

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL-2004-15-T
TRIAL CHAMBER I

THE PROSECUTOR
OF THE SPECIAL COURT
v.
ISSA SESAY
MORRIS KALLON
AUGUSTINE GBAO

MONDAY, 10 JANUARY 2004
10:10 A.M.
STATUS CONFERENCE

Before the Judges:

Bankole Thompson, Presiding

For Chambers:

Ms Candice Welsch
Mr Matteo Crippa

For the Registry:

Mr Geoff Walker

For the Prosecution:

Ms Lesley Taylor
Ms Boi-Tia Stevens

For the Principal Defender:

Ms Simone Monasebian
Ms Haddijatou Kah-Jallow
Ms Elizabeth Natamya

For the accused Issa Sesay:

Mr Wayne Jordash
Ms Sareta Ashraph
Ms Chloe Smythe

For the accused Morris Kallon:

Mr Melron Nicol-Wilson

For the accused Augustine Gbao:

Mr Andreas O'Shea
Mr John Cammegh

1 Monday, 10 January 2005
2 [The three accused not present]
3 [Open session]
4 Upon commencing at 10.10 a.m.
5 PRESIDING JUDGE: Good morning, learned counsel, appearances.
6 MS TAYLOR: Good morning, Your Honour. May it please
7 Your Honour, I appear with my learned friend Ms Boi-Tia
8 Stevens for the Prosecution.
9 MR JORDASH: Your Honour, for the first accused it's myself,
10 Sareta Ashraph and Chloe Smythe, who is a recent addition
11 to the team.
12 PRESIDING JUDGE: Thank you. Second accused.
13 MR NICOL-WILSON: Your Honour, for the second accused Melron
14 Nicol-Wilson.
15 PRESIDING JUDGE: And third accused.
16 MR O'SHEA: May it please Your Honour, I am Andreas O'Shea.
17 I appear with Mr John Cammegh for the third accused,
18 Mr Augustine Gbao. You will note he is not here this
19 morning. I don't know what the position is going to be
20 during the course of this session.
21 PRESIDING JUDGE: Thank you, counsel.
22 Well, learned counsel, as you are aware, we're
23 convened here this morning --
24 MR JORDASH: Your Honour, I'm sorry to interrupt you. Just to
25 explain, Mr Sesay has absented himself this morning
26 simply because of the nature of the hearing. I fully
27 expect him to be here tomorrow.
28 PRESIDING JUDGE: Thank you, learned counsel.
29 MR NICOL-WILSON: Your Honour, Mr Kallon is absent due to a

1 slight ailment. He informed me yesterday that
2 arrangements are underway to allow him to have access to
3 some medical facilities at the military hospital, but
4 then I expect him to be here tomorrow.

5 PRESIDING JUDGE: Thank you. Does Professor O'Shea have
6 anything to say apart from what he has already said?

7 MR O'SHEA: With regard to Mr Gbao?

8 PRESIDING JUDGE: Yes.

9 MR O'SHEA: Well, at this stage, Your Honour, I have not yet
10 seen him, so I don't know the position and I won't
11 speculate.

12 PRESIDING JUDGE: Very well, thank you.

13 Learned counsel, we're convened here this morning
14 for the purpose of conducting a status conference in
15 respect of the third trial session of the RUF case
16 pursuant to scheduling order for status conference under
17 Rule 65 bis, dated 30th July 2004.

18 It is now, of course as you are aware, an
19 established practice for us to refer to the relevant
20 statutory authority for a proceeding of this nature and,
21 undoubtedly, you are aware that we are proceeding under
22 Rule 65 bis of the Rules of Procedure and Evidence of the
23 Special Court for Sierra Leone, which states, and I
24 quote: "A Status Conference may be convened by the
25 designated Judge or by the Trial Chamber. The Status
26 Conference shall:

27 (i) organise exchanges between the parties so
28 as to ensure expeditious trial proceedings;

29

1 (ii), review the status of his case and to allow the
2 accused the opportunity to raise issues in
3 relation there to."

4 Let me further indicate that it is not the intention
5 of the Bench, and I have no prior request on the part of
6 the Prosecution or the Defence otherwise to conduct this
7 proceeding either in its entirety or some parts of it in
8 executive or closed session.

9 In effect, we shall comply strictly with Rule 78 of
10 our Rules which provides, and I quote again:

11 "All proceedings before a Trial Chamber, other than
12 deliberations of the Trial Chamber, shall be held in
13 public unless otherwise provided."

14 In essence, the proceeding will accordingly be
15 conducted and has been conducted in open session.

16 I shall now proceed to read out the agenda items for
17 the dispatch of today's business. We've already covered
18 the first agenda item, which is appearances of the
19 parties. The second item would be in relation to the
20 accused persons in terms of their health and also
21 detention issues. That is agenda item 2. The third item
22 on the agenda will be trial logistics. The fourth item
23 will relate to witness issues. Item 5 will be
24 outstanding motions, appeals. And item 6 will be any
25 other matters. I'm sure you appreciate that each of
26 those items will have sub-items, sub-things to cover.

27 At this stage I will ask counsel for each accused
28 person to raise any issues in relation to their health.

29 Mr Jordash.

1 MR JORDASH: I do know that Mr Sesay was on Friday suffering
2 from malaria. I don't know today what his condition is,
3 but I think he was coming towards the end of the present
4 bout.

5 PRESIDING JUDGE: Yes. Was it a severe condition or a mild
6 condition? Do you have any information on that?

7 MR JORDASH: Well, he had been ill for nearly two weeks and
8 was heading to the doctor after a conference we me on --
9 I beg your pardon. It wasn't Friday; it was Saturday.
10 That is the only information I can assist with.

11 PRESIDING JUDGE: And he has been receiving medical attention?

12 MR JORDASH: He has.

13 PRESIDING JUDGE: Yes. Learned counsel for the second
14 accused.

15 MR NICOL-WILSON: Mr Kallon is suffering from a slight
16 ailment. This is a medical condition that he was
17 suffering from before he was taken over to the Detention
18 Centre. He has been seeing the doctor at the detention
19 facility, but the doctor has advised that he will need to
20 see a medical doctor at the military hospital at
21 Wilberforce, and the medical doctor at the Detention
22 Centre is making the necessary arrangements. This is a
23 medical condition which will not affect his appearance at
24 the trial.

25 PRESIDING JUDGE: Yes. In other words, these are all matters
26 receiving medical attention.

27 MR NICOL-WILSON: Yes, Your Honour.

28 PRESIDING JUDGE: All right. What about Professor O'Shea?

29 MR O'SHEA: Your Honour, I spoke to the doctor on Saturday and

1 he had nothing to report with respect to Mr Gbao's
2 physical condition.

3 PRESIDING JUDGE: Nothing remarkable?

4 MR O'SHEA: Sorry?

5 PRESIDING JUDGE: Nothing remarkable? Remarkable.

6 MR O'SHEA: Yes, yes.

7 PRESIDING JUDGE: Let's move on to detention issues. We'll
8 now begin with Mr Jordash. Are there any issues that you
9 need to raise? Let me also inform you that
10 Mr Barrie Wallace, who is in charge of the unit, is in
11 court. And in case there are issues that may call for
12 his clarification or explanation from him, I'm sure he's
13 able and willing to provide those.

14 MR JORDASH: As far as I'm aware there are no issues to raise.

15 PRESIDING JUDGE: Right. Learned counsel for the second
16 accused?

17 MR NICOL-WILSON: Nothing, Your Honour.

18 PRESIDING JUDGE: Mr Cammegh, anything from your side?

19 MR CAMMEGH: No.

20 PRESIDING JUDGE: All right. Does the Principal Defender have
21 any supplementary issues that the assigned counsel may
22 not know about?

23 MS MONASEBIAN: No, thank you, Your Honour, not at this time.

24 PRESIDING JUDGE: You don't have anything? Right. Does the
25 Prosecution know of anything that they might want the
26 Court to be apprised of?

27 MS TAYLOR: No, Your Honour.

28 PRESIDING JUDGE: Thanks. Well, let's move on to the third
29 item on the agenda, trial logistics. And here we have

1 various subdivisions of this. The first part is the
2 trial schedule, and all we need to say here is that this
3 Chamber issued an order on the 23rd of July 2004, order
4 detailing judicial calendar for the RUF trial providing
5 that this third session of the trial against the accused
6 persons would run from the 10th of January 2005 until the
7 4th of February 2005. Of course, there has been an
8 amendment where it will run from the 11th of January
9 2005. And the hours of court operation will be those
10 adopted during the second trial session; that is, Monday,
11 Tuesday, Thursday and Friday from 9.30 a.m. to 6.00 p.m.
12 with a break for lunch from 1.00 to 2.30 p.m. On
13 Wednesday the court will sit only from 9.30 a.m. to 1.00
14 p.m. We have found that these hours of operation are
15 convenient and there are no compelling reasons to make
16 any modification.

17 The Trial Chamber also issued a further order
18 detailing the judicial calendar on the 8th of October
19 last year scheduling the fourth and fifth trial sessions
20 in this matter. These sessions will run from the 5th of
21 April 2005 to the 13th of May 2005 and from the 1st of
22 July 2005 to the 9th of August 2005 respectively.
23 These sessions will each be approximately of a six-week
24 duration. I take it that these are noncontroversial
25 contentious issues. We have resolved them. We consulted
26 with both sides.

27 Then let us move on to item B under our main agenda
28 item trial logistics, tendering of exhibits. I think
29 perhaps all I need to say here, and again I would, with

1 some measure of judicial reluctance, but for the records
2 is that the Trial Chamber again takes the opportunity of
3 emphasising that it is absolutely necessary to ensure the
4 smooth functioning of the judicial process, that a party
5 who intends to submit documentation for evidence or
6 evidentiary purposes should make available, in advance,
7 copies of the said document for the other party, for each
8 member of the Bench, for the Court Management office and
9 for the legal officer assigned to the trial. Where a
10 party intends to tender a document as an exhibit, the
11 original should be made available to Court Management for
12 the records and the original, of course, will be numbered
13 accordingly as an exhibit. It is the considered opinion
14 of the Trial Bench that there has not been strict
15 compliance with this requirement. Again we urge counsel
16 to cooperate as much as possible.

17 MS MONASEBIAN: Your Honour, if I may, part of the problem
18 that the Defence was having was the inability to access a
19 photocopier despite their legal services contracts
20 indicating they had the right to one for their exclusive
21 use.

22 PRESIDING JUDGE: Yes, right.

23 MS MONASEBIAN: I could just let Your Honours know that the
24 last week in December the Registry has finally complied
25 with the Trial Chamber's order in the CDF matter that
26 counsel should have that copier forthwith and it has now
27 arrived so hopefully --

28 PRESIDING JUDGE: So that will ameliorate the situation.

29 MS MONASEBIAN: We hope it will, Your Honour.

1 PRESIDING JUDGE: Right. I was expecting an intervention from
2 you. So in other words, at this stage we have a happy
3 issue out of all our afflictions.

4 Well, then we will proceed to case presentation,
5 that is sub-item C. Again, once more nothing of much
6 moment, but just to say that the Trial Chamber is still
7 of the opinion that on occasion examinations-in-chief and
8 cross-examinations of Prosecution witnesses have been
9 unduly lengthy, and sometimes understandably, and
10 repetitious, again sometimes understandably, and
11 seemingly not relevant, but we say with a lot of judicial
12 caution. But again, what we need to do here is just
13 consistent with prior judicial warnings, is to urge
14 learned counsel on both sides to cooperate with the
15 Bench, as they have so far been doing, in giving efficacy
16 and substance to our joint commitment to ensure that each
17 accused person has a fair and expeditious trial. That is
18 all I need to say.

