

THE SPECIAL COURT FOR SIERRA LEONE

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

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

TUESDAY, 5 APRIL 2005
10.03 A.M.
STATUS CONFERENCE

Before the Judges:

Benjamin Mutanga Itoe, Presiding
Bankole Thompson
Pierre Boutet

For Chambers:

Ms Candice Welsch
Mr Matteo Crippa

For the Registry:

Mr Neil Gibson

For the Prosecution:

Mr Peter Harrison
Mr Alain Werner
Mr Mark Wallbridge (Case Manager)

For the Principal Defender:

Ms Haddijatou Kah-Jallow

For the accused Issa Sesay:

Mr Wayne Jordash
Ms Sareta Ashraph
Ms Eleanor Hutchison

For the accused Morris Kallon:

Mr Melron Nicol-Wilson
Ms Rachel Irura

For the accused Augustine Gbao:

Mr Andreas O'Shea

1 Tuesday, 5 April 2005
2 [Status Conference]
3 [The accused Sesay and Kallon entered court]
4 [The accused Gbao not present]
09:50:14 5 [Open session]
6 [Upon resuming at 10.03 a.m.]
7 JUDGE THOMPSON: Good morning learned counsel. May we have
8 representations, please? Prosecution.
9 MR HARRISON: I am having a bit of technical difficulty; I did not
10:04:50 10 quite hear you.
11 JUDGE THOMPSON: Good morning, learned counsel.
12 MR HARRISON: We have myself, Mr Alain Werner and also Mr Wallbridge.
13 JUDGE THOMPSON: Thank you. Learned counsel for the first accused?
14 MR JORDASH: For Mr Sesay, it is myself - Wayne Jordash - Sareta
10:05:19 15 Ashraph and our new assistant Ellie Hutchison.
16 JUDGE THOMPSON: Thank you. Learned counsel for the second accused.
17 MR NICOL-WILSON: For the second accused, Melron Nicol-Wilson and
18 Rachel Irura.
19 JUDGE THOMPSON: Third accused.
10:05:33 20 MR O'SHEA: I appear in the interests of Mr Augustine Gbao.
21 JUDGE THOMPSON: Learned counsel, the instant proceeding is being
22 convened and conducted pursuant to Rule 65 bis of the Rules of Procedure
23 and Evidence of the Special Court. The aforesaid Rule provides as follows,
24 and I quote:
10:06:02 25 "A status conference may be convened by the designated judge or by
26 the Trial Chamber. The status conference will:
27 (1) organise exchanges between the parties so as to ensure
28 expeditious trial proceedings; and
29 (2) review the status of his case and to allow the accused the

1 opportunity to raise issues in relation thereto."

2 There being no specific request for this proceeding to be conducted
3 in camera and no statutory provision otherwise, this proceeding will be
4 held in public consistent with Rule 78 of the Court's Rules of Procedure
10:06:49 5 and Evidence. The agenda items are as follows:

- 6 (1) appearance of the parties;
7 (2) the accused;
8 (3) trial logistics;
9 (4) witness issues;
10:07:06 10 (5) outstanding motion/appeals; and
11 (6) any other matters.

12 Under agenda item (2) we will deal with issues relating to the health
13 of the accused persons and their detention. Under agenda item (3) we will
14 cover the specific issues: Trial schedule; tendering of exhibits; case
10:07:45 15 presentation; court reporting; interpretation; and voice and video
16 distortion. Under agenda item (4) we will examine these specific issues:
17 Additional witnesses; number of Prosecution witnesses; witnesses for the
18 upcoming trial session; and expert witnesses. Under agenda item (5), we
19 will report on the status of pending motions and appeals. Let us proceed
10:08:27 20 to the second item on the agenda -- the health of the accused. Do Defence
21 counsel have any reports relating to the health of the accused that they
22 may want to bring to the attention of the Court?

23 MR JORDASH: No thank you, not on behalf of Mr Sesay.

24 JUDGE THOMPSON: Counsel for the second accused?

10:08:53 25 MR NICOL-WILSON: Mr Kallon is in good health, Your Honour.

26 JUDGE THOMPSON: Counsel for the third accused?

27 MR O'SHEA: Well, Your Honour, I have not seen Mr Gbao, but neither
28 have I received any report of any difficulties.

29 JUDGE THOMPSON: So there is a presumption of good health.

1 MR O'SHEA: In a way.

2 JUDGE THOMPSON: I am advised that Mr Barry Wallace, Head of the
3 Detention Unit, is in Court. Does he have anything to say about the health
4 of the accused?

10:09:25 5 MR WALLACE: What I can report, Your Honour, is that during the
6 Easter recess a full medical for each of the accused was undertaken
7 including blood, urine, ophthalmic and orthopedic examinations. Any
8 medication or new prescription glasses or x-rays were taken. All of the
9 accused are generally in good health.

10:09:49 10 JUDGE THOMPSON: Nothing remarkable to report?

11 MR WALLACE: Nothing remarkable.

12 JUDGE THOMPSON: Thank you. Let us move on to item b, detention
13 issues. Do Defence counsel have any detention issues they wish to raise at
14 this point? First accused?

10:10:01 15 MR JORDASH: No thank you.

16 JUDGE THOMPSON: Second accused?

17 MR NICOL-WILSON: None, Your Honour.

18 MR O'SHEA: Again, Your Honour, I have not seen Mr Gbao, but I have
19 confirmed with the Defence office that there is no issue.

10:10:09 20 JUDGE THOMPSON: Thank you very much. Does Mr Barry Wallace have
21 anything to report?

22 MR WALLACE: No Your Honour.

23 JUDGE THOMPSON: Thank you. Let us move on to the third item --
24 trial logistics. Let us take the first sub-item, trial schedule.

10:10:33 25 According to the Trial Chamber's order titled "Order detailing judicial
26 calendar" dated 8th of October 2004, the fourth session of the RUF trial
27 commences on the 6th of April 2005 -- that is, tomorrow -- and ends on the
28 13th of May 2005. Sitting days and times are Monday, Tuesday, Thursday and
29 Friday from 9.30 a.m. to 6.00 p.m. with a lunch break from 1.00 p.m. to

1 2.30 p.m. and on Wednesday from 9.30 a.m. to 1.00 p.m. The fifth trial
2 session is scheduled to run from the 1st of July 2005 to the 9th of August
3 2005. Are there any comments from both sides on that?

4 MR HARRISON: No, none from the Prosecution.

10:11:41 5 MR JORDASH: No thank you.

6 JUDGE THOMPSON: Counsel?

7 MR NICOL-WILSON: None Your Honour.

8 JUDGE THOMPSON: Learned counsel?

9 MR O'SHEA: Your Honour, no.

10:11:58 10 JUDGE THOMPSON: Sub-item b, tendering of exhibits. The Chamber
11 regrettably wishes to observe that there has not been any significant
12 improvement regarding the practice of tendering exhibits despite its
13 injunction that before parties submit any document in Court intended to be
14 received as an exhibit they should ensure that copies are available for all
10:12:31 15 the parties: A copy for each Judge, a copy for Court Management and a copy
16 for the Chamber's legal officer. I again urge parties to comply with this
17 requirement. I am sure there is no dispute that such a requirement is
18 designed to enhance the efficiency of the judicial process.

