

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO.: SCSL-04-15-T
TRIAL CHAMBER I

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

5 JULY 2004
1015
TRIAL

Before the Judges:

Benjamin Mutanga Itoe, Presiding
Bankole Thompson
Pierre Boutet

For the Registry:

Mr. Robert Kirkwood
Ms. Maureen Edmonds
Mr. Geoff Walker

For the Prosecution:

Mr. David Crane
Mr. Desmond De Silva QC
Mr. Luc Côte
Mr. Robert Petit
Ms. Lesley Taylor
Mr. Abdul Tejan-Cole
Ms. Boi-Tia Stevens

For the Principal Defender:

Ms. Simone Monasebian
Ms. Haddijatou Kah-Jallow

For the Accused Issa Hassan Sesay:

Mr. Timothy Clayson
Mr. A. Serry-Kamal
Mr. Wayne Jordash
Ms. Sareta Ashraph
Mr. Azeem Suterwalla

For the Accused Morris Kallon:

Mr. Shekou Touray
Mr. Raymond Brown
Ms. Wanda Akin

Mr. Melron Nicol-Wilson
Mr. Lansana Dumbuya

For the Accused Augustine Gbao:

Mr. Andreas O'Shea
Mr. John Cammegh
Ms. Glenna Thompson
Mr. Ben Holden

Court Reporter:

Ms. Susan G. Humphries

P R O C E E D I N G S

1

2 MR. WALKER:

3 This is case number SCSL 2004-15-T, the Prosecutor v. Issa Sesay, Morris Kallon and Augustine
4 Gbao, which is listed for trial.

5

6 Would the interpreters take the oath, please.

7 MR. PRESIDENT:

8 Excuse me, are all the Accused -- are the three Accused in court?

9 MR. WALKER:

10 Your Honour, they are.

11 MR. PRESIDENT:

12 The three of them are in court. Yes, go ahead.

13 *(Interpreters sworn)*

14 MR. WALKER:

15 Thank you very much. Will you take your places in the booth again, please.

16 MR. PRESIDENT:

17 Please take your places in the cabin.

18 MR. PRESIDENT:

19 Are you all right? Are you set? May we have the appearances, please? For the Prosecution.

20 MR. CRANE:

21 Your Honour, for the Prosecution, David M. Crane, the Prosecutor, Desmond De Silva, Queen's
22 Counsel, and Prosecution team for the RUF/AFRC as listed.

23 MR. PRESIDENT:

24 For the first Accused.

25 MR. CLAYSON:

26 Your Honour, for the Defence of Issa Hassan Sesay, Timothy Clayson, Wayne Jordash, Sareta
27 Ashraph and Azeem Suterwalla. Mr. Suterwalla is not presently in Court. With Your Lordships' leave
28 he would come into court unrobed, there being a lack of robes, unfortunately, for him to be so robed.

29 MR. PRESIDENT:

30 Where is he now?

31 MR. CLAYSON:

32 He is waiting outside.

33 MR. PRESIDENT:

34 He is waiting outside. We are afraid we are not only very strict on the attire, the professional attires,
35 you know, of counsel who appear before us, but we, in fact, and above all we insist on their being
36 robed. We do not see any reasons to digress from this. I suppose that since you are many on the
37 team you can share the responsibility and ensure that he is robed at one time or the other.

1 MR. CLAYSON:

2 Mr. Suterwalla is not, in fact, counsel -- Mr. Suterwalla is not, in fact, counsel, he is a legal assistant to
3 the team.

4 MR. PRESIDENT:

5 No, we do not accept legal assistants. We do not accept legal assistants and I thought he was a
6 lawyer, you know, who has been called to the Bar. We want only those who qualify, you know, under
7 the Rules and the Statute, you know, to sit in the Bar. And, in fact, if there is any who has not been
8 called to the Bar who is sitting there, we are inviting the persons, you know, so concerned, you know,
9 to retire very conveniently.

10 MR. CLAYSON:

11 Well perhaps I can come back to this issue at a later stage, if we choose so to do.

12 MR. PRESIDENT:

13 You are welcome, you can come back to it, there is no problem.

14

15 Yes, for the second Accused, please.

16 MR. TOURAY:

17 Good morning, Your Honour, Shekou Touray for the defence of Kallon, Raymond Brown, Wanda Akin
18 and Melron Nicol-Wilson, and last, but not least, Lansana Dumbuya, so a full team, Your Honour.

19 MR. PRESIDENT:

20 For the third Accused, please.

21 MR. O'SHEA:

22 May it please Your Honours, I am Andreas O'Shea, I appear for Mr. Augustine Gbao, I appear with
23 Mr. John Cammegh, to my right, Ms. Glenna Thompson behind me and Mr. Ben Holden. Thank you.

24 MR. PRESIDENT:

25 Before we commence the proceedings, I would like to make a statement.

26

27 After the historic day of the 3rd of June 2004 when we commenced our trials with the CDF group of
28 indictees and at which the RUF group of indictees was present, and this only slightly over 14 months
29 of detention and after the initial appearances of other indictees, here we are today about to
30 commence yet another trial this time of the case involving the RUF group of indictees which we, as a
31 Chamber, intend to proceed with alternately with the case involving the CDF group of indictees -- of
32 indictees.

33

34 The mandate for the Special Court for Sierra Leone, as outlined in Article 1 of its Statute, is to try
35 those who bear the greatest responsibility for serious violations of international humanitarian law and
36 Sierra Leonean law committed in the territory of Sierra Leone since the 30th of November 1996,
37 including those leaders who, in committing such crimes, have threatened the establishment and

1 implementation of the peace process in Sierra Leone.

2
3 The mission of this Court and the resolve of the international community is to bring an end to impunity
4 for those alleged to be responsible for crimes outlined in its Statute and to contribute to the peace and
5 reconciliation process within Sierra Leone.

6
7 The Trial Chamber, which started this process since the 15th of March 2003, and effectively
8 commenced trials on the 3rd of June 2004, is fully and unreservedly committed to the fulfilment of the
9 mission of the Special Court to restore the rule of law and to contribute *inter alia* to the process of
10 national reconciliation and the maintenance of peace in this country. In pursuing these objectives, the
11 Chamber will act in accordance with its Statute and its Rules of Procedure and Evidence.

12
13 Let me say here again, as I said on the 3rd of June 2004 in my opening statement, that we are
14 committed to ensuring that trials are fair and are disposed of expeditiously. In this regard, we are
15 calling on all the parties to avoid engaging in irrelevancies and digressions which could unnecessarily
16 protract the conclusion of these trials thereby compromising the rights of the Accused persons to a fair
17 and expeditious trial on the one hand, and the determination of the Chamber to respect its mandate
18 on the other.

19
20 To achieve this objective we will, indeed we shall, and in accordance with the provisions of Rule
21 90(F)(i) and 90(F)(ii) of the Rules of Procedure and Evidence, exercise control where it becomes
22 necessary over the mode and order of interrogation of witnesses and the presentation of evidence to
23 make them effective strictly for the -- as attainment of the truth and to avoid devoting time
24 unnecessarily on trivialities.

25
26 In accordance with Article 17(3) of the Statute of the Special Court, the Accused shall be presumed
27 innocent until proven guilty. The burden, of course, of establishing guilt beyond reasonable doubt
28 rests on the Prosecution.

29
30 The amended and consolidated indictment of 13th May 2004 against the Accused persons in the RUF
31 case, namely Mr. Issa Hassan Sesay, Mr. Morris Kallon and Mr. Augustine Gbao, charges them with
32 individual criminal responsibility and superior criminal responsibility pursuant to Article 6(1) and 6(3) of
33 the Statute and for violations of crimes under Articles 2, 3 and 4 of the Statute.

34
35 I would like, on this particular occasion and at this moment in time, to address myself to the Accused,
36 Mr. Issa Hassan Sesay, Mr. Morris Kallon and Mr. Augustine Gbao, and to draw your attention to
37 Article 17 of the Statute of the Special Court which outlines a number of procedural guarantees for a

1 fair trial and due process. You will be afforded these guarantees which you are already enjoying up to
2 this moment and which are also enshrined in other human rights conventions, including the African
3 Charter on Human Rights and People's Rights which entered into force in 1986.