19 Court reporting. Mr Dolphin, I understand, is
20 available to provide us an update on the staffing
21 situation of court reporters and also some kind of
22 approximation as to delivery times for drafts and final
23 transcripts.

24 MR DOLPHIN: Thank you, Your Honour. The Court Reporters Unit
25 is at full strength now for this Chamber. By the end of
26 the last session they were achieving next day turnaround
27 for transcripts and I would expect that that will
28 continue through the next session.

29 The only things I'd want to say on behalf of the

1 unit are to remind people to speak at a reasonable pace
2 and for only one speaker at a time, not to speak over the
3 top of each other and that everyone remembers to switch
4 on and off their microphones.

5 PRESIDING JUDGE: Yes, again I think that is an area which is
6 not a matter of contention. We've all been endeavouring
7 to measure up to expectations of Court Management, and
8 unless there are any parties who want to shed some
9 further light on this, I will move on to the next item.

10 MR JORDASH: Your Honour, may I just seek clarification as to
11 what "the next day" means, because for my part it is very
12 useful to have them before we come into court on the next
13 day. I don't know if that is a feasible option.

14 PRESIDING JUDGE: Well, I will leave you in the capable hands
15 of Mr Dolphin. Would you like to excise a right of
16 response?

17 MR DOLPHIN: Yes, Your Honour, that will be the case. They
18 will be able to have it the next morning.

19 PRESIDING JUDGE: Interpretation. I understand Rebekka Ehret
20 of the Interpretation Unit, head of it, will provide us
21 with an update on the staffing of the interpreters and
22 address some issues concerning the interpretation during
23 this trial session.

24 MS EHRET: Thank you very much, Your Honour. As usual during
25 recess we did continuous training with the old staff that
26 have been here for quite a while. We were concentrating
27 on English grammar issues and English pronunciation
28 issues, again to make life easier for the court reporters
29 and also to guarantee expeditious trial procedures. So

1 you can be confident that everything during all dialogues
2 within court, other than directly with the witnesses,
3 will be interpreted simultaneously. The ones with the
4 witnesses will be interpreted consecutively, as it is the
5 convention all over the world. Also conventionally all
6 over the world, interpreters should get written documents
7 beforehand. That is my old request, and again, I beg you
8 all to follow that and give me any kind of written
9 documents so I can hand them over to the interpreters,
10 and I will guarantee full confidentiality, as always.
11 What we do then is that still the interpreters will be
12 listening to the reader to make sure that this is being
13 interpreted, but at the same time they can look at the
14 text.

15 I've been trying to recruit -- to look for women
16 interpreters. I've been quite successful. I've found
17 about 20 possible women. We start doing training, as
18 long as the other courtroom is free, during January and
19 then we will see and then I'll try to at least employ
20 some of the women - the best ones - on a temporary basis,
21 and I hope that I will get all your support to do that.

22 While I'm doing training for new possible
23 interpreters, I would also ask everybody in here, all
24 other sections that are working with interpreters that
25 are not professional interpreters, be that Investigation
26 or from the Defence side or from Prosecution side to at
27 some point let me introduce -- or let me be introduced to
28 your interpreters so I can have a word with them when it
29 comes to questions of professionalism, and we will find a

1 way to guarantee the professionalism of these
2 interpreters as well. I think I would very much
3 appreciate that and again in the case of expeditious
4 trial procedures. Thank you very much.

5 PRESIDING JUDGE: Thank you.

6 I would like to invite the Prosecution, if they have
7 any comments in response to this, and particularly in the
8 light of some indication on the part of the Prosecution
9 that the ninth witness, TF1-218, will require a female
10 Limba interpreter, does the Prosecution wish to update
11 the Chamber on this arrangement, if any?

12 MS TAYLOR: The position remains the same, that that witness
13 does require a female Limba interpreter. And
14 I understand that that interpreter is, in fact,
15 available. So arrangements have been made.

16 PRESIDING JUDGE: Okay, yes.

17 MS EHRET: May I add something which I forgot?

18 PRESIDING JUDGE: Yes, quite.

19 MS EHRET: Again, I understand that if it is the case that the
20 order of witnesses needs to be changed for whatever
21 reasons, I would appreciate it if I be notified about any
22 changes as soon as possible. You can call me any time at
23 night. I don't mind. I just have to get it organised.
24 Thank you very much.

25 PRESIDING JUDGE: Thank you. Learned counsel for the first
26 accused any comments on the interpretation issues?

27 MR JORDASH: No, Your Honour.

28 PRESIDING JUDGE: Learned counsel for the second accused?

29 MR NICOL-WILSON: None, Your Honour.

1 JUDGE THOMPSON: What about for the third?

2 MR CAMMEGH: Nothing to say, thank you.

3 PRESIDING JUDGE: Thank you. Let's move on to the presence of
4 monitors during closed sessions. That's agenda sub-item
5 F. It will be recalled that in its order on trial
6 monitoring during closed session dated 27th of October
7 last year, the Trial Chamber ordered that one
8 international and one national monitor could be present
9 during the court proceedings in closed session. The
10 Chamber has been advised that the monitors will be able
11 to follow proceedings from the public gallery via
12 wireless headphones that will be made available to them.
13 Perhaps we should invite the Chief of the Court
14 Management section to shed some light on this matter,
15 either confirm this or shed some further light on it.
16 Mr Dolphin.

17 MR DOLPHIN: Yes, Your Honour, I can confirm that two monitors
18 will be able to hear the proceedings via wireless
19 headphones in the public gallery. The equipment is
20 available for them.

21 PRESIDING JUDGE: Very well, thanks. Does the Prosecution or
22 the Defence have any concern in that regard?

23 MS TAYLOR: No, Your Honour.

24 PRESIDING JUDGE: Thanks. Let's move on to a much more
25 elaborate sub-item, and that is the concept of voice
26 distortion. And here I would like to invite your very
27 careful attention, because not only is the issue one of
28 some sensitivity, but it is also an issue where the
29 technology does play tricks with us and we need to be

1 absolutely sure of what we are in fact working with.
2 In accordance with Chamber's decision on Prosecution
3 motion for modification of protective measures for
4 witnesses dated 5th July 2004, the voices of victims of
5 sexual violence, Category A, and witnesses who are
6 described as insiders, Category C, are to be distorted in
7 the speakers for the public during their testimony. So
8 that is the protective measure that this Court ordered.

9 It may be recalled that during the October RUF trial
10 session there were some technical difficulties that arose
11 when a witness was testifying in English through voice
12 distortion. Essentially the scenario was this: A system
13 of speakers in the courtroom was necessary to allow
14 persons within the courtroom to hear the undistorted
15 voice of the witness. We were advised that the system
16 presented risks that the undistorted voice of the witness
17 would be broadcast if any microphone in the courtroom was
18 activated while the witness was speaking. It also
19 created difficulties in terms of being able to use the
20 headphones to hear everyone else in the courtroom speak
21 since it was the distorted voice of the witness that was
22 being broadcast through the headphones.

23 So that is the background and I'm sure that most of
24 us recall this kind of technological difficulty. So what
25 is the position now in terms of our next trial session
26 and prospective trial sessions? We're advised, and we
27 faithfully believe, that a new system has been developed
28 and it will be put in practice during this trial session.
29 For those witnesses in Category A or C, regardless of the

1 language in which they testify, no longer a restriction
2 of in English, but regardless of the language in which
3 they testify. Now people within the courtroom will hear
4 all voices of the witnesses, the judges and counsel
5 undistorted through the headphones. We're further
6 advised that in the public gallery people will hear all
7 voices distorted, and that efforts have been undertaken
8 to reduce the actual level of distortion that will be
9 used in order to minimise the impact of the distortion
10 whilst still affording sufficient protection to the
11 protected witnesses. That is a kind of encapsulation of
12 the new system that will be in place.

13 I can testify that this new system was demonstrated
14 to myself and Judge Boutet and staff from the Office of
15 the Principal Defender, the Office of the Prosecutor and
16 Victims and Witnesses section on the 7th of January of
17 this year. And the Audio and Visual Unit have indicated
18 they will provide such a demonstration this afternoon if
19 Defence counsel so insist. I could say, speaking for
20 myself and I think I have Judge Boutet's concurrence on
21 this, that when we witnessed the demonstration of this
22 new system last Friday, our considered view is that with
23 certain safeguards in place, any distortions at the level
24 of the public gallery will be minimal or manageable and
25 will not reflect anything approximating to the
26 "Daffy Duck" kind of situation. So that is our own
27 considered opinion that -- that is the scenario we have
28 for this adjustment to the technology.

29 I now invite learned comments from Prosecution and

1 Defence.

2 MS TAYLOR: Your Honour, the concern of the Prosecution,
3 consequent upon the demonstration last Friday to which
4 Your Honour has referred, is that the level of distortion
5 from the witness is variable depending upon how close or
6 how far away people are from the microphone.

7 PRESIDING JUDGE: That is one dimension of it.

8 MS TAYLOR: And I understand that the distortion increases the
9 closer you get to the microphone and the distortion
10 lessens --

11 PRESIDING JUDGE: The further away you get.

12 MS TAYLOR: The further away you get. The Prosecution's
13 concern is simply that with witnesses who might be
14 nervous, who might be excited or have any other kind of
15 emotional kind of response in the courtroom, they will
16 not keep themselves at the same distance from the
17 microphone, nor at the appropriate distance from the
18 microphone. And that until the situation can be
19 satisfactorily judged, that is that everyone gets to know
20 how close or how far someone really should be from the
21 microphone, if a witness is at all tempted to lean back,
22 which means that the distortion will lessen, if they
23 might -- the Trial Chamber might consider having a
24 monitor in the public gallery the first couple of times
25 that this is used so that the level of distortion - only
26 for the witnesses - can be judged. And it is simply the
27 protective concern, obviously, for the witnesses that the
28 Prosecution raises this issue.

29 PRESIDING JUDGE: It is a difficult situation I could say,

1 speaking for myself and for my brother Judge Boutet, that
2 we are not saying we have a foolproof solution here. It
3 is how the technology is managed and adapted. Of course
4 added to that is the complication that there would be or
5 would not be sharp distortions depending on the level or
6 the pitch of one's voice. I mean, some people have
7 high-pitched voices and some people have low-pitched
8 voices. That too can affect the distortion. When we
9 watched the demonstration there were persons who usually
10 would speak at a high-pitched level and that would
11 accentuate the distortion.

12 One suggestion it would seem that has been put
13 forward and probably has the support, perhaps -- or may
14 have the support of Prosecution and Defence is whether we
15 need to have before every witness or any witness
16 testifies we need to have some kind of demonstration,
17 quick demonstration, you know, and see how things will
18 play out, but we will leave this to the experts. And
19 I hear that we have someone here from the Audio Unit who
20 perhaps can assure us that they will be monitoring the
21 level of distortion and -- but I certainly agree with you
22 that the new system does not purport to be foolproof.

23 Yes, go ahead.

24 MS TAYLOR: Your Honour, I understand the rationale,
25 obviously, for demonstrating the use of the system to
26 witnesses before they give evidence and that will go a
27 long way to -- explaining that. My only concern is for
28 witnesses coming to a room they're unused to. There are
29 lots of people dressed in robes, they become nervous, and

1 they will start to move. And it's that ad hoc
2 difficulty, if you like, that the Prosecution is
3 concerned with.