19 Sub-item c, case presentation. I am assuming that on the tabling of
10:13:07 20 exhibits all we can do is continue to be cooperative. We will do the best
21 we can to understand some of the difficulties but we can move on to case
22 presentation. Under this sub-item of the agenda, the Chamber is compelled
23 to revisit the issue of the length and nature of examinations-in-chief and
24 cross-examinations. We repeat the same observation we made in the last two
10:13:36 25 status conferences; namely, that generally speaking examinations-in-chief
26 and cross-examinations appear, in the opinion of the Chamber -- and it is
27 our opinion with which you may disagree -- unduly lengthy and repetitious.
28 Again, we urge both sides to cooperate with the Bench in ensuring a fair
29 and expeditious trial for all the accused persons.

1 Sub-item d relates to court reporting. Is there any relevant
2 information from Court Management on this subject that both parties and the
3 Chamber need to be apprised of Mr Gibson?

4 MR GIBSON: No, Your Honour, save for the fact that transcripts will
10:14:35 5 be available next day provided the Chamber does not sit well past 6.00 p.m.

6 JUDGE THOMPSON: Do learned counsel have any brief response?

7 MR HARRISON: I am afraid I did not hear that.

8 JUDGE THOMPSON: Can you repeat that, Mr Gibson?

9 MR GIBSON: Transcripts will be available the following morning
10:14:48 10 providing the Chamber does not sit way past 6.00 p.m.

11 JUDGE THOMPSON: Counsel for the second accused, any response?

12 MR JORDASH: No, Your Honour.

13 JUDGE THOMPSON: Learned counsel for second accused?

14 MR NICOL-WILSON: No.

10:15:02 15 JUDGE THOMPSON: Learned counsel for the third accused?

16 MR O'SHEA: Your Honour, no.

17 JUDGE THOMPSON: Let us move on to sub-item e, interpretation. Is
18 there any relevant information from the Head of the Interpretation Unit for
19 the information of the parties and the Chamber?

10:15:12 20 MS EHRET: Everything is in place, even the two less common
21 languages, Mandingo and Kuranko, will be all right.

22 JUDGE THOMPSON: Thanks. Any short responses?

23 MR HARRISON: None from the Prosecution.

24 MR JORDASH: No thank you.

10:15:25 25 JUDGE THOMPSON: Counsel?

26 MR NICOL-WILSON: None, Your Honour.

27 MR O'SHEA: Your Honour, no.

28 JUDGE THOMPSON: Voice and video distortion. The Chamber decided on
29 the 5th of July 2004 that the voices of victims of sexual violence - that

1 is, category A witnesses - and insider witnesses - that is, category C
2 witnesses - be distorted in the speakers for the public in the course of
3 their testimonies. It may be recalled that a new system was put in place
4 during the third trial session for these categories of witnesses regardless
10:16:11 5 of the language in which they testify. The effect of that system is that
6 persons within the courtroom will hear voices -- those of witnesses, the
7 judges and counsel -- undistorted through the headphones. Persons in the
8 public gallery will hear all voices distorted. The Chamber is now advised
9 that the Audio Visual Unit has indicated that it has also, again using the
10:16:51 10 technical jargon, an additional mixer that would permit distortion of the
11 faces of the witnesses testifying behind a screen from the public.
12 Presently, the unit does not show the faces of witnesses. We are further
13 advised that this change will not affect the ability of the Audio Visual
14 Unit to televise a distorted image of a witness testifying through closed
10:17:38 15 circuit television outside of the courtroom while televising an undistorted
16 image of the witness within the courtroom. The normal procedure again we
17 advise will continue to apply. The Audio Visual Unit is offering to
18 provide a demonstration of this technology this afternoon if the
19 Prosecution and the Defence are interested. Learned counsel?

10:18:08 20 MR HARRISON: We would be interested, yes.

21 JUDGE THOMPSON: Learned counsel for the first accused?

22 MR JORDASH: I am not sure; we might be.

23 JUDGE THOMPSON: All right. Learned counsel for the second accused?

24 MR NICOL-WILSON: We will be interested.

10:18:27 25 JUDGE THOMPSON: Learned counsel for the third accused?

26 MR O'SHEA: Your Honour, yes, we would.

27 JUDGE THOMPSON: I hope the unit will make the necessary
28 arrangements. Let's move on to the fourth agenda item, beginning with
29 sub-item a, additional witnesses. It may be recalled that on the 11th of

1 February 2005 the Chamber granted leave to the Prosecution to add three
2 additional witnesses to its witness list. The witnesses on the reference
3 are TF1-366, TF1-367 and TF1-368. In their request for leave in respect of
4 the addition of these witnesses the Prosecution reserved the right to apply
10:19:31 5 later for them to be categorised as "insider witnesses"; that is, category
6 C witnesses. They also reserved the liberty to request an extension to
7 them of the existing relevant protective measures for this category of
8 witnesses. It should be noted that these witnesses are not listed to
9 testify during this trial session. This notwithstanding, does the
10:20:12 10 Prosecution intend to confirm the accuracy of the position just stated?

11 MR HARRISON: Yes, they will not be called in this session.

12 JUDGE THOMPSON: Do counsel for the accused persons wish to respond?

13 MR JORDASH: No thank you.

14 JUDGE THOMPSON: Any concern learned counsel?

10:20:35 15 MR NICOL-WILSON: No, thank you.

16 JUDGE THOMPSON: Learned counsel for the third accused, are you
17 concerned?

18 MR O'SHEA: No response Your Honour.

19 JUDGE THOMPSON: Thank you. Another related matter is that pursuant
10:20:44 20 to an order of the Trial Chamber of the 3rd of December 2004 concerning
21 renewed witness lists, the Prosecution filed on the 9th of February 2005
22 its further renewed witness list, comprising of 98 core witnesses and 163
23 backup witnesses. More specifically, the Prosecution sought to add one
24 witness - TF1-210 - to the core witness list. It also sought to move two
10:21:34 25 witnesses - TF1-029 and TF1-122 - from the backup witness list to the core
26 witness list. The Prosecution also sought contextually to move to the
27 backup witness list from the core witness list these two witnesses:
28 TF1-085 and TF1-126. Mr Harrison, does that reflect a correct portrayal of
29 the procedural steps in that regard?

1 MR HARRISON: Yes. I am just reviewing paragraph six of that
2 submission and I think Your Honour has summarised it accurately.

3 JUDGE THOMPSON: Thank you. Then the position now is that the
4 Chamber has received the responses of the Defence to the Prosecution filing
10:22:49 5 and also a consolidated reply from the Prosecution to the Defence
6 responses. All I am permitted to say now is that a ruling is pending.

7 Moving on to sub-item b, the number of Prosecution witnesses. The
8 Chamber notes with satisfaction the Prosecution's effort and determination
9 to reduce the total number of its witnesses from the initial figure of 266
10:23:25 10 to the new figure of 98. Is that a correct reflection learned counsel?

11 MR HARRISON: Yes, the core witness list is 98. Is this a convenient
12 time for me to advise the Court of an earlier ruling the Court made with
13 respect to calling another witness?

