

Case No. SCSL-2004-15-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
ISSA SESAY
MORRIS KALLON
AUGUSTINE GBAO

MONDAY, 4 FEBRUARY 2008
9.50 A.M.
TRIAL

TRIAL CHAMBER I

Presiding

Before the Judges:

Benjamin Mutanga Itoe,
Bankole Thompson
Pierre Boutet

For Chambers:

Ms Peace Malleni
Mr Felix Nkongho
Ms Sandra Brown

For the Registry:

Mr Thomas George

For the Prosecution:

Mr Vincent Wagona
Mr Charles Hardaway

For the accused Issa Sesay:

Mr Wayne Jordash
Ms Sareta Ashraph
Ms Sally Longworth

For the accused Morris Kallon:

Mr Kennedy Ogeto

For the accused Augustine Gbao:

Mr John Cammegh
Mr Scott Martin

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1 [RUF1FEB08A - DG]

2 [Monday, 4 Febuary 2008]

3 [Open session]

4 [The accused not present]

5 [Upon resuming at 9.50 a.m.]

6 [The witness entered Court]

7 PRESIDING JUDGE: Good morning, learned counsel. We'll
8 resume with the proceedings. The Court observes that the
accused
9 persons, or none of the accused persons, is in Court.

09:59:32 10 Incidentally, may the witness be taken please.

11 [The witness stood down]

12 PRESIDING JUDGE: Yes, as I was saying before -- we're
in
13 an open session are we? I suppose we.

14 MR xxx: Sorry, My Lord.

10:01:45 15 PRESIDING JUDGE: We are in an open session?

16 MR XXXXX: Yes, My Lord.

17 PRESIDING JUDGE: Yes, right. Yes, I was saying that it
18 is -- we observe that the three accused persons aren't in
Court

19 today which is quite unusual. So is there any waiver on their
10:02:06 20 part to absent themselves from Court and for the proceedings
to
21 go on in their absence.

22 MR JORDASH: The situation is a little less than clear
at
23 the moment.

24 PRESIDING JUDGE: Yes, Mr Jordash you were going to --
you
10:03:40 25 were on your feet. Incidentally, I would just interrupt
because
26 we have here the usual waivers, the forms or waivers you know,
in
27 the event of an accused person deciding on his own not to
attend
28 the session. He signs a waiver and says that the proceedings
can
29 go on in his absence. But the three accused persons have
refused

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1 to sign the waiver. That's the only indication I wanted to
give,
2 you know, from the papers that we have before us. And I would
3 like that -- have you shown them to the counsel Mr -- Mr --
have
4 their counsel seen them?

10:06:53 5 Yes, have you -- have learned counsel seen the waivers,
the
6 three waivers?

7 MR JORDASH: Yes.

8 PRESIDING JUDGE: Unsigned anyway.

9 MR JORDASH: Yes.

10:07:03 10 PRESIDING JUDGE: Has the Prosecution seen them as well?

11 MR HARDAWAY: We have not, Your Honour.

12 PRESIDING JUDGE: Has -- have Court Management?

13 MR GEORGE: Yes, My Lord.

14 PRESIDING JUDGE: Has the Prosecution seen the
documents?

10:08:17 15 MR GEORGE: Yes, My Lord.

16 PRESIDING JUDGE: Right. The Court intends to exhibit
17 these documents and to have them on record. Is there any
18 objection from any of the parties, please? The three
documents.

19 MR JORDASH: No objections.

10:08:35 20 PRESIDING JUDGE: No objection. Mr Ogeto.

21 MR OGETO: No objection, My Lords.

22 PRESIDING JUDGE: Mr Cammegh.

23 MR CAMMEGH: No objection.

24 PRESIDING JUDGE: The Prosecution.

10:08:41 25 MR HARDAWAY: None, Your Honour.

26 PRESIDING JUDGE: Right. The three documents are
admitted

27 and marked as exhibits --

28 MR GEORGE: 282, My Lord.

29 PRESIDING JUDGE: 282 A, B and C.

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1 MR GEORGE: Yes, My Lord.

2 PRESIDING JUDGE: In the serial order of Sesay, Kallon
and

3 Gbao. You said 283.

4 MR GEORGE: 282, My Lord.

10:09:06 5 PRESIDING JUDGE: 282.

6 MR GEORGE: Yes, My Lord.

7 [Exhibit No. 282A was admitted]

8 [Exhibit No. 282B was admitted]

9 [Exhibit No. 282C was admitted]

10:10:06 10 PRESIDING JUDGE: Yes, Mr Jordash. You were on your
feet.

11 Yes?

12 MR JORDASH: I can assist to some degree concerning Mr
13 Sesay's absence from the Court, if the Court wishes. We
received

14 a call this morning and Mr Sesay gave some indication as to
why

10:10:37 15 he wished to stay out of Court for the day. So I can assist
if

16 Your Honours wish.

17 PRESIDING JUDGE: Yes you may.

18 MR JORDASH: Mr Sesay --

19 PRESIDING JUDGE: Did he express his wish to the
10:10:58 20 detention -- to the detention officials?

21 MR JORDASH: That I do not know.

22 PRESIDING JUDGE: You do not know.

23 MR JORDASH: I don't know.

24 PRESIDING JUDGE: Is the detention office -- is the
10:11:08 25 detention facility represented here.

26 MR JORDASH: No.

27 PRESIDING JUDGE: No. Right. Yes, Mr -- it would have
28 been -- it is desirable, you know, that they are here because
29 might touch on what concerns them and if the accused persons

we
are

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leave.

1 not here it's not just enough to tender the waivers and to

to

2 Well, with this said, Mr Jordash, you may proceed. We'd like

say?

3 hear from you as to why not intend to be here for today, you

10:12:05

4 MR JORDASH: Yes. That was the indication he gave. I

5 should caveat what I have to say with -- that I do not have

Sesay

6 chapter and verse. I just have some information from Mr Sesay

7 today and information about the last two weeks, and what Mr

8 has been saying to me concerning his perception.

not

9 In short, Mr Sesay perceives that his Defence case is

10:12:49

10 being given fair consideration and, in particular, there have

caused

11 been incidents over the last two or three weeks which have

appeared 12 him a deal of anxiety and disquiet which, to his mind,
13 to show that the decision to convict had been made. And I, at
14 this stage, cannot go much further than that because I am
10:13:29 15 surmising part of what I've just said from the complaints he's
16 made to me but I know that Friday particularly was of huge
17 concern. And what he expressed to me over the weekend was the
18 deep shame that he'd felt at the time when the Prosecution
19 witness had claimed that he had, or he was responsible for the
10:14:03 20 rape and killing of XXXXXXXX and he remembered that at the time
21 the public gallery had been full and the public had peered at
him
22 as if he was some kind of specimen in a zoo, and he had hoped
23 that on Friday, when the claimed deceased appeared as a
witness,
24 that the Trial Chamber would in some way indicate their own
10:14:54 25 anxiety about that allegation. And, in particular, I think Mr
26 Sesay was concerned that, despite the fact he'd had to listen
to
27 that allegation in the glare of the public that, when it came
to
28 it, the Trial Chamber wouldn't ask the Prosecution to say
whether
29 that allegation remained or not. And I think that, to Mr
Sesay,

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one, 1 was disturbing because it's a serious allegation, a shameful
Mr 2 and the Prosecution were not prepared nor asked to say whether
I 3 Sesay was still to be charged with that offence. And that, as
to 4 understand from what Mr Sesay said to me today, and has said
10:15:51 5 me previously, has led him to the conclusion that it doesn't
6 matter what he does during his Defence case, he will be
7 convicted. And so what he outlined in brief today was that he
8 wanted to stay out of Court, not to disrespect the Court, not
to 9 withdraw cooperation from the proceedings, but to indicate his
10:16:16 10 protest at what he perceives to be an unfairness which has
11 descended in the Court. That is as far as I can assist the
Court 12 with.

13 PRESIDING JUDGE: Thank you.

14 MR OGETO: Thank you, My Lords. Now, over the last few
10:16:48 15 days, my client Mr Kallon has been expressing some form of
16 resentment regarding what he perceives to be unfairness in the
17 proceedings and this relates to the attempts that he has been
18 making to challenge the indictment against him. He thinks
that 19 the Trial Chamber is not fair to him -- has not been fair to
him. 20 He filed a motion in December, last year, for leave to bring a
10:17:27 21 motion challenging defeats in the indictment which would
exceed 22 the ten-page limit. Now, that motion was dismissed and,

unfair 23 according to Mr Kallon, he perceives that to be extremely
violation 24 because, as far as he's concerned, that decision is a
10:18:06 25 of his rights under the Statute.
in 26 Last week, we filed another motion challenging defects
filed 27 the indictment. Upon filing that motion, the Prosecution
28 another motion in which motion they requested that Mr Kallon's
Mr 29 motion be struck out. They also requested that the defence of

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1 Kallon be sanctioned for bringing a motion that was, in their
2 view, an abuse of process and also it was frivolous.
3 We were not given an opportunity to respond to the
4 Prosecution motion, and the Chamber went ahead and struck out
our 5 motion and also sanctioned the Kallon defence. Now, Mr Kallon
10:19:15 6 considers this an indication of unfairness, serious
unfairness,
7 in the process and, this morning, he summoned me to the
detention
8 facility. I had a 20-minutes chat with him and he indicated
that

that 9 he does not intend to be present in today's proceedings, and

10:20:00 10 he is doing so in order to protest what he perceives to be
11 fundamental unfairness of the process.

12 He asked me to seek an adjournment so that I go and
discuss
13 with him and so that he's able to give me full instructions
14 regarding what he intends to do and also explain to me
further,

10:20:40 15 and give me details of why he thinks these proceedings have
been
16 unfair. So I'm asking for an adjournment to go and discuss
with

17 Mr Kallon so that he's able to give me full instructions
18 regarding the fears and apprehension that he has so far
19 expressed.

10:21:15 20 JUDGE BOUTET: So you are saying that in protest he is
not
21 coming to Court but yet he's asking an adjournment. I must
say
22 that I have some difficulties to understand the logic of all
of
23 that. On this Monday morning, if he had reasons to speak to
you,
24 he's why wasn't it possible to do that during the weekend? Now

10:21:34 25 coming through you this morning so say: I protest. I'm not
26 attending and you say we would like to have an adjournment to
27 have further discussion. I must say that I need some
explanation
28 because I do not understand.

29 MR OGETO: Well, I must tell that over the weekend I had

aspects

of

not

only

10:22:10 he

him

10:22:34 full

out.

should

why

10:22:50

And

1 several meetings with Mr Kallon, and we discussed several
2 of the case. Of course he was grumbling about the unfairness
3 the proceedings but, at that time when I spoke to him, he did
4 express his intention not to be in Court this morning. It's
5 when I went to see him, I had a 20-minute chat with him, when
6 told me that he does not intend to be present today. But I
7 didn't get full details and full instructions regarding why he
8 doesn't intend to be in Court. Of course, I could not force
9 to come to Court, and so he asked me to seek an adjournment so
10 that I could go and discuss with him so that he can give me
11 details and explanations as to why he thinks he should stay

12 JUDGE BOUTET: So, according to you and to him, we
13 delay the proceedings so you can have a discussion to justify
14 he is protesting today and not coming to Court?

15 MR OGETO: It is not according to me; it is what I'm
16 expressing to the Court what Mr Kallon told me this morning.

regarding

17 what I'm saying is that I do not have full instructions
18 his failure to be in Court today. We only discussed for
19 20 minutes this morning, so I did not get the full story; the
10:23:08 20 implications of the story that he gave me.

21 That's why I'm saying that I'll probably need an
22 adjournment to go and sit down with him so that I really
23 understand the nature of his grievances and so that I'm in a
24 position to come and explain to the Court in a much more
10:23:25 25 intelligible fashion.

26 PRESIDING JUDGE: Thank you, Mr Ogeto. Mr Cammegh?

from

27 MR CAMMEGH: Your Honours, I received a telephone call
28 Mr Gbao from detention on Saturday afternoon, late Saturday
29 afternoon, in which he informed me that discussions were

ongoing

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is

1 amongst the three detainees as to the possibility of making a
2 single day's protest today. I should emphasise, I think this
3 in common with my two learned friends, there's no question of
4 this action being taken upon advice, it is something which has
10:24:22 5 been arisen independently and it's been something which I have

6 found very difficult to advise my client on.

o'clock 7 I was summoned to the detention centre again at 9

8 this morning, where I spoke to Mr Gbao for about 15 minutes.

he 9 Whilst it appeared on Saturday that he was wavering as to what

10:24:45 10 wanted to do, this morning he seemed to have made his mind up
11 unequivocally that he wanted to stay outside of Court.

morning, 12 He didn't really illuminate any reasons why this

13 but I have to say that on Saturday the concerns, or the

14 grievances that he raised with me concerned nothing to do with

10:25:07 15 motions, nothing to do with anything that has been lying
before

16 the Court in paper form for some time, it's to do with the

17 witness TF1-108 and the witness XXXXXXXX.

but 18 Mr Gbao alluded, it's something that escapes my memory

19 he may well remember better than me, the performance in the

10:25:35 20 witness box of 108 at a particular time when he broke down in

was 21 tears relating the death of his wife. And, as I think this

22 one of the first witnesses who testified with Mr Gbao in the

23 room, Mr Gbao, I remember at that time, was affected by the

24 content of that testimony, and was particularly upset by it.