4
5 This Article provides that accused persons, "Shall be equal before the Special Court," and as accused
6 persons you "Shall be entitled to a fair and public hearing, subject to measures ordered by the Special
7 Court for the protection of victims and witnesses."

8
9 You will be presumed innocent until proven guilty according to the provisions of the present Statute.
10 And in the determination of any charge against you pursuant to this Statute, you will be entitled to be
11 informed promptly and in detail in a language you understand of the nature and cause of the charge
12 against you.

13
14 You are entitled to have adequate time and facilities for the preparation of your defence and to
15 communicate with counsel of your choosing to be tried without undue delay, and to be tried in your
16 presence.

17
18 You have the right to defend yourself in person or through legal assistance of your choosing, to be
19 informed that if you do not have legal assistance of this right and to have legal assistance assigned to
20 you in any case where the interests of justice so require.

21
22 You also have a right to examine or to have examined the witnesses against you and to obtain the
23 attendance and examination of witnesses on your behalf under the same conditions as witnesses
24 against you.

25
26 You will have the free assistance of an interpreter if you cannot understand or speak the language
27 used in the Special Court which is English.

28
29 You will not be compelled to testify against yourself or to confess your guilt.

30
31 I would also like on this occasion and at this moment to remind counsel to the parties to be mindful of
32 the duties and obligations that are imposed on them, vis-à-vis the Court as ministers of justice, both
33 by the Statute, the Rules of Procedure and Evidence and other regulations in force, and to constantly
34 ensure that the integrity of the process is always maintained.

35
36 Having said this, I would like to invite the Prosecutor of the Special Court, if he so desires, to make an
37 opening statement under the provisions of Article 84 of the Rules of Procedure and Evidence, and I

1 would like the parties, that is whoever opts to make a statement under 84 -- under Rule 84, that the
2 statement should be confined, strictly confined, to the evidence it intends to adduce in order to
3 establish its case either for the Prosecution or for the Defence.

4
5 I would like to reiterate, like we did in the earlier case, that the occasion to make opening statements
6 is not an occasion to make political declarations. We are in a court of law and we will only tolerate
7 matters to be raised here which are strictly acceptable within our judicial practices and that any
8 statement that tends to be political will be called to order and would, of course, not feature in the
9 records.

10
11 Mr. Prosecutor, you have --

12 MR. CLAYSON:

13 Before the -- sorry, Your Honours, but before the Prosecutor opens there is a matter, I would wish, if I
14 may have your permission, to raise with the Court at this stage. It concerns a matter which is of the
15 greatest gravity and it arose only in the last few days and so, if I may, I would like to address Your
16 Lordships about it at this stage before the Prosecutor makes his opening statement.

17 MR. PRESIDENT:

18 Please go ahead.

19 MR. CLAYSON:

20 This matter concerns the very troubled issue of disclosure of exculpatory material to the Defence in
21 this case.

22 MR. PRESIDENT:

23 If you don't mind, counsel, this goes to the substance of the matter. Since we are on preliminary
24 issues, the Bench would rather take the opening statements and thereafter you can be free, you
25 know, to raise issues which you think are pertinent, you know, for the defence of your client.

26 MR. CLAYSON:

27 Can I say why I invite Your Lordships to deal with it at this stage? The reason is that -- to the Defence
28 it seems clear that the issue I would wish to address you about may affect whether or not it is
29 appropriate for the Prosecution to make their opening statement at this time, and indeed, it may
30 impact upon the very start of this trial which, of course, takes place when the Prosecutor makes his
31 opening statement. That is why I would seek your permission to raise it at this moment, please.

32 MR. PRESIDENT:

33 Do you think that the Court is properly seized of this application that you are making?

34 MR. CLAYSON:

35 Oh yes.

36 MR. PRESIDENT:

37 Is the Court properly seized at this point in time to take your application, because if you are making

1 this application it would, of course, mean, you know, that the Prosecution -- it should be on notice and
2 the Prosecution should be given the right to respond to the application. And such an application, I
3 would like to imagine, should be in writing so that it is communicated to the parties for appropriate
4 replies to be looked into before the Court can rule on issues like this.

5 MR. CLAYSON:

6 It follows from the Defence motion of the 31st of May, to which the Prosecution responded on the 9th
7 of June. My Lords, what it comes to is this, that on Wednesday of last week, the 30th of June, the
8 Defence received documents from the Prosecution which shows that in certain cases they have made
9 substantial payments to witnesses who are to be called in the first trial period which Your Lordships
10 have scheduled. Now, in one case there are payments made to a witness, who clearly is considered
11 important by the Prosecution, that come to nearly 6,000 dollars thus far, and the Defence are
12 understandably aggrieved beyond measure that we should receive notification of such payments to
13 witnesses in the pre-trial period so close to the trial --

14 MR. PRESIDENT:

15 Are payments supposed to be communicated to the -- how relevant is this to this issue? Section 66
16 talks of disclosures of witness statements. I can understand it if -- I mean, I'm not wanting to go into
17 the merits of the payments of whatever sums of money, but what I am saying is that even if it
18 happened, was that supposed to have been disclosed to you?

19 MR. CLAYSON:

20 Most certainly under Article -- under section -- Rule 68, exculpatory material --

21 JUDGE THOMPSON:

22 Learned counsel.

23 MR. CLAYSON:

24 I am sorry.

25 JUDGE THOMPSON:

26 Let me state my position on this that the Chamber does not -- or I do not think the Chamber wishes to
27 foreclose the possibility of your raising these issues, disclosure or whatever you have notified the
28 Court of, but it would seem to me to accord moral procedural regularity and propriety --

29 MR. CLAYSON:

30 Absolutely.

31 JUDGE THOMPSON:

32 -- that, in fact, these issues be raised before the Prosecution calls their first witness. At this juncture I
33 think the Court ought to hear the opening statement because, bearing in mind the Prosecution's
34 opening statement does not bind the Court, it is not evidence, it is merely a statement of expectations.
35 And so at this point I don't see what prejudice the Defence will suffer if the issue is raised at an
36 appropriate time. That would be my own position.

37

1 MR. PRESIDENT:

2 Are you satisfied? If you are not satisfied, we will just have to inform you that your application is
3 denied.

4 MR. CLAYSON:

5 I regret I have not completed making it.

6 MR. PRESIDENT:

7 And then we will be calling on the Prosecution to make its opening statement.

8 MR. CLAYSON:

9 Can I --

10 MR. PRESIDENT:

11 Mr. Prosecutor, please, you have the floor.

12 MR. CLAYSON:

13 I should like to explain on the record that I have not completed my argument.

14 MR. BROWN:

15 Yes, I do not wish to interrupt counsel, but Your Honour, there is one matter which we have brought to
16 the Court's attention by means of a motion and I have carefully listened to your response to co-
17 counsel's argument, but one aspect of our motion does seek relief in terms of the Prosecutor's
18 opening. That is, we have received quite recently a substantial number of pages, about 2,000, of a
19 statement of a co-accused. And we, though we have tried as much as we could, have not been able
20 to review that matter completely and we do, taking into account the comments just made by the Court,
21 understand that some parts of that motion can abide a time prior to the first witness, but we think it
22 would be improper, prior to our having had an opportunity to adequately review it, for Prosecutors to
23 rely upon or quote from that statement or to refer to that statement of that co-accused during opening
24 statements and we ask for protection from that in light of the late supplying to the counsel for the
25 Accused Kallon of this statement and see there can be no possibility other than our asking for that
26 relief at this moment.