14 JUDGE THOMPSON: Yes, perhaps yes. Let's hear that.

10:23:50 15 MR HARRISON: On the 27th of July 2004 under cross-examination by
16 Mr Cammegh a witness referred to a statement taken by an investigator.
17 There was then some discussion amongst Counsel and the Court as to what the
18 best course of action would be. Ultimately, the record shows that on page
19 40 of the transcript of 27th of July 2004 this Court made an order that a
10:24:12 20 particular investigator be requested by the Prosecution to return to the
21 jurisdiction as she is out of the jurisdiction. That witness is going to
22 be back in the jurisdiction; she has agreed to a request from the
23 Prosecution. We are wishing to inform the Court and, of course, Defence
24 counsel that we hope we can accommodate this witness so that she testifies
10:24:40 25 on the 25th of April, that is a Monday.

26 JUDGE THOMPSON: Thank you. Any responses learned counsel?

27 MR JORDASH: I have nothing to comment directly about this particular
28 witness. But as I understand it, there was a CDF ruling, the meaning of
29 which could be summarised as, if there is a dispute as to whether an

1 omission or an inconsistency -- let me start this again. If an
2 inconsistency is put to a witness and the witness is to turn around and
3 say, "The investigator missed it out of the statement", as I understand the
4 CDF ruling there might be an obligation on the Prosecution to call the
10:25:29 5 investigator to deal with that point. I will have to go back to the CDF
6 ruling to find the exact wording, but it may be, since the subject has been
7 raised, that the Prosecution will need to consider calling a number of
8 investigators to deal with those inconsistencies or alleged
9 inconsistencies.

10:25:48 10 JUDGE THOMPSON: I would say that clearly the ruling was not as
11 open-ended as that. I think that is all I would like to say at this point.
12 Perhaps you need to study the ruling. We need to study it again because we
13 thought we were treading on extremely delicate ground here and were very
14 careful how we couched that ruling. But, indeed, you are not far from
10:26:10 15 presenting what your understanding was. It may be that we propounded the
16 general principle, but I think we were very careful in terms of what
17 qualifications we made. But I think that is the general thrust of the
18 position.

19 MR JORDASH: Notwithstanding the exact terms of the ruling --

10:26:32 20 JUDGE THOMPSON: Yes.

21 MR JORDASH: -- we are going to be left, or I should say, Your
22 Honours are going to be left in a rather strange situation of having a
23 witness for the Prosecution say, "I did tell the Prosecution that; the
24 investigator must have missed out it out of the statement." That
10:26:51 25 information, or the answer to that, whether that is true, laying peculiarly
26 within the hands of the Prosecution and the Prosecution not actually
27 revealing the answer to that -- in other words, not calling an investigator
28 to say --

29 JUDGE THOMPSON: Yes.

1 MR JORDASH: -- that the witness is right or the witness is wrong.
2 But instead, Your Honours will have to be considering the issue, as it
3 were, blind.

4 JUDGE THOMPSON: Yes. I remember that particular case involved a
10:27:16 5 child witness. We actually were very careful how we couched our ruling.
6 We were actually saying that in that particular case the witness had
7 repudiated significant portions of highly contentious matters and we chose
8 our words advisedly. And, of course, I am not suggesting that the general
9 principle that we enunciated there would not apply, but we were very, very
10:27:48 10 careful and that is why I said perhaps the best way to do it is to go back
11 and look at that ruling and see whether it is as open-ended as one might
12 want to think. Of course, these rulings lend themselves to various
13 interpretations, as is the nature of the law -- it is the nature of the
14 beast.

10:28:14 15 MR JORDASH: I will leave it just that I would urge the Prosecution
16 to consider whether in the interests of justice they ought to call
17 investigators.

18 JUDGE THOMPSON: Okay. Right, thanks. Anything from the other side?

19 MR NICOL-WILSON: At this stage, Your Honour, the Defence for Kallon
10:28:28 20 will not make any comment. But we may wish to do so at a later stage.

21 JUDGE THOMPSON: Yes, fine. Learned counsel for the third?

22 MR O'SHEA: No comment now.

23 JUDGE THOMPSON: Let us move on to this sub-item entitled "Witnesses
24 for the upcoming trial session." The position is this: This seems to be
10:28:51 25 one of the most controversial issues, but I am not suggesting this sub-item
26 is acutely controversial. There may be issues that the Prosecution will be
27 able to clarify. There are some issues that require clarification from the
28 Prosecution. I will go through them very carefully. The first relates to
29 the filing by the Prosecution on the 15th of March this year of its

1 proposed order of appearance of Prosecution witnesses for the fourth
2 session of trial in April 2005 listing 25 Prosecution witness to appear
3 during this trial session. The Prosecution also began filing copies of the
4 statements of the proposed witness. The Prosecution declared that it had
10:29:54 5 fulfilled its 42-day disclosure obligations to the Defence in respect of
6 the statements of those witnesses. Of course, the Chamber is currently
7 seized of a motion on behalf of the first accused for the exclusion of
8 supplemental statements in respect of TF1-361 and TF1-122. The short
9 request now is whether the Prosecution is in a position to confirm that it
10:30:39 10 has met this requirement, the 42-day requirement. Mr Harrison?

11 MR HARRISON: Yes.

12 JUDGE THOMPSON: Thank you. Any comments, first accused?

13 MR JORDASH: We agree with that.

14 JUDGE THOMPSON: Second accused?

10:30:52 15 MR NICOL-WILSON: No, Your Honour.

16 JUDGE THOMPSON: And third accused?

17 MR O'SHEA: No comment.

18 JUDGE THOMPSON: A second matter requiring some clarification relates
19 to the categorisation of TF1-022 as a category A witness; namely, a victim
10:31:15 20 of sexual violence. Here is the query: This witness was not so
21 categorised and not covered by the additional protective measures granted
22 pursuant to the Chamber's decision on Prosecution motion for modification
23 of protective measures for witnesses. Here I am referring to our decision
24 dated 5 July 2004. In other words, there was no such categorisation of
10:31:53 25 TF1-022. During the last status conference, the Prosecution promised to
26 investigate this matter. The witness is not included in the current
27 proposed order of appearance. The Chamber requires some clarification on
28 this issue, especially in the light of the fact, based on advice to the
29 Chamber, that a summary of the witness's statement does not refer to any

1 act of sexual violence allegedly suffered by the said witness. I am being
2 very cautious here based on advice to us. I have not read and I do not
3 read those statements. Does the Prosecution wish to shed some light on
4 this?

10:32:55 5 MR HARRISON: The only light I can shed on it right now is that you
6 are correct in stating that that witness is not on the list for the current
7 session. I can investigate that further and report back to Defence counsel
8 tomorrow morning and provide the Court with guidance or the Trial Chamber
9 officer if that is helpful.

10:33:10 10 JUDGE THOMPSON: That would be helpful. Any responses, learned
11 counsel? There is an undertaking to investigate this.

12 MR JORDASH: We are content with that.

13 JUDGE THOMPSON: Learned counsel for the second?

14 MR NICOL-WILSON: We are fine with that.

10:33:15 15 JUDGE THOMPSON: Learned counsel for the third?

16 MR O'SHEA: Yes.

17 JUDGE THOMPSON: A third issue requiring clarification concerns
18 witness TF1-104. The situation in the Chamber's estimation is this: This
19 witness is now categorised as a category B witness, to wit, a child
10:33:53 20 witness. The witness was not so categorised before and therefore was not a
21 beneficiary of the Chamber's protective measures regime referred to in the
22 context of the second issue. Again, the Prosecution undertook to
23 investigate the matter, but has now included that witness in its proposed
24 order of appearance for witnesses for the trial session. The Chamber
10:34:26 25 requires some clarification of this discrepancy in light of the fact, again
26 based on advice given to the Chamber, that the witness's statement does not
27 indicate that the witness is a child. Clarification is being sought for
28 two reasons: (A) that the witness does not appear to be a child witness
29 and (B) that the Prosecution seems to be seeking an order from the Chamber

1 for the entire testimony of this witness to be heard in closed session for
2 the AFRC trial. Again, we would require some kind of clarification here so
3 that we know how to proceed. Learned counsel for the Prosecution can you
4 help us out?