10:25:57 25 The entry into the fray of XXXXX last week appears, if

26 Saturday's conversation is anything to go by, to have reopened

Chamber 27 those wounds. Mr Gbao's concern is perhaps less with the

28 than with the Prosecution.

29 PRESIDING JUDGE: TF1-108 is the alleged ex-husband of

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1 Monjama?

2 MR CAMMEGH: Yes, that's right.

3 PRESIDING JUDGE: Yes.

4 MR CAMMEGH: Your Honour, Mr Jordash rose on Friday --

10:26:59 5 PRESIDING JUDGE: Please continue.

6 MR CAMMEGH: If I have overstepped the mark in saying
7 anything I apologise; perhaps it should be redacted.

8 PRESIDING JUDGE: No, no, that's okay. It was a Chamber
9 exchange. We were just saying that 108 is a protected
witness.

10:27:19 10 MR CAMMEGH: Yes.

11 PRESIDING JUDGE: And that was why he didn't call him by
12 name. He is known in this Court by his name. Whether he's
13 protected, I just said the former husband, or an alleged
husband
14 of XXXXXXXX.

10:27:36 15 MR CAMMEGH: Yes. Mr Jordash rose and was overruled by
16 Your Honour, as Your Honours will remember on Friday
afternoon,
17 when he really made an inquiry via the Chamber of the
Prosecution
18 as to whether or not there was any Rule 68 potentially
19 exculpatory material in relation to this issue, the XXXXXXXX

10:27:56 20 issue. Your Honour overruled him on that.

21 This is a difficult situation for us to be in because it
22 appears that we're being critical of the Chamber and, if it
23 appears so, I want to emphasise I make these comments with the
24 greatest of respect. But I don't think Mr Gbao was happy with

10:28:20 25 the preemptory way in which I was told that the Chamber was
26 ruled.

27 I, with the greatest of respect, simply want to make
this
28 point: The matter I was trying to raise on Friday afternoon
was,
29 in fact, unrelated to Rule 68 application; it was simply to
ask

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1 via the Chamber whether the Prosecution would now be in a
2 position, bearing in mind, in the light of the evidence that
3 XXXXXXXXX gave, as to whether they were going to continue to
use
4 108 as against Gbao on two separate allegations within 108's
10:28:57 5 testimony, both of which referred to unlawful killings.
6 Number one, the alleged killing of 108's brother on a forced
7 labour march from Kailahun to Pendembu and, secondly, the
alleged

8 killing of four civilians at the Kailahun Town court barri at
9 which Augustine Gbao, according to 108, was the senior-most
10 present.
11 It seemed to me, just thinking off the top of my head,
12 if I was to apply rules which apply in English courts, and
13 are two cases in particular, called Galbraith and one called
14 Shippey, which basically refer to scenarios where a
15 witness, his testimony has been so badly impugned by
16 cross-examination, that it may often be the duty of the
17 Prosecution, if they don't withdraw that witness, it's the
18 of the judge to withdraw that evidence. That is --
19 JUDGE BOUTET: Mr Cammegh, I thought on Friday we told
20 that we were quite prepared to receive this. All you had to
21 do is put it in a motion. I don't see why we are hearing all
22 this argument this morning.
23 MR CAMMEGH: I'm simply illustrating what the argument
24 was going to be and the fact that it was different from Mr
25 Jordash, and Your Honour --
26 JUDGE BOUTET: Well, Mr Jordash raised that issue in
27 part. He was arguing 68 plus --
28 MR CAMMEGH: I'm not seeking to argue it here, I'm
29 simply saying what the argument is going to be. I'm not going behind

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Gbao

1 Your Honours' decision on that at all. I'm simply trying to
2 explain what it was I was trying to do and the fact that Mr
3 felt that I was shut off quickly.

the

4 He was clearly, on Saturday, aggrieved not so much with
5 Chamber's action on Friday, but with what he sees as an
6 unwillingness of the Prosecution to approach the Defence in
7 relation to stating their case. This will be the subject of a
8 motion; that is a motion that I will see to this week.

10:30:40

9 Now, on Saturday evening, Mr Gbao was quite calm, quite
10 measured in what he was saying. I explained to him the

potential

11 detriment of not coming into Court. He said that he would
12 consider it with his fellow detainees over the next 24 hours.
13 This morning I was summoned into detention to be told his

answer.

14 What I do know is that there is no intention on his part

to

10:31:26
he

15 make this last for more than one day, but I have to say that
16 is, in a measured way, not -- it's not like he's gone off the
17 wall, or anything like that, he is in a measured way very

upset

fight

18 and very concerned about -- about how he is to be able to
19 his case when he's not quite sure what the Prosecution are
10:31:56 20 saying.

I

21 In short, his complaint is: How on earth do we meet the
22 Prosecution case when we don't know for sure what it is? And,
23 Your Honour, there it is. I don't think there's anything else
24 could say on the issue.

10:32:16 25 PRESIDING JUDGE: You may sit down.

26 MR CAMMEGH: Thank you.

I'm

27 PRESIDING JUDGE: Okay. Thank you. I, for my part and
28 taken aback by this protest, and I fail to perceive the role
of
29 the Tribunal in circumstances like this. And I'm asking
myself

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a

all

1 the question whether the Defense Counsel, or the Prosecution,
2 expects this Bench at any time to pronounce on the validity of
3 particular count, or the credibility of a certain witness at
4 stages of these proceedings. That is where my doubt is.
10:33:22 5 Otherwise, I wouldn't go to -- I wouldn't like to go too far.

which 6 What is the purpose, what is the purport of Rule 98
And 7 is -- I mean, we have come to that and we are beyond that.
found 8 if it is the purport of Rule 98, that the fact that we have
10:34:03 9 that there is an indicia, you know, of the elements of the
that 10 offence having been established, it does not go to confirm
11 the accused persons are guilty. It doesn't. It does not, at
12 least as far as my understanding goes.
their 13 At the end of the case I think all the parties have
the 14 right to present arguments on the strength and weaknesses of
10:34:29 15 Prosecution witnesses or the Defence witnesses. That is the
way 16 we perceive it and I do not understand. Maybe you may
enlighten 17 me. I mean, is it that it should now become the practice that
18 where there is a perceived defect in the case for the
19 Prosecution: Oh, they should withdraw the charge or withdraw
the 20 case against X, Y, Z, is that what they should be doing at
10:34:51 21 point in time? Or is it that upon reflection you would agree
22 with me that these are matters that have to be addressed at
the 23 end of the proceedings, when final submissions will be called
in. 24 Because we are here to listen to the evidence. We are here to
10:35:17 25 listen to what the parties are saying. And we are taking our
26 pains to do just that, in order to arrive at a basis for
27 determining the credibility of certain witnesses which has a

accused 28 nexus with determining the guilt or the innocence of the
I 29 persons. This is what we are doing and I say, you know, that

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is 1 find it very difficult to see myself determining at all stages
2 and saying: Oh well, you know, this witness must be this; he
interventions; 3 wrong; he is this and that. We are not for those
4 I don't think that I would like to go that far.

10:35:57 5 My duty is to listen to the evidence, to make whatever
I 6 meaning I can make out of the evidence and, having done that,
of 7 will be in a better position, having regard to the generality

8 all the evidence, of the evidence that has been adduced in a
9 particular case, to be able to determine the guilt or the
10:36:19 10 innocence of the accused person. To be able to determine
whether 11 the Prosecution has fulfilled its obligations to prove the
case 12 against the accused persons beyond reasonable doubt. That is
13 what it is.

14 If the Defence has questions about the evidence of XXX,

10:36:43 15 and the photographs and so on and so forth, these are all
valid

16 issues which have been raised, and I did make a statement that
17 well, if the Prosecution decides to limit its cross-
examination

18 on this issue, that is their call. The Chamber will take its
19 stand at the appropriate time, and I think that this is the
right

10:37:10 20 way to proceed and I do not think, you know, that the -- I
heard

21 everything, but I know you are there to represent the accused
22 persons at their will, but I thought that it is also your
place,

23 as their legal counsel, as their legal advisers, to tell them,
24 you know, that it is not right for them to start questioning
10:37:37 25 certain stance taken by the Court in this case because we
think

26 that we are holding the balance and that at the end of the day
we

27 would do just what we are here to do as a Chamber in the
exercise

28 of its judicial functions.

29 That is my stand on this matter and I don't know if my

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my 1 colleagues have something to add to what I've said. This is
2 personal position on this.

perception 3 JUDGE THOMPSON: I make a short point: That my
4 of my judicial role is that judges do not descend into the
arena
10:38:35 5 in adversarial proceedings.

what 6 JUDGE BOUTET: In the -- to supplement what Justice Itoe
7 just said, I'm also -- I have some difficulty to understand
8 the Defence is saying about the Prosecution now having some
9 obligation because you don't know, from the Defence
perspective,
10:39:06 10 what your case and which case you have to meet.

11 The case that you have to meet is, to me, quite clear.
12 It's based on the indictment, coupled with the decision we
13 rendered on the Rule 98, and this is fundamentally the case
you
14 have to meet. Now, as you know, Rule 98 doesn't address

10:39:22 15 credibility of witnesses. This is an issue that did not come
16 into consideration at that time. But why should we, the
Bench,
17 rule after each witnesses or have to consider each witnesses
18 because all of a sudden it may or may not contradict some of
the
19 evidence for the Prosecution -- I don't think it's our role.

10:39:39 20 That's not the way trials are conducted. And we have to look
at
21 that in due course with a full picture, and this at the end of
22 the trial, after having heard all the evidence.

23 Now, if the Prosecution, based on some of the evidence
that

or
10:39:56
have
intervening

24 has been adduced, why they are taking this particular position
25 not, in fact, when the case on issue here, to my knowledge,
26 taken no position except to just carry on the way they have.
27 That's their case. We have no way to interfere. Not
28 in the way they conduct their case. I mean, that is -- the
29 independence of the Prosecution is also part of the judicial

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1 process. So, why is it that they are taking this position
2 vis-a-vis their particular witness or not? We don't know. We
3 are in the same position that you are in this respect. So,
4 should we intervene? Well, you are saying that we should. We
10:40:26 5 will wait until we hear your motion, Mr Cammegh, and we'll see
6 what it is you are alleging at that particular moment.

-
asking
evidence

7 MR CAMMEGH: Your Honour, I feel that I might have put -
8 expressed myself quite badly. I wasn't asking, or I'm not
9 for the Chamber to rule on the admissibility of certain

10:40:43 10 at all. I was simply trying to ask the Prosecution --

11 JUDGE BOUTET: No, no, I understood that, Mr Cammegh.

your 12 That's why I say, on that aspect, we'll have to wait to see
13 motion and then we will decide what, once we have seen all the
14 parties, what it is.

10:40:55 15 MR CAMMEGH: Yes. Just so I can, if Your Honour will
16 forgive me, just express because I didn't completely -- I
didn't 17 put it well.

18 The point I was making was that in the area of
19 uncorroborated allegations, it would assist if the Prosecution
10:41:13 20 would be able to inform us, bearing in mind the cross-
examination 21 of 108 et cetera, of XXXXXXXX, are they prepared to make any
22 concessions in relation to uncorroborated stuff because if
they 23 were it would --

24 JUDGE BOUTET: I understood that, Mr Cammegh.

10:41:26 25 MR CAMMEGH: -- reduce the amount of work. That's my
26 point.

27 PRESIDING JUDGE: If they don't, Mr Cammegh, let us come
to 28 that extreme. If they don't, what do you expect the Chamber
to 29 do?

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1 MR CAMMEGH: Nothing.

2 PRESIDING JUDGE: Isn't it.

3 JUDGE BOUTET: Well, that's what we're saying. I mean,
we
4 have certain obligations. We have no authority to impose on
the
10:41:44 5 Prosecution to do this or not to do this. I understand that.

6 MR CAMMEGH: Yes, and I accept the blame for putting
myself
7 [overlapping speakers] --

8 JUDGE BOUTET: And I accept as well that if that is the
9 case, and they are prepared to tell you this is -- we're not
10:41:53 10 pursuing this well fine, that would facilitate your case and
11 everybody's case but we are more or less without much
authority.
12 That's why I say well, wait to see what you have to argue on
this
13 and take it from there.

14 MR CAMMEGH: Your Honour, there's no disagreement
between
10:42:07 15 us on that issue.

16 PRESIDING JUDGE: Mr Cammegh, I will give you a very
very
17 concrete example from the Prosecution. It's not in this case,
in
18 the CDF case, the Prosecutor, Mr De Silva himself, taking the
19 stand of the Prosecution, made certain concessions and said
that
10:42:28 20 he admits -- the Prosecution admits or admitted that the
Kamajors

21 were fighting for the restoration of the ousted democratically
22 elected government. I mean, he made those -- I don't want to
go

23 into the details but, you know, he went further, you know, by
24 saying that they were fighting alongside ECOMOG in order to
10:42:54 25 restore the constitutionally elected government that had been
26 ousted. These were clear admissions from the Prosecution. We
27 did not ask for them. If the Prosecution is prepared,
throughout
28 these proceedings, to make certain concessions and some
29 admissions, they are welcome to do that.