27 MR. PRESIDENT:

28 While you are still on your feet, what do you -- what is your reaction to the Court -- the Court's
29 attitudes to the Prosecution's statement, because we are saying that we are not bound by whatever
30 the Prosecutor says. It is not part of the evidence, you know, before this Court. He is going to say
31 whatever he is going to say, but let me tell you one thing, this Court is not bound by what Mr. David
32 Crane is going to reveal here. It is his conception of the case and we will have to look at the case on
33 the merits after hearing the totality of the evidence in this matter and after giving all the parties an
34 opportunity of having been heard on all the issues.

35 MR. BROWN:

36 May I respond, because I want to be clear we are not expressing lack of confidence in the Court's
37 ability to separate argument from fact or analysis from evidence, but what we are concerned about is

1 we are in a position where clearly the Court has come today with an open mind, willing to hear
2 arguments from both sides to and weigh those arguments insofar as they attempt to articulate what
3 the facts are and how they meld with the law which is binding on this Tribunal. And to that extent
4 when an opening argument is made and facts are offered, there is an expectation that counsel on
5 both sides have access to those facts and can respond appropriately, either by means of objection or
6 by means of response, and our only request is that the Prosecution, having given us this voluminous
7 document at a very late date, not be permitted, understanding Your Lordships capacity to separate
8 wheat from chaff, to argue from that document at this time.

9 MR. PRESIDENT:

10 What if -- what if -- what if I also told you, you know, that even if you had had enough time to respond
11 to those statements that whatever you tell us, you know, does not bind us, it is just -- it is one of those
12 strategies, you know, to make opening statements -- it's protocolish, it goes more to the shadow and
13 not to the substance. So, I don't know, even if you had -- given if those statements had been regularly
14 delivered, you know, to you and you addressed us, I would say to you and the Prosecution that the
15 Chamber is not bound by what you would say in your opening statement. What the Chamber is going
16 to examine is the evidence that will be adduced during examination-in-chief, cross-examination and
17 re-examination of all the witnesses both for the Prosecution and for the Defence and, of course,
18 exhibits that are going to be tendered.

19 JUDGE THOMPSON:

20 Just to reinforce what the learned Presiding Judge has said, learned counsel, I am not persuaded that
21 your client suffers any prejudice from an opening statement from the Prosecution which is a mere
22 declaration of intentions and this Tribunal is professional enough, sophisticated enough, to see the
23 distinction between what a Prosecutor says, he might set his expectations high and at the end of the
24 day he falls far short of those expectations and, therefore, it is difficult to see why this particular issue
25 should, in fact, take pre-eminence over the opening statement of the Prosecutor. I can assure you
26 that this Court or this Chamber will not be bound by Prosecutorial statements, but that the high point
27 of this trial will be when the witnesses begin to testify and to see whether what they say proves what
28 is alleged in the indictment.

29 MR. BROWN:

30 I understand that and I do not wish to invite the Court's ire or test its patience, I simply say we feel that
31 we have cogent argument that suggests that we come at this point as to this matter unprepared and
32 therefore are at a disadvantage with respect to the Accused Kallon. We will abide, of course, by what
33 the Court rules.

34 MR. PRESIDENT:

35 At this stage we do not think that you are very seriously disadvantaged because if you are
36 disadvantaged it's not as to the substance of the matter which of course we are here to examine.

37

1 MR. BROWN:

2 Might I just may say that we do join in the motion made by prior counsel with respect to the disclosure
3 issue. I do not know whether your rule is by not speaking we have waived, but we do join in the
4 motion made by prior counsel.

5 MR. O'SHEA:

6 Your Honours, I am physically some distance from my client and therefore have not been able to tell
7 him his directly.

8 MR. PRESIDENT:

9 What we told Court Management was informed -- to arrange counsel in a way that they should be as
10 close to their clients as possible.

11 MR. O'SHEA:

12 Yes.

13 MR. PRESIDENT:

14 Because, I mean, spontaneous consultations, you know, could arise.

15 MR. O'SHEA:

16 I am happy for things to stay as they are at the moment, but the reason why I raise this is because I
17 noticed during, Mr. President's, your quite comprehensive introduction, the Accused didn't have their
18 headphones on and I just feel that the Court --

19 MR. PRESIDENT:

20 Their earphones?

21 MR. O'SHEA:

22 Their earphones, yes. And I just feel that the Court should draw attention to the fact that they can
23 have them on and have translation if they wish of the proceedings.

24 MR. PRESIDENT:

25 Thanks a lot for this remark. In fact, we didn't in fact, I mean, what you should have taken --
26 Mr. Walker, their ears are empty, they don't have earphones, yet you swore interpreters in. I mean, is
27 that the duty of the Court to ensure the Tribunal -- to ensure that Accused persons have their
28 earphones on? This is very serious; one of their statutory rights is that they don't understand English.
29 They are entitled, you know, to a translation. Please, can you educate them, you know, on how --
30 even if it comes to the Court, you know, to be rising for this to be done. I think we would rise and
31 make sure that, you know, that they follow particularly the statement, you know, which is going to be
32 made by the Prosecution. And they ought to have followed my statement and others and even the
33 debates, you know, that have been going on. Thank you, Mr. O'Shea.

34 MR. O'SHEA:

35 Yes, thank you, Mr. President. You see, this is a matter of some significance indeed because Your
36 Honour in your introduction Your Honour referred to Article 17 of the Statute and rights of the
37 Accused. Now, I am not sure to what extent my client followed all of that, those matters which you

1 raised. However, I would just like to flag this issue up -- and I say flag this issue up because I am in
2 full agreement with what Your Honour Judge Thompson raises with regard to the issue of prejudice
3 and I see that fully -- but I would like to flag this up because I would like to leave it entirely in Your
4 Honour's hands as to whether this is a preliminary preliminary issue or one which needs to be dealt
5 with later as the other issues which you have mentioned. I am also fully aware of Your Honour's
6 statement that you need to avoid divergencies in these proceedings.

7
8 Now, I need to indicate to this Court that Mr. Gbao has expressed to me that he would like to make a
9 brief statement to this Court. Now, I fully understand that under normal circumstances in a court of
10 law if an accused is represented, then it is the representative that makes statements to the Court and
11 not the accused themselves. However, I would like to draw Your Honours' attention to the fact that
12 the statement which Mr. Gbao makes, I may not be in a position to make, or may have -- may not at
13 least be in the best position to make. And it will be my application, not necessarily now, because Your
14 Honours may wish to proceed with the opening statement of Mr. Crane --

15 JUDGE BOUTET:

16 Mr. O'Shea, you have indicated that your client does not have earphones and therefore may not be
17 able to understand and hear --

18 MR. O'SHEA:

19 He still does not --

20 JUDGE BOUTET:

21 That is why I am raising the issue, so before we move ahead --

22 MR. O'SHEA:

23 Before we move ahead, yes.

24 JUDGE BOUTET:

25 -- and hear what you are saying, so your client does understand clearly what you are saying --

26 MR. O'SHEA:

27 Yes.

28 JUDGE BOUTET:

29 I think we should ensure one, whether or not he does understand, two, if he hears what you are
30 saying, and three, if he needs assistance that we have earphones available for him.

31 MR. PRESIDENT:

32 I know as matter of fact he has always relied on interpreters, so can we rise for about ten minutes,
33 you know, for this problem to be solved, please, because it is very important.

34
35 The Court will rise, please.

36 *(Court recessed from 1047H to 1102H)*

1 MR. PRESIDENT:

2 The session resumes. And yes, Mr. Jordash, you know, we left at a point -- or Mr. O'Shea, I am sorry,
3 Mr. O'Shea, we left at a point where we thought that what you were saying was important to be
4 communicated directly to your client. Can you please -- can you please take that all over again --

5 MR. O'SHEA:

6 Yes.

7 MR. PRESIDENT:

8 -- so that he hears you. And very, very slowly, please, because the interpreters have -- and I would
9 appeal to counsel who have just joined us to go very slowly and audibly because the translators have
10 to take their time to recast what you are saying to the various -- to the respective indigenous
11 languages of *Krio*, *Mende* or whatever. Yes, please.

12 MR. O'SHEA:

13 Yes, thank you, Mr. President.

14

15 Mr. President, at the opening of this session you set out quite an elaborate introduction as to the
16 nature of this Court and the rights of the Accused.