10:35:25 5 MR HARRISON: If I am understanding Your Honour correctly, you are
6 referring to TF1-104.

7 JUDGE THOMPSON: Correct.

8 MR HARRISON: That is not a witness on the current witness list.

9 JUDGE THOMPSON: I see. Yes, TF1-104.

10:35:34 10 MR HARRISON: That is not one of the witnesses to be called in the
11 upcoming session.

12 JUDGE THOMPSON: Thanks for the clarification. So we will correct
13 that.

14 MR HARRISON: I understand your point with reference to the AFRC
10:35:44 15 trial and the attempt -- or perhaps it is already an accomplished fact --
16 to change the status in that trial. If Your Honour will allow me again, I
17 am asking if I can review that this afternoon and I will report back to
18 Defence counsel and to the Trial Chamber's office tomorrow morning with
19 respect to the status of TF1-104.

10:36:03 20 JUDGE THOMPSON: Thank you very much. I am satisfied. Counsel for
21 the Defence are you satisfied with the undertaking to investigate?

22 MR JORDASH: Certainly.

23 JUDGE THOMPSON: Second accused?

24 MR NICOL-WILSON: We are.

10:36:15 25 JUDGE THOMPSON: And Professor O'Shea?

26 MR O'SHEA: Your Honour, yes.

27 JUDGE THOMPSON: Thank you. Learned counsel for the Prosecution, a
28 fourth issue that needs to be clarified relates to perhaps some clerical
29 mistake on the part of the Prosecution in respect of witnesses TF1-212 and

1 TF1-213, the 19th and 23rd witnesses in this trial session. The
2 Prosecution listed both of them as TF1-212, but indicates in its further
3 renewed witness list that the 48th witness is TF1-213. What is the true
4 position?

10:37:14 5 MR HARRISON: I apologise there is an error made by the Prosecution.
6 We apologise to the Court and we also apologise to Defence counsel. The
7 reality is that in fact -- and I will explain this later on if the Court
8 will allow me -- the 18th witness in this session will be TF1-212, and the
9 22nd witness in this session will be TF1-213.

10:37:38 10 JUDGE THOMPSON: Thank you. Right. Assuming that Counsel is
11 satisfied I will move on to the fifth issue for clarification. The fifth
12 issue for clarification, Counsel, is whether the Prosecution intends for
13 closed session hearings for part or all of the testimony of any of the
14 witnesses who are appearing in the third trial session. Are you in a
10:38:09 15 position to let us know?

16 MR HARRISON: Yes, I am. We do endeavour to limit closed sessions as
17 much as possible, but I am forced to advise the Court and Defence counsel
18 that for this particular session applications will be made for closed
19 session for witness TF1-360, witness TF1-362, witness TF1-125 and witness
10:38:41 20 TF1-129. For the first two witness, it appears as if the application will
21 be that the entire testimony be in closed session. For the third witness,
22 that is TF1-125, we are trying to think of some way that we can have some
23 of that testimony in open session. As I am speaking to you this morning I
24 have not figured that out yet. With respect to the last witness, TF1-129,
10:39:13 25 we are waiting for some further information from that witness before we can
26 make a final determination. But as it stands today it is far more likely
27 than not that the Prosecution will be applying that at least a portion of
28 that witness's testimony will be in closed session.

29 JUDGE THOMPSON: Thank you. Learned counsel for the first accused?

1 MR JORDASH: No observations at this stage.

2 JUDGE THOMPSON: Learned counsel for the second?

3 MR NICOL-WILSON: No comment, sir.

4 JUDGE THOMPSON: Learned counsel for the third?

10:39:44 5 MR O'SHEA: At this stage we will not address this issue.

6 JUDGE THOMPSON: A sixth issue requiring clarification is whether the
7 18th Prosecution witness for this session, namely TF1-172, will be
8 testifying in the Mandingo language and whether the 24th witness, TF1-138,
9 will be testifying in the Kuranko language.

10:40:27 10 MR HARRISON: As far as we know right now, that is correct. Again I
11 will endeavour to provide that information and confirm it to all parties
12 later on this afternoon.

13 JUDGE THOMPSON: Thank you. Right. The other issue to be resolved
14 is the subject of expert witnesses. Here it may be recalled that the
10:41:12 15 Prosecution filed their further renewed witness list on the 9th of February
16 this year. The list included four expert witnesses under the category of
17 core witnesses. Specifically they are TF1-150, TF1-272, TF1-296 and
18 TF1-301. Witness TF1-348, who had previously been listed as an expert
19 witness, has now been deleted from the list. Witness TF1-351, formerly
10:42:18 20 listed as an expert witness, has been moved to the backup witness list in
21 the renewed witness list of November 2004. Furthermore, it would seem that
22 witness TF1-150 is an overview witness. The clarification which is
23 necessary here is for the Prosecution to provide some explanation as to
24 whether there is an overlap between the so-called overview witness
10:42:57 25 characterisation and the expert witness characterisation, or overlap
26 between the so-called overview witness characterisation and the witness of
27 fact characterisation. Of course, the reason why this is so necessary is
28 that, judicially speaking, as far as I am aware, there is no separate and
29 distinct category of witnesses known to the law of evidence as overview

1 witnesses. Of course, these are all prosecutorial conceptual devices. We
2 speak largely in terms of ordinary witnesses as to fact and expert
3 witnesses. So, even if we are being so creative and inventive, we need to
4 have some kind of rationalisation on this issue. We request some guidance
10:43:59 5 on this and I am open to some enlightenment.

6 MR HARRISON: I can provide you with some very brief guidance this
7 morning. I think what the law in international tribunals suggests is that
8 there may in fact be a subset of witnesses of fact who for some reason or
9 other have been deemed to be overview witnesses. There may be some tension
10:44:27 10 on this issue and there may be some debate ultimately that the Court may
11 have to resolve, but an overview witness to my understanding is not an
12 expert witness.

13 JUDGE THOMPSON: Yes, in other words, it falls under the general
14 category of a witness. That is the clarification we are seeking. We are
10:44:46 15 not questioning the legal creativity here to provide this subset. After
16 all, the law continues to grow and expand. It is just that we want to know
17 whether these are new legally recognised categories in addition to our
18 ordinary witnesses of fact as distinct from our expert witnesses. But now
19 that you have mentioned subset it seems to me, as I thought that myself,
10:45:13 20 that that is the area in which we are. Does counsel on the other side wish
21 to comment? Does that help? In other words, we are not talking here about
22 an expert witness under another characterisation or disguised or an
23 overview witness disguised as an expert witness.

24 MR JORDASH: This is going to be, I am sure, a contentious and
10:45:43 25 interesting issue. I am not familiar with the category of overview
26 witnesses in international tribunals.

27 JUDGE THOMPSON: In the tradition of evidence or in international
28 systems.

29 MR JORDASH: No, and I am still not altogether clear what it is that

1 the Prosecution is saying is the distinction between witnesses of fact,
2 overview witnesses and expert witnesses.