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1 MR CAMMEGH: Yes, indeed.
2 PRESIDING JUDGE: They are welcome to do that. If they
3 don't, it is not, like Justice Thompson has said, it is not
for
4 the Bench to interfere unnecessarily in an adversarial system
to
10:43:32 5 force them to make concessions.
6 MR CAMMEGH: Your Honour, I entirely accept your words,
7 entirely.
8 PRESIDING JUDGE: Thank you. Yes, Mr Jordash.
9 MR JORDASH: If I may, I think I might have perhaps not
10:43:45 10 conveyed what Mr Sesay's complaint is properly, in that his
11 complaint is not that he expects issues of credibility to be

the 12 decided at this stage. What he expects is that he will know

13 specific allegations which the Prosecution --

he 14 PRESIDING JUDGE: But, Mr Jordash, if I may cut in: If

10:44:06 15 does not expect issues of credibility to be decided at this

16 stage, why should a stand be taken on the evidence of XXXXXX?

17 Isn't it to put into question the credibility of TF1-108?

18 MR JORDASH: It's --

10:44:28 19 PRESIDING JUDGE: But that is precisely what he's asking
20 for. That's why he's annoyed, that the credibility of TF1-108

he 21 has not been put into question by this Tribunal. Nor has the
22 Defence or, rather, the Prosecution considered, you know, that

them 23 must have lied by refusing to make -- well, and you expect

24 to make some disclosures which are exculpatory in nature under
10:44:53 25 Rule 68.

on 26 MR JORDASH: Well, what Mr Sesay expects, and to this
27 extent I'm completely at one with Mr Sesay, I make no comment

28 his protest at all but, in terms of what he wants, in terms of

are 29 wanting the Prosecution to say whether particular allegations

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1 being pursued, I'm completely at one with him. If the
2 Prosecution had indicated by cross-examination that they want
to
3 pursue that allegation, then of course Mr Sesay cannot say to
4 Your Honours: Please decide this issue between the parties
now
10:45:32 5 but what he can do, and what Your Honours are enjoined, and in
6 fact I would respectfully submit obliged to do, is to require
the
7 Prosecution to make it clear what allegations are or are not
8 being pursued. And, in the face of what happened on Friday,
when
9 we had a complete volte-face, a complete change from a direct
10:45:56 10 allegation of rape and killing to a non-challenge to Defence
11 evidence, then it is left unclear.

12 And if I may go back to Mr Sesay's position, and if I
put
13 myself in his position, to sit in a courtroom and be accused
of
14 rape and killing, and then when Defence evidence comes and the
10:46:22 15 Prosecution do not challenge it, but refuse to say why, why
16 should I sit there and listen to that allegation and allow --

17 PRESIDING JUDGE: Don't you think that they stand or
fall
18 by their evidence? Don't you think that the Prosecution
stands
19 or falls by the evidence? Whether they do anything about it
or
10:46:38 20 not.

21 MR JORDASH: But the evidence has judged against their
22 case, and if they do not clarify their case, the evidence just
23 sits there with nothing to be compared against.

This 24 JUDGE BOUTET: But that's what we said, Mr Jordash.
10:46:52 25 is not for this Chamber to intervene in the case for the
26 Prosecution at this stage. If what you say is supported, and
27 this is what the evidence is all about, fine. We'll make
28 whatever decision is appropriate in due course. But we are
not 29 prepared to intervene at this stage to say, in fact, the

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is 1 allegation by the Prosecution on this particular count as such
2 not founded and therefore I disregard. I mean, we are not
3 prepared to do this at this stage; absolutely not.

10:47:22 4 MR JORDASH: But I go back to the point I'm making on Mr
Trial 5 Sesay's behalf; we're not asking that. We are asking the
charged? 6 Chamber to turn to the Prosecution and say: Is Mr Sesay

the 7 JUDGE BOUTET: But it's the same thing. I mean, it's
I 8 same thing said differently. We are not prepared to do that.
9 am not. I will not speak on behalf of the Bench. We have not
10:47:35 10 discussed that. I am not prepared to do that.

correctly 11 MR JORDASH: Well, if I understand Your Honours
12 then Your Honours are not prepared to ask the Prosecution to
13 detail their case and if that's --

14 JUDGE BOUTET: Their case is detailed, their case is
10:47:48 15 detailed in the indictment. It's detailed in every document,
16 they have submitted a pre-trial brief, I don't know how many
17 times we've discussed that Mr Sesay -- Mr Jordash. I don't
think
18 we're going to resolve this issue this morning again because
19 obviously our decisions have not convinced you of that, and
you
10:48:04 20 keep coming back with the same fundamental issue.

21 MR JORDASH: Well, I leave it at that. No one in this
22 Courtroom except the Prosecution knows whether the accused are
23 still charged with the murder and rape of XXXXXX. No one.

24 PRESIDING JUDGE: And that should be an eventual
submission
10:48:19 25 from you.

26 MR JORDASH: Except the Prosecution.

27 PRESIDING JUDGE: That will be an eventual -- that will
be
28 the final submission, which we are expecting from you.

29 JUDGE BOUTET: As far as the Bench is concerned, your

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1 accused is still facing that charge.

2 JUDGE THOMPSON: Yes.

3 JUDGE BOUTET: I mean, we have not disposed of that. I

4 mean, if your question is whether or not he is facing that,
the

10:48:36 5 answer is "yes." The counts are still there; the indictment
is

6 there; we have not ruled out on the Rule 98 decision, and

7 therefore it's all there. How it will be disposed of at the
end

8 of the trial is a different issue. As we speak it is there.

9 MR JORDASH: Well, not if the Prosecution are not
pursuing

10:48:54 10 it it's not, unless the Trial Chamber is pursuing the charge

11 itself.

12 JUDGE THOMPSON: Well, Mr Jordash, are you saying --

13 PRESIDING JUDGE: You mean the Trial Chamber is pursuing

14 the charge itself?

10:49:05 15 MR JORDASH: Well, if the Prosecution are not, and the

16 Trial Chamber says it still exists, then it must be the Trial

17 Chamber --

18 JUDGE BOUTET: Well, the indictment is there, Mr
Jordash.

19 As far as I know the indictment has not been amended. It is

10:49:16 20 still there.

21 MR JORDASH: But this allegation is not specifically on
the

22 indictment. It's not specifically in the pre-trial brief.

23 JUDGE BOUTET: I don't want to go there. I mean --

24 MR JORDASH: [Overlapping speakers] witness's statement.

10:49:24 25
Prosecution

It's in a supplementary statement. So, it's for the
26 to indicate at each step of the way whether they wish to rely
27 upon evidence or not. Else we have to deal with all evidence
28 without an indication from whether we have --

To 29

JUDGE BOUTET: Well, this is what trials are all about.

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1 my knowledge, as such may be in the British system, in the UK,
2 after each witness called by the Defence, then the Prosecution
3 stands up and say: We are not pursuing this because and
because,
4 this is not known to me. It's a concept that you are
advancing

10:49:52 5
tribunal

this morning that is foreign to me.

6 MR JORDASH: It's not foreign to any international
7 for the judges to intervene to for the Prosecution to
8 particularise and specify --

9 JUDGE BOUTET: It has been done.

10:50:04 10
this

MR JORDASH: Well, it hasn't been done in relation to
11 allegation.

12 JUDGE BOUTET: It may not be to your satisfaction, Mr

13 Jordash, but it has been done. We've ruled upon that.

14 PRESIDING JUDGE: It may have flaws, from your
perception,

10:50:13 15 but that is how they've done it, and they will stand or fall
by

16 the way they are doing it and they are pursuing their
indictment

17 in all its compartments.

18 JUDGE THOMPSON: Mr Jordash, let me seek one
clarification:

19 Is this evidence that is being led not related to a specific
10:50:34 20 charge in the indictment?

21 MR JORDASH: We don't know.

22 JUDGE THOMPSON: That's the point.

23 MR JORDASH: We don't know.

24 JUDGE THOMPSON: So, in other words, we're in an area of
10:50:41 25 some kind of nebulousness as to whether this particular piece
of

26 evidence does relate to the indictment.

27 MR JORDASH: Well, we know that we are -- Mr Sesay's
28 accused of unlawful killings and sexual violence in Kailahun.
We

29 know that. We know that a witness said that he was
responsible

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1 some way for the rape and killing of XXXXXX. Apart from that,
2 we don't know whether the Prosecution intend to rely upon it.
3 We've never known that it's never been in the indictment, it's
4 never been in the pre-trial brief, and it wasn't -- there's
been

10:51:20 5 no proclamation from the Prosecution as to their precise
material
6 facts which underpin the alleged responsibility. So we've
never
7 had an indication of that in any document.

8 We can, I suppose, guess that because it's unlawful
killing
9 and rape, and it's happened, it's also they say in Kailahun,
it

10:51:42 10 must relate to the unlawful killing and sexual [overlapping
11 speakers] in the indictment.

12 JUDGE THOMPSON: In other words, a kind of
presupposition.

13 MR JORDASH: But we're guessing.

14 JUDGE THOMPSON: Yes. Wouldn't it be really a subject
of

10:51:53 15 some intense legal argument that can seek to persuade the
Bench
16 that what the Prosecution has done here does not accord with
the
17 interests of justice?

18 MR JORDASH: Well, that as I -- in a layperson's --

19 PRESIDING JUDGE: Not necessarily at this stage.

10:52:12 20 JUDGE THOMPSON: No, not at this stage. I'm talking
about
21 the -- at the end of the day.

22 MR JORDASH: But, you see, that is Mr Sesay's complaint.

23 JUDGE THOMPSON: Yes, not at this stage, at the end of
the

24 day.

10:52:20 25
Prosecution,

26 and yet they seem not to pursue it, the Defence still have to
27 deal with it through evidence which appears to, on one view,
Mr
28 Sesay's view, place the burden on him to fight allegations
which
29 may or may not be made in the final stage.

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1 JUDGE THOMPSON: But if the Prosecution equivocate on an
2 issue, ought they to take the benefit of the equivocation?
3 Wouldn't this be a matter of argument?

expend

4 MR JORDASH: Well, do we, the Defence, continue to
10:52:58 5 energy and resources to rebut the allegation or do we take a
6 guess?

7 JUDGE BOUTET: Well, that's what you are paid for, Mr
8 Jordash.

9 MR JORDASH: I am not paid to guess.

10:53:12 10
of

11 JUDGE BOUTET: Yes, you are paid to exercise this kind
judgment. You are paid to advise your client accordingly, and

12 you are paid to assess the evidence and to give proper advice
to
13 your client. That is what you are paid for.
14 MR JORDASH: Based on --
10:53:25 15 JUDGE BOUTET: I mean, don't ask the Bench to do your
work
16 in your place in determining what you should do or not do.
This
17 is your call as to whether or not you cross-examine a witness.
18 This is your call as to whether you address this issue or not.
19 It is not for the Bench to do it. If the evidence is there,
you
10:53:40 20 don't want to deal with it, that's fine.
21 MR JORDASH: Well, I can make those decisions only in
22 relation to the charges if I'm simply looking at evidence but
do
23 not know the charges, then I am being asked to guess.
24 PRESIDING JUDGE: The charges are there.
10:53:53 25 JUDGE BOUTET: Exactly.
26 PRESIDING JUDGE: You may say -- the charges are there
on
27 the indictment. You may say, at the end of the day, during
your
28 final submissions, after we close this trial, that all what
the
29 Prosecution is talking on this or that count, or on the entire

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1 indictment, is nonsense because it is not supported by their
2 evidence. And you will add, you know, that the evidence that
was
3 adduced from TF1-108 is highly and fundamentally flawed and
4 cannot be used to sustain a conviction against your client.
Are

10:54:34 5 these not the arguments which we expect you to make in your
final
6 brief, Mr Jordash?

7 MR JORDASH: On charges that the Prosecution still wish
to
8 pursue.

9 PRESIDING JUDGE: We're presuming regularity in this and
10:54:50 10 that they intend to pursue all the counts, unless they
indicate
11 to us, you know, in the course of these proceedings, and make
12 some admissions and some corrections to the indictment, or
13 withdraw the entire, or part of the indictment. They are free
to
14 do that, you know, before the end of these proceedings. It is
10:55:09 15 possible.

16 MR JORDASH: What we're saying is that if the
Prosecution
17 do not cross-examine and put a challenge to a witness like
that,
18 they are effectively --

19 PRESIDING JUDGE: That is their call, Mr Jordash, let us
10:55:19 20 agree on this, please. Let us really agree on this, if they
do
21 not, as a lawyer --

22 JUDGE BOUTET: And furthermore --

standing 23 PRESIDING JUDGE: We have all been where you are
would 24 there. As a lawyer, what would be your conclusion? What
10:55:31 25 be your solution? Mine would be that I keep quiet about it
and 26 I'll raise it at the proper time.
with 27 JUDGE BOUTET: I must say, too, that I am a bit upset
motion 28 the fact that we've told you on Friday, if you have such a
29 to make, make it in writing, as such. And now you are coming

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such. 1 this morning through the back door to argue your motion as
2 MR JORDASH: I was answering --
3 JUDGE BOUTET: I'm -- yeah, but you were asked -- I
mean, 4 you are saying Mr Sesay says this. This is not Mr Sesay who's
10:56:00 5 speaking, it's Mr Jordash who's speaking to the Bench this
6 morning. All of these arguments we've told you, if you have
7 them, put them in writing and we'll deal with them.
8 MR JORDASH: Your Honours raised the issue and I
answered. 9
don't 9 JUDGE BOUTET: Well, I raised the issue, I mean, we

10:56:12 10 raise the issues, you raised the issue because your client is
not

11 here this morning.

12 MR JORDASH: Well, Your Honours suggested that you
didn't

13 have the right to intervene and I disagreed with that

14 proposition.

10:56:32 15 PRESIDING JUDGE: Yes. The Prosecution, you know, do
you

16 have any admissions to make? If you have any admissions,
please,

17 you know, get us out of this rubble.