4 PRESIDING JUDGE: Perhaps let's hear some responses from the
5 Defence. The Defence might be able to provide some
6 alternative options that might help us out of this
7 difficult situation.

8 Mr Jordash.

9 MR JORDASH: I wasn't at the demonstration; somebody from the
10 Defence office was. I mean, I know nothing about this
11 technology except --

12 PRESIDING JUDGE: You will be treated to it this afternoon if
13 you have the time.

14 MR JORDASH: I may have to politely decline that offer, but
15 somebody from my team might. But I think somebody from
16 the Defence office might, in any event.

17 PRESIDING JUDGE: Yeah, but do you have any -- I mean,
18 considering the dynamics of the technology as we
19 presented it, do you have any problems in terms of --
20 theoretical problems in terms of safeguards from a
21 Defence perspective? Not at this stage?

22 MR JORDASH: No. No, thank you.

23 MR NICOL-WILSON: Your Honour, if I heard you rightly, you
24 said the people in the gallery will hear all voices
25 distorted?

26 PRESIDING JUDGE: Yes. That's what I'm advised. It's not me
27 saying that. I'm speaking from pure technical advice.

28 MR NICOL-WILSON: Does that mean that they will hear the
29 voices of counsel and learned judges --

1 PRESIDING JUDGE: That is what I said, all voices.

2 MR NICOL-WILSON: And we are thinking if the mechanism can be
3 put in place wherein they will hear the voices of counsel
4 undistorted.

5 PRESIDING JUDGE: Well, we could address that to the experts.
6 Are the experts around here? Is somebody from the
7 Audiovisual Unit here, present?

8 MR WALKER: Not in court, Your Honour.

9 PRESIDING JUDGE: Not in court? Can we stand down this matter
10 and invite them to come and provide some clarifications
11 while we hear any responses or comments that
12 Professor O'Shea and Mr Cammegh might want to make on
13 this issue, because you are familiar with this problem.

14 MR CAMMEGH: Your Honour, I wonder if a wait-and-see approach
15 would be the safest.

16 PRESIDING JUDGE: Yeah. For the demonstration?

17 MR CAMMEGH: Yes, or indeed to see how we get on in the trial.
18 It may be that the technology that's being proposed is
19 perfectly adequate.

20 PRESIDING JUDGE: Yes, it is difficult to speculate here.
21 What we heard on Friday gave us the impression that it
22 can be managed, provided that the safeguards are put in
23 place and we follow the advice without the kind of
24 distortion that would create the impression as if we're
25 dealing with cartoon characters and all that kind of
26 thing.

27 MR CAMMEGH: Yes. Cartoon characters, yes. I would rather
28 that we just simply experience it and see how well it
29 works. And if it doesn't work, then we can spend time on

1 working on it. I don't know whether it's sensible to
2 expend more time before we try it.

3 PRESIDING JUDGE: Well, I appreciate that response,
4 Mr Cammegh. Does Professor O'Shea have anything to add
5 to that?

6 MR O'SHEA: The only thing that I would raise at this stage is
7 the possibility that the press may wish to look at the
8 issue as well, apart from us, because of course this is
9 an historic set of proceedings for the country and it may
10 be that some aspects of it go across the radio and I
11 don't know to what extent that's affected.

12 PRESIDING JUDGE: Quite right. I think it's a point which we
13 as lawyers would take into consideration that it is
14 the -- the press is part and parcel of the judicial
15 process. They are entitled to monitor the process of
16 justice. As Lord Denning once said, justice is not a
17 cloistered mistress; it's administered in public, so it's
18 important also to factor their own interest here. And if
19 you ask me how we can cater for their interest, I would
20 say perhaps since we're dealing with technology which is
21 novel, I would rather defer to the judgement of the
22 experts. I hear that Peter Cowe of the AV Unit is now in
23 the courtroom. Perhaps he could shed some light on this.

24 Please help us.

25 MR COWE: Good morning, Your Honour.

26 PRESIDING JUDGE: Good morning.

27 MR COWE: Counsel. I'd like to keep this fairly brief, if I
28 could. I can explain it at length this afternoon. Voice
29 distortion is a very tricky and difficult business. The

1 solution we've come up with, in a nutshell, is that
2 everyone in the courtroom, no matter what language is
3 being distorted, will hear the language in clear. The
4 only distortion is going out to the public gallery and
5 the streaming.

6 What happens with trying to find one solution to fit
7 every problem is that something is compromised. The
8 distortion that we have now in place, that I can
9 demonstrate to you this afternoon, is a flattening of the
10 voice level, but it is dependent on the volume, pitch and
11 tone of the speaker at the time. The only real person
12 that it concerns in the courtroom is the witness. So, in
13 a nutshell it works like this: If you're very close to
14 the microphone, or the closer you are to the microphone
15 the more distortion is activated. The further away from
16 the microphone you are, the less distortion there is. So
17 my advice to everyone in the courtroom - and I can show
18 you this this afternoon - is when you're speaking or
19 questioning is to keep further away from the microphone
20 than usual. Speak directly into the microphone. Keep a
21 moderate tone because if your tone fluctuates, so does
22 the distortion. But for the witness, just to be safe,
23 we're going to keep the microphone close to their mouth
24 so that all of their voice is distorted. But everyone in
25 the courtroom will hear it in the clear. We can monitor
26 this from the gallery. We can monitor from the
27 streaming, but as we -- it's easier to demonstrate than
28 to talk about it. In a nutshell: Counsel, keep away
29 from the microphone. Witness, keep close to the

1 microphone.

2 I hope that answers your questions and we will be
3 giving a demonstration this afternoon.

4 PRESIDING JUDGE: Thank you. Counsel for the Prosecution, are
5 you happy with, as Mr Cammegh has suggested and as
6 Mr Cowe is saying, a wait-and-see attitude?

7 MS TAYLOR: Certainly.

8 PRESIDING JUDGE: Wait till the demonstration and see whether
9 that will help.

10 MS TAYLOR: Certainly I'm reassured that there will be
11 monitoring of the level of distortion of the witness's
12 voice into the public gallery. Presumably, if that level
13 of distortion is not adequate, then the Trial Chamber
14 will be notified so that arrangements can be made to
15 increase the level of distortion for the witness.

16 PRESIDING JUDGE: What is the Defence response?

17 MR JORDASH: No response at this stage other than that seems
18 to be clear.

19 PRESIDING JUDGE: Right. Mr Cammegh.

20 MR CAMMEGH: Thank you, none.

21 PRESIDING JUDGE: And Mr --

22 MR NICOL-WILSON: No further concerns, Your Honour.

23 PRESIDING JUDGE: Well then, we will, again, as advised, adopt
24 the wait-and-see attitude.

25 We next move on to the fourth item on the agenda
26 which is titled "Witness Issues". The first sub-item
27 there is additional witnesses and the position is that
28 the Trial Chamber did deliver a decision on the 29th of
29 July last year granting leave to the Prosecution to add

1 six additional witnesses to the witness list. These
2 witnesses are identified with the following pseudonyms:
3 TF1-359, TF1-360, TF1-361, TF1-363, TF1-314, TF1-362.
4 And protective measures, according to our records, have
5 been extended to these witnesses in accordance with the
6 Chamber's order on protective measures for additional
7 witnesses dated the 24th of November last year.

8 On the 23rd of November last year, the same year in
9 which it filed a new witness list reducing the number of
10 witnesses, the Prosecution filed a request for leave to
11 call additional witnesses and disclose additional witness
12 statements pursuant to Rule 66(A)(ii) and 73 bis (E). In
13 this application, the Prosecution seeks to add three
14 additional witnesses to its witness list.

15 The records show that Defence responses and the
16 consolidated Prosecution's reply were filed. Does the
17 Prosecution wish to comment on that? Has that been
18 disposed of?

19 MS TAYLOR: No, as I understand, we're still waiting on the
20 decision from Your Honours.

21 PRESIDING JUDGE: The Chamber. So this is a matter which is
22 pending.

23 MS TAYLOR: Yes, it is.

24 PRESIDING JUDGE: Awaiting determination. The Defence concurs
25 in that?

26 MR JORDASH: Yes, Your Honour.

27 PRESIDING JUDGE: Well, I'll investigate and we'll see and get
28 this out as quickly as possible. B, number of
29 prosecution witnesses.

1 MR JORDASH: Your Honour, before we move to that, I do have a
2 matter to raise about the additional witnesses.

3 PRESIDING JUDGE: Right, go ahead.

4 MR JORDASH: It's really an issue which, simply put, I may
5 seek within this period to recall, or to have recalled,
6 Mr George Johnson. And the reason for that is as
7 follows: The Prosecution intend to call this session
8 TFI-359 who is one of the additional witnesses Your
9 Honour has just referred to. The statement was served
10 upon the Defence on the 9th of December 2004. That
11 statement is a statement from a radio operator who
12 effectively travels from Kailahun to Kono, from Kono to
13 Camp Rosos and therein to Freetown. The same journey, in
14 effect, taken -- or a very similar journey taken by
15 George Johnson.

16 In short, we should have had, I would submit, that
17 statement, 359's statement in order to properly conduct
18 the cross-examination of George Johnson. Now, the
19 Prosecution had it, because it was a statement taken in
20 June of 2004. Your Honours may recall as well during the
21 examination-in-chief of George Johnson, the Prosecution
22 adducing evidence about a radio operator named "Radio
23 Operator" who turns out to be TF1-359. It was clear to
24 me at the time that the Defence were going to be either
25 served the statement of that person, TF1-359, or we
26 already had it but we just didn't know his identity.

27 Now the issue, I would submit, is fairly clear that
28 the Prosecution were examining-in-chief a witness based
29 on evidence which they had which had not been disclosed

1 to the Defence. Several issues obviously arise from
2 that: Fundamentally, a principle of equality of arms.
3 In relation to forthcoming proceedings, it raises the
4 issue of whether the Defence will need to recall
5 George Johnson to deal with some of the matters dealt
6 with by 359. 359 is quite specific about certain things,
7 such as radio communications, such as communications
8 between AFRC and the RUF, such as the plan, if there was
9 one, to enter Freetown in 1999. These are all issues, as
10 Your Honour will appreciate, dealt with by George
11 Johnson. It would have been, or it might have been
12 useful to have TF1-359's statement at the time of
13 cross-examining George Johnson.

14 Now, I shall make clear that I haven't come to -- or
15 we haven't come to a firm view as to whether we would
16 seek the recall of George Johnson; I'll need to have a
17 look again at what George Johnson said and also study
18 more closely what TF1-359 has said. But I think it's
19 important for Defence to raise at this stage, well,
20 firstly because of the problems I've outlined but also
21 because we may be facing the same situation with the
22 present application for additional witnesses. And whilst
23 I do not submit that the same would apply in relation to
24 say, witnesses which are crime-base witnesses, it is
25 wrong, I would submit, to have the Prosecution in
26 possession of evidence, significant evidence, which
27 relates to evidence to be given by other witnesses in a
28 trial session and not to have that disclosed to the
29 Defence.

1 PRESIDING JUDGE: In other words, an underlying assumption of
2 your submission so far, is that Johnson was a strategic
3 witness for the Prosecution.

4 MR JORDASH: Yes. Whose evidence quite clearly involved
5 TF1-359.

6 PRESIDING JUDGE: Yes, there is, in fact, some correlation
7 there.

8 MR JORDASH: In fact, a significant correlation. But, the
9 real problem is that we are being asked to cross-examine
10 significant witnesses with our hands tied behind our
11 backs.