17 MR. PRESIDENT:

18 They don't have their -- the microphones(*sic*), you know. They don't have their microphones.

19 MR. BROWN:

20 Mr. Kallon can follow the proceedings in English and would prefer to do so.

21 MR. PRESIDENT:

22 But this is a problem -- Mr. Kallon can follow the proceedings, this is a problem we have had all along,
23 you know, since initial appearances. The experience of the Court has always been that, "Well, we do
24 not understand English," so we have taken the pains all along since the 15th March 2003 to ensure
25 that there is a translation to their respective indigenous languages. So, I don't know where we stand.
26 If they can understand without the microphones, then let them say, so we can also dispense with the
27 interpreters, you know, if it comes to that.

28 MR. BROWN:

29 I agree this is an appropriate area for the Court's concern. I would think that each accused, after
30 conferring with counsel, should indicate which is the language which he can effectively follow the
31 proceedings and thereafter we resolve the matter. It is an important issue the Court is appropriately
32 involved, I think that perhaps we can do even without the Court recessing is ensure that the Accused
33 is satisfied of the language (*inaudible*).

34 MR. PRESIDENT:

35 All right. Okay, now --

36 MR. O'SHEA:

37 Just to assist Your Honours, I believe there is a means of changing the channel and they can choose

1 whether they wish to listen to English or *Krio*, if that has been demonstrated to them.

2 MR. BROWN:

3 Your Honour, not surprisingly, the Court's wisdom surpasses everyone else's and Mr. Kallon prefers
4 to listen to translation and will do so.

5 MR. PRESIDENT:

6 You see, that's the difficulty we have had all along and this is why we put this infrastructure in place to
7 ensure that we do not violate the Statute as far as they are concerned. Right.

8

9 Yes, Mr. Jordash.

10 MR. JORDASH:

11 Mr. Sesay will sometimes use the translation, sometimes not. He will make his choice as we go
12 along.

13 MR. PRESIDENT:

14 You mean, when he says he will make his choice because, I mean, we do not want -- we do not want
15 you to appear tomorrow, you know, we have violated his statutory rights. So, let him make one option
16 and that is it. We want to go with the option which he has to make so that we are not delayed in the
17 course of the proceedings.

18 MR. JORDASH:

19 We have made it clear what the equipment does; he understands how it works. Sometimes he will
20 wish to listen in English --

21 MR. PRESIDENT:

22 Can we hear from him? Please, let's hear from him. Mr. Kallon, you say --

23 MR. JORDASH:

24 Mr. Sesay.

25 MR. PRESIDENT:

26 Mr. Sesay, yes, Mr. Sesay. Yes, please. In what language would you like to follow the proceedings?

27 THE ACCUSED SESAY:

28 *Krio*, sir.

29 MR. PRESIDENT:

30 Pardon?

31 THE ACCUSED SESAY:

32 *Krio*.

33 MR. PRESIDENT:

34 *Krio*. Mr. Kallon, in what language would you like to follow the proceedings?

35 THE ACCUSED KALLON:

36 *Krio*, *Mende* and the rest of the Sierra Leone languages.

37

1 MR. PRESIDENT:

2 Okay. All right, sit down. Mr. Gbao.

3 THE ACCUSED GBAO:

4 *Krio*, English.

5 MR. PRESIDENT:

6 Please stand up, please stand up, you should stand. You saw others standing, it is good to stand,
7 even the lawyers -- your lawyers when they are addressing the Court, you know, they stand

8 (*The Accused Gbao stands*)

9 THE ACCUSED GBAO:

10 I'm sorry, Your Honour.

11 THE PRESIDENT:

12 No, it's all right, go ahead. Yes, in what language?

13 THE ACCUSED GBAO:

14 (*inaudible*) *Krio* and (*inaudible*)

15 MR. PRESIDENT:

16 Choose one, do you want a translation?

17 THE ACCUSED GBAO:

18 In *Krio*.

19 MR. PRESIDENT:

20 *Krio*, *Krio*. *Krio* and English

21 THE ACCUSED GBAO:

22 Yes, sir.

23 MR. PRESIDENT:

24 Well, if it is in English, you will get us directly. It is when it is in *Krio* they will get it that way. So I
25 would rather that you had the translations, you know, directly into *Krio* from the cabin. Is that all right?

26 That's all right. Okay.

27

28 Now I hope the cabin is aware of this. This said, I hope we have sorted this out.

29

30 Mr. O'Shea, please, we would like you to repeat integrally what you were saying before this issue
31 arose so that your client, you know, gets you very, very clearly.

32 MR. O'SHEA:

33 Yes, thank you, Mr. President.

34

35 Yes, Your Honour made a very comprehensive introduction.

36 MR. PRESIDENT:

37 Mr. Gbao, I don't -- yes.

1 MR. O'SHEA:

2 Your Honour made a very comprehensive introduction on the way in which the jurisdiction of this
3 Court operates and the rights of the Accused under Article 17 and on other matters. And I was
4 indicating to the Court that Mr. Gbao has requested me that he would like to make a brief statement to
5 the Court. I am fully aware of --

6 MR. PRESIDENT:

7 That is an opening statement, a brief opening statement, I suppose, you know, we have to -- it's not
8 just a statement because at this stage he has rights under 84 that this is what concerns us. Whether
9 it is brief or not, you know, is another matter. What statement?

10 MR. O'SHEA:

11 Only that Your Honour has indicated the parameters of what Your Honour believes should be an
12 opening statement and it may be that --

13 JUDGE THOMPSON:

14 May I interrupt?

15 MR. O'SHEA:

16 Yes.

17 JUDGE THOMPSON:

18 It's not -- it's not that we are indicating the parameters. If learned counsel reads 84, it clearly tells you
19 what an opening statement will contain. I think what the learned President was saying that nowhere
20 in Rule 84 is it enunciated that an opening statement is a political statement. And so what we are
21 suggesting is that since this Court functions by the doctrine of equality of arms and the Prosecution,
22 under Rule 84, will only be permitted to make an opening statement relating to the evidence, not to
23 any political ramifications of this trial. It seems that the integrity of these proceedings demand that if
24 the Accused elects to make an opening statement, either in person or through counsel, the Accused
25 must do so or counsel within the parameters of Rule 84. And I would have thought that is a clear
26 position.

27 MR. O'SHEA:

28 Yes, Your Honour.

29 MR. PRESIDENT:

30 But my concern -- my concern is you were on the communication, you know, there are certain things
31 you wanted your client to know or you wanted the Court to know about your client. This is what we
32 would like you to bring up, you know, so that he can follow you directly now that we have the
33 translations and interpretations sorted out.

34 MR. O'SHEA:

35 Yes, yes. This is why -- Your Honour Judge Thompson, this is why it might be difficult to qualify the
36 statement that my client wishes to make as a opening statement. And really he and I are in the hands
37 of the Court and to some extent the hands of the Prosecution because the Prosecution will, of course,

1 have to be heard on --

2 MR. PRESIDENT:

3 Mr. O'Shea.

4 MR. O'SHEA:

5 Yes.

6 MR. PRESIDENT:

7 If it is -- if it is not a statement under 84 --

8 MR. O'SHEA:

9 Yes.

10 MR. PRESIDENT:

11 -- what other statement do the Rules admit can be made at this stage at this point in time?

12 MR. O'SHEA:

13 Well, as Your Honour has rightly pointed out, Your Honour has the right to control the proceedings
14 and under Rule 54 Your Honour can make such rulings as you may feel appropriate for the interests
15 of justice.

16 MR. PRESIDENT:

17 No, we shall not make such a ruling, we shall confine ourselves --

18 MR. O'SHEA:

19 Yes.

20 MR. PRESIDENT:

21 -- to 84 --

22 MR. O'SHEA:

23 Yes.

24 MR. PRESIDENT:

25 -- at this point in time. We know when 54 would apply, but at this point in time we will just want to
26 inform you that we would be calling -- if he wants to make a statement he has to make one under 84.