18 MR HARDAWAY: I can, Your Honour, but the Prosecution
has

19 no admissions. However, the Prosecution would agree with the

10:56:50 20 Bench that this is an issue that is meant for final
submissions.as it

22 relates to TF1-108 and that is an issue of credibility which
the

23 Chamber has rightfully said that they need to --

24 PRESIDING JUDGE: But you do appreciate that it is a
10:57:10 25 fundamentally important issue which the Prosecution has to

26 address.

27 MR HARDAWAY: That's true, Your Honour, and the
Prosecution

28 will address it, as the Court says, at the appropriate time.

29 However, the Prosecution would want to move on to the over --
to

1 the issue that brought us here, which is the accused not being
2 present.

Chamber

3 The Prosecution submits that, based upon what the
4 has heard of their failure to appear is wilful and as such the
5 Prosecution would ask that the Court deem that they have
6 their presence so that we may continue with the proceedings.

10:57:39
waived

7 Also, as it relates to the request for adjournment by
8 second accused, the Prosecution would object to such an
9 adjournment. There are other counsel present for the second
10 accused who can address these issues and there is no, the
11 Prosecution believes, legal basis for such an adjournment to
12 delay the proceedings.

10:57:58

the

13 PRESIDING JUDGE: Yes. This brings the Chamber to -- we
14 would like learned counsel on both sides to address the Court

on

10:58:25

15 the applicability of Rule 60 of the Rules of Procedure and
16 Evidence. These Rules say: "An accused may not be tried in

his

17 absence unless (1): The accused has made his initial

appearance,

18 has been afforded the right to appear at his own trial but
19 refuses to do so, or (2), or the accused, having made his

initial

10:58:50
is

20 appearance is at large or refuses to appear in Court." What

21 your interpretation of these Rules? The Prosecution, please.

22 MR HARDAWAY: Your Honour, the Prosecution believes that
23 Rule 60(A)(i) that he has been afforded the right to appear,
24 which has been evident by the exhibits of their waivers which
10:59:19 25 they refuse to sign. They were aware of it. There's no
medical
26 reason given as to why they cannot physically appear, and,
based
27 upon the words of the Defence, they are not here as a result
of
28 protest, so that can be easily interpreted as that they have
29 refused to do so, and, as such, that they can be tried today
in

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1 their absence.
2 PRESIDING JUDGE: Thank you. Mr Jordash, please.
3 MR JORDASH: Well, could I perhaps answer it in this
way,
4 that Mr Sesay is content for the proceedings to continue to
10:59:53 5 complete this witness in his absence and, after that point, we
6 have an application to adjourn for a week, in any event. In
7 terms of this Rule, it would appear on the face of it quite
clear
8 that Your Honours could, if Your Honours wanted, continue in
the

9 absence of the accused in these circumstances.

11:00:24 10 PRESIDING JUDGE: Mr Ogeto?

11 MR OGETO: I think there was a misunderstanding
regarding
12 the request that I made of adjournment. I wasn't making
13 adjournment that would last the whole day; the adjournment
that I
14 was seeking was to facilitate a meeting between myself and the
11:00:42 15 accused this morning, so that he is able to provide me with
16 further and better particulars regarding his absence; that's
all.
17 So I just wanted a short adjournment to be able to go
and
18 discuss with him because, as I said, this is not a matter we
19 discussed over the weekend. I had only 20 minutes this
morning
11:01:00 20 so I didn't really fully appreciate the reasons why he is not
in
21 Court this morning and, for that reason, I thought I should
get a
22 short adjournment to go to the detention facility and finalise
my
23 discussions with him, so that I can come and advise the
Chamber
24 accordingly.

11:01:15 25 PRESIDING JUDGE: Thank you.

26 JUDGE THOMPSON: So you wanted a standdown?

27 MR OGETO: Yes, My Lords.

28 JUDGE THOMPSON: I understood an adjournment to mean
some
29 protracted time. But if it had been a standdown that was

1 different.

2 MR OGETO: Maybe I used the wrong terminology.

3 JUDGE THOMPSON: That's okay.

4 PRESIDING JUDGE: Mr Cammegh, please; may we have your
view
11:01:34 5 on this as well?

6 MR CAMMEGH: Well, I think it's implicit in what Mr Gbao
7 said to me this morning that he is content for proceedings to
go
8 on in his absence today.

9 PRESIDING JUDGE: Right. Thank you. Learned counsel,
the
11:03:33 10 Chamber will recess for a brief while and we will resume in
the
11 next couple of minutes. We will rise, please.

12 [Break taken at 11.03 a.m.]

13 [RUF04FEB08A - DG]

14 [Upon resuming at 11.22 a.m.]

11:22:21 15 PRESIDING JUDGE: Yes, we are resuming this session.
Yes,

16 Mr Ogeto.

17 MR OGETO: My Lords, thank you. My application for
18 adjournment may now be mute because during the short break I
19 rushed to the detention facility to speak with Mr Kallon, and
he

11:22:41 20 has just provided me with a document in writing, explaining
his
21 absence in Court, and I don't know how I will proceed now. I
22 have this document with me here. I don't know whether the
best
23 procedure would be to read the document into the record or
simply
24 make copies for the parties and hand the original to the
Chamber.
11:23:07 25 I'm in your hands, My Lords.
26 PRESIDING JUDGE: May you tender it? You may tender it.
27 MR OGETO: Yes.
28 PRESIDING JUDGE: We are interested in knowing what is
in
29 the document.

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1 MR OGETO: Can you look at it before we tender it, My
2 Lords?
3 PRESIDING JUDGE: No. I mean, we don't know what is
there,
4 but if it is an explanation as to why he is not in Court--
11:23:23 5 MR OGETO: That is -- that is what is in the document,
6 nothing more.
7 PRESIDING JUDGE: Yes. Can you show it to the
Prosecution,

8 please?

9 MR OGETO: Yes, I have copies here. You could give the
11:23:28 10 original to the learned Judges. Or you want to show them the
11 original?

12 PRESIDING JUDGE: I am sure you want this document to be
13 admitted in evidence?

14 MR OGETO: Yes, My Lords.

11:24:16 15 PRESIDING JUDGE: Am I right? So stated; am I right?

16 MR OGETO: Yes, My Lords, it could be admitted.

17 PRESIDING JUDGE: The document is virtually restating
what
18 you informed the Court, you know, orally.

19 MR OGETO: Yes.

11:24:32 20 PRESIDING JUDGE: This morning.

21 MR OGETO: Yes, My Lords.

22 PRESIDING JUDGE: I have not gone through the entire
23 document, but I've gone through most of it, you know, just
24 browsing through.

11:24:37 25 MR OGETO: It is more or less --

26 PRESIDING JUDGE: The issue of the lack of fairness.

27 MR OGETO: It's moreorless, Your Honour, what I said in
the
28 morning hours.

29 PRESIDING JUDGE: According to the rights which are

1 accorded him under the Statute. Any objection?

2 MR HARDAWAY: None, Your Honour.

in

3 MR OGETO: The only thing that I probably didn't mention

4 the morning is that, and that is in this letter, Mr Kallon

11:25:18 5 he

5 emphasises that he has the greatest respect for this Court and

6 will continue to do so, and all he's asking of this Court is

7 fairness in the proceedings.

throughout

8 PRESIDING JUDGE: So the Court has been unfair

9 the proceedings?

11:25:40 10 making

10 MR OGETO: That is what is -- not throughout the

11 proceedings. He has explained the context in which he's

12 these allegations of unfairness. I don't think he has said --

13 JUDGE BOUTET: What explanation have you given to your

14 client about that? You know the reasons. We've issued the

11:25:52 15 you

15 decision on that. What explanation you, as his counsel, have

part

16 given to him with respect to these decisions? This is also

17 of your duties --

18 MR OGETO: It is. It is.

explain

19 JUDGE BOUTET: -- to support the Court as well and

11:26:03 20

20 how proceedings function in a Court like this.

21 MR OGETO: I have -- I have explained that to him.

22 JUDGE BOUTET: But he's refused to hear what you have to
23 say.

24 MR OGETO: No, I can't disclose that. That is
privileged,

11:26:14 25 My Lords.

26 PRESIDING JUDGE: You know, I did mention this earlier
on

27 this morning, before we stood this matter down, and that is
that

28 counsel on both sides, you know, are supposed to be the
advisers

29 to their clients, and they know better than their clients do.

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1 And they are supposed also -- I mean, we are not asking to be
2 shielded. They are supposed to explain to them what the Court
3 can do and what the Court cannot do, and to advise them on
4 certain motions.

11:26:42 5 Most submissions have been made here this morning and
6 we've not heard that, notwithstanding your efforts to advise
7 them against what we consider you should think is not proper,
8 they did insist that you should present this, this in Court.
9 This is where we think that the role of counsel comes in, and

we

11:27:05 10 would like to mention this and to hope that when accused
persons
Court 11 allegedly make, you know, certain allegations against the
from 12 that counsel would be the very first to distance themselves
13 these allegations, particularly if they consider, if counsel
14 consider that they lack any legal or lawful justification.

11:27:37 15 This is what we were wanting to say in respect of this
in 16 particular matter, because I think many things could be nipped
17 the bud. They are accused persons, they know nothing about
18 what -- they may know nothing about what they are talking
about 19 but the allegations are sufficiently grave.

11:27:57 20 MR OGETO: My Lords, let me, let me just point out that,
21 speaking for myself, I have done my best in the context of the
go 22 law and the Statute to advise my client, and I don't want to
I've 23 into details of the discussions that I've had with him, but
in 24 done my best to advise him. So I don't want to get involved
11:28:25 25 other discussions --

26 PRESIDING JUDGE: Anyway, that's all right, Mr Ogeto.
27 That's okay, we have heard you. I think the document which
you 28 have tendered is admitted and marked as Exhibit 283.

29 [Exhibit No. 283 was marked]

1 MR GEORGE: Yes, My Lord.

2 MR JORDASH: May I just briefly buttress what my learned
3 friend has just said, that at every stage of this trial we
have
4 done our best to advise our client, and, well, I'll go further
11:29:16 5 than that, we've always done our best to advise him that
6 cooperating and fighting --

7 PRESIDING JUDGE: Just like we, too, have done our very
8 best to be very fair to them. We may be faulted somewhere,
but I
9 think this Chamber considers that it has been -- it has done
its
11:29:37 10 very, very best to be fair to all the parties in this case.

11 MR JORDASH: Well, I simply wanted to say, in light of
the
12 Court's comments concerning my submissions in some way being
13 connected to Mr Sesay's protest, that I have always, we have
14 always advised Mr Sesay that his best interests lie in
remaining
11:30:06 15 in Court and fighting the case. So if there is a suggestion
that
16 the advice has been different to that, then it's rejected.
17 Wholly rejected.

18 PRESIDING JUDGE: Thank you. Well, this morning the
19 Chamber did notice the absence of the three accused persons
and
11:30:49 20 opened inquiry. We are informed, through Exhibits 282A, B and
C,

of

in

21 and now through Exhibit 283, that they have impliedly waived
22 their rights to be present in Court pursuant to the provisions
23 Rule 60(B) of the Rules of Procedure and Evidence. This being
24 the case, the Chamber will proceed with this trial,
11:31:39 25 notwithstanding their absence, and we will proceed to hearing
26 continuing the -- with taking the evidence of DIS-236, who was
27 the witness box.

28 MR HARDAWAY: I believe it is 226, Your Honour.

29 PRESIDING JUDGE: 226, I'm sorry. It's 226. 226, I'm

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1 sorry. Mr Jordash, do you confirm that?

2 MR JORDASH: Yes, Your Honour, it's 226.

3 PRESIDING JUDGE: 226. Right. Thank you. So may the
4 witness be brought in please.

11:34:51 5 [The witness entered Court]

6 PRESIDING JUDGE: Yes, Mr Hardaway.

7 MR HARDAWAY: Thank you, Your Honours.

8 WITNESS: DIS-226 [Continued]

9 CROSS-EXAMINED BY MR HARDAWAY:

11:35:02 10 Q. Mr Witness, good morning, sir.

11 A. Good morning.

12 Q. I have a few questions for you. If there is at any
point
All
13 you don't understand what I'm saying, ask me to repeat it.
14 right?

11:35:19 15 A. Yes.

16 Q. Now, Mr Witness, you had testified that you had received
a
start
17 message from the paramount chief that the civilians should
18 cultivating a farm; is that correct?

19 A. Yes.

11:35:40 20 Q. Now, the paramount chief was instructed by the RUF to
tell
also
21 the civilians that they should cultivate a farm; isn't that
22 correct?

23 A. He came and told us to cultivate farm, that we have come
to
24 the end of the war.

11:36:07 25 PRESIDING JUDGE: Who came? Who came? "He" came. You
26 said "he" came.

27 MR HARDAWAY:

28 Q. By "he" came, who do you refer to, sir?

29 A. The paramount chief. He sent a letter to us.

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1 Q. Mr Witness, please listen to my question. The question
2 was: The RUF told the paramount chief to send the letter so
the
3 civilians could start the farm; is that correct?

4 A. I was not there when the letter was written. We only
saw
11:36:50 5 the letter from the paramount chief that we should cultivate a
6 farm.

7 Q. So when I put it to you that it was the RUF that told
the
8 paramount chief to tell the civilians to cultivate the farm,
you
9 would not know; is that correct?

11:37:09 10 A. No. I cannot tell.