12 PRESIDING JUDGE: Without disclosure of this very important,
13 as you say in your submission. Does the counsel for the
14 second accused wish to associate or not?

15 MR NICOL-WILSON: Yes, Your Honour, I associate.

16 PRESIDING JUDGE: All right. Learned counsel for the third?

17 MR CAMMEGH: The force of Mr Jordash's argument speaks for
18 itself. And I am concerned because I anticipate there
19 isn't going to be a great deal of evidence in relation to
20 the crime bases concerning Augustine Gbao this session.
21 Perhaps in the next session there will be. I don't want
22 the same scenario to arise in relation to disclosure in
23 the future and for it to become problematic further down
24 the line. So it's an issue I hope the Prosecution will
25 address. Thank you.

26 PRESIDING JUDGE: Learned counsel for the Prosecution.

27 MS TAYLOR: Your Honour, if I may say first that, of course,
28 the Defence have been in possession of a redacted version
29 of the statement of Witness TF1-359 and while the

1 redactions mean they did not have his identity, the
2 statement still had the places that he had been and what
3 he had done, and therefore the cross-links that can be
4 made between TF1-359 and George Johnson could be made.
5 The Prosecution has complied with every order of this
6 Court in relation to disclosure within the 42 days as
7 established by this Court.

8 The unredacted version of the evidence of Witness
9 TF1-359 has been served in advance of the 42 days. The
10 Defence have been in possession of that and, as I said, a
11 redacted version of that. Now, obviously, throughout the
12 Prosecution evidence, there are cross-links between many,
13 many witnesses. And part of the Prosecution's
14 responsibility is to make those links, as it is part of
15 the Defence in preparing to cross-examine Prosecution
16 witnesses that they cross-link the evidence to which they
17 have been given. The orders of the Court are that the
18 Prosecution does not have to disclose unredacted versions
19 of the statement because of the protection issues until
20 42 days prior to testimony. Now Mr Jordash hasn't said
21 that he is going to make an application for Mr Johnson to
22 be recalled. I suggest, in the words of my learned
23 friend Mr Cammegh, we adopt a wait-and-see approach and
24 argue the toss if and when it arises. But in relation to
25 the issue of the Defence having their hands tied behind
26 their back, the Prosecution would reject that because, as
27 I say, they have been in possession of the redacted
28 version of this statement and links can be made between
29 the various statements even though there are some

1 redactions made.

2 PRESIDING JUDGE: Thank you. Mr Jordash, do you want a short
3 reply to that? Your learned friend has invoked
4 Mr Cammegh's suggestion; perhaps the best thing is to
5 wait and see whether it may be necessary and expedient
6 for the ends of justice to have you advise yourself on
7 the need to recall George Johnson at some stage. But let
8 me just hear a short response.

9 MR JORDASH: Well, the problem may be more fundamental than
10 that.

11 PRESIDING JUDGE: But what you need at the end of the day is
12 to have the opportunity of cross-examining again Johnson
13 now on some of the issues that may well be testified to
14 by the TF1-359.

15 MR JORDASH: Perhaps. There appears to me a real unfairness
16 in the way the Prosecution are able to examine-in-chief
17 significant witnesses adducing evidence which is
18 incriminating, and at times potentially hugely
19 incriminating, with evidence that they know is about to
20 come into this court without disclosing their intentions
21 as to that evidence. In other words, this is a
22 particular problem which may arise again.

23 PRESIDING JUDGE: In other words, the innuendo there is that
24 the machinery of additional evidence -- witness may well
25 be overstretched and probably used by the Prosecution
26 unfairly. That's what you're suggesting.

27 MR JORDASH: This is why we argued in our response to the
28 motion for additional witnesses that the witnesses should
29 be disclosed to the Defence for the purpose of that

1 argument, and we've argued that again in the present
2 motion before this Chamber that we are unable to properly
3 put our arguments without disclosure of those additional
4 witness statements. But moreover we are hampered,
5 I would submit, in court without knowing what those
6 additional witness statements might say and we're put in
7 a position where we might have to cross-examine partially
8 and then later on consider, once the disclosure has taken
9 place, whether we ought to recall a witness and George
10 Johnson is a particularly obvious example.

11 PRESIDING JUDGE: Of course without in any way pre-empting
12 what you might want to do in terms of George Johnson,
13 would this be the kind of issue which, if you feel
14 strongly that the issue here is one of fundamental
15 fairness, want to formalize your thoughts somehow in some
16 motion whereby you request the Court for some ruling or
17 guidance on this, would it be that kind of approach may
18 well be this Court will be forced to take a position on
19 situations of that nature?

20 MR JORDASH: I agree. I will give this some thought and
21 formulate a response but I should say for the record that
22 our understanding is that 359 was not served upon us in a
23 redacted form.

24 PRESIDING JUDGE: So there is evidently some kind of dispute
25 between -- on the facts, you know, and perhaps in the way
26 that we have done it in the past I would urge some kind
27 of cooperation between the Prosecution and the Defence to
28 get the facts -- the records straight on this issue.

29 MR JORDASH: Certainly.

1 PRESIDING JUDGE: If there is any need for some intervention
2 on the part of the Bench, we would probably be ready to
3 be of service.

4 MR JORDASH: Thank you.

5 PRESIDING JUDGE: Mr Cammegh.

6 MR CAMMEGH: Perhaps I can make a practical suggestion.

7 Ms Taylor I'm sure is right. We probably have, or
8 I probably have a copy back in London of a redacted copy
9 of this particular statement, but then again I've got
10 about 20 Lever Arch files containing thousands of pages
11 of statements. With the best will in the world, it's
12 very difficult to humanly keep on top of all of those and
13 associate forthcoming statements of witnesses with one
14 shortly to be called in the following session. So
15 perhaps a practical suggestion or even solution would be
16 that if in future the Prosecution see a primary witness
17 such as this one and are aware that that witness may be
18 associated to others further down the line, a list of
19 associated witnesses could be attached. The purpose
20 would be twofold: First of all, one only has to check
21 whether one has a copy of that associated witness in
22 either redacted or unredacted form. And secondly, of
23 course, one is alive to the issues raised within that
24 associated witness's statement which could be borne in
25 mind when the forthcoming witness is about to give
26 evidence. I don't know whether practically that would be
27 possible for the Prosecution to provide. One would hope
28 that it would be. It would possibly circumnavigate a lot
29 of problems that certainly Mr Jordash has just

1 encountered and that I would be encountering too if this
2 witness were to cover aspects of my client's case which
3 fortunately he doesn't.

4 PRESIDING JUDGE: I thank you for that. I would like to
5 propose that that could be an item for discussion in some
6 bilateral conference between the Prosecution and Defence
7 without prejudicing your right of reply straight away.

8 MS TAYLOR: I'm certainly happy to talk to my learned friends
9 at any stage. I would have to say that my initial
10 response to the suggestion of my learned friend
11 Mr Cammegh is that it's not the job of the Prosecution to
12 do Defence counsel's work for them.

13 PRESIDING JUDGE: No, but I'm sure counsel wasn't suggesting
14 that. We've had -- we've already somehow
15 institutionalised the principle of cooperation between
16 the Prosecution and the Defence and we would do nothing
17 to undermine the spirit of that approach. I'm sure he
18 made that in that spirit.

19 MR CAMMEGH: I did indeed, Your Honour.

20 MS TAYLOR: And, Your Honour would be pleased to know that
21 there is, I believe, quite a deal of cooperation between
22 the Prosecution and my learned friends. Whether or not
23 we come to some agreement on this issue or not is, of
24 course, another matter, and if we need to raise it again
25 before Your Honour, then obviously that can be done. The
26 only thing that I would say, with your leave, Your
27 Honour, in response to my learned friend Mr Jordash is
28 that all Defence have been in receipt of a copy of the
29 statement of Witness TF1-359 since September of last

1 year. All Defence counsel acknowledged receipt of that
2 on the 22nd of September.

3 [HS100105B 11.10 a.m.]

4 PRESIDING JUDGE: Thank you. Yes, learned counsel for the
5 Defence Office. Yes, your intervention.

6 MS MONASEBIAN: Yes, Your Honour, I would just like to
7 support defence counsel in one aspect, because it is a
8 unique difficulty that the Defence has in responding to
9 motions to add new witnesses when they are not given the
10 names of those witnesses in an unredacted form. And the
11 only thing I would say to my learned counsel on the other
12 side is that no-one disputes that the Prosecution and the
13 Defence has a right to move for additional witnesses and
14 make a showing to Your Honours as to the need, but the
15 normal practice - although we are not slaves to the other
16 tribunals - the normal practice as a Prosecutor at the
17 ICTR was that every time I moved for additional witnesses
18 I would disclose those witness statements in an
19 unredacted form and if could not, I would seek the
20 Court's permission under Rule 66(B) or (C) - and in
21 this Court it's 66(B), at the ICTR it was 66(C) - to
22 explain to Your Honours why it is that enormous
23 prejudice would occur if one of those particular
24 witness statements was not disclosed.

25 I think once we are in trial relying upon a
26 protective measures issue in saying that the Witness and
27 Victims Service Section cannot put all these witnesses
28 under the protection is not good enough any more when
29 defence counsel hasn't been told that these are witnesses

1 who are going to be called. And so I would just say that
2 in the future, as we are getting farther and farther along
3 in trial that the Office of the Prosecutor make an attempt
4 not to be shackled to this rule that we have protective
5 measures and we don't have to disclose unless its 42 days.
6 There is nothing preventing the Office of the Prosecutor
7 from looking at fundamental fairness and saying, "Yes, we
8 have a rule of 42 days, but we are not going to be a slave
9 to it, and we are going to be very careful in moving for
10 new witnesses and making sure that we are going to minimise
11 the Defence -- the prejudice to the Defence and give the
12 Defence an opportunity to counter these motions with some
13 knowledge as to who these witnesses are and what they are
14 going to say."

15 So I just don't understand -- in the four years that
16 I was a Prosecutor and on only one occasion I didn't
17 disclose the witness statement when I moved for a new
18 witness - and I was not known as an easy Prosecutor - so I
19 don't understand why it is so different here.

20 The only other thing I can say to Your Honours is,
21 with respect to what Mr Cammegh suggested, that may be one
22 way to go and I think that was a helpful suggestion, but
23 another way may also be that in the future when counsel
24 discloses a witness statement within 42 days, the
25 Prosecution also looks at other witness statements that
26 they may or may not call and say, "Okay, we are going to
27 disclose these other statements in an unredacted form
28 because they are material to defence counsel's preparation
29 of a particular witness who is coming in 42 days," and it

1 is the only way that the defence can have their
2 investigator adequately prepared is if they have any
3 related witness statements of witnesses who may or may not
4 be called disclosed within 42 days in an unredacted form as
5 well. So that is just one other suggestion.

6 PRESIDING JUDGE: Thank you, counsel. I would -- go ahead,
7 Mr Jordash.

8 MR JORDASH: It has just occurred to me that perhaps the
9 problem was -- arose actually due to the non-disclosure
10 within George Johnson's statement --

11 PRESIDING JUDGE: Of?

12 MR JORDASH: -- of the evidence --

13 PRESIDING JUDGE: Yes, quite right.

14 MR JORDASH: -- relating to TF1-051.

15 PRESIDING JUDGE: I thought -- my mind seemed to have been
16 moving in that direction, but I thought -- But let me
17 give learned counsel for the Prosecution the right of
18 response to the intervention of the Principal
19 Defender, if you so wish to exercise it.