27 So we don't need to --

28 MR. O'SHEA:

29 Well, may I -- may I be heard for a couple of minutes on that?

30 MR. PRESIDENT:

31 Please, please, you remember -- you see, it is very painful for us to come back to this issue time and
32 again.

33 MR. O'SHEA:

34 Yes.

35 MR. PRESIDENT:

36 I hope you are aware of fact that this Court is supposed to be wrapping up its activities by December
37 2005.

1 MR. O'SHEA:

2 Yes.

3 MR. PRESIDENT:

4 Right. And we know, you know, there is a vast liberty of expression in the Bar and if I made a
5 reference to it, you know, today and to the way we intend to conduct our proceedings, it is because,
6 you know, I wanted us to concentrate on essentials. Essentials are nothing but essentials. So,
7 please can you briefly go to the point and let's be done, please?

8 MR. O'SHEA:

9 Your Honour, the point is this --

10 JUDGE BOUTET:

11 Mr. O'Shea, before you proceed, why should we hear you at this time and before the opening
12 statement of the Prosecution? Is it because you are intending to suggest to the Court that your client
13 should be heard now?

14 MR. O'SHEA:

15 Well, as I said at the outset, but I did not repeat when the headphones had been put on, I am actually
16 flagging this issue up. I agree with the statement of his Honour Judge Thompson with regard to the
17 issue of prejudice in the opening statement. I wanted to leave it in the hands of Your Honours to
18 consider whether if this issue touched on the rights of the Accused in any way, whether it should be
19 considered as a pre-preliminary issue or whether it should be an issue which comes after the
20 Prosecution opening statement. I fully understand the Court's position on this and I am not going to
21 attempt to dictate to the Court when I should elaborate this point. My intention or my initial intention at
22 this stage is to flag it up. If you would prefer me to address this issue again after Mr. Crane has made
23 his statement, I will do so.

24 JUDGE BOUTET:

25 The normal process would be after the Prosecution has made the opening statement and we will turn
26 to each and every Accused and ask them if they wish to make an opening statement at this time
27 reminding them that they don't have to. If they do that now, they will be precluded to making an
28 opening statement after the case for the Prosecution will be closed. So that is the normal process, so
29 if you have representation, I suggest it might be better to be made after the opening statement of the
30 Prosecution than now.

31 MR. O'SHEA:

32 Well, if that is Your Honours' views, then I will sit down --

33 JUDGE THOMPSON:

34 I am inclined -- I would be inclined to have him flag it up and that would advance the process here and
35 expedite it and advance the course of justice.

36 MR. O'SHEA:

37 Well, Your Honour, I am glad you raise that because, Mr. President, you raised the issue of the

1 mandate of this Court and I, as counsel, would not make this submission unless there were very
2 strong reasons for it. I -- I know that there is no direct link between the Court and my client, so my
3 client is not in a position to directly put Your Honours in the picture, I can only do that and I have to do
4 that within the parameters of my mandate as counsel with my duty to the Court

5 JUDGE THOMPSON:

6 And as an officer of the Court.

7 MR. O'SHEA:

8 As an officer of the Court indeed. So, I would not raise this kind of request lightly and it will be my
9 submission that it will, in fact, possibly assist the expediency of these proceedings, given what my
10 client has told me, if he is exceptionally permitted to make such a brief statement and I will --

11 MR. PRESIDENT:

12 No, no, no, it is not exceptionally, Mr. O'Shea, the Court has no objection to your client making a
13 statement.

14 MR. O'SHEA:

15 Yes.

16 MR. PRESIDENT:

17 All the Court is saying is that this statement has to be in conformity with the provisions of Article -- of
18 Rule 84.

19 MR. O'SHEA:

20 Yes.

21 MR. PRESIDENT:

22 That is all the Court is -- we are guided by legality and this is what we are saying. And I told you, it's a
23 statement whether you say -- you said a brief statement, the Prosecutor's statement last time, you
24 know, lasted over an hour. If he wants to make a statement, you know, which is in conformity with 84,
25 for 30 minutes or 15 minutes, for one hour, that is entirely, you know, his business. We are here for
26 that to accord him his rights. So, I would like you to remove that adjective of brief, brief, brief, well that
27 is it -- it is for him to determine, you know, how the length of his statement and it is for the Court,
28 under 84, to determine whether the statement is getting unnecessarily long for it to be curtailed, that is
29 it.

30 MR. O'SHEA:

31 Yes.

32 JUDGE THOMPSON:

33 But just one point before you rest this matter. Is there anything problematic about an opening
34 statement from your client within the parameters of Rule 84?

35 MR. O'SHEA:

36 Yes.

37

1 JUDGE THOMPSON:

2 I see, so in other words your client if we want, to use a familiar colloquialism, would like to get the best
3 of both worlds, in other words, opt out of 84 but still make a statement to the Court. Do I get you right
4 or am I misconstruing it? In other words, the rights guaranteed by the Rules and the Statute, for some
5 reason he wants to do something that do not -- does not fall within that -- the parameters of the
6 guaranteed rights, so in other words, probably asking this Court to ignore these Rules and
7 accommodate him, a kind legal accommodation or something?

8 MR. O'SHEA:

9 Well, Your Honour, yes. And if I may just simply submit that there are occasions, even if there are a
10 set of rules governing the Court, there are always occasions when judges can, if they feel that it might
11 be in the interests of expediency, exercise discretion under their general powers.

12 JUDGE THOMPSON:

13 But to promote the aims of justice.

14 MR. O'SHEA:

15 Exactly, exactly.

16 JUDGE THOMPSON:

17 Nothing else, not other aims, but the aims of justice.

18 MR. O'SHEA:

19 Well, in any event, it seems as though the position of Your Honours is that you would prefer to deal
20 with this issue at a later stage in any event and, therefore, perhaps I should sit down now and raise
21 the issue at the time of the Defence opening statements and we will see where we are.

22 MR. PRESIDENT:

23 Right, thank you. Thank you. I think it is a good option. Yes, please go ahead.

24 MR. CLAYSON:

25 Could I return Your Lordships to the issue of our legal assistant? I understand it may be the case that
26 the Prosecution team does have a number of legal assistants in court in robes. If Your Lordships
27 consider that acceptable, then may we also ask for the same facility? Our legal assistant does now
28 have robes available.

29 MR. PRESIDENT:

30 We shall address that issue at an appropriate time. Let us -- we shall address that issue at an
31 appropriate time.

32

33 Let us proceed with the Prosecutor's statement. Mr. Crane, please you have the --

34

35 Yes, the Court is listening to you, Mr. Prosecutor.

36 MR. CRANE:

37 Thank you, Your Honour.

1 Your Honours, this opening, as we have done in the past, will be in two parts.

2 MR. PRESIDENT:

3 And before we continue, I would like to make the same restrictions that I made on -- at the opening of
4 the first trial, and that is that the content of this statement should be bereft of anything political. We
5 want to listen to you on the facts and the evidence which you intend to adduce to support your
6 charges. And that saying this not only to you at this time, but also to the Defence when the time
7 comes.

8 MR. CRANE:

9 We are certainly mindful of Rule 84, Your Honour, and the arguments, therefore, this opening
10 statement reflects facts.

11

12 As we have done in the past, we will do it in two parts: I will set the stage of the conflict, outline the
13 general crimes, allegations, charges and how we will prove this case; and then turn it over to
14 Mr. Abdul Tejan-Cole to continue reviewing the horrific crimes we allege were caused by the Accused
15 in this joint indictment.