11 Q. Thank you, sir. Now you had also testified that there
was
12 brushing of the farm and that the farm was all burned; is that
13 also correct?

14 A. Yes.

11:37:34 15 Q. And this was all done by civilians; is that also
correct?

16 A. Yes.

17 Q. Now, there were children also working on the farm; is
that
18 also correct?

19 A. Who were working on the farm? There were children
amongst

11:37:50 20 us, together with our children.

21 Q. So the children worked the farm with you; is that
correct?

22 A. Yes. Those who were with us, we were all there.

the 23 Q. Now, Mr Witness, could the civilians refuse to work on
24 farm if they wanted to?
11:38:13 25 A. Somebody will complain about ill-health. Those who are
26 willing will go and work.
27 Q. So, if somebody was not in ill-health, could they refuse
--
28 A. If you refused to go, you will remain at home because
29 nobody was forced. We are only told to -- we are cultivating
it

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1 for ourselves.
forced 2 Q. I put it to you, Mr Witness, that the civilians were
3 to work on that farm; how do you respond?
nobody 4 A. I? I did not see anybody forced to do that work and
11:39:15 5 forced me to do the work.
tell 6 Q. Now, Mr Witness, you had testified that you could not
7 the difference between the civilians and the fighters; is that
8 correct?
9 A. We, the civilians, I know very well. We were moving
11:39:45 10 together, I know us very well.

had 11 Q. Mr Witness, again, please listen to the question. You
12 testified you could not tell the difference between the
civilians 13 and the fighters; is that correct?
14 A. I cannot differentiate that this is a soldier or this is
a 15 civilian.
11:40:12 16 Q. I put it to you, Mr Witness, that there were fighters at
17 the farm whose purpose was to guard the farm. How do you
18 respond?
19 A. They were there, but we were not told that these are the
11:40:34 20 soldiers, that they should be there to guard the farm. We are
21 all moving together. Whenever we are told to go and do it, we
22 will all go there. We will use the town crier to announce to
23 everybody that we should go and do, for example, the felling.
24 Q. I put it to you, Mr Witness, that fighters were there at
11:41:00 25 the farm to make sure that the civilians worked. How do you
26 respond?
27 A. But I don't know them.
28 Q. Now, Mr Witness, you had testified that the civilians
had 29 harvested the rice; is that correct?

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1 A. Yes.

2 Q. And there were also children who helped harvest the
rice;

3 is that also correct?

4 A. Together with the women.

11:41:35 5 Q. Could the civilians --

6 PRESIDING JUDGE: Came back together with the women.
7 Children first. He said children.

8 MR HARDAWAY: Yes.

9 Q. Mr Witness, did the children harvest the rice; yes or
no?

11:41:59 10 A. There were suckling mothers but the children were not
there

11 to work on the farm. We were all working together. I did not
12 see any child there, because a child does not know how to
13 harvest.

14 Q. Mr Witness, could the civilians refuse to harvest the
rice

11:42:30 15 if they wanted to?

16 A. I did not see any civilian refusing to cultivate the
rice.

17 Q. But, Mr Witness, could a civilian refuse if they wanted
to?

18 A. It was a work. If nobody is-- somebody is capable of
19 doing, he will say no, but it was for ourselves.

11:43:02 20 Q. I'll ask again, Mr Witness. Based --

21 A. Okay.

22 Q. -- upon the position you held, and do not tell us what
that

23 position is, we are in open session, based on the position
that

the 24 you held, would you know if civilians could refuse to harvest
11:43:34 25 rice?
26 A. Civilian could refuse but we would beg him to go. They
27 were not refusing. We were all asking them to go together.
They
28 were all happy. Nobody would say, for example: Today I am
not
29 going to work.

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1 Q. I put it to you, Mr Witness, that civilians could not
2 refuse to harvest the rice because, if they did so, they will
be
3 punished. How do you respond?
4 A. They will not punish them. Even myself, sometimes I
will
11:44:18 5 say I'm not going to work today. There are other people who
will
6 go happily, and I did not see anybody who was refusing to go
and
7 work.
8 Q. Now, Mr Witness, after the rice was harvested you
testified
9 that you and the other civilians carried the rice to town; is
11:44:39 10 that correct?

11 A. Yes.

12 Q. That town was different from when you carried the rice
to

13 Kailahun; is that also correct?

14 A. Yes, the rice that we stored in the barn that was the
rice.

11:44:55 15 Q. Now, did children help carry the rice?

16 A. When we were transporting from the farm there were
17 children. You, as a child, if you can carry whatever you can
you
18 will carry it. But if you can't you won't. Even women were
also
19 carrying. Whatever you were able to carry you would be able
to

11:45:19 20 carry.

21 Q. So in answer to the question, yes, children -- there
were

22 children that carried rice to the town; correct?

23 A. The child that was able, the child that was able. Not
all

24 of the child. Not every child. You'll tell a child: Take
this

11:45:40 25 rice to the farm. You will not force that child. Even an
adult,

26 you will not force that adult to carry the rice. They will --
27 you will not be punished. Whatever you are able to do is what
28 you'll be able to carry.

29 Q. Now, you stated that some of the rice -- you took some
of

1 the rice to Kailahun; is that correct?

2 A. Yes. They took rice there. We were processing the
rice.

3 Then they will give us some.

4 Q. Who told you to carry the rice to Kailahun?

11:46:17 5 A. The paramount chief.

6 Q. And who told the paramount chief to have the rice
brought
7 to Kailahun?

8 A. No, I don't know the person.

9 Q. So, if I put it to you that the paramount chief was
11:46:38 10 instructed by the RUF to tell the civilians they should carry
the
11 rice to Kailahun, you would know nothing about that; is that
12 correct?

13 A. I don't know that. I was not there. I don't know.

14 Q. Now the rice you carried to Kailahun that was carried by
11:47:06 15 the civilians; is that correct?

16 A. We, the civilians, were carrying the rice, but the time
the
17 rice was carried there we were not there. I was not there.

But
18 the rice was stored there. They told us that the rice has
been
19 taken to Kailahun.

11:47:24 20 Q. Did children help carry the rice to Kailahun?

21 A. I don't know that. I did not see anybody in my presence
22 carry the rice to Kailahun.

23 Q. So if I put it to you that there were children that were
24 carrying rice to Kailahun, you would know nothing about that?

11:47:53 25 A. No. I did not see them forcing them to carry the rice
to
26 Kailahun, telling them to carry the rice to Kailahun. I did
not
27 see that.

28 Q. Could the civilians have refused to carry the rice to
29 Kailahun if they wanted to?

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1 A. Nobody was told to take the rice to Kailahun. I was not
2 there. That did not happen in my presence. That did not
happen
3 in my presence that you, as an individual, take this rice to
4 Kailahun. I did not see that.

11:48:39 5 A. So if I put it to you that the civilians, including
6 children, were forced to carry the rice to Kailahun, you would
7 know nothing about that; is that correct?

8 A. No, I did not see that. I did not see that at all. I
did
9 not see it at all, in my presence, these people were forced to
10 carry the rice. Or, for example, forcing people in my
11:49:02 10 presence,

11 carry this rice to Kailahun. I did not see that at all.

12 Q. Now, Mr Witness, while the civilians were carrying the
rice

13 to Kailahun, they were guarded by armed fighters, weren't
they?

14 A. No. I did not see anybody who was told to carry the
rice.

11:49:34 15 If that happened in my presence I would have been able to
answer

16 all these questions but I did not see anybody who was even a
17 child. We process the rice, we transported it on the road,
then

18 we went to do our own personal work. But I did not see
anybody

19 was forced to carry the rice. So when --

11:49:57 20 PRESIDING JUDGE: There are two things, Mr witness. Did
21 you see -- there is some lack of clarity somewhere. Are you
22 saying that you never saw anybody, that you were not there
when

23 they were carrying the rice?

24 THE WITNESS: No.

11:50:16 25 PRESIDING JUDGE: And that, are you saying you were not
26 there when they were carrying the rice to Kailahun?

27 THE WITNESS: No.

28 PRESIDING JUDGE: That's not what you are saying? What
29 you're saying is that you were there and you did not see
anybody

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1 forcing the civilians to carry the rice?

2 THE WITNESS: That rice, I was there when the rice was
3 processed, but they did not force anybody in my presence to
carry
4 the rice to Kailahun. I did not see anybody that was forced
to

11:50:48 5 carry the rice to Kailahun in my presence. I did not see
anybody
6 in my presence that was forced to carry the rice to Kailahun.

7 PRESIDING JUDGE: Okay.

8 MR HARDAWAY:

9 Q. You yourself did not go to Kailahun with the rice; is
that
11:51:07 10 correct?

11 A. Not at all.

12 Q. So, when I put it to you, Mr Witness, that there were
armed
13 fighters with the civilians carrying the rice to Kailahun, you
14 would not know about that; is that correct?

11:51:24 15 A. Not at all. I have told you, I was afraid of gunshots.
16 That was the reason that I went -- I ran away. If people had
17 guns with them we wouldn't have been able to cultivate that
farm,
18 in fact.

19 Q. So when I put it to you that the armed men with the
20 civilians carrying the rice to Kailahun were there to force
11:51:46 them
21 to carry the rice to Kailahun, you would know nothing about
that;
22 is that correct?

23 A. No, because I don't know the soldiers.

24 MR HARDAWAY: Thank you, Mr Witness. I have no more

11:52:06 25 questions of you. Thank you for your time and your evidence
here

26 today. Your Honours, this concludes my cross-examination.

27 PRESIDING JUDGE: Yes, Mr Jordash, any re-examination?

28 MR JORDASH: No re-examination. Thank you.

29 PRESIDING JUDGE: Well, at the end of the testimony of
this

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1 witness, this is the -- the Chamber will like to present to
make

2 its ruling in respect of the closed session application made
by

3 learned counsel Mr Jordash for the first accused for the first

4 five minutes, I think he said, of his evidence to be taken in
a

11:54:06 5 closed session.

6 Consistent with the general requirements that criminal

7 proceedings are to be conducted in public as enjoined by Rule
78

8 of the Rules of Procedure and Evidence of this Court, and
taking

but 9 into consideration Article 17(2) of the Statute of the Court,
11:54:28 10 exceptionally as authorised by Rule 79(A)(ii) of the said
Rules,
11 and the need to protect witnesses as provided for in Rule 75,
12 this Chamber, on the application of learned counsel Mr
Jordash,
13 for a certain portion of the testimony which was to last five
14 minutes of witness number DIS-225, DIS-225 --

11:55:07 15 MR JORDASH: 226.

in a 16 PRESIDING JUDGE: I'm sorry, 226, DIS-226, to be heard
17 closed session did, by way of an exceptional procedure, grant
the 18 said application for reasons advanced in support thereof. We
are 19 now at the end of, the close of his evidence, and Mr Witness,
we 20 would like to thank you for coming to provide the Court, you
11:55:31 21 know, with your knowledge of the facts of this case and we
thank 22 you for coming and we wish you -- you are now discharged. We
are 23 at the end of your testimony and we wish you a safe journey
back 24 to your home. Once more, thank you very much and bye for now.

11:55:59 25 THE WITNESS: Okay. Okay.

26 [The witness withdrew]

27 PRESIDING JUDGE: We're still in the open session. Mr
28 Jordash, how do you proceed from here?

29 MR JORDASH: We would like to make an application for a

and
submissions
There
11:58:01

1 one-week adjournment, because the application is a serious,
2 in some regards, complicated. We've put our skeleton
3 into a document which we would ask Your Honours to read.
4 are copies for Your Honours, and copies for my learned friends
5 from the Prosecution.

to
have
11:58:31

6 In short, we do not have any witnesses ready to be able
7 give evidence. The witnesses we do have, in our professional
8 view, are not ready to give evidence. And so we regrettably
9 to make this application. I would ask Your Honours to have a
10 look at the submissions we've made on paper, and I'm happy, of
11 course, to address Your Honours in depth on any issue. Can I
12 Mr George, please.

made

13 PRESIDING JUDGE: Well, this is an application you've
14 for an adjournment, and an adjournment for one week.

12:00:46 15 MR JORDASH: Your Honour, yes.

we

16 PRESIDING JUDGE: Yes. And this is made notwithstanding
17 the ruling of the Chamber on Friday, but irrespective of the
18 application you made for an adjournment to tomorrow, Tuesday,
19 were going to go on, because we didn't find any legal

12:01:08 20 justification for us to adjourn the case. And that's why we
are

21 here today.

22 MR JORDASH: Yes.

23 PRESIDING JUDGE: Today you are making an application
for

24 an adjournment for one week.

12:01:20 25 MR JORDASH: Yes.

26 PRESIDING JUDGE: I, yes, we -- we cannot say that we
can

27 go through this document now, but-

28 MR JORDASH: Your Honour --

29 PRESIDING JUDGE: I don't know if the Prosecution have
been

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1 served with this document, you know, before now.

2 MR JORDASH: No. They haven't because we've literally
just

3 completed it. May I explain what happened over the weekend to

4 necessitate a change of the application and a revisitation by
the

12:01:54 5 Defence to the issue of an adjournment. It is not designed to
go

6 behind Your Honours' order. We had anticipated that --

7 PRESIDING JUDGE: We are in an open session. Why is
this

8 screen closed here? Please, can it be opened.

9 MR JORDASH: We had anticipated that --

12:02:16 10 PRESIDING JUDGE: We have this -- we have the, the
people

11 of the witness unit. And they should be here to assist.

