
18 for the first accused recently in my presence, and some
19 time back on the team for the third accused. I just want
11:58:40 20 to emphasise this position for the records, My Lord.
21 Secondly, regarding the issue of the judicial
22 calendar that has been amended, My Lord, it is my
23 understanding, and indeed it is to my knowledge as well,
24 that the Principal Defender conveyed this position to
11:58:57 25 counsel time and time again -- to several counsel --
26 I mean, all nine Defence teams, and she got feedback and
27 responses from only a few teams. The position that she
28 conveyed was the views reflected by the teams that she
29 received responses from. Thank you very much.

1 JUDGE BOUTET: It is well noted. Thank you very much. So
2 that concludes this Status Conference and we will see you
3 in Court tomorrow morning at 9.30.
4 [Whereupon the Status Conference adjourned at 11.00 a.m.
11:59:47 5 The hearing will reconvene on Tuesday, the 2nd day of
6 November 2004, at 9.30 a.m.]
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C E R T I F I C A T E

We Ella K Drury and Maureen P Dunn, Official Court Reporters for the Special Court for Sierra Leone, do hereby certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (machine writer) and thereafter transcribed by computer, that the foregoing pages contain a true and correct transcription of said proceedings to the best of our ability and understanding.

We further certify that we are not of counsel nor related to any of the parties to this cause and that we are in nowise interested in the result of said cause.

Ella K Drury

Maureen P Dunn