20 MS TAYLOR: Your Honour, the first one is actually a
21 preliminary one and I am mindful that the role of the
22 Principal Defender before this Court is a very limited
23 one in the sense that she does not necessarily have a
24 right.

25 PRESIDING JUDGE: Yes, it is a right of intervention, which is
26 definitely with leave of the Court.

27 MS TAYLOR: Yes.

28 PRESIDING JUDGE: It is not -- this is not giving her a
29 representational role here, and clearly this Court has a

1 discretion to do everything that conduces to the ends of
2 justice. We have a Principal Defender that is part of
3 the Special Court. That role is recognised
4 institutionally and so I have limited it to a right of
5 intervention.

6 MS TAYLOR: Indeed, Your Honour.

7 PRESIDING JUDGE: And that's why I thought, in fairness to
8 you, you need to have a right to respond to her
9 intervention.

10 MS TAYLOR: Your Honour, I have listened to what the
11 Principal Defender has said. I don't wish to respond to
12 any of the comments that she has raised.

13 PRESIDING JUDGE: Very well.

14 MS TAYLOR: What I can say to Your Honour is there is a
15 degree of cooperation between counsel for the Prosecution
16 and counsel for all three of the accused in this trial.

17 PRESIDING JUDGE: Yes.

18 MS TAYLOR: We will discuss these issues and, as I said,
19 the Prosecution has actually complied with the orders of
20 the Court, it does not believe that it has done
21 anything that is unfair, and if these issues need to be
22 looked at again in front of Your Honour or with the
23 intervention of the Trial Chamber --

24 PRESIDING JUDGE: Yes, I am pre-eminently aware of the
25 co-operation that goes on. So I wanted to remind
26 them, learned counsel, that indeed there has been much
27 co-operation between both sides. Yes, thank you.

28 Well, the second sub-item under witness issues is
29 number of prosecution witnesses. Here it may be

1 recalled that the Chamber has repeatedly encouraged the
2 Prosecution to endeavour to scale down, prosecute -- the
3 number of prosecution witnesses. We wish to recognise that
4 the Prosecution has been responsive in this regard.
5 According to figures available to us, it has reduced the
6 total number of prosecution witnesses from 266 to 260, then
7 to 179 and recently, to 102 in its reviewed witness list
8 filed on 23rd November 2004. Is that correct?

9 MS TAYLOR: That is correct, Your Honour, as, of course, we
10 have the motion before the Trial Chamber for the
11 additional three --

12 PRESIDING JUDGE: Yes, quite.

13 MS TAYLOR: There is no decision on that. The Prosecution is
14 also mindful of the order that the Trial Chamber
15 subsequently issued us --

16 PRESIDING JUDGE: Yes, right.

17 MS TAYLOR: -- and the Prosecution will be responding to
18 that in --

19 PRESIDING JUDGE: So statistically we are at 102 in terms of
20 the number of witnesses, which one can say is a
21 statistically significant reduction --

22 MS TAYLOR: Yes, Your Honour.

23 PRESIDING JUDGE: -- in terms of original figures.

24 MS TAYLOR: Yes, Your Honour, the Prosecution has been
25 mindful of all of the statements they have had come
26 from the Trial Chamber, and I am mindful of the need
27 for an expeditious trial and to assist our learned
28 friends.

29 PRESIDING JUDGE: Yes. Does the Defence want to make any

1 short observation or brief observation on that --

2 MR JORDASH: No, thank you.

3 PRESIDING JUDGE: -- of this reduction? Right, nothing.

4 Right, well, in its order --

5 MR O'SHEA: Your Honour, I am sorry, I do. I was just waiting
6 for my learned friends.

7 PRESIDING JUDGE: Learned counsel, did you want to make any
8 statement?

9 MR NICOL-WILSON: No, Your Honour.

10 PRESIDING JUDGE: Professor O'Shea, go ahead.

11 MR O'SHEA: Yes, your Honour. We, of course, have moved
12 significantly from the position when the Prosecution on
13 26th April 2004 served its witness list of 266 witnesses.
14 Statistically that is a significant move and I believe
15 the Prosecution needs to be congratulated for that. And
16 they have acted in good faith and they have acted well in
17 this regard.

18 PRESIDING JUDGE: Yes. Well, all we can do on the Bench side,
19 we can just recognise that, you will do the
20 congratulations.

21 MR O'SHEA: Yes. However, the initial figure of 266, as I
22 indicated in the status conferences in March and in July,
23 were in my submission totally unrealistic in any event.

24 PRESIDING JUDGE: Yes.

25 MR O'SHEA: And so one needs to look at that in context. I
26 would also like to say, because I know Your Honour made
27 some preliminary remarks at the beginning of these
28 proceedings, would also like to say that from our
29 perception as practitioners, both the Prosecution and the

1 Defence advocates, have acted admirably in terms of the
2 way in which they have conducted their examinations of
3 witnesses and the way in which they have kept their
4 arguments to essence. There are many examples in these
5 international criminal tribunals --

6 PRESIDING JUDGE: Yes, quite.

7 MR O'SHEA: -- where counsel, I have to say particularly
8 defence counsel --

9 PRESIDING JUDGE: Quite right.

10 MR O'SHEA: -- delay proceeding significantly.

11 PRESIDING JUDGE: Yes.

12 MR O'SHEA: But that hasn't been the case here. We do not
13 wish to be in a situation where we are constrained --
14 constrained -- I have just been told that I am going on
15 too long.

16 PRESIDING JUDGE: I am not intending to apply the guillotine.
17 No way.

18 MR O'SHEA: We do not want to be in a position where we are
19 constrained in defending our clients--

20 PRESIDING JUDGE: Yes.

21 MR O'SHEA: -- because of any kind of mandate, politically or
22 legally.

23 PRESIDING JUDGE: Yes.

24 MR O'SHEA: We believe that the real problem remains that the
25 substantial content of the indictment and the substantial
26 number of witnesses coming from the Prosecution. Now the
27 problem starts, Your Honour, with the indictment, because
28 legally speaking in the line of proceedings the
29 Prosecution has almost an absolute discretion in the

1 formation of the initial indictment and here we have an
2 indictment which has effectively gone across the entire
3 country and a very large span of international criminal
4 law.

5 PRESIDING JUDGE: Yes.

6 MR O'SHEA: Now, it may be that that is not necessary to get
7 two life sentences - and that is something we can't
8 really control from the side of the Defence - but what we
9 can control and what in my submission the Court can
10 control was the number of witnesses.

11 PRESIDING JUDGE: Yes.

12 MR O'SHEA: And it is not a good excuse, in my submission, to
13 simply refer back to the indictment and say, "Well these
14 are different charges, these are different incidents --"

15 PRESIDING JUDGE: Yes.

16 MR O'SHEA: "-- which show new crimes at different places,"
17 because at the end of the day there is no difference
18 between two life sentences and 50.

19 PRESIDING JUDGE: Yes.

20 MR O'SHEA: We have noticed in examining the Prosecution
21 evidence, even at its 102 witnesses and having regard
22 also to this concept of back-up witnesses, that there is
23 a fair amount of repetition in the sense of crimes
24 committed at particular locations. And we would
25 encourage the Prosecution to continue to look at whether
26 it cannot reduce its witness list in fact much further.
27 We were at one point last session contemplating putting
28 in a motion to ask the Court to force them to do that,
29 but they beat us to it, thankfully. It certainly saved

1 me some work because it is quite difficult, that kind of
2 motion. But, you know, that option is still on the
3 table --

4 PRESIDING JUDGE: Yes.

5 MR O'SHEA: -- putting in a motion, but it is not the most
6 effective one.

7 PRESIDING JUDGE: Yes.

8 MR O'SHEA: And in my submission the Prosecution in a case
9 like this does not need more than 50 witnesses and they
10 should think about that seriously.

11 PRESIDING JUDGE: Thank you.

12 Well, actually you will recognise that this is a
13 matter of utmost delicacy and the Bench has been very
14 very -- and when we make the judgment that
15 cross-examination sometimes and examination-in-chief
16 sometimes have been unduly long, repetitious and
17 seemingly not relevant, we do this with considerable
18 judicial diffidence, because we recognise that these are
19 trials of a different dimension other than traditional
20 ordinary trials in national systems, and this Bench has
21 been very reluctant to even come with any strong and
22 forthright statement as to the possibility of exercising
23 our authority to compel the Prosecution to reduce number
24 of witnesses, because again we are sensitive to the fact
25 that the burden of establishing the guilt of the
26 defendant rests upon the Prosecution, though, of course,
27 as lawyers we are all aware that at the end of the day
28 when we come to determine the ultimate question of guilt
29 or innocence, it is the quality of the evidence, not the

1 quantity, that matters. We all appreciate that. But the
2 Bench, of course, has been extremely circumspect in
3 trying to balance this, because it's a kind of
4 hydra-headed thing. I mean, what would be some
5 compelling reason if the Defence were to say, "All right,
6 we are going to call 70 witnesses."? And what would be
7 the reason for the Bench to intervene and say, "Well,
8 don't you think some of them would be ..." So, I
9 appreciate your comments are very very appropriate, and
10 we commend both sides for the co-operation that has gone
11 on here and for the way that you have conducted
12 yourselves I mean with a high degree of professionalism,
13 but we have advised ourselves that as a Bench that even
14 though we have these powers, we must exercise them, only
15 exceptionally, you know, and I am pretty sure that the
16 Prosecution may well appreciate the observation that
17 perhaps even 102 may be on the high side, but it is not
18 for us to say and I think that is all we can say from our
19 own position here. But I do agree with you,
20 Professor O'Shea, that both sides have conducted
21 themselves admirably, professionally. I mean sometimes
22 the judges themselves have been probably a little
23 impatient, but again, we are flesh and blood even though
24 we are supposed to have certain super or extraordinary
25 powers and qualities. But I certainly do not disagree
26 with you on that, but this is an area where we all need
27 to tread extremely cautiously.

28 Any responses or comments.

29 MS TAYLOR: No, Your Honour.

1 MR NICOL-WILSON: No, Your Honour.

2 PRESIDING JUDGE: Now, we can move onto -- the other item here
3 is the Prosecution did, in response to the order to the
4 Prosecution concerning renewed witness list, or in the
5 order which was filed on 3rd December, or rather in our
6 order we required the Prosecution to seek leave and
7 demonstrate good cause to add witnesses TF1-189, TF1-274,
8 TF1-126 and TF1-210 to their core witness list and to add
9 TF1-106, TF1-146, TF1-103, TF1-276, TF1-013, TF1-155 and
10 TF1-302 to their back-up witness list of witnesses.
11 Perhaps Professor O'Shea's comments prophetically
12 anticipated this issue. Could we have some
13 amplifications or elaborations on this one?

14 MS TAYLOR: Yes, Your Honour, obviously when the renewed
15 witness list was filed there were some transpositions of
16 numbers.

17 PRESIDING JUDGE: Yes.

18 MS TAYLOR: That had been made in respect of a number of the
19 orders which the Prosecution now must respond to we are
20 considering our position. What I can tell Your Honour is
21 that some of the witnesses that you have just -- to whom
22 you have just referred will not be called by the
23 Prosecution.

24 PRESIDING JUDGE: I see.

25 MS TAYLOR: And some of them the Prosecution may well yet seek
26 leave, but that is a matter that is under review by the
27 Prosecution.