12 MR JORDASH: We had anticipated that.

13 PRESIDING JUDGE: Yes, Mr Jordash, you may proceed.

14 MR JORDASH: We had anticipated that by working to an
12:02:42 15 unreasonable level over the weekend, we would be able to have
a

16 witness ready for this morning, after Your Honours rejected
the

17 application for an adjournment. And we had hoped that we
would

18 have a witness after, a second witness, ready at least by the
end

19 of today. What happened over the weekend was that I saw the
12:03:08 20 anticipated witness and came to the -- and that was the first
view

21 time I'd seen that witness, it was DIS-127 and I came to the
22 that the witness could not be ready, except after a two- or
23 three-day period. In addition, the second witness who we
24 anticipated who would come next, DIS-170, informed us that he
12:03:33 25 could not remain in the witness house because of professional
26 commitments and could not, in fact, return to Freetown for two
27 weeks.

28 Hence, despite our wanting to comply with the Court's
order

29 to continue this morning, the two witnesses we had hoped we

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professional
available.

1 could, with excessive endeavours, have ready, in my
2 view, the first cannot be ready and the second is not
3 So that, that has led to our revisiting the issue of an
4 adjournment. That and --

12:04:25
to

5 PRESIDING JUDGE: The adjournment on Friday was for two
6 days, or one day, Monday, for us to resume on Tuesday. Now on
7 Monday we are faced with an application from you, Mr Jordash,
8 adjourn this matter for one week.

9 MR JORDASH: Yes.

12:04:45
you

10 PRESIDING JUDGE: Is it something which you could not
11 anticipate on Friday.

12 MR JORDASH: Well--

13 PRESIDING JUDGE: Before making the application which
14 know, you know, the Court rejected.

12:04:58
predicated
of
to

15 MR JORDASH: Well, the application on Friday was
16 upon more of a hope than a reasonable expectation, as has much
17 our case been predicated upon the hope that witnesses turn up
18 the witness house, and a hope that the witnesses, when seen

we
12:05:31 19 properly and taken through their testimony, will be witnesses
20 wish to call. And so in many ways I ought to have applied on
21 Friday for four or five days adjournment but I was hoping, as
avoid 22 I've hoped, and we've hoped throughout the Defence case, to
23 any adjournment whatsoever. So the application was a limited
one 24 in the hope that we could avoid a lengthier one. But, given
the 25 events over the weekend and meetings between myself, Ms XXXXX
12:05:59 26 and Mr XXXXXX, and the illness of Mr Kneitel over the weekend,
I 27 should add that to the equation, it's -- we've arrived at the
28 view that it would not be in our profession -- in our client's
29 interest, to ask for anything less than a week. And in fact,
we

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still 1 considered at length whether to ask for two weeks, and it may
2 well be if Your Honours grant the adjournment, that we may
3 come back to this Court and ask for another week.

4 Your Honours will see from Paragraph 9 that there are,
12:06:55 5 there is an expectation that 46 witnesses will arrive in the
next

6 few days to the next two weeks. And as I've noted on several
7 occasions, we have only two lawyers who can interview the
8 witnesses with the requisite knowledge of the case. And with
9 myself in Court, and with the best will in the world, two
people

12:07:27 10 to interview 46 witnesses to select a possible 15 or so, with
20
11 or 25 to be cut to be the basis of a 92, Rule 92 application,
12 it's not possible. It's just not possible. And we are as
13 concerned about delay as anyone else because --

14 PRESIDING JUDGE: It's you who say that your client, you
12:07:59 15 keep saying it, your client has been in detention for a very
long
16 time.

17 MR JORDASH: Yes.

18 PRESIDING JUDGE: He's been there for an unduly long
time
19 and this is what it plays up to.

12:08:12 20 MR JORDASH: Yes. We are sadly placed into a position
of
21 having to chose between expedition and fairness. And this
22 situation we foreshadowed in April 2005, and I came to the
view,
23 myself and Ms XXXXXX came to the view, at that stage. You
24 cannot interview 300 witnesses to select the witnesses you
want

12:08:36 25 to call with only three lawyers.

26 PRESIDING JUDGE: Why do you need to interview 300
27 witnesses? 300 witnesses for what case, really? 300
witnesses
28 for what case? The case where the Prosecution has called how
29 many witnesses, you're interviewing 300.

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1 MR JORDASH: Yes.

2 PRESIDING JUDGE: Envisaging interviewing 300. That's

an

3 excessive burden that you place on yourself. It's a very

4 excessive burden. I must say, if that has been your approach,

I

12:09:03 5 would say that the burden you've assumed is excessive.

6 MR JORDASH: Well, if 300 witnesses give evidence on the

7 face of their preliminary statements which is exculpatory, we

the

8 have an absolute duty to interview each witness to find out

9 substance and detail of that testimony. We do not have the

12:09:23 10 dealing

option of simply ignoring a proportion of them, and not

11 with them. In the same way the Prosecution had a witness list

of

12 in excess of 300, they too, would have interviewed, I'm

wanted

13 presuming, each and every witness to chose the ones they

14 to put before the Court to put their case against the accused.

12:09:49 15 We're asking for nothing more than what facilities were

16 provided to the Prosecution. And I would not be doing my

of

17 professional duty to my client if I were to simply ignore 200

step 18 them. And we have sought to avoid this situation at every
and 19 of the way. And the arguments have been advanced since 2005,
12:10:19 20 yet we have never received a response to how it is two people
are 21 to interview this large number of witnesses while one person
is 22 in Court. And in my respectful submission, it comes down to
that 23 simple fact: Ignoring the plethora of other tasks which arise
24 day-in, day-out: It comes down to that.

12:10:54 25 I've been in Court alone, practically alone, since the
26 beginning of the Defence case. And I look around me every so
27 often and see two people on each of the co-accused's cases
28 sitting there. And I look around and I see two, sometimes
three 29 on the Prosecution side. And yet the one team which has the

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1 burden of the work at the moment has one. In my respectful
2 submission the merits of this situation --

3 PRESIDING JUDGE: The Prosecution has two or three.
4 [Indiscernible] the three accused persons as well.

12:11:38 5 MR JORDASH: And one case being presented.

6 PRESIDING JUDGE: Being presented but which has a nexus,
7 you know, with the other cases.

8 MR JORDASH: Well, at the end of the day the Prosecution
9 have four lawyers who rotate in and out of Court.

12:11:51 10 PRESIDING JUDGE: How many do you have, including your
11 legal assistants?

12 MR JORDASH: Well, including the legal assistants, we
have,
13 as Your Honours can see from the motion --

14 PRESIDING JUDGE: I've seen two of, two of you, you and
Ms

12:12:05 15 XXXXX.

16 MR JORDASH: Well, lawyers who are--

17 PRESIDING JUDGE: I know that it's lawyers, you know,
who
18 are mentioned there, but your team, what's the picture of your
19 team?

12:13:02 20 MR JORDASH: The picture of the team is --

21 PRESIDING JUDGE: Because you have been introducing
people,
22 legal assistants, and so on and so forth.

23 MR JORDASH: Well, the legal assistants are interns, and
24 unqualified lawyers. And there are now three of them working
on

12:13:02 25 a specific task analysing 10,000 DDR documents, and during
direct

26 examination, taking a note for me. There is one lawyer who is
a
27 personal friend of mine who has taken an unreasonable rate of
28 remuneration at the last minute to and come and help with the
29 92bis witnesses, but goes without saying he does not know the

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present

1 case so cannot fulfill the full role of a lawyer at this
2 time. And so that is the complement of the team. It comes
3 to three lawyers cognizant of the case, who --

down

who

12:13:20 5
recollection,

4 JUDGE BOUTET: But you introduced one a few weeks ago
5 was new to your team. It was not an intern from my
6 but I may be wrong.

we're

7 MR JORDASH: Well, legal assistant/intern, unqualified
8 lawyers perhaps is the best way to describe the assistance
9 getting --

12:13:38 10

PRESIDING JUDGE: But lawyers all the same.

11

MR JORDASH: Well unqualified lawyers also.

12

PRESIDING JUDGE: In what sense?

13

MR JORDASH: They are not qualified lawyers.

or

12:13:49 15

14 PRESIDING JUDGE: They have not been admitted to the Bar
15 so?

16

MR JORDASH: Yes.

17

I

JUDGE BOUTET: But the one you introduced two weeks ago,

18

do not remember his name, he's an unqualified lawyer?

19 MR JORDASH: Yes. But this is the problem with the
12:13:59 20 funding. If peanuts are provided, what we can hire are
21 unqualified lawyers. But of course we can also rely upon the
22 generosity of our friends to come to Sierra Leone if we're
lucky,
23 and agree to work for peanuts. But what we cannot do is
obtain
24 qualified lawyers at reasonable rate who will give up their
12:14:28 25 domestic practice for a period to come and assist.

26 If I may say so, whether I'm right or wrong about any of
27 this, we have placed these arguments in front of the Registry;
28 we've placed these arguments in front of the Trial Chamber in
29 September of 2006. We cannot have done more to obtain the
merits

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1 of what I'm saying, to be looked at fairly and squarely.

2 PRESIDING JUDGE: But at least there is some progress as
3 has been an improved remuneration, somehow.

4 MR JORDASH: Yes, to place--

12:15:09 5 PRESIDING JUDGE: Wasn't there an improved remuneration?

6 MR JORDASH: To place --

7 PRESIDING JUDGE: So it's not a question of nothing
having

8 been done since 2006, as you put it.

9 MR JORDASH: Well nothing has been done.

12:15:18 10 PRESIDING JUDGE: At least we know, you know, from the
11 records that we have examined that there has been an improved
12 remuneration.

13 MR JORDASH: No, no. Improved from--

14 PRESIDING JUDGE: Improved in a sense, you know.

12:15:26 15 MR JORDASH: In a sense.

16 PRESIDING JUDGE: Yes.

17 MR JORDASH: That now myself and Ms XXXXXX and Mr
XXXXXXXX

18 can be paid at the same rate as the rest of the teams. So
yes,

19 we are grateful to be paid at the same rate as the other
teams,

12:15:39 20 but there has been no consideration of our application for
21 additional help. And in my respectful submission, the very
least

22 that we could hope for is that somebody would consider the
merits

23 of our application which run into close to a hundred pages of
24 argument. And we have time and time again said this is going
to

12:16:09 25 happen. We've done everything we can by working ridiculous
hours

26 to avoid it. And we cannot, we haven't been able to avoid
this

27 application for an adjournment today. And so, if Your Honours

28 look at the request we make at paragraph 29, we ask for one
week

29 suspension of the proceedings, we ask for an immediate

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1 consideration of the motion for additional funding so that the
2 lawyer who's kindly agreed to come and help out where he can
3 receives proper remuneration consistent with what every other
4 professional lawyer gets at this Court and finally the proper
12:17:03 5 consideration of any further application for an adjournment to
6 ensure effective representation. And I would add this, that
at
7 one point our application was simply for additional funds.
Our
8 application was in 2005, 2006 to have a lawyer come in to get
on
9 top of the details of the case and help us out during the
Defence
12:17:26 10 case. Our application now has gone beyond that because
obviously
11 that time has passed. The lawyer who's come to help us now if
--
12 now has come in halfway through the case so the remedy we seek
13 now has been extended to adjournment because that is the only
way
14 the existing team with the full knowledge of the case can cope
12:17:57 15 with the workload. The additional lawyer whose come to help
can
16 assist and will mean that we do not have to apply for the same

17 adjournments we would have had to apply but for his generosity
18 but nevertheless those are the remedies we now unfortunately
have
19 to seek.

12:18:20 20 PRESIDING JUDGE: Thank you. Prosecution, I mean, I
don't
21 know have you looked through that document or do you want some
22 time to look through it. Because I notice it was just served
on
23 you now.

24 MR HARDAWAY: Would ask to briefly have time to look at
it
12:18:36 25 Your Honour since it was just served upon us.

26 PRESIDING JUDGE: Learned counsel, I think we'll be
27 standing down this matter, you know, to enable the Prosecution
to
28 provide a response to Mr Jordash's application before the
Chamber
29 would come out with its position on this application. So we
are

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1 standing down the matter and we will resume at 2.30 during
which
2 time we expect the Prosecution to have -- to state its
position
3 on this and thereafter we would indicate to the parties how we

4 intend to proceed. With this said we would go now for the
12:21:36 5 recess, for the lunch recess and resume the session at 2.30.

6 The Chamber will rise, please.

7 [Luncheon recess taken at 12.22 p.m.]

8 [RUF4FEB08B - DG]

9 [Upon resuming at 3.20 p.m.]

15:29:41 10 PRESIDING JUDGE: Good afternoon, learned counsel. We
are

11 sorry we are starting a bit late. We have been in Chambers
and

12 we have been discussing issues relating to the proceedings
before

13 we thought we should start. We did adjourn for the
Prosecution

14 to provide a reply to Mr Jordash's written motion.
Ordinarily,

15:30:09 15 we should have called on you to provide a written response
16 coupled with -- coupled by a reply like he did but, if you
may,

17 we are disposed to hearing you on what your position is on
this

18 application, Mr Hardaway.

19 MR HARDAWAY: Yes, Your Honour. For the record, the
15:30:36 20 Prosecution does oppose the Defence request for an
adjournment.

21 The major basis for that opposition is the fact that the
22 Prosecution's case closed on 2 August 2006. We are now in
23 February of 2008. It's been approximately 18 months since the

24 close of the Prosecution's case for the Defence in -- for the
15:30:59 25 Defence for the first accused in order to get their witnesses
26 together.