16

17 May it please the Court, this is a tale of horror, beyond the gothic into the realm of Dante's inferno.
18 They came across the border, dark shadows, on a warm spring day, 23 March of 1991. Hardened
19 rebels trained by outside actors from Liberia, Libya and Burkino Faso. These dogs of war, these
20 hounds from hell, unleashed by cynical --

21 MR. BROWN:

22 I object. Objection. I object, your Honour.

23 MR. CRANE:

24 Internal and external criminal actors --

25 MR. PRESIDENT:

26 You will limit -- you will limit -- your objection is sustained. You will limit your observations to the facts.

27 MR. CRANE:

28 May I be heard on this, Your Honour?

29 MR. PRESIDENT:

30 Please, to the facts -- I am not interested in knowing, you know, whether they were trained in Libya or
31 what have you, so please limit your observations to the facts --

32 MR. CRANE:

33 Your Honour.

34 MR. PRESIDENT:

35 -- which intend to prove the case. Nothing political, please.

36 MR. BROWN:

37 The reference to dogs of war, my client -- that may be a metaphor -- I find that objectionable.

1 MR. PRESIDENT:

2 Objection is sustained.

3 MR. CRANE:

4 Your Honour, may I be heard on this point? I am arguing the facts.

5 MR. PRESIDENT:

6 Go ahead, we are listening to you, Mr. Crane, we are listening to you.

7 MR. CRANE:

8 This is an opening statement, this not a presentation of evidence.

9 MR. PRESIDENT:

10 Which must respect the provisions of Article 84 of the Rules of Procedure and Evidence.

11 MR. CRANE:

12 And I am certainly aware of that, Your Honour.

13 MR. PRESIDENT:

14 Right, go ahead, Mr. Crane.

15 MR. CRANE:

16 But I will state the facts.

17
18 These rebels consisted of Sierra Leoneans and Liberians were assisted by Libyan Special Forces.

19 Among their goals was the diamond fields of eastern Sierra Leone. Their motive: power, riches, and
20 control in furtherance of a joint criminal enterprise that extended from West Africa north into the
21 Mediterranean Region, Europe, and the Middle East. Blood diamonds are the common thread that
22 bound together this criminal enterprise. The rule of the gun reigned supreme.

23
24 Approximately 250 armed members of the Revolutionary United Front, or the RUF, were the initial
25 invasion force backed up by members of the National Patriotic Front for Liberia, NPFL, led by Charles
26 G. Taylor. This invasion force was under the command of Foday Sankoh.

27
28 A few weeks earlier, on 27 February 1991, at the planning conference for the invasion held in
29 Gbarnga, Liberia, Foday Sankoh had been delighted with the initial overall plan, this blueprint of death
30 and destruction, and he unconditionally promised to work with the NPFL training command to ensure
31 professional and tactical military training of his forces. Also, at this fateful meeting, Charles Taylor
32 told Sankoh to recruit through involuntary conscription any and all able-bodied men and women, boys
33 and girls, within captured areas. Sankoh was told by Taylor to train them and make them part of the
34 fighting forces of the RUF -- and this is important -- those who refused to be deemed and treated as
35 enemies of the revolution.

36

37 At this meeting on 27 February, Charles Taylor appointed Benjamin Yeaten and others to be the ones

1 to initially go into Sierra Leone. Charles Taylor told Foday Sankoh that Benjamin Yeaten was his
2 personal representative with responsibility for bringing back all the diamonds and gold that would be
3 mined from the Kono District as a way to help finance the war about to be started. Taylor also told
4 Sankoh that diamonds and gold would be forwarded to Burkino Faso and Libya to pay for additional
5 weapons, ammunition, food and other supplies. The initial joint criminal enterprise was thus laid out
6 for all to understand.

7
8 To show the extent of the detailed planning around this joint criminal enterprise we allege that those
9 sitting around the planning table in Gbarnga that sad and tragic day included not only Sierra
10 Leoneans, but also Liberians, to include: Isaac Mussah, NPFL Battle Front Commander; Oliver
11 Varney, NPFL War Propaganda Advisor; Oliver Council, NPFL Deputy Training Commandant; Grace
12 Beatrice Minor, NPFL Political Advisor; Brigadier John Tarnue, NPFL training Commandant; and Joe
13 Mulbah, NPFL Information Officer. Apart from Foday Sankoh, another Sierra Leonean was sitting at
14 the table, Augustine Gbao, one of the indictees in this war crimes trial.

15
16 The military training was done in Liberia at Camp Jackson Maama, a former artillery base in Bong
17 County. The training, done under the direction of Brigadier Tarnue, was completed by Special Forces
18 from Libya and Burkino Faso.

19
20 As these forces stepped across the border, they ignited a fatal spark setting off a brush fire that
21 consumed an entire nation and people, threatening the peace and security of all of West Africa. The
22 acrid smell of this smoke of rebellion and terror began to permeate into the eastern and southern
23 provinces. On 27 March at Bomaru, then into Koidu in the Kailahun District; and, one day later, 28
24 March, the Pujehun District across Mano River into Zimmi.

25
26 The Revolutionary United Front, the infamous RUF, was backed by a wide-ranging joint criminal
27 enterprise that had little political motive other than to assist in the overall takeover of resource rich
28 areas of West Africa by cynical criminal actors, war lords and heads of state who had in their personal
29 and individual capacities operated together for decades in a dark corner of the world, a world without
30 law and accountability. This joint criminal enterprise was an extension of individuals who manipulated
31 the institutions, assets and governmental structures for their own personal criminal gain.

32
33 It is important to note at this juncture that the Republic of Sierra Leone at the time was no paradise.
34 The history of Sierra Leone has been itself replete with coups, corruption, and failed governments.
35 No one here today will be saying that the system was working. At the time there was rightfully a
36 building resentment against the current government. We are not going to question whatever initial
37 politics surrounded the RUF. We are going to show, however, that this abuse of a political process

1 and the discontent of the citizens of Sierra Leone was a mask for these actors' own criminal purposes.
2 This trial is not, cannot be, about this subterfuge of frustrated political aspirations, but about war
3 crimes, the crimes against humanitarian.

4
5 Cruelly led by Charles Taylor, Samuel Bockarie and Foday Sankoh, these war crimes indictees who
6 now stand before this Tribunal, before this country, before mankind to face justice, were part of this
7 union, this joint criminal enterprise. Issa Sesay, Battle Field Commander and leader of the RUF and
8 an AFRC/RUF Junta member; Morris Kallon, Battle Field Commander and AFRC/RUF Junta member;
9 and Augustine Gbao, Overall Security Commander of AFRC/RUF and senior RUF commander of
10 Kailahun District and the Makeni area.

11
12 These were the leaders after 1996, the commanders of an army of evil, a corps of destroyers and a
13 brigade of executioners bent on the criminal takeover of Sierra Leone, once the Athens of West
14 Africa. Today, due to these indictees, a sodden backwater, marred and broken, lapping against the
15 shores of civilisation. Ruin was their motto, and destruction was their creed.

16
17 Throughout this war crimes trial against Sesay, Kallon and Gbao, the phantoms of the deceased
18 indictees, Foday Sankoh and Samuel Bockarie, will be ever present in this hall of justice. Additionally,
19 Charles Taylor would be sitting next to these accused war criminals today had he been turned over to
20 this tribunal for a fair trial. Their alleged crimes against humanity cannot justly or practically be
21 ignored, as they were the handmaidens to the beast, the beast of impunity that walked this burnt and
22 pillaged land.

23
24 Today, before you, these indictees --

25 MR. CLAYSON:

26 I am sorry, again I am going to object to these (*overlapping microphones*) emotive languages --
27 language being used. The Accused are --

28 MR. PRESIDENT:

29 I am going to (*microphone not activated*).

30
31 You can sit down. Yes, Mr. Clayson.

32 MR. CLAYSON:

33 The objection is to the incredibly -- the objection is to incredibly emotive and inappropriate language
34 being used, despite Your Honour's earlier ruling and guidance to the Prosecution.

35 MR. PRESIDENT:

36 The language -- he is outlining the evidence. He is outlining the evidence. Mr. Crane, you can go on,
37 the objection is overruled.

1 MR. CRANE:

2 Thank you, Your Honour.

3

4 Today, before you, these indictees, Sesay, Kallon and Gbao, are charged with crimes against
5 humanity, violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II and
6 other serious violations of international humanitarian law. All in violation of Articles 2, 3 and 4 of the
7 Statute of the Special Court.