28 PRESIDING JUDGE: Under review?

29 MS TAYLOR: Yes.

1 PRESIDING JUDGE: Right. I take it the other side does not
2 want to -- Right.

3 Witnesses for the up-coming trial session, 13th
4 December the Prosecution filed its proposed order of
5 appearance of prosecution witnesses for the third session
6 of this trial commencing tomorrow. And the list identifies
7 19 prosecution witnesses. And on the same day the
8 Prosecution filed copies of the witness statements for all
9 of the proposed witnesses. And the Prosecution did declare
10 that it had made prior full disclosure of the witness
11 statements for all of the witnesses in the proposed order
12 in compliance with the 42 day disclosure requirement. You
13 still adhere to that position?

14 MS TAYLOR: Your Honour, with the caveat as occasionally
15 happens when the Prosecution is preparing its witness for
16 trial that additional information comes out, and if there
17 has been that additional information that has been
18 subsequently disclosed to the Defence, including command
19 structure charts and the like which were prepared as aids
20 for all our learned friends and for Your Honours.

21 PRESIDING JUDGE: Yes.

22 MS TAYLOR: But with that caveat, that statement is true.

23 PRESIDING JUDGE: Yes. And does the Defence have any comments
24 on this? You have received the proposed witness list.

25 MR JORDASH: Yes, I agree with everything that my learned
26 friend has just said.

27 PRESIDING JUDGE: Yes, okay. Counsel for the second accused.

28 MR NICOL-WILSON: Nothing else to add, Your Honour.

29 PRESIDING JUDGE: And counsel for the third accused.

1 MR O'SHEA: Your Honour, I have no difficulty with what has
2 just been said. Can we just indicate, however, that this
3 list of 19 witnesses we question how realistic that is
4 for this session.

5 PRESIDING JUDGE: Yes, yes, quite right. Six week session.

6 MR O'SHEA: It might be more useful if the Prosecution over
7 the next couple of days could have a review of that so we
8 can have a more realistical list.

9 PRESIDING JUDGE: Okay. Shall we pass that on?

10 MS TAYLOR: Your Honour, what I can say in response to that is
11 that the list will go in order as it is listed unless
12 there is an issue with one of the witnesses, and as soon
13 as an issue arises which means that we would have to call
14 a witness out of order I will notify both my learned
15 friends and the translation unit and anyone else affected
16 by it.

17 PRESIDING JUDGE: Yes.

18 MS TAYLOR: The Prosecution, of course, is in a very difficult
19 position, we are told that we have four weeks of trial.
20 The speed with which we have been getting through
21 witnesses has picked up over the first two sessions.

22 PRESIDING JUDGE: Yes, that's true.

23 MS TAYLOR: The Prosecution must disclose witness statements
24 42 days in advance. The Prosecution, therefore, always
25 errs on the side of caution, that we have too many
26 witnesses rather than too few, otherwise we would waste
27 court time because there would be disclosure issues and
28 those kinds of problems. So, that is why the Prosecution
29 has listed the 19 witnesses. I agree with my learned

1 friend's observation that it is unlikely that we will get
2 through all 19, but that for his own preparation he
3 should be starting at the top of the order and working
4 down.

5 PRESIDING JUDGE: All right. Thanks. Yes, go ahead.

6 MR O'SHEA: Yes, Your Honour. In principle I have no
7 difficulty in having a longer list. I just hope that the
8 Court will be aware of the fact that it is extremely
9 unlikely that we will get through this list and don't get
10 into a situation where we are all setting 19 as a target.
11 We have covered so far 17 witnesses. I am not in any way
12 indicating that we intend to cause any delay, of course.

13 PRESIDING JUDGE: Yes, quite.

14 MR O'SHEA: But it would be a shame if we sort of encapsulate
15 in our minds over the next week that this 19 is somehow a
16 target. The other thing is that it would be quite
17 useful - my learned friend reminds me and I think this is
18 right - it would be quite useful if the Prosecution could
19 at the status conference give us an indication of when it
20 believes, on the current state of affairs, it will finish
21 the Prosecution case.

22 PRESIDING JUDGE: Do you want to do that? Can you give us a
23 realistic estimate? I mean, he is calling for -- I think
24 what I understand Professor O'Shea to be doing is calling
25 for a realistic approach to these matters. Realism in
26 numbers of witnesses that we can cover within this trial
27 session, and also some kind of indication.

28 MS TAYLOR: Part of that, of course, is dependent upon the
29 length of cross-examination which is something that the

1 Prosecution cannot control.

2 PRESIDING JUDGE: And you are not in a position to give us
3 some rough approximation?

4 MS TAYLOR: No. Part of the difficulty, of course, is that we
5 have trial sessions listed in this trial ending now on
6 9th August for which the Chamber has indicated.

7 PRESIDING JUDGE: Yes,

8 MS TAYLOR: Obviously, there will be a recess in August and
9 then presumably the session immediately after the recess
10 will revert to the CDF trial. So, in terms of the
11 sessions I can't tell my learned friend, or indeed the
12 Chamber, when the Prosecution case will finish. What I
13 can say, and what the Prosecution has obviously been
14 doing is reducing the number of witnesses, making the
15 Prosecution far more streamlined so that everyone is in a
16 better position to make the trial go expeditiously.
17 Beyond that I am not in a position to say when the
18 Prosecution will --

19 PRESIDING JUDGE: Perhaps you might come the next trial
20 session after this one you might be able to give us some
21 kind of -- I mean you might review your position.

22 MS TAYLOR: It is certainly something that is under constant
23 review in the OTP, I can tell Your Honour, but in terms
24 of giving an estimate of time, I am not in a position to
25 do so, but I note Your Honour's comments and we will
26 think about that prior to the next hearing.

27 PRESIDING JUDGE: Thank you.

28 It will be recalled too that at the status conference
29 held on 1st October last year the Prosecution did indicate

1 that it intended to apply to have witness TF1-071
2 classified as a category C insider witness. In the
3 proposed order of appearance the Prosecution has
4 characterised this witness as a category C witness and, of
5 course, evidently without leave of the Court.

6 MS TAYLOR: Your Honour, if that appears presumptuous, please
7 pardon the presumption, it was simply done. The reason
8 that the column that has the category of witness is filed
9 in a way that it is is to put people on notice --

10 PRESIDING JUDGE: I see.

11 MS TAYLOR: -- for the technical requirements that might be
12 necessary for those witnesses.

13 PRESIDING JUDGE: Right.

14 MS TAYLOR: So the Prosecution certainly does --

15 PRESIDING JUDGE: We will accept that apology. So what it
16 means is that there are implications for the audio visual
17 unit here.

18 MS TAYLOR: That's correct. It was a practical tool for
19 anyone's use and if the Prosecution has caused offence
20 with that, then it apologises.

21 PRESIDING JUDGE: Yes. So would you come sometime with some
22 application?

23 MS TAYLOR: Yes. There will be a number of similar kind of
24 protective issues that will be raised at the appropriate
25 time in respect of the witnesses.

26 PRESIDING JUDGE: Is this a matter the Defence has anything to
27 say about? And the same would go -- it is not the same,
28 but an analogous kind of situation here is with regard to
29 witness TF1-022 and that is described as a category A

1 witness that is a victim of sexual violence. The query
2 here is that this witness was not described as a category
3 A witness and therefore has not been granted any
4 additional protective measures in the Chamber's decisio
5 of 5th July. The point here, which I think perhaps
6 counsel would need to shed some light on, is two-fold.
7 1. Whether you intend to apply for this witness to be
8 classified as a category A witness, and also, whether you
9 are aware, as I am advised, that the summary of this
10 witness's statement does not refer to any act of sexual
11 violence. I am advised, I have not read it.

12 MS TAYLOR: Your Honour, I don't have the sheet that has
13 classified this witness as a category A witness, and when
14 you said that I must say admit it surprised me because
15 this witness is not --

16 PRESIDING JUDGE: You will investigate.

17 MS TAYLOR: Yes, we will investigate.

18 PRESIDING JUDGE: We raise it as a query.

19 MS TAYLOR: Yes.

20 PRESIDING JUDGE: And the reason, of course, it's a query is
21 that if you -- if, according to the advice that I have
22 received, a summary of the witness's statement does not
23 refer to any act of sexual violence, how then can you
24 seek to classify the witness as a category A witness.

25 MS TAYLOR: Indeed, Your Honour. I believe that may simply be
26 a mistranscription of a description.

27 PRESIDING JUDGE: Yes, quite.

28 MS TAYLOR: But what I can say to Your Honour is that in
29 relation to the protective issues that will arise for the

1 witnesses for this session the Prosecution will make the
2 appropriate applications.

3 PRESIDING JUDGE: Yes. You need to take -- it's a kindred
4 issue, you need to take that also in relation to witness
5 TF1-104 who is described as a category B witness, but who
6 again, I am advised, from the statement of that witness
7 is not, in fact, a child.

8 MS TAYLOR: Indeed, Your Honour.

9 PRESIDING JUDGE: TF1-104.

10 MS TAYLOR: Those matters the Prosecution will look at and
11 will review them.

12 PRESIDING JUDGE: Yes. The Victims and Witnesses Unit have
13 indicated that they would like to have one of their staff
14 present when TF1-141 is testifying. Am I right in that?
15 Is that correct?

16 MS TAYLOR: That is something that --

17 PRESIDING JUDGE: What is the rationale for that?

18 MS TAYLOR: The rationale for that is that the young person in
19 question suffers from post-traumatic stress disorder.

20 PRESIDING JUDGE: I see.

21 MS TAYLOR: And he often apparently experiences physical
22 symptoms when he is under conditions of stress, and it is
23 believed that if there is a neutral person in the room
24 with the -- in the video room with him, then he will be
25 re-assured that there is -- that there is someone there,
26 it is not just a computer screen.

27 PRESIDING JUDGE: So procedurally I reckon that there will be
28 an appropriate application for that?

29 MS TAYLOR: There will be an appropriate application with the

1 appropriate information available at the time,
2 Your Honour.

3 PRESIDING JUDGE: Does the Defence have any initial response
4 to that?

5 MR JORDASH: Yes, the first response is that this is the first
6 time I have heard of this.

7 PRESIDING JUDGE: Yes.

8 MR JORDASH: The second is that I would seek the expert
9 opinion which has come to the conclusion that this
10 witness suffers from post-traumatic stress disorder,
11 because clearly that would be an issue that would impact
12 upon his witness's ability to give evidence and his
13 credibility.

14 PRESIDING JUDGE: So here we are opening a kind of Pandora's
15 box.

16 MR JORDASH: And thirdly, I think my initial response to have
17 anyone with that witness would be to object.

18 PRESIDING JUDGE: Well, let us wait. I thought that I should
19 mention it because it is part of something that we need
20 to advert our minds to at this status conference. It may
21 be coming forward. Right. You don't want to respond
22 now, there is no application.

23 MS TAYLOR: No, no, I am happy to discuss the issues with my
24 learned friends after this status hearing.

25 PRESIDING JUDGE: Right.

26 MR NICOL-WILSON: Your Honour, I would like to seek
27 clarification as to whether this witness will still be
28 entitled to the protection afforded to category B
29 witnesses when he is no longer a child.