3 JUDGE THOMPSON: But learned counsel is clear that in fact an
4 overview witness is not an expert witness. That is helpful, isn't it?

10:46:15 5 That clarification is helpful.

6 MR JORDASH: That is the assertion.

7 JUDGE THOMPSON: Yes, quite. But what is not clear --

8 MR JORDASH: What is not clear is whether that assertion is in fact
9 true. The overview witnesses proposed by the Prosecution look to me very
10:46:36 10 much like expert witnesses with a little bit of fact thrown in.

11 JUDGE THOMPSON: Yes. Very interesting.

12 MR JORDASH: I would respectfully urge the Chamber to have the
13 Prosecution put their arguments down on paper as to why it is they say that
14 overview witnesses are admissible, why it is they say that overview
10:46:56 15 witnesses are different from expert witnesses. Clearly if they are
16 properly to be categorised as expert witnesses, then there are certain
17 procedural steps that must be followed.

18 JUDGE THOMPSON: For me the thing, of course, is that the doubts in
19 my mind -- my judicial doubts -- have been allayed by Counsel's explanation
10:47:20 20 that they are not expert witnesses, because I am familiar with the law, or
21 the regime of law, governing the admissibility of expert evidence. The
22 reason I wanted this clarification is that I do not transpose my knowledge
23 of the law required in respect of the admissibility and probative value of
24 expert evidence and apply the same principles to overview witnesses,
10:47:54 25 because that would be the danger. The principles that we have developed --
26 in other words, what an expert witness is supposed to do and how we treat
27 the evidence of an expert witness -- are clear. In terms of admissibility,
28 they have to have the relevant expertise, they have to be credentialised,
29 their evidence should not in any way amount to evidence that usurps the

1 function of the trials of fact and should not in fact relate to issues on
2 which the Court can form its own judgment. I do not know whether we apply
3 those principles to overview witnesses, but he has now said that they are
4 overview witnesses -- overview witnesses are not expert witnesses.

10:48:49 5 MR JORDASH: If I could make our position clear that that assertion
6 is disputed. Of course, we will have to wait to see what the reports are.

7 JUDGE THOMPSON: Yes, perhaps --

8 MR JORDASH: From an indication of what these overview witnesses are
9 likely to be speaking about, I would at this stage indicate that we will
10:49:10 10 dispute that they are overview witnesses, and in fact we would say that
11 they are expert.

12 JUDGE THOMPSON: They are purporting to be expert witnesses under a
13 different characterisation.

14 MR JORDASH: Those comments are caveated by --

10:49:25 15 JUDGE THOMPSON: Yes, but for now I certainly will take Counsel's
16 word for it that the concept of overview witness is a subset of witnesses
17 of fact and not expert witnesses. I will have to take his word for it
18 until we have the debate on that.

19 MR JORDASH: A quick flick through "International Criminal Practice"
10:49:44 20 by Powells and Jones does not reveal any category of witness as overview.
21 I will leave my comments there.

22 JUDGE THOMPSON: Right, okay. Learned counsel for the second
23 accused?

24 MR NICOL-WILSON: Your Honour, this is an area in which we have done
10:49:59 25 some research. I will also support Mr Jordash's position. I have also
26 been guided by May in "International Criminal Evidence", which is one of
27 the authoritative sources on the subject, and we have not seen any distinct
28 category of witnesses referred to as overview witnesses.

29 JUDGE THOMPSON: Remember, he is not saying it is a distinct

1 category; he is saying it is a subset.

2 MR NICOL-WILSON: Yes, but we have not seen any subset of witnesses
3 referred to as overview witnesses. I will agree with Mr Harrison's
4 position that these are basically witnesses of fact.

10:50:32 5 JUDGE THOMPSON: They are not expert.

6 MR NICOL-WILSON: They are not expert witnesses. As to the content
7 of their testimony --

8 JUDGE THOMPSON: That will be a matter -- that is the clarification
9 we were wanting to get at -- whether, in other words, overview witnesses
10:50:45 10 were expert witness not properly so called. And that distinction has been
11 made here. Learned counsel for the third accused?

12 MR O'SHEA: Your Honour, if there is a such an expression, is it an
13 expression with no legal significance. My understanding of the law on
14 expert testimony in the international arena is that the basic pillars of
10:51:11 15 that area of law do not in fact differ in any way from general principles
16 of law. It is just that in the international arena the questions become
17 more nuanced because of the fact that you have a conflict and the fact that
18 the experts sometimes study the individuals in the conflict and perhaps go
19 a little further than an expert would in an national arena. That is where
10:51:43 20 things become contentious, and they are currently becoming very contentious
21 in that arena in the Government II case in the Rwanda tribunal. So, it is
22 a developing area of law in the international arena, but the basic pillars
23 do not differ. There is a witness of fact or an expert witness; there is
24 no third category.

10:52:09 25 JUDGE THOMPSON: Yes, thank you very much. As I said, this is a
26 matter which we will have to pursue further.

27 MR HARRISON: Could I just interrupt while we are still on the
28 witnesses section?

29 JUDGE THOMPSON: Yes.

1 MR HARRISON: The Prosecution just wanted to advise the parties and
2 the Court as well. I have already advised Defence counsel that witness
3 TF1-363 will not be testifying in this session.

4 JUDGE THOMPSON: Right.

10:52:51 5 MR HARRISON: We are not saying that that witness is not testifying
6 at all; we are saying today that he is not testifying in this session. We
7 would also like to advise the Court that in addition to the witness that I
8 referred to, the investigator who will be coming from outside the
9 jurisdiction to Freetown to testify, we are hoping that witness testifies
10:53:17 10 on the 25th of April. Secondly, there is another witness, that is, witness
11 TF1-272, who is also coming from outside the continent. We are asking
12 whether some accommodation can be made for TF1-272 by Defence counsel so
13 that she testifies in this trial on the 29th of April. Thank you.

14 JUDGE THOMPSON: Thank you. Responses please.

10:53:52 15 MR JORDASH: There is an argument that 272 is an expert witness.

16 JUDGE THOMPSON: There is some what?

17 MR JORDASH: There is an argument. I am considering whether 272 in
18 fact should be properly categorised as an expert witness. We have not come
19 to any fixed idea as yet, but it may be that if we do come to the view that
10:54:17 20 he or she is an expert witness, we will be seeking an adjournment of that
21 witness until service of the expert report, which we expect at the latest
22 in May.

23 JUDGE THOMPSON: Yes.

24 MR JORDASH: In the event that we do not consider this witness an
10:54:38 25 expert witness, we will be happy to accommodate the Prosecution.

26 JUDGE THOMPSON: Yes. Second accused?

27 MR NICOL-WILSON: Your Honour, a similar position. We are of the
28 opinion that witness TF1-272 is an expert witness and we have not received
29 the report yet.

1 MR JORDASH: May I just add something to that out of turn? The
2 witness refers in the statement to a number of interviews which are
3 referred to, and also it would appear that the statement has been based on
4 some personal notes of 272. In order to properly decide whether we take
10:55:35 5 issue with categorisation of this witness as a witness of fact, we would
6 like disclosure of those interviews and notes so we can properly consider
7 the witness's statement.