8

9 We generally allege there was a state of armed conflict within Sierra Leone. That the organised
10 armed factions in this conflict included the Revolutionary United Front, the Civil Defences Forces and
11 the Armed Forces Revolutionary Council.

12

13 Initially the RUF led by Foday Sankoh was founded in 1988 or 1989 in Libya and organised armed
14 operations began in Sierra Leone, as I have said, in March of 1991. During the ensuing armed
15 conflict the RUF forces were also referred to as the "RUF," "Rebels," and "People's army."

16

17 On 30 November 1996 Sankoh signed a peace agreement with the President of Sierra Leone which
18 brought a temporary cessation to active hostilities which were shortly thereafter recommenced by the
19 rebel forces.

20

21 The AFRC was founded by members of the armed forces of Sierra Leone who seized power from the
22 elected government by a coup d'etat on 25 May 1997. Soldiers of the Sierra Leonean army, the SLA,
23 comprised the majority of the AFRC membership led by the indictee, Johnny Paul Koroma, who is
24 presently at large.

25

26 It must be noted that we will show clearly that there is a key and important linkage and union between
27 the RUF and the AFRC factually that began in the summer of 1997 lasting throughout the rest of the
28 conflict. The RUF and the AFRC in large measure became one and the same. The facts and details
29 of this campaign of destruction perpetrated by these two organisations are forever intertwined in this
30 macabre dance of death. Evidence will and must be presented in this criminal trial to prove the war
31 crimes and crimes against humanity perpetrated by both of these linked units were, in fact, done by
32 Sesay, Kallon and Gbao, along with other indictees.

33

34 Shortly after the 25 May 1997 coup, Johnny Paul Koroma invited Foday Sankoh and the RUF to join
35 the AFRC. This was accepted by Sankoh and the AFRC and the RUF acted jointly thereafter. The
36 AFRC/RUF were referred to as "Junta," "rebels," "soldier," "SLA," "ex-SLA," and "People's Army."

37 After the coup, a governing body was created called the Supreme Council which included the leaders

1 of both the RUF and the AFRC.

2
3 About 14 February 1998, after the Junta was forced from power on behalf of the ousted government,
4 this AFRC/RUF alliance continued. The facts and the evidence that will be offered show that this
5 alliance of the AFRC/RUF committed these crimes, led by the indictees before you today in the dock.
6 On 7 July 1991 at Lome, Togo, a peace agreement was signed by the President of Sierra Leone and
7 Foday Sankoh once again. However, the hostilities sadly continued, the AFRC/RUF ignoring the
8 peace.

9
10 Sesay, Kallon and Gbao and all the members of the organised armed factions engaged in the fighting
11 within Sierra Leone where all the offences were committed after 30 November 1996, were required to
12 abide by the International Humanitarian Law and the laws and customs governing the conduct of
13 armed conflicts, including the Geneva Conventions of 12 August 1949 and the Additional Protocol II to
14 the Geneva Conventions.

15
16 These acts and omissions charged in this joint indictment as crimes against humanity were committed
17 as part of a widespread or systematic attack directed against the civilian population of Sierra Leone,
18 among other general allegations.

19
20 At all times relevant to this indictment Issa Hassan Sesay occupied various and key leadership
21 positions within the AFRC/RUF forces to include the RUF Area Commander, Battle Group
22 Commander and eventually Battle Field Commander of the RUF, subordinate these various times
23 only to Samuel Bockarie, and eventually subordinate only to the leader of the RUF, Foday Sankoh or
24 the leader of the AFRC, Johnny Paul Koroma. After Sankoh's incarceration, Sesay directed all RUF
25 activities in Sierra Leone.

26
27 Morris Kallon, at all times relevant to this indictment also was a senior officer in the RUF, Junta, and
28 AFRC/RUF forces, to include being a member of the Junta governing body. During the pertinent
29 times relevant to this joint indictment Kallon served as a Deputy Area Commander, Battle Field
30 Inspector, Battle Group Commander under Sesay, Sankoh and Koroma, and eventually on or about
31 June 2001 becoming RUF Battle Field Commander subordinate to Sesay who was chosen by Sankoh
32 to have direct control over all RUF operations and to the AFRC leader, Johnny Paul Koroma.

33
34 During the times relevant to this joint indictment Augustine Gbao was a senior officer and commander
35 within the RUF and AFRC/RUF forces. Gbao joined the RUF in 1991 and was present at the planning
36 session for the invasion of Sierra Leone. During his long tenure with the RUF and the AFRC/RUF,
37 Gbao was Commander of the RUF Internal Defence Unit and in charge of all RUF Security Units, a

1 senior RUF Commander in the Kailahun District, subordinate only to RUF Battle Field Commander
2 and the leader of the RUF, Foday Sankoh and the leader of the AFRC, Johnny Paul Koroma. Later,
3 Augustine Gbao, to the end of the conflict in January of 2002, was the Overall Security Commander in
4 the AFRC/RUF forces subordinate only to the leader of the RUF and the AFRC, Sankoh and Koroma
5 respectively. Also, during this time frame, Gbao was the Joint Commander of AFRC/RUF forces in
6 the Makeni area, subordinate only to the RUF Battle Field Commander and again the leaders of the
7 RUF and AFRC.

8
9 In these respective key, essential, and leadership positions referred to above, Sesay, Kallon and
10 Gbao, individually, or in concert with others, and Foday Sankoh, Johnny Paul Koroma, Samuel
11 Bockarie, also known as Maskita; Alex Tamba Brima, also known as Gullit; Brima Bazzy Kamara, also
12 known as Bazzy; Santigie Borbor Kanu, also known as Five-Five; and other superiors in the RUF
13 Junta, and the AFRC/RUF forces, exercised authority, command and control over all subordinate
14 members of these forces to include acting in concert with Charles Ghankay Taylor, President and now
15 former President of Liberia. These indictees, along with others above, shared a common plan,
16 purpose or design, a joint criminal enterprise, which was to take any actions necessary to gain and
17 exercise political power and control over the territory of Sierra Leone, in particular the diamond mining
18 areas. The natural resources of Sierra Leone, mostly the diamonds, were to be provided to persons
19 outside Sierra Leone in return for assistance in carrying out the joint criminal enterprise.

20
21 This joint criminal enterprise included gaining and exercising control over the population of Sierra
22 Leone in order to prevent or minimise resistance to their geographic control, and to the population to
23 provide support to the members of the joint criminal enterprise. For this, Sesay, Kallon, Gbao, by their
24 acts or omissions are individually criminally responsible pursuant to Article 6.1 of the Statute for the
25 crimes alleged in the joint indictment.

26
27 These crimes, each of them planned, instigated, ordered, committed or in whose planning,
28 preparation or execution each indictee otherwise aided and abetted, or which crimes were within a
29 joint criminal enterprise in which each indictee participated or were a foreseeable -- reasonably
30 foreseeable consequence of the joint criminal enterprise in which each indictee participated.

31
32 In addition or in the alternative, pursuant to Article 6.3 of the Statute, Sesay, Kallon and Gbao while in
33 their positions of superior responsibility and exercising effective control over their subordinates, are
34 individually criminally responsible for the crimes that are alleged in this joint indictment. Each of these
35 indictees is responsible for the criminal acts of his subordinates in that he knew or had reason to know
36 that the subordinate was about to commit such acts or had done so and each indictee failed to take
37 the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

1 Sesay, Kallon and Gbao conducted armed attacks throughout the territory of Sierra Leone, targeting
2 civilians, humanitarian assistance personnel, and peacekeepers. These attacks were carried out
3 primarily to terrorise the civilian population or to punish the population for failing to provide sufficient
4 support to the AFRC/RUF, or providing support to pro-government forces. These attacks included
5 unlawful killings, physical and sexual violence against civilian men, women and children; abductions
6 and looting and destruction of civilian property. Many civilian saw these crimes committed. Other
7 victims returned to their homes or places of refuge only to find the results of these crimes: dead
8 bodies, mutilated victims, and looted and burnt property.