1 PRESIDING JUDGE: What is your response? Thank you.

2 MS TAYLOR: This witness turns 18 sometime during 2005. He
3 was taken as a child.

4 PRESIDING JUDGE: Yes.

5 MS TAYLOR: Taken as a child soldier. He does not know his
6 exact birthday. It is, of course, possible that his
7 birthday is between 1st January and today. The
8 Prosecution is not in a position to say that he has yet
9 turned 18, nor that he has not yet turned 18, but he is
10 certainly on the cusp. In those circumstances the
11 Prosecution submits that the witness is still legally a
12 child.

13 PRESIDING JUDGE: Do you want to debate this at this stage?

14 MR NICOL-WILSON: No, Your Honour, but I was just thinking
15 if --

16 PRESIDING JUDGE: Adopt the wait-and-see approach.

17 MR NICOL-WILSON: Okay, I will. I wanted to see if I could
18 ask for a medical --

19 PRESIDING JUDGE: Well, of course, again this can be the
20 subject of further discussion between Prosecution and
21 Defence.

22 MR NICOL-WILSON: As My Lord pleases. As my Lord pleases.

23 PRESIDING JUDGE: And interestingly, Miss -- Prosecution
24 counsel, you have indicated or you have not yet indicated
25 whether you intend to apply for closed session of any of
26 the witnesses appearing for the third session.

27 MS TAYLOR: Your Honour, the position --

28 PRESIDING JUDGE: Can you do that at this stage?

29 MS TAYLOR: I can't do it in total. What I can say to

1 Your Honour is that the position will be that for limited
2 parts of some of the testimony --

3 PRESIDING JUDGE: Yes.

4 MS TAYLOR: -- the Prosecution will make application that that
5 take place in closed session, bearing in mind always, of
6 course, that the object is to have most of the trials in
7 open session.

8 PRESIDING JUDGE: Yes.

9 MS TAYLOR: The Prosecution is working in terms of its
10 presentation of the evidence to minimise the amount of
11 the evidence that it says should take place in closed
12 session.

13 PRESIDING JUDGE: Yes, because the reason we raise it at this
14 point is to economise judicial time, considering how
15 much -- not that we really want to hear any kind of
16 application and submissions one way or the other, but
17 just to remind you that this is something that usually
18 takes up quite a lot of time. So if we have some advance
19 notice.

20 MS TAYLOR: Certainly. What I can say is that a very small
21 amount of the evidence of the first witness TF1-304 there
22 will be an application for a closed session in relation
23 to that. There will be an application in relation to
24 Witness TF1-071.

25 PRESIDING JUDGE: Yes.

26 MS TAYLOR: And beyond that I am not in a position to assist
27 the Court. But again, that is something that the
28 Prosecution is more than happy to give advance notice to
29 my learned friends.

1 PRESIDING JUDGE: Yes. Again another issue, Ms Taylor, is
2 that the Prosecution has -- or shall we say has not
3 provided indication of the language requirements yet, or
4 have they provided in respect of two of your witnesses in
5 your proposed order. Our records show that the -- let me
6 just check this again to see whether you have -- yes, you
7 have not been able to provide indication for the language
8 requirement for two of your witnesses.

9 MS TAYLOR: I was not aware of that, Your Honour. I apologise
10 for that --

11 PRESIDING JUDGE: I think this is something you need to
12 resolve with Court Management on this.

13 MS TAYLOR: Indeed. I will speak to the head of translation
14 and make sure that she has adequate time to organise the
15 interpreters.

16 PRESIDING JUDGE: Yes. We now come to one of the other tricky
17 areas on the witnesses that is (d) expert witnesses. The
18 records available to the Chamber show that the
19 Prosecution has included five expert witnesses in its
20 renewed witness list filed on 23rd November.
21 Specifically, TF1-150, TF1-272, TF1-296, TF1-301, TF1-332
22 and TF1-348. Then Witness TF1-351 has now been included
23 on the list of the Prosecution back-up witnesses. Again,
24 the Chamber is advised that TF1-150 is an overview
25 witness and the question is, rather curiously and
26 legally, whether an overview witness is also an expert
27 witness. Perhaps you would like to shed some light on
28 that for us.

29 MS TAYLOR: Certainly, Your Honour. That particular issue has

1 been occupying some time of the Prosecution. The
2 Prosecution is aware that the Chamber has indicated that
3 it is willing to recognise the category of the overview
4 witness --

5 PRESIDING JUDGE: Yes.

6 MS TAYLOR: -- to provide assistance to the Chamber which is
7 distinct from the expert opinion in the true sense -- in
8 the true legal sense, someone you need to be able to
9 qualify as an expert. What I can say, I know that my
10 learned friends would probably wish to say something
11 about the experts and about when they might expect
12 reports or statements from the expert and overview
13 witnesses, what I can say is that although those reports
14 have not been served, the Prosecution is working with due
15 diligence in attempting to obtain those. In relation to
16 all but one of these witnesses the Defence have been
17 provided with the name of that witness. In relation to
18 one witness that name has not been disclosed to the
19 Defence the reason being that there need to be several
20 permissions obtained from various international
21 organisations for permission the Office of the Prosecutor
22 to release that name. And there have been international
23 phone calls, letters and e-mails doing the level best to
24 obtain permission to disclose that name. The last such
25 communication was in fact on 19th December in which the
26 Prosecution was simply told that the matter was under
27 review and the organisation concerned would get back to
28 us in the new year. And this week, now that everyone is
29 back at work, the Prosecution will be following that

1 matter up again. I fully understand that it's important
2 that the Prosecution serves these reports as soon as ^
3 possible. What I can say is that the Prosecution is
4 working towards that end and that given that we already
5 have a trial session mapped out until August of this year
6 the Prosecution obviously is not going to call any of
7 these witnesses until at least the end of this year and
8 it still in my submission then gives the Defence adequate
9 time to respond to the material that will be ultimately
10 disclosed under this heading.

11 PRESIDING JUDGE: Yes, well, I mean, clearly the Trial
12 Chamber's position on this is known that we think that
13 the whole question of expert witnesses and whether the
14 Prosecution's obligation to make available the report
15 does have a checkered history, because at our pre-trial
16 conference which we held on 29th April 2004 and also the
17 status conferences held on 23rd June 2004 and 1st
18 October, you indicated that you had not received any
19 report from them and then, of course, you also expressed
20 that you didn't believe it was desirable to impose a
21 deadline because the Chamber was inclined to impose a
22 deadline for filing reports. In the light of that, I
23 don't know whether, with the assurances that you have
24 given, you have allayed the concerns of the Defence, but
25 I will let them respond to your position.

26 MR JORDASH: I would seek an order from the Trial Chamber of a
27 timing for service of those reports. My learned friend
28 says, "Well we are not going to call the witnesses until
29 late in the day," so say August or around that period.

1 But it is not simply an issue of when the witnesses is
2 going to be called, it is an issue of what use is expert
3 evidence in a criminal trial. And the use, as I say see
4 it, is to place much of the factual evidence into its
5 proper context and to allow, of course, the Defence an
6 opportunity to deal with that expert case put by the
7 Prosecution not only through obtaining its own expert
8 reports, but through cross-examination of the Prosecution
9 witnesses. I go back to George Johnson.

10 I don't know what the Prosecution expert is going to
11 say about what he has to say. I don't know if it is
12 going to impact upon what he and many other witnesses
13 will say over the forthcoming months. In effect again,
14 the Defence are being asked to conduct a defence with
15 their hands tied behind their backs, because until the
16 Prosecution serve their expert reports we cannot instruct
17 out own experts because we do not know what issue they
18 are to go to. So it is not simply when the witnesses
19 will be called, but how much notice should the Defence
20 have and this is the first time I have ever conducted a
21 defence without knowing what the expert issues are before
22 the beginning of the case. And I have been asking since
23 April of last year for an indication of what that expert
24 evidence will say about the factual evidence in this
25 case, and that's the link which is important it is not
26 simply evidence which stands on its own, it's evidence
27 which is the framework of the Prosecution case, and we
28 are being asked to cross-examine witnesses without
29 knowing what that framework is and, moreover, without

1 having the benefit ourselves of knowing what the expert
2 issues are pertaining to in this case. And there is a
3 second and equally important problem, as I see it, and it
4 is this, that if the Prosecution are right that it has
5 taken them so far nine months or eight months to obtain -
6 and they still haven't obtained these permissions - but
7 they have been waiting eight months for these permissions
8 for their experts or proposed experts' employers, what is
9 going to happen when we do get served these reports from
10 the Prosecution? The Defence are going to need an equal
11 amount of time to obtain the same permissions from the
12 employers of our proposed experts and I can see a
13 position in this Court where I have to come to the Court
14 and ask for an adjournment of the trial of eight months
15 simply to obtain our own expert reports. That, in my
16 respectful submission, cannot not be right for the
17 accused and it cannot be right for the interests of
18 justice and it certainly is not right for the Defence to
19 try and conduct a defence on what is a complicated case.
20 Those are my submissions.

21 PRESIDING JUDGE: So your conclusion would be then, if I put
22 words in your mouth, that the time for judicial
23 intervention is opportune?

24 MR JORDASH: Exactly, it is now.

25 PRESIDING JUDGE: All right. Learned counsel for the second
26 accused.

27 MR NICOL-WILSON: Your Honour, I associate with the concerns
28 raised by Mr Jordash and I have nothing else to add.

29 PRESIDING JUDGE: Learned counsel for the third.

1 MR CAMMEGH: I very firmly support what Mr Jordash has said in
2 its entirety.

3 PRESIDING JUDGE: Yes. Because that is the crux of the
4 matter, is now judicial intervention opportune
5 considering the protracted nature of this particular
6 aspect of the prosecutorial obligation. I have been one
7 advocate for judicial caution and judicial circumspection
8 and the question again is that in the light of the
9 principle of equality of arms, are we just paying
10 lip-service or are we in a way trying to ensure that we
11 give efficacy to the principle? I am not myself saying
12 that I am familiar with the complexities of trying to get
13 experts in cases of this nature, but fundamental issues
14 do arise really. How long are we going to wait? In
15 other words, if the Prosecution feels that they have a
16 latitude of discretion on this particular issue in
17 waiting as long as they can obtain these permissions
18 because of certain peculiarities and then would the
19 Defence also be entitled, if and when these reports are
20 probably five, six or seven months down the road, would
21 they be entitled to the same kind of preferences that the
22 Prosecution is now claiming? But this is just thinking
23 aloud, that is all. Go ahead, counsel.

24 MS TAYLOR: Your Honour, if I might just respond to that last
25 point first. I do understand the concerns of my learned
26 friends to receive the expert reports of the Prosecution.
27 What I would say in response to Mr Jordash's claim that
28 if it has taken the Prosecution eight months, then it is
29 going to take the Defence eight months, proceeds at least

1 on partially a false assumption and that is that the
2 Defence experts are mere reactive to the Prosecution
3 experts. Obviously, the Defence will want experts to
4 attest to things in the Defence case and that the experts
5 for the Defence I would be very much surprised if the
6 Defence have not made some approaches to experts
7 witnesses already. They understand the nature of the
8 expert and overview witnesses whom the Prosecution
9 intends to call for summaries of what is expected of
10 those experts will testify. Two have already been
11 provided by the Prosecution to the Defence. And while
12 obviously the nature of experts evidence is that experts
13 comment on the opinions of each other to say that the
14 process has to be that the Defence do nothing until they
15 receive the expert reports for the Prosecution and then
16 start their search for experts is, in my submission, a
17 nonsense and while obviously the Defence will want to
18 show their experts what the Prosecution experts say, to
19 suggest that intervening at this point to force a
20 deadline on the Prosecution is in some way the only way
21 that the equality of arms can be preserved, is, in my
22 submission, an unrealistic position.