27 There are also a couple of points from the written
motion

28 that I would like to respond to specifically as it relates to
29 paragraph 22 of the first accused brief, where it mentions
that

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1 during the Prosecution case, the Prosecution had up to seven
2 lawyers to lead a similar number of witnesses. It should be
3 pointed out that it was not exclusive --

4 PRESIDING JUDGE: At paragraph what?

15:31:35
inequality

5 MR HARDAWAY: 22, Your Honour. Dealing with the
6 between the parties.

7 PRESIDING JUDGE: Yes.

also

8 MR HARDAWAY: During the Prosecution case, every lawyer
9 involved with the RUF case, all but one of those lawyers was

15:31:54
that

10 working on the AFRC case at that time, so it is not the fact
11 you had seven lawyers dedicated exclusively to the RUF case.

And

12 also, the following sentence which states: The Prosecution
13 currently has four full-time lawyers engaged in cross-

examining

14 the Sesay Defence witnesses, that is also inaccurate. We have

15:32:17 15 full-time lawyers, that part is accurate. However, two
lawyers
brought 16 are also assigned and required to do work on other trials
17 before the Special Court. So again, it is not an exclusivity
18 issue. It is the fact that with our resources they are being
19 allocated not just to the RUF but also to other matters in
other
15:32:38 20 cases before the Court.

21 Also, Your Honour, I need to point out, when it's stated
22 about unavailability of witnesses, the Prosecution was
approached
23 I believe last week asking if DIS-103 could be called to
testify.
24 Now, DIS-103 was not on any call order and thus, pursuant to
the

15:33:06 25 Court Rules, we would have -- we are entitled to about two
weeks
26 notice to see who's coming in the call order.

27 To be fair, the Defence asked if we would waive that two
28 week requirement. Our response was that, in order to save
time,
29 we would have no objection to the witness coming forward to
give

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1 his evidence in chief, but that we would need to defer his

2 cross-examination, at least from the point of the Prosecution.
3 That offer was rejected by the Defence.

4 Furthermore, Your Honour, as it relates to the
witnesses,
15:33:46 5 apparently I don't know if they are -- maybe counsel can help
6 with this -- how many witnesses are currently in the witness
7 house and how long have they been there. The fact that they
are
8 not ready -- I understand the Defence's reasons but it is our
9 understanding, and we stand to be corrected, that there have
been
15:34:05 10 witnesses in the witness house some for a significant period
of
11 time, and why these witnesses cannot be brought forth the
12 Prosecution doesn't know.

13 Again, the Prosecution would stand to be corrected if
we're
14 in error on that point. But the fundamental reason why we
oppose
15:34:22 15 is the fact that the Defence has had 18 months since the close
of
16 the Prosecution's case to get their Defence witnesses in
order.
17 Those are the submissions of the Prosecution.

18 PRESIDING JUDGE: Thank you. Mr Jordash, you have a
reply
19 to that please?

15:34:41 20 MR JORDASH: Well, in relation to the issue of
21 Prosecution's case closing on 2 August, clearly, until the
Rule
22 98 had been argued, there was no point disturbing witnesses
from
23 their respective homes and bringing them into Freetown to
24 interview until we knew what we had to interview them about.

15:35:11 25 I --
26 PRESIDING JUDGE: The Prosecution's case closed on 2
27 August --
28 MR JORDASH: Yes.
29 PRESIDING JUDGE: 2000 and --

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1 MR HARDAWAY: Six, Your Honour.
2 PRESIDING JUDGE: 2006. Yes. And when did we issue our
3 Rule 98 decision? Do you have an idea?
4 MR JORDASH: I'm just trying to recall. I think it must
15:35:37 5 have been around October because I remember we attended here
in
6 September or thereabouts to argue. So, in October, I think
the
7 decision came out. During that time there was approximately a
8 month or so then for work to be done on the case before the
9 Christmas period when it is almost impossible to have
witnesses
15:36:08 10 leave their respective homes to work on the case. And so we
11 could start in January 2007, although I have to say we had
people
12 working on the case, including myself, throughout the period
from

13 August until January 2007.

14 January 2007 we were able to start bringing in witnesses
in

15:36:45 15 earnest to start the Defence case in May 2007 and so, again,
the

16 best will in the world, from January to May, one can interview

17 only so many witnesses. One cannot in that period of time
bring

18 in 300 witnesses to interview, and carry out detailed
interviews.

19 In addition to that, obtain he detailed instructions
from

15:37:16 20 the client and prepare the client to give evidence which,
again,

21 was a long and detailed task. So, yes, on the face of it, the

22 Prosecution's case did close on 2 August 2006 and the Defence

23 were able to start interviewing witnesses afresh in October
2006

24 and began and continued in earnest in January 2007. So
January,

15:37:52 25 February, March, April, April, four months to interview as
many

26 witnesses as we could and that explains why it was we were
able

27 to continue thus far. The --

28 PRESIDING JUDGE: Mr Jordash, just one question before
you

29 continue: In the course of your cross-examination of
Prosecution

interview 1 witnesses, I would imagine you must have had cause to
of 2 some of these witnesses who you are now calling for purposes
3 your cross-examination of the Prosecution witnesses. I would
in 4 imagine that must have been the case. That you must have been
15:38:37 5 contact with a good number of them, of those who were
testifying, 6 yes.

Prosecution 7 MR JORDASH: Yes. Well, what we had during the
assistance 8 case was a single national investigator and the able
9 of between one and three legal assistants who, when the
15:38:57 10 Prosecution case was progressing were out in the provinces
done 11 interviewing witnesses, but, of course, only so much can be
had 12 in the provinces. And by the end of the Prosecution case we
13 our 300 witnesses and preliminary statements taken from each.

14 Those statements ranged from between two to five or six
15:39:20 15 pages, but the real interviewing can only take place in the
such 16 privacy of the witness house because, for example, insiders,
require 17 as DIS-1288 [sic] 188 -- let me shortcut that. Insiders
of 18 several days of interview which has to be done in the privacy
19 a safehouse. It cannot be done by lawyers or legal assistants

15:40:01 20 attending the provinces and occupying civilians' houses,
because
21 that would necessarily alert everyone in the locality to the
fact
22 that the person is a Defence witness.
23 So, practical considerations mean that the interviewing
24 process cannot be done in full until they are in a safe house.
15:40:25 25 And I would also add this: That these witnesses are brought
to
26 Freetown either under their own steam or through the
assistance
27 of the investigator and, again, that imposes a huge
restriction
28 on how many can be brought to Freetown. It's only with the
29 assistance of our witness management, and then the full

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1 assistance of WVS, who begin to play a role in bringing in
2 witnesses as soon as the Defence case is imminent, and did not
3 play a role in bringing witnesses in before then.
4 So these are practical difficulties which actually
explain
15:41:17 5 why it was we could not interview witnesses properly in the
6 field. And again, we've raised these points on a number of

interview 7 occasions with the Registry, arguing we cannot find and
8 this many witnesses for a case of this size using one national
9 investigator and, time and time again, we argued for the
15:41:42 10 assistance of an international investigator. Rejected,
rejected,
11 rejected until the last minute, until the crisis was upon us.
12 Again, the same with the witness management officer, not
provided
13 until the intervention of Your Honours shortly before the
Sesay
14 case began.

15:42:00 15 So we have struggled through the use of some very able
and
16 generous legal assistants who have worked tirelessly in the
17 provinces trying to find these witnesses and trying to do
their
18 very best to interview them to give us a picture of what these
19 witnesses might say.

15:42:18 20 The Prosecution, if they had a mind, would have to agree
21 that this is the way they've done it. They haven't taken
22 detailed interviews in the provinces, they have done it in the
23 privacy of a safehouse in Freetown, but, the difference being
24 that they've had the luxury of up to ten, four-by-four
vehicles
15:42:38 25 to be able to bring witnesses into the premises at the drop of
a
26 hat. We have had to rely upon poda-podas, taxis and the
goodwill
27 of witnesses.

28 PRESIDING JUDGE: I'd love to see inside the poda-poda.

29 MR JORDASH: Fortunately, I have managed to avoid it but
my

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1 legal assistants have enjoyed that experience.

of

2 PRESIDING JUDGE: They film you in it and put it on some

3 the screens in England, so they see a British lawyer in a

4 poda-poda situation in Freetown. Anyway, yes.

15:43:15

5 MR JORDASH: So that in a way tells the real story about
6 how the time has been spent in trying to get the Defence case
7 ready.

one

8 In relation to other points my learned friend made. The
9 point they make about the seven lawyers that they had at any

15:43:44 10 they

10 time working on the Prosecution case; the point remains that

witness

11 had seven lawyers who could attend their own particular

Prosecution

12 and interview those witnesses whilst the proceedings in Court
13 continued. Your Honours would have noted during the

15:44:04 15

14 case that they had at most around four, often three counsel in
15 Court. So at any one time they had up to three or four

The

16 prosecuting counsel interviewing witnesses outside of Court.

did

17 issue isn't whether they were working full-time, the issue is

18 witnesses --

19 PRESIDING JUDGE: Well, there are three accused, so,
there

15:44:22 20 are three accused persons.

21 MR JORDASH: Could I deal with that point because the
22 Prosecution have had to, and the present four Prosecutors have
to

23 oppose a case -- sorry, put forward a case against three
accused.

24 Now, in an ordinary case, that would mean they have three
times

15:44:43 25 as much work to do as each individual Defence team, but this
26 isn't an ordinary case because Mr Sesay's liability rests on
his

27 own acts and conduct, but also the acts and conduct of Mr
Kallon

28 and Mr Gbao, so the notion that we, for the first accused at
29 least, do not have to meet the case in relation to each three

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1 accused does not represent the state of the law of command
2 responsibility, as I understand it. So, we cannot interview
3 witnesses and forget about Mr Gbao, we cannot interview
witnesses

4 and forget about Mr Kallon. We have to interview with the
idea

15:45:18 5 of trying to attack the liability of each accused. That is
6 command responsibility, as I understand it.

7 In relation to the question of the four lawyers now, who
8 are in charge of the RUF Prosecution, it's interesting that my
9 learned friend does not in fact detail what other case these
four

15:45:57 10 lawyers are working on. They are certainly not working on the
11 AFRC case and certainly not working on the CDF case. And, as
I
12 observed from the TV screen from The Hague, there appears to
be
13 about seven prosecuting lawyers working on the Taylor case so
I
14 think we need to put that submission into its right
perspective

15:46:18 15 which is that these four lawyers are working practically
16 full-time on this case.

17 My learned friend raised the comment or raised the
18 submission about DIS-103. Again, what they are suggesting is,
19 well, they offered us a solution, we didn't take them up on
it,

15:46:38 20 but again, that needs to be examined with some care. DIS-103
was

21 a witness who said: If you can get me on within two days I
can
22 stay, otherwise, I have to go back to Makeni. So my learned
23 friend's suggestion that, well, leave that witness in chief
and

24 then we want to have the time, two weeks, to do our
preparation

15:47:03 25 for that witness didn't, in fact, save any time because at the
26 time we had other witnesses who could go on, and yet DIS had
to

27 travel back to Makeni two days later and did so.

28 So my learned friend simplifies the issue to one of
29 scheduling of witnesses rather than a party having to take
into

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1 account witness's own schedule. And, of course, as much as
2 possible, the Court must take precedence. We have to do what
we
3 can to not disturb the witness's own work schedule.

4 Finally, my learned friend made comments about witnesses
15:47:52 5 being in the witness house for a significant time. I can say
heard 6 that for now is simply not true. The witnesses we've just
completed 7 from were in the witness house for some time, and we've

8 them. DIS-127, who we'd hoped to go today, only came into the
9 witness house on Friday. DIS-095 came into the witness house
on

15:48:19 10 Saturday and has had to leave yesterday, and I can assure this
--
11 sorry, DIS-170 came into the witness house on Saturday and had
to

12 leave I think today. And during the weekend Mr Kneitel saw
both
13 witnesses in the mornings and I saw one of those witnesses
14 yesterday as well.

15:48:47 15 So the remaining witnesses in the witness house are
coming
16 in as we speak and two of them arrived at the weekend but,
again,
17 we couldn't deal with them immediately because we don't have
the
18 personnel to deal with them when they come in.

19 So what I would conclude with is this: That --
15:49:08 20 PRESIDING JUDGE: So, how many witnesses do you have in
the
21 witness house now, in the one they call Zulu; how many of
them?
22 How many do you have?

23 MR JORDASH: At the moment I think we have 14 or so with
I
24 think probably about seven of them having already given
evidence
15:49:26 25 and waiting to leave and seven now -- two of them being
26 interviewed by the lawyer I referred to earlier for the 92bis
27 submission, relating to Bombali and five of them now waiting
to
28 have interviews commenced or completed.

29 Could I round up by saying this: That I offer this

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hours.

1 submission in absolute bona fides, that we work excessive

has

2 Nobody from this team works less than 12 hours in a day during
3 the week and less than six hours a day at the weekend, and I
4 would respectfully ask this Court to consider what this Court

15:50:20

5 seen this team do since this case started.

this

6 We've always worked and committed ourselves to keeping

the

7 case on track, and the suggestion now that somehow we come to

8 Court without bona fides, or without merit to the argument, we

9 would simply reject and reject as forcefully as able.

15:50:48 10
working

To be frank, the core team is absolutely tired of

with

11 at this rate; absolutely tired of it because if, with a short

12 trial one can work every weekend, one can work evenings, but

up

13 a trial which lasts for months and years, one cannot keep that

14 forever.