8 JUDGE THOMPSON: Yes. This of course more or less highlights what
9 now has become a rather nagging problem about the question of reports. I
10:56:06 10 remember that the way that the Chamber intervened to get over what seemed
11 to be an impasse on the question of production of expert reports was to
12 issue an order for compliance of Prosecution with Rule 94 bis, and this was
13 done on the 9th of March this year. There the Prosecution was ordered to
14 make disclosure of expert reports by the 4th of May 2005. Is the
10:56:46 15 Prosecution aware of that order?

16 MR HARRISON: Yes, we are.

17 JUDGE THOMPSON: Yes. Of course, the expiry date is still to come.
18 Of course, the Prosecution has indicated that TF1-272 will be called as the
19 17th witness. Is that what you are saying to the trial session?

10:57:10 20 MR HARRISON: Bearing in mind that I advised you that one witness
21 will not be testifying, that actually means that will be the 16th. But you
22 are correct.

23 JUDGE THOMPSON: Yes. So what it really means is that that
24 indication does trigger off the governing positions of Rule 94 bis as to
10:57:33 25 the prescribed time for filing of the expert report and the requirement
26 that the Defence should indicate its acceptance of the report or intention
27 to cross-examination on it. So we have not reached that eventuality yet.
28 Do we have the report yet?

29 MR HARRISON: I think I had better say I am not 100 per cent certain,

1 but as far as I know it has not come in as of today's date.

2 JUDGE THOMPSON: That is the situation we have, Mr Jordash. We
3 ordered that the reports be disclosed by the latest the 4th of May this
4 year, and this to solve the nagging problem of delay in filing of expert
10:58:22 5 reports and disclosure to the Defence. Prosecution now says we are going
6 to call TF1-272 as an expert witness during this trial session. And so --

7 MR JORDASH: I am sorry to interrupt. I do not think the Prosecution
8 is saying that this witness is an expert. But the Defence is saying --

9 JUDGE THOMPSON: Let him correct us if we are wrong. Do sit down.
10:59:00 10 Does the Prosecution intend to file a report for TF1-272 under Rule 94 bis
11 or is the Prosecution not in a position to make a commitment one way or the
12 other?

13 MR HARRISON: I would prefer not to make a commitment right now, but
14 I think I could do it by the end of the day and advise Defence counsel. I
10:59:23 15 think I know the answer to that question; I just want to double check one
16 matter.

17 JUDGE THOMPSON: Yes, all right. Because the question is that if
18 TF1-272 is not going to be called as an expert witness, then the order
19 which we issued would not be relevant to TF1-272 but to others whom the
10:59:52 20 Prosecution may intend to call.

21 MR HARRISON: I have Mr Jordash's point and the point of
22 Mr Nicol-Wilson and I take no issue; it is a fair point to raise and I will
23 try to resolve it for them this afternoon.

24 JUDGE THOMPSON: Right. Thank you.

11:00:07 25 MR JORDASH: Thank you.

26 JUDGE THOMPSON: Mr Nicol-Wilson?

27 MR NICOL-WILSON: No more comment on this issue.

28 JUDGE THOMPSON: Professor O'Shea?

29 MR HARRISON: I am sorry to interrupt Mr O'Shea, but I have been

1 receiving confirmation that 272 will not be tendered as an expert witness.

2 JUDGE THOMPSON: I see. Right. Mr O'Shea?

3 MR O'SHEA: Well, if that is the case, Your Honour, then presumably
4 there will be no report.

11:00:37 5 MR HARRISON: I think that is fair to say.

6 JUDGE THOMPSON: That is the logical conclusion.

7 MR O'SHEA: The question is simply the point at which that witness
8 comes to testify we will then consider the admissibility of what the
9 witness has to say.

11:00:54 10 JUDGE THOMPSON: Yes. In other words, that witness will be treated
11 not as an expert. But, of course, I have just been advised that the
12 witness has been identified as a category 2 witness on the Prosecution
13 list. Here we have in a clarification from the Prosecution that the
14 witness will not in fact be an expert witness.

11:01:26 15 MR O'SHEA: Yes. For our part, when the witness comes to testify, we
16 will consider the admissibility of any portion of that testimony and, of
17 course, reserve the right to argue its inadmissibility.

18 JUDGE THOMPSON: Yes.

19 MR O'SHEA: If we feel that essentially what is happening is an
11:01:53 20 attempt to get expert evidence through the back door, or non-expert
21 evidence through the back door --

22 JUDGE THOMPSON: The point that needs to be clarified. Having stated
23 that the witness will not be called as an expert, what I have not had
24 expressly stated and I am not prepared to imply anything is whether the
11:02:15 25 witness will be called as a witness of fact. Perhaps the Prosecution can
26 help me. I do not want to imply anything.

27 MR HARRISON: I think that is a fair conclusion to draw.

28 JUDGE THOMPSON: Is it fair?

29 MR HARRISON: I am not sure there is anything else other than

1 experts --

2 JUDGE THOMPSON: It may well be that he may be coming as an overview
3 witness in the subset.

4 MR JORDASH: I would still pursue the notes which form the basis of
11:02:44 5 that statement. Having had another look at it, there are a number of
6 statistics given in this statement which in the event that the witness does
7 not have a photographic memory, then there are notes which ought to be, I
8 would submit, disclosed to the Defence. I have no wish to take a laborious
9 or a bad point against the Prosecution. If they serve the notes, I will
11:03:10 10 look at them and it may well be that there will be no application
11 concerning the admissibility of this witness. But without them and when
12 the witness refers to them, it seems to me that we are left in a rather
13 unsatisfactory position.

14 JUDGE THOMPSON: Does the Prosecution wish to respond to that?

11:03:27 15 MR HARRISON: So far as I know, everything in the Prosecution's
16 possession has been disclosed but, again, this is a point on which I am
17 asking Mr Jordash to indulge me somewhat. I will make some enquiries this
18 afternoon and confirm to him either yes or no with respect to the existence
19 or possibility of some further disclosure.

11:03:51 20 MR O'SHEA: Of course, Your Honour, if there were a time at which we
21 were to object to admissibility, it would avoid any unnecessary
22 adjournments if the Prosecution ensured that we have all the papers in
23 relation to that witness.

24 JUDGE THOMPSON: Quite right.

11:04:07 25 MR O'SHEA: Regardless of issues of absolute obligation, they may
26 feel that it might avoid unnecessary adjournment. They are on notice that
27 there may be an issue.

28 JUDGE THOMPSON: It is a prudent position to take. Quite right. I
29 am pretty sure the Prosecution takes the point. Anything else on this

1 matter, anything else on the expert witness issue?

2 MR JORDASH: Only this, and I am sure that Mr Harrison has it well in
3 mind, but the Defence have been waiting, I think for myself, for over a
4 year for expert reports. That is when I first raised the issue. It would
11:04:48 5 be disappointing, I would submit, if all the reports landed on our desks on
6 the 4th of May. The obligation, as Mr Harrison I am sure is aware, is to
7 serve as early as possible.

8 JUDGE THOMPSON: Yes. I certainly think that learned counsel for the
9 Prosecution is very much concerned about that. We have actually issued
11:05:12 10 that order merely to strengthen their hands to say to their experts, "Look,
11 we have a court order indicating a time limit within which to file this
12 report." I am sure that we were more or less in a way helping the
13 prosecutorial effort in that regard. I am sure he takes the point.