23 PRESIDING JUDGE: But the point is clearly that if they have
24 no reports, what do they go by in preparing their case?
25 They have a blank cheque, don't they?

26 MS TAYLOR:

27 They have a blank cheque, but it's not only simply that
28 they respond to what the Prosecution evidence is, the
29 Defence have their own case, they have their own version,

1 their own instructions, their own story.

2 PRESIDING JUDGE: But it could be both reactive and proactive.

3 MS TAYLOR: Exactly. But my point is that it is proactive as
4 well as reactive and so it's not simply a case of sitting
5 down and waiting until the Prosecution gives its reports,
6 although undoubtedly part of the job or their experts
7 will be to comment on what the Prosecution experts say.

8 PRESIDING JUDGE: Yes.

9 MS TAYLOR: But it's not simply reactive and that although the
10 timeframes may be long, they are not as long as being
11 suggested by my learned friends. Your Honour, all I can
12 say is that I urge upon the Trial Chamber not to impose
13 deadlines that the Prosecution may not be able to meet in
14 the short term. I can assure Your Honour that the
15 Prosecution is working very very hard to get these
16 reports in as short as time from now as possible.

17 PRESIDING JUDGE: Yes. Learned counsel in response, short
18 responses.

19 MR JORDASH: Short responses.

20 PRESIDING JUDGE: Not covering familiar ground, just short
21 responses.

22 MR JORDASH: Well, short response is of course we will
23 instruct our own expert irrespective of what the
24 Prosecution's expert say. However, the bulk of the
25 expert instruction will necessarily involve rebutting the
26 Prosecution's own experts. Whilst there will be some
27 subjects that can be dealt with discretely and separately
28 by the Defence experts, the vast majority it is about
29 rebutting the Prosecution case. And I could guarantee

1 this Court that there is not one case before the ICTR and
2 the ICTY which begins without any expert report having
3 been served upon the Defence. That puts, I would submit,
4 this Prosecution position into its proper context.

5 PRESIDING JUDGE: Thank you. Learned counsel for the second
6 accused.

7 MR NICOL-WILSON: No response, Your Honour.

8 PRESIDING JUDGE: And learned counsel for the third Accused.

9 MR CAMMEGH: Well, whether or not the defence team is to
10 employ its own expert on a discrete issue, it would
11 inevitably and invariable be failing in its duty if it
12 did not attempt at least to employ its own expert to
13 rebut the expert evidence served by the Prosecution.
14 That is the point, that is why we need timely disclosure
15 of these expert reports for the Prosecution side. It is
16 a matter of delay more than anything else.

17 PRESIDING JUDGE: Yes. Carry on, Mr O'Shea.

18 MR O'SHEA: May I just add to my learned friend here one point
19 and shock my learned friend and humbly admit that I have
20 fallen in her category of nonsense because our team are
21 not going to attempt to identify an expert or to identify
22 expert issues until we do have the Prosecution's expert
23 report for one simple reason --

24 PRESIDING JUDGE: Yes.

25 MR O'SHEA: We have no instructions.

26 PRESIDING JUDGE: You have a right of intervention.

27 MS MONASEBIAN: A brief one, Your Honour.

28 PRESIDING JUDGE: A very brief one.

29 MS MONASEBIAN: I don't wish to address what has been said

1 about the deadlines, I think we have gone over this
2 quite --

3 PRESIDING JUDGE: No, certainly not.

4 MS MONASEBIAN: Just one other point. If it is an overview
5 witness versus whether it is an expert witnesses, if it
6 is an expert witness, we Rule 94 bis that applies and
7 Your Honours can make the timeline that is earlier than
8 21 days or Your Honours can make it 21 days.

9 PRESIDING JUDGE: Yes.

10 MS MONASEBIAN: But if it is an overview witness then Rule 66
11 applies and then I would argue, Your Honours, that the
12 Prosecution is in violation of their duties to disclose
13 in redacted at least witness statement of the overview
14 witness. So I would just hope that my learned friends
15 don't seek to play it both ways to say, "Well they are a
16 kind of expert, we are not going to give their report.
17 But they are an overview." If they are an overview Rule
18 66 requires them to bring the statement now. The only
19 other thing is, Your Honour, I trust counsel, I believe
20 counsel are acting on good faith for the Prosecution, I
21 have no doubt. My only concern is that all of us have
22 responsibilities to the Court because we are lawyers
23 here. The experts don't have that responsibility and
24 unless Your Honours puts some discipline on them, however
25 hard my learned friends are trying - and I trust that
26 they are trying they might need the back-up of Your
27 Honours to say maybe not make the reports due now, make
28 them due in a few months, but give a date certainly.
29 Thank you, Your Honour.

1 PRESIDING JUDGE: Yes. You think there is any short thing you
2 want to say. Perhaps, in other words, that is surely
3 what I understand learned counsel is saying that perhaps
4 judicial intervention may even well serve your cause and
5 expedite the process on your side. I mean, not
6 necessarily faulting you, but given some kind of impetus
7 to those who are supposed to produce these reports. In
8 other words, do you need our --

9 MS TAYLOR: The stick rather than the carrot?

10 PRESIDING JUDGE: Quite right. That sort of thing. But if
11 you don't need our help that's okay.

12 MS TAYLOR: I am not sure that we are quite at the position
13 where we need the judicial stick. I am happy to have an
14 on-going conversation with my learned friends about this
15 issue and beyond that there isn't anything further I can
16 assist you with.

17 PRESIDING JUDGE: Well, I consider both sides that the Chamber
18 feels very strongly about this issue, and this is an
19 issue which we ourselves will be considering. When I go
20 back to chambers my learned colleagues and I, judges,
21 would in fact be deliberating upon it.

22 We can move on now to the fifth item, which is
23 outstanding motions/appeals. The Trial Chamber has certain
24 issues pending. 1. The confidential motion on detention
25 issue in respect of all nine accused persons. There is a
26 defence motion against the Registrar's decision not to
27 allow conjugal visits. A decision will be issued as soon
28 as possible on this.

29 There is also a motion on issues of urgent concern to

1 the accused Morris Kallon. The status of this is that the
2 majority decision of Judges Thompson and Boutet was filed
3 on 9th December 2004, and the dissenting opinion of Judge
4 Itoe will be filed as soon as possible.

5 Then the third motion is that on behalf of Issa Sesay
6 seeking disclosure of the relationship between governmental
7 agencies of the United States and the Office of the
8 Prosecutor. This was filed on 8th November and responses
9 and reply from the Prosecution and Defence are already on
10 file. I advise that a draft decision is being prepared.

11 Then there is also a motion by the Prosecution for
12 leave to call additional witnesses and that is yet to be
13 determined.

14 As far as the Appeals Chamber is concerned, I see here
15 that nothing is outstanding before them, I think they have
16 disposed of all the motions that they were seized of.

17 Item 6, any other matters. There is one important
18 matter that has now been resolved. It concerns translation
19 of in-court decisions concerning objections and legal
20 argument to witnesses. It may be recalled that during the
21 July trial session the Defence requested the discussions of
22 a legal nature must not be translated to the witness. At
23 the last status conference held on 1st October 2004,
24 learned counsel for the first accused, Mr Jordash, raised
25 this issue again seeking clarification as to the Chamber's
26 position on this matter. I am pleased to say that after
27 careful deliberation that the Chamber is in a position to
28 provide definitive guidance on the issue. It is as
29 follows:

1 All court proceedings are to be translated to the
2 witness. If a party is of the view that hearing the legal
3 arguments is likely to impact on the testimony of the
4 witness, then that party can apply to have the witness
5 excused from the courtroom during the discussions. At this
6 point the burden will be on the party seeking the witness's
7 exclusion to articulate why the witness should not be
8 present. Arguments on this issue will then be heard, where
9 appropriate, generally in the temporary absence of the
10 witness. The Trial Chamber will proceed to deliberate upon
11 the question and, if satisfied that the witness should be
12 temporarily excluded, will decide accordingly. The
13 Presiding Judge will then order that the witness be
14 temporarily out of the courtroom be brought back to Court
15 and will explain fully to the witness the reasons for his
16 or her temporary exclusion. So we have resolved this
17 matter.

18 Does any other counsel have any other matter to raise
19 at this point under item 6? That is all we have to bring
20 to the attention of Court. Yes, learned counsel.

21 MS TAYLOR: Your Honour there is one matter that the
22 Prosecution feels it would be useful to raise in this
23 forum. And that is that several times during the last
24 session of this trial the Prosecution noted that it was
25 suggested to Defence counsel who were then
26 cross-examining counsel, that they should not use leading
27 questions.

28 PRESIDING JUDGE: They should not?

29 MS TAYLOR: Use leading questions in their cross-examination.

1 The Prosecution is concerned that the cross-examining
2 counsel have the liberty of the Court to cross-examine
3 effectively and in the most appropriate manner and in the
4 respectful submission of the Prosecution a cross-examiner
5 is entitled to use both leading and non-leading
6 questions. And the Prosecution thought that it was worth
7 raising in this forum so that that issue might be
8 addressed.

9 PRESIDING JUDGE: Right. We will try and address it. I can
10 assure you that probably the difference of opinion among
11 the judges, as far as I am concerned there has never been
12 a bar on the part of cross-examination to leading
13 questions. In fact, if anything is most permissible, it
14 is leading questions. Even when they are contentious the
15 burden is on the Prosecution not to lead when the issues
16 are contentious. There is no such ban on the Defence as
17 far as I know. And if there is a difference of opinion
18 among the judges, I think we will have to resolve it in
19 some way, but I do appreciate the point. As far as I can
20 understand the jurisprudence of the international
21 tribunals so far do not say there is nothing there which
22 precludes defence counsel asking leading questions in
23 cross-examination.

24 MS TAYLOR: Indeed, Your Honour, that is the understanding of
25 the Prosecution.

26 PRESIDING JUDGE: Yes, that's my understanding of the law
27 myself.

28 MS TAYLOR: Indeed, and it is the most basic ruling in
29 domestic jurisdictions that leading questions are

1 permissible in cross-examination.

2 PRESIDING JUDGE: Probably one or two things might have been
3 said by us, sometimes we say things per incuriam, but we
4 can get that resolved.

5 MS TAYLOR: Indeed. The observation was just -- -

6 PRESIDING JUDGE: Yes. We appreciate your candour and your
7 approach to set the law straight and we have it on
8 record.

9 MS TAYLOR: If Your Honour pleases.

10 MR JORDASH: I concur entirely with what my learned friend has
11 just said.

12 MR O'SHEA: Well, thank you to the Prosecution.

13 MR NICOL-WILSON: Same, Your Honour. Thanks.

14 PRESIDING JUDGE: Yes, right. Anything else? Anything the
15 Defence counsel, anything for the good of the Special
16 Court in particular, or the good of the interests of
17 justice in general? If there is nothing else --

18 MR JORDASH: No, Your Honour.

19 PRESIDING JUDGE: Then we will bring this proceedings to a
20 close and I would again thank you for your co-operation.

21 We will commence the trial tomorrow morning at 9.30 a.m.

22 So the Court will adjourn.

23 [Whereupon the status conference adjourned at
24 12.14 p.m.]

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C E R T I F I C A T E

We Roni Kerekes and Susan G Humphries, 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.

_____ RONI KEREKES

_____ SUSAN G HUMPHRIES