15:51:12 15
wanting

And this is where we find ourselves now is actually

work.

16 a little bit of time off; a weekend or two where we don't

to

17 But because we're the Defence, it seems, we are not entitled

18 the resources, and we are not entitled to have our arguments

19 about the resources considered. That is all we have asked for

15:51:34 20

from the beginning. Just, these are our arguments: Would

21 somebody consider them, please. That is it. And their

22 suggestion that now we come, without having those arguments

23 considered, somehow it is our fault, well, if that is the

24 suggestion, if that is how it appears, then so be it, but we

15:51:54 25 reject it without a shadow of doubt.

26 MR CAMMEGH: Your Honour, may I briefly say something,
27 please?

28 PRESIDING JUDGE: Yes, you may, Mr Cammegh.

29 MR CAMMEGH: I think the Bench will take it from me that

I

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1 hadn't actually intended to say anything, but I feel morally
2 compelled to do so. It seems that perhaps Mr Jordash deserves
3 some corroboration and that is what I will do.

4 The phenomenal effort that the Sesay team make
15:52:31 5 day-by-day-by-day puts everybody else to shame, and I think it
is
6 time somebody actually put that on record. These individuals
7 work tremendously hard, and don't appear to me to ever have a
day
8 off, and to that extent I would like just to introduce that
human
9 element into this, and say I agree they should have some time.

15:52:54 10 But there is a second point that I'd like to make, and
that
11 is this: I'm frequently embarrassed by the fact that I've
12 plundered so much information from Sesay witnesses. And I've

13 been in that very luxurious and privileged position and, to
the
14 extent that I don't anticipate the Gbao case to last any more
15:53:09 15 than -- at the moment it looks like about two weeks -- and I
do
16 hope that that can be borne in mind when one comes to a
17 conclusion as to whether or not this adjournment should be
18 awarded. Because it is true that this case is taking an awful
19 long time, and I think the Court knows no one wants to go home
15:53:26 20 more than I do, but, taking everything into account and
21 particularly the fact that the Gbao Defence has benefitted so
22 much from Mr Jordash and his team's noble efforts, I'm
compelled
23 to support the application.

24 PRESIDING JUDGE: Yes. Mr Ogeto, you want to support
the
15:53:55 25 application as well?

26 MR OGETO: My Lords, the position of the Kallon Defence
is
27 that we are desirous of going through this process, this
trial,
28 as soon as possible, and we will not entertain any delay in
these
29 proceedings. But, having listened to the submissions made by
my

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1 learned friend Mr Jordash, I have no otherwise than sympathise
2 with his predicament and I associate myself with this
application
3 for adjournment.

4 PRESIDING JUDGE: Thank you. Yes, Mr Hardaway.

15:54:59 5 MR HARDAWAY: May I rise, Your Honour, just to answer a
6 question that was raised by my learned friend for the first
7 accused.

8 PRESIDING JUDGE: Yes, you may.

9 MR HARDAWAY: When counsel asked exactly what other
cases

15:55:10 10 we are working on, I can tell you him that the work we're
doing

11 is in relation to the Charles Taylor case and what it is the
12 reviewing of transcripts for Rule 68 and that takes a
tremendous

13 amount of time, given the fact that the two trials are
14 intertwined. That is the other work that we are doing, which
is

15:55:31 15 why we're rotating in and out, and Your Honour even said, when
I

16 came in for first time last week, I had been gone for a while,
17 and a part of that was leave, but the other part when I came
back

18 had to do with the other responsibilities. I just wanted to
put
19 that on the record.

15:55:45 20 MR JORDASH: Sorry, I don't mean to turn this into an up
21 and down but we too are reading all the transcripts on the
Taylor

22 case, as we must, because we don't know what's in there and we
23 have to make sure that if there's valuable evidence in there
we

24 seek to call it.

15:56:01 25 JUDGE BOUTET: But that's not what he said. He said
they
26 were viewing the proceedings of this case for Rule 68
disclosure
27 to the Taylor case.

28 MR HARDAWAY: No, Your Honour. If that was the
impression,
29 no, we are reviewing the Taylor transcripts for Rule 68
material

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1 as it relates to this case; I do apologise for the confusion.

2 JUDGE BOUTET: Sorry, Mr Jordash. Sorry.

3 MR JORDASH: Well, I can say that so far I have read
three
4 of the witnesses full transcripts from the Taylor case and
15:56:29 5 continue and will continue to read them because, obviously,
they
6 are very closely interlinked cases and we do not simply rely
upon
7 the Prosecution to serve the material we want. So I, too, am
8 working on another case.

9 PRESIDING JUDGE: Well, everybody is working on
something,

15:56:50 10 I suppose that's why we are all seated in our various angles
in
11 the four corners of this Court. So one can complain, you
know,
12 working and working and working. There is enough work for
13 everybody.

14 So, well, I hope that the little controversy we have now
15:57:18 15 will not repeat itself, you know, when we come to the Defence
16 cases -- let this be an eye opener for other Defence cases.
The
17 Kallon case should take particular note because out of the
Sesay
18 case it will be the Kallon case. We hope that we will not be
19 confronted with the same issues, and that witnesses will be
15:57:43 20 streamlined to ensure that we'll move as expeditiously as we
can.

21 And I say this also for the attention of Mr Cammegh,
from
22 whom we have received assurances that his case may not last
for
23 up to two weeks or maximum two weeks. So I think that this
24 should teach us at least a lesson on how we should tackle
issues
15:58:17 25 like this in future.

26 Well, we'll stand this matter down and return in the
next
27 couple of minutes to continue with the proceedings. The
Chamber
28 will rise, please.

29 [Break taken at 3.48 p.m.]

1 [Upon resuming at 4.29 p.m.]

2 PRESIDING JUDGE: Well, learned counsel, we are resuming
3 the session and this is our Chamber decision, our decision on
Mr
4 Jordash's application for an adjournment for seven days,
that's
16:41:56 5 one week.

6 After an application of a similar nature which he made
to
7 the Chamber on Friday 1 February 2008, learned lead counsel
for
8 the first accused, Mr Wayne Jordash, during the proceedings
this
9 morning, again applied this time to have the case adjourned
for
16:42:24 10 one week on these grounds: The inability to properly identify
11 and prepare viva voce witnesses, totalling 46, for immediate
12 trial readiness and, two, the inability to carry out the
13 remaining associated tasks given the number of lawyers on the
14 team.

16:42:52 15 After hearing Mr Jordash on his application, which he
made
16 in writing and filed on 4 February 2008, and which he further
17 buttressed with oral submissions, and the Prosecution in
reply,
18 the Chamber grants Mr Jordash's application and orders as
19 follows:

16:43:24 20 1. That the Defence case for the first accused must be

21 closed on or before Thursday, 13 March 2008.
22 2. That Mr Jordash further reduces to a strict minimum
the
23 list of Defence witnesses he intends to call.
24 3. That the reduced list of Defence witnesses to be
called
16:43:56 25 be filed by Mr Jordash on or before 12 February 2008,
26 including a summary of their testimony with a view to
27 avoiding repetitiveness and unnecessary duplication of
28 evidence.
29 That the case is accordingly adjourned to Monday, 12

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written 1 February 2008, and that these orders be carried out. A
2 reasoned decision on this oral ruling will be delivered in due
3 course.
4 Having so delivered our ruling on this, we are
adjourning
16:44:47 5 the case to 12 February 2008 to pursue -- 11? Well, we said
12.
6 To 12 February 2008, and we do expect to take the witnesses
for
7 the Defence in the order that will be presented by the Defence

the
8 team of the first accused to the Court, and particularly to
9 Prosecution for them to be put on notice as to when these
16:45:49 10 witnesses will be called and the order in which they will be
11 called. Yes, Mr Hardaway.
12 MR HARDAWAY: Actually, Your Honour addressed the second
of
13 the two points I wanted to raise which is ancillary to Court's
14 decision. The first point is the Prosecution --
16:46:03 15 PRESIDING JUDGE: But this decision is oral. We're
going
16 to deliver a written decision.
17 MR HARDAWAY: Understood, Your Honour.
18 PRESIDING JUDGE: Yes.
19 MR HARDAWAY: Based on how the Court ruled, the
Prosecution
16:46:14 20 wanted to bring up two ancillary matters, the second of which
I
21 will address, but the Court has already addressed, I believe.
22 The first is that the Court -- that the Prosecution
would
23 ask the Court for a reaffirmation of their order issued on 28
24 March 2007, in which, in a written decision, the Chamber
stated
16:46:33 25 that the Defence shall ensure at all times the availability of
at
26 least two standby witnesses in Court ready to testify.
27 PRESIDING JUDGE: The decision stands. It is not
28 nullified. This one is made to take care of a particular
29 circumstance. Our previous decisions on this issue still
stand.

1 MR HARDAWAY: Right. I am just asking for a
reaffirmation

2 on that point.

3 PRESIDING JUDGE:

4 We are not reaffirming, you know. It stands.

16:46:57 5 MR HARDAWAY: And the second point which I believe the
6 Court addressed is, given the Prosecution concerns from last
7 week, dealing with the fluidity of the call order, but I
believe

8 Your Honour's oral ruling has addressed that. That's the

9 other -- the other main concern of the Prosecution that of the

16:47:14 10 fluidity of the call order that's received by the Prosecution.

11 PRESIDING JUDGE: I think we have done so.

12 MR HARDAWAY: Very well, Your Honour. Thank you.

13 PRESIDING JUDGE: Thank you. Yes, Mr Jordash.

14 MR JORDASH: May I -- may I just highlight two issues.
One

16:47:31 15 is that there are -- we'd anticipated that four witnesses
would

16 be called immediately after Easter, at the close of our case,
and

17 the reason for that is the UN personnel or ex-UN personnel
whose

18 schedules are dictated by some serious duties in associated

19 roles, two of whom are I think currently serving in the
military;
16:48:12 20 one of whom is -- could I just take a moment -- one is an
21 ambassador and the other is ex-UN, but we're not sure exactly
22 what he's doing now but he's extremely senior, so we have not
23 inquired as to his professional commitments but they have all
24 indicated that they cannot come this session. So I'd flag
that
16:48:45 25 up for Your Honour's consideration. What I can say is that
their
26 testimony at most would take three to four days.
27 JUDGE BOUTET: Each?
28 MR JORDASH: No, no, in total, Your Honour. Two are
29 effectively but not exclusively character and two go to the

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1 UNAMSIL counts.
2 JUDGE BOUTET: All those character witnesses, why can't
you
3 do them by 92bis?
4 MR JORDASH: Well, because I think we would like to call
16:49:23 5 them live, and they do, as I said, they are not exclusively
6 character, they do go to acts and conduct of the accused.
7 The second point I would seek to raise, without
appearing

order 8 to -- appearing to be difficult is that, in relation to the
we've 9 to file a call list by 12 February, the same problems which
16:50:07 10 sought to identify remain in that these witnesses are slowly
fixed 11 making their way to Freetown and, in order to decide on a
12 list of witnesses and, secondly, a fixed call list, we have to
13 see them.

list 14 What we can definitely do is comply as -- by giving a
16:50:33 15 of some sort but, until they arrive in Freetown there remains
16 some fluidity because, obviously, if they arrive -- well,
17 number one, they may not arrive. Number two, if they do, we
may 18 wish to abandon them. So I raise this with some hesitation,
but 19 I feel as though I'm obliged to raise them because we can do
only 20 as much as we can do. I just wanted to make those comments,
for 21 the record.

heard 22 PRESIDING JUDGE: All right. Well, Mr Jordash, we've
Easter 23 you on the witnesses who you say you intend to call after
24 break.

16:52:23 25 MR JORDASH: Yes.

Chamber's 26 PRESIDING JUDGE: Is that what -- well, it is the
an 27 view that you, before that point in time, be required to make
28 application detailing exceptional circumstances why you cannot
29 comply with the present order, and then the Court at that time

would
is
16:53:12

1 will have to determine whether it should vary its order on the
2 particularity or the peculiarity of the reasons which you
3 have advanced to sustain your application. If we do find that
4 there is merit in that we will see what we will do. So that
5 what we have decided upon here and now.

6 MR JORDASH: Certainly.

7 PRESIDING JUDGE: Right. So is there --

Mr
16:53:32
accommodation
it.

8 JUDGE BOUTET: You should attempt to make every effort,
9 Jordash, to bring these people before Easter recess. I have
10 worked in organisations like that and you can make
11 in those organisations, so, if they want to do it they can do

12 But, having said that, they are your witnesses and see what
13 accommodation either the UN, or whoever it is, if they are
14 prepared to make accommodation to come before Easter. But I
15 leave it to you as to --

16 MR JORDASH: And we shall make every effort for sure
17 because, frankly, we want this to be done by Easter.

18 JUDGE BOUTET: Thank you.

19 PRESIDING JUDGE: So, we said the Chamber will rise and
we

16:54:12 20 are adjourning the proceedings to 12 February 2008. The
Chamber

21 will rise, please.

22 [Whereupon the hearing adjourned at 4.54
p.m.,

23 to be reconvened on Monday, the 12th day of
24 February 2008 at 9.30 a.m.]

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27

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EXHIBITS:

Exhibit No. 282A 4

Exhibit No. 282B 4

Exhibit No. 282C 4

Exhibit No. 283

WITNESSES FOR THE DEFENCE:

WITNESS: DIS-226

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CROSS-EXAMINED BY MR HARDAWAY

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