14 MR HARRISON: Yes, it is a fair point; I understand.

11:05:46 15 JUDGE THOMPSON: The last but one item on the agenda is outstanding
16 motions. Mr Harrison, perhaps we should just go back to one issue under
17 witness issues; that is in relation to the application by the Prosecution
18 in respect of the testimony of TF1-141. I think on the 18th of January
19 this year we had submissions from the parties that witness TF1-141 be heard
11:07:13 20 by means of closed circuit television and that a member of the victims and
21 witness unit be available in the video conference room for the purposes of
22 providing any necessary assistance to this witness. I think I can say at
23 this point that the Trial Chamber will issue a ruling on the application as
24 soon as possible, because the only reasonable request at this stage from
11:07:46 25 the Bench would be that TF1-141 be not called as the first witness by the
26 Prosecution during this trial session. I hope this would not do any
27 injustice to the Prosecution's case if they could just hold off. That is
28 the position we take because a ruling is pending and we don't think that we
29 should have that witness testify as the first witness.

1 MR HARRISON: I take the Court's point and the suggestion that is
2 being offered to the Prosecution. I think I can say right now that the
3 Prosecution takes a somewhat different view and I was wondering whether it
4 would be fair to the Defence counsel and to the Court as a whole that
11:08:52 5 perhaps this matter be addressed tomorrow before the Court as a whole
6 rather than the Prosecution's attempting to drag this matter on.

7 JUDGE THOMPSON: Very well, to give an undertaking to this status
8 conference. Yes, perhaps that would be the best way to proceed. What is
9 your response to that?

11:09:11 10 MR JORDASH: My response is that I would rather not spend four or
11 five hours this afternoon preparing for 141 if we are not having 141.

12 JUDGE THOMPSON: Yes, I can see the difficulty there.

13 MR JORDASH: Certainly for the first accused we are waiting on
14 decisions for 141, and in the same regard for 366 and 122. We presumed
11:09:33 15 that until those issues were resolved those witnesses would not be called.
16 If the Defence are right in relation to 141 and we are forced nevertheless
17 to proceed with that witness and we have a ruling which then says that we
18 were right, where does that leave us in terms of the witness's evidence?
19 One obvious solution, and satisfactory I would submit, is to say, "Well,
11:10:05 20 the areas which have been ruled to be inadmissible can be excised from the
21 record." But better, I would respectfully submit, that we just leave that
22 witness, push them back, and then deal with the witness when we know
23 exactly which aspects of the evidence this Court has decided are
24 admissible. I would just urge the Prosecution to make a decision if they
11:10:34 25 can today. If they cannot and they wish to argue it tomorrow, then so be
26 it. But I am thinking of my work schedule.

27 MR NICOL-WILSON: Your Honour, I see the likelihood that 141 will not
28 testify. We want confirmation from the Prosecution as to whether the first
29 witness will now be TF1-260.

1 JUDGE THOMPSON: That is what we are trying try work out. Apparently
2 the Prosecution would like to argue a contrary option to that proffered by
3 the Bench. Of course, the question now is whether we should deprive the
4 Prosecution of the opportunity of making a case. Calling TF1-141 out of
11:11:29 5 turn may well be prejudicial to their prosecutorial strategy in presenting
6 their case when, of course, at the same time accommodating the position
7 enunciated by Mr Jordash. It is just that with the case of TF1-141 we have
8 pending rulings by the Chamber. There is also the leave to appeal the
9 decision to admit statements made by this particular witness on certain
11:12:02 10 days. In this kind of situation we are entirely in the hands of the
11 Prosecution in terms of their prosecutorial discretion to present their
12 case the best way they think possible and also having regard to the state
13 of play in terms of how the judicial process is working in the context of
14 the dynamics of this trial. Let me hear from Mr O'Shea.

11:12:47 15 MR O'SHEA: Your Honour, I align myself with the comments of
16 Professor Jordash.

17 JUDGE THOMPSON: Honorary professor.

18 MR O'SHEA: Whilst I understand Your Honour's wish to respect the
19 prosecutorial prerogative as somewhat sacrosanct --

11:13:15 20 JUDGE THOMPSON: I am not saying that.

21 MR O'SHEA: -- I nonetheless invite Your Honour to consider the
22 following and perhaps the Prosecution can indicate whether the following
23 witness on the list is ready to go.

24 [Defence counsel confer]

11:13:45 25 MR O'SHEA: Yes, if the next witness on the list is ready to go then
26 we can have a position of temporary consent to start with that second
27 witness. Then that gives the time during which that second witness is
28 giving evidence to resolve this issue. If necessary, I would invite Your
29 Honour to make that order as an interim measure just to ensure that there

1 is no prejudice.

2 JUDGE THOMPSON: Yes. Certainly, we do have a discretion, but a
3 discretion that does not, as you rightly said, discount the importance of
4 prosecutorial discretion. Not that anything is sacrosanct here in the
11:14:51 5 Court, except the judicial process itself. But I would like to feel that
6 we must give the Prosecution the opportunity to say what prejudice will be
7 done to them if they were to take their witnesses out of turn. But as you
8 are rightly suggesting, it is just the next witness that can come on and
9 take the place of the first one.

11:13:38 10 [HS050405B 11.15 a.m. - SV]

11 MR O'SHEA: Well, Your Honour, yes. If the Prosecution can indicate
12 what prejudice it would cause them, but before they do so they might wish
13 to consider to simply consent to the proposal I'm making.

14 JUDGE THOMPSON: Quite right.

11:15:31 15 MR O'SHEA: It shouldn't cause too much difficulty.

16 JUDGE THOMPSON: I'd like to hear from Mr Harrison whether he is
17 approaching this matter with the same degree of prosecutorial caution which
18 I gathered from his first response or whether there has been a slight
19 review, hearing your position.

11:15:52 20 MR HARRISON: There's two sticking points. The first sticking point
21 is this: This particular witness is a young person who on three occasions
22 has been forced to come to court with the expectation and having been given
23 notice that he is going to be testifying. The effect of that is that he is
24 removed from his schooling and his education. There is quite a significant
11:16:15 25 effect that has already taken place for this young person.

26 The Prosecution always has to bear in mind the nature of its case but
27 it also has to have some regard to the effect that the litigation may have
28 on witnesses and other people closely attached to litigation. The
29 Prosecution is very concerned that an adjournment again of this young

1 person's testimony is going to have an ongoing and significant effect on
2 his development.

3 The second sticking point is this: I am aware that a leave
4 application for appeal was filed. There is not sought, as a remedy in that
11:16:49 5 application, a stay.

6 JUDGE THOMPSON: Yes. When I made that point I wasn't virtually
7 saying that that was a factor. There is really no order staying the
8 proceedings.

9 MR HARRISON: Although I understood Mr Jordash's point that -- and I
11:17:12 10 think the suggestion was that a preferred course of action may well be that
11 this Court not hear the evidence at all of 141 until some later date. The
12 Prosecution takes a somewhat different view. We say there is absolutely no
13 reason why professional judges cannot hear this evidence now. If they
14 decide a month, two months down the road, in the fullness of time, having
11:17:39 15 reviewed all of the submissions, that TF1-141 ought not testify, or ought
16 not testify in a certain matter, that decision could be made and the Court
17 would disabuse its mind of any evidence that was given. And that, in my
18 suggestion, is the appropriate course of action to follow. I'm not
19 suggesting that we need to go into a formal voir dire of this person's
11:18:01 20 evidence. It's simply that case that, at the end of the day, if the Court
21 as a whole takes the view that the evidence is not admissible the Court
22 simply disabuses its mind of all the evidence.

23 JUDGE THOMPSON: Well, thank you. Perhaps the compromise should be
24 just -- before I suggest what the compromise would be, let me hear
11:18:20 25 Professor O'Shea.

26 MR O'SHEA: Well, Your Honour, we have severe time constraints. I
27 don't know what the time frame of the Trial Chamber is in terms of
28 resolving these issues. If the time frame of the Trial Chamber is quite a
29 short one it would save significant court time to, as I say, not do away

1 with 141 completely for the time being but simply swap the first two
2 witnesses. It would be a measure which would, in my submission, be a
3 compromise because it would minimise the prejudice which Mr Harrison is
4 referring to and at the same time it would save our time which is very,
11:19:14 5 very precious at the moment.

6 JUDGE THOMPSON: Yes, and clearly the Chamber is aware of the urgency
7 with which this matter should be disposed of. In fact, I wish I could
8 indicate when the ruling will in fact be issued but I'm not in a position
9 to do that now, but all I can say is that efforts would be made on the part
11:19:46 10 of the Bench to expedite the issue of the ruling so as to minimise any
11 prejudice that may accrue to one side or the other. The Easter vacation
12 virtually intervened and, more or less, made it difficult for us to come
13 out with something. But definitely there has been deliberation on this.

14 I think the best thing to do is if we are not able to come out with a
11:20:29 15 ruling before tomorrow morning then perhaps to ask both sides to argue,
16 rather briefly, and then we take a position in the trial. The points
17 canvassed on both sides clearly are pretty convincing. It is just a
18 question of how we try to harmonise, in terms of the judicial position,
19 these two convincing positions.

11:21:14 20 MR JORDASH: Sorry, could I lend my support to Mr O'Shea's
21 suggestion. The very most we would be talking about is the witness being
22 put back for three or four days. Not desirable perhaps but a happy
23 compromise, I would submit.

24 JUDGE THOMPSON: Yes. Well, let's just hope that we can arrive at
11:21:35 25 something reasonable for both sides.

26 MR O'SHEA: May I also request that the Prosecution ensure that the
27 next witness is available just to anticipate --

28 JUDGE THOMPSON: Right. Well, the Prosecution is always ready with
29 other witnesses in that situation.

1 The fifth item is outstanding motions/appeals and you could see we
2 have the first motion which we have here as outstanding is the one on
3 issues of urgent concern to the accused Morris Kallon, a dissenting opinion
4 of Judge Itoe and the history here is that this motion was the one relating
11:22:24 5 to the issue of service of the consolidated and amended consolidated
6 indictment and arraignment on the amended consolidated indictment. The
7 majority decision of Judges Boutet and myself was filed on the 9th of
8 December last year and the dissenting opinion of Judge Itoe, I am advised,
9 will be filed pretty soon.

11:23:00 10 The second motion is that seeking disclosure of relationship between
11 the OTP and the US government and agencies. That was filed on behalf of
12 the first accused on the 8th of November last year and the Prosecution did
13 file a response and a reply from the Defence was also filed. I am again
14 advised that a decision will be published very soon.

11:23:34 15 There is also an oral request of Defence counsel to reopen
16 cross-examination of TF1-012. This request was filed on behalf of the
17 first and the third accused persons on the 4th of February 2005. The
18 request was denied orally on that very day and it was indicated that
19 written reasons will be published. Again I am advised that the written
11:24:13 20 reasons will be published in due course.

21 There is another motion on behalf of both the first and the third
22 accused persons requesting leave to appeal the ruling on oral application
23 for the exclusion of statements of witness TF1-141 and that particular
24 motion is before the Trial Chamber. According to the records, the
11:25:12 25 Prosecution filed a consolidated response on the 9th of February. Again
26 this has been the subject of the -- just the previous issue which we were
27 discussing. I am also advised that a ruling will soon be published on this
28 particular application.

29 Decision also will be forthcoming soon on the further renewed witness

1 list pursuant to an order to the Prosecution concerning renewed witness
2 list and there the Prosecution sought leave to add witness TF1-210 to the
3 call list and, again, a decision is forthcoming on that.

4 There is also an urgent and confidential Prosecution application to
11:26:12 5 vary protective measures. The application seeks that the testimony of
6 witnesses TF1-104 and TF1-081 be heard entirely in closed session. These
7 witnesses are due to testify in both the AFRC trial and, at a later stage,
8 the RUF trial. The application has been filed before this Chamber pursuant
9 to Rule 75(F), not the second Chamber. The records show that the Defence
11:26:53 10 teams for the AFRC trial have indicated that they do not oppose the motion.
11 Responses from the second and third accused here were filed yesterday. The
12 judges of this Chamber are currently deliberating on this application.

13 The final motion is one for the exclusion of certain statements of
14 witness TF1-361 and supplemental statements of witness TF1-122. That
11:27:47 15 motion was filed by counsel for the first accused on the 11th of March and
16 the Prosecution filed its response yesterday. So that motion is under
17 consideration.

18 The records show that there is nothing outstanding in the Appeals
19 Chamber in terms of motions.

11:28:15 20 Any general or specific comments on the state of the motions? I know
21 that, according to the advice given to the Chamber, these rulings are
22 definitely being discussed and they certainly will be published very soon
23 on some of these outstanding motions. There is quite a lot.

24 Well, the last item is any other matters and are there any other
11:28:52 25 issues to be raised? Prosecution, any issues at all?

26 MR HARRISON: None, thank you.

27 JUDGE THOMPSON: First accused?

28 MR JORDASH: Just three very quick issues. Firstly to request from
29 the Prosecution expenses for the forthcoming witnesses. The same request

1 to the Victims and Witness Unit in relation to the forthcoming witnesses.

2 Thirdly, this is an issue which I have discussed with Mr Harrison but
3 it involves the service of CD-ROMs containing radio [inaudible]. I'm
4 trying to save time for when this evidence is called, but the evidence as
11:29:49 5 it has been served is not sourced. It is not clear whether we have
6 received it before. It's not clear whether there is proof of authenticity.

7 JUDGE THOMPSON: Yes.

8 MR JORDASH: It is basically served with little indication of what it
9 is, where it's from and whether we have received it before. I've raised it
11:30:11 10 with Mr Harrison and I've left it with Mr Harrison, but if that evidence is
11 to be called this week then we are in a position where we've been served a
12 great deal of evidence, some of it I suspect is new, and we will need time
13 to consider it.

14 JUDGE THOMPSON: Right, thanks. Mr Nicol-Wilson?

11:30:37 15 MR NICOL-WILSON: Your Honour, just one issue which we think is
16 relevant information for the Court. The Defence team for Mr Morris Kallon
17 has two additional members. One is Professor Vincent Nmehielle, a
18 professor of international law at the University of Witwatersrand in South
19 Africa. The other is the lady on my right-hand side, Ms Rachel Irura, a
11:31:04 20 Kenyan lawyer. We just thought it fit to [inaudible].

21 JUDGE THOMPSON: Yes, thank you. Anything, Professor O'Shea?

22 MR O'SHEA: I have nothing to add, your Honour.

23 JUDGE THOMPSON: If there is nothing else for the good of the Special
24 Court in particular and the interests of justice in general I will bring
11:31:29 25 this proceeding to a close. Thank you.

26 [Whereupon the Status Conference adjourned at 11.31 a.m.]

27

28

29