9
10 As part of this campaign of terror and punishment the AFRC/RUF routinely captured and abducted
11 members of the civilian population. Captured women and girls were raped, many of them were
12 abducted and used as sex slaves and in forced marriage arrangements. Men and boys who were
13 abducted were also forced -- used as forced labour, some of them held captive for years. Many
14 abducted boys and girls were given combat training and used in active fighting. AFRC/RUF also
15 physically mutilated men, women and children including amputations of hands, feet, breasts, buttocks,
16 lips, ears, noses, genitalia and carving A-F-R-C or R-U-F on their bodies.

17
18 A witness will testify that while hiding in the Malama bush near Batmis she could hear the rebels in
19 Batmis shout out threats to those in hiding. As it became light the witness was captured by a rebel.
20 He hit her, pushed her down on the ground and raped her while another rebel looked on. Afterwards,
21 other rebels armed with guns, knives and cutlasses rounded up the witness, her husband and other
22 Sierra Leoneans. They were taken into Batmis where the witness was forced to pound fundeh, which
23 is millet. Other civilians were forced to carry water. Some managed to escape. Those who remained
24 were punished. The rebel commander ordered the witness's husband to be killed. The witness will
25 testify she watched while her husband was hacked to death with a cutlass. The rebels then took hold
26 of her right hand and with four long strokes of a machete cut it off. Then they chopped off her left
27 hand telling her to go to Kabbah, who would give her hands.

28
29 For these crimes of horror, these acts of destruction, Sesay, Kallon and Gbao as leaders and
30 commanders within the RUF, Junta, AFRC/RUF, are charged with 18 counts of war crimes and
31 crimes against humanity. These charges are: terrorising the civilian population and collective
32 punishments. Count 1, acts of terrorism, a war crime; Count 2, collective punishments, a war crime;
33 Unlawful killings, Count 3, extermination, a crime against humanity; Count 4, murder, a crime against
34 humanity; Count 5, violence to life, health and physical or mental well-being of persons, in particular,
35 murder, a war crime; Sexual violence, Count 6, rape, crime against humanity; Count 7, sexual slavery
36 and other forms of sexual violence, a crime against humanity; Count 8, other inhumane acts, a crime
37 against humanity; Count 9, outrages upon personal dignity, a war crime.

1 Women were especially singled out for over a decade; degraded, enslaved, mutilated, assaulted,
2 sodomised, and forced to live a life in the bush. We will show that this condition, these forced
3 marriage arrangements, were and are inhumane acts and should forever be recognised as a crime
4 against humanity. Sadly, even today, there are women and girls still in the bush out there in these
5 forced marriage arrangements. It is now time to cry out to the world about what took place in
6 SALONE regarding sexual violence. These despicable degradations should be the last time they are
7 committed, for future war lords must know the price they will pay.

8
9 Physical violence, Count 10, violence to life, health and physical or mental well-being of persons, in
10 particular, mutilation, a war crime; Count 11, other inhumane acts, a crime against humanity; Use of
11 child soldiers, Count 12, conscripting or enlisting children under the age of 15 into armed forces or
12 groups or using them to participate actively in hostilities and other serious violations of international
13 humanitarian law.

14
15 There is in Sierra Leone an entire lost generation of children, lost souls due to their physical and
16 psychological torment. No child should be forced into situations as to cause them to mutilate, maim,
17 rape and murder. This lost generation, victim or perpetrator, are overall victims of this joint criminal
18 enterprise that was led by Sesay, Kallon and Gbao among others. Children will come before you and
19 testify in effect, "I killed people. I am sorry, I didn't mean it."

20
21 Abductions and forced labour, Count 13, enslavement, a crime against humanity. A witness from
22 Kono District will testify before this Tribunal that he was forced to mine diamonds for the RUF near
23 Tombodu. The conditions in these mines are beyond description and something out of the dark ages.
24 They were tied up and forced to work 12-hour shifts at gunpoint and forbidden to speak. They were
25 not paid or fed. The only sustenance was bananas and other fruit they could find. The witness will
26 state that he saw at least 100 people brought to Tombodu each week in chains. This constant
27 replenishment of labour was necessary as those who became ill or too weak to work were shot.

28
29 Who did the shootings? They were often children from RUF Small Boys Units. These children as
30 young as 11 years of age were armed with AK-47s. On order they would kill. The bodies were
31 dumped into the water. We will show that the very top of the RUF command was aware of these
32 conditions. The Prosecution will show that Issa Sesay, the Battle Field Commander of RUF was seen
33 repeatedly in Tombodu collecting packages of diamonds in front of the emaciated and subjugated
34 civilians who mined under the barrel of an AK-47. The rule of the gun prevailed in Kono.

35
36 Looting and burning, Count 14, pillage, a war crime; attacks on UNAMSIL personnel, Count 15,
37 intentionally directing against personnel involved in humanitarian assistance or peacekeeping mission

1 and other serious violation of international humanitarian law; Count 16, for the unlawful killings,
2 murder, a crime against humanity; Count 17, violence to life, health and physical or mental well-being
3 of persons, in particular, murder, a crime against humanity. Count 18, for the abductions and holding
4 as hostage, taking of hostages, a war crime.

5
6 This case will be proven by witnesses, again the brave and courageous people of Sierra Leone who
7 stepped forward to meet and slay the beast of impunity with the righteous sword of the law.

8 Additionally, we will bring in members of the inner circle of this joint criminal enterprise who will testify
9 against these war crimes indictees. In this situation, in some ways, we will have to dance with the
10 devil to put into proper context the complete, yet truthful picture. They too will come forward to face
11 the good people of Sierra Leone and assist them in returning the rule of law to their country.

12
13 Our approach will focus on themes to highlight the widespread and systematic nature of the crimes.
14 Our evidence will show time and time again that these indictees criminally gutted an entire nation.
15 Themes of terrorising a populace, routine hackings and burnings to death; unlawful killings from
16 Freetown to Bo, Kenema to Bombali, Kono to Kailahun, Koinadugu to Port Loko; widespread sexual
17 violence against women and girls to include brutal multiple rapes and forced marriages; mutilations,
18 conscription and abduction of children into the fighting forces of the AFRC/RUF; forced labour in the
19 diamond mines; widespread taking and destruction by burning of civilian property; and attacks on
20 peacekeepers and humanitarian assistance workers.

21
22 A tale of horror follows and there will be many, many more tales to follow in the months ahead.

23
24 In 1999, another witness in Koidu will testify that when RUF and AFRC rebels drove the *Kamajors*
25 from the town they began to burn the houses of Koidu. The witness and his family fled to a nearby
26 village. The RUF rebels followed them in a number of trucks filled with young women. The rebel
27 commander took the 16 year old sister of the witness. He declared loudly that he was going to take
28 her as his wife. The witness tried to protect his younger sister, but was told he would be killed. The
29 rebels left with around ten girls from the town, the youngest being 12. His younger sister was kept by
30 the rebels for four long years.

31
32 The witness will testify further that upon hearing the ECOMOG troops had taken Koidu Town the
33 family decided to return, walking for four days. When they reached Penduma village it was
34 overwhelmed with armed RUF rebels. Twenty civilians who attempted flee were shot dead. The rest
35 of the survivors were grouped together and told to wait for their commander. Upon arrival the
36 commander addressed the frightened civilians saying to them, "So you are the supporters of Tejan
37 Kabbah." They were separated into three groups the witness will declare: first, pregnant women,

1 suckling mothers and children; second, men and boys; third, females, teenagers to grandmothers.
2 Twenty-five men and women were picked out at random from the last two groups. The commander
3 gave the order, "Una take them. Make una burn dem." These civilians were placed in a house which
4 was set on fire by the rebels. All of them were burnt alive while the others were forced to listen to
5 their agonised screams.

6
7 The commander then pointed at the group of females. There were around 20. The wife of the
8 witness was one of them. The women were raped in front of everyone. The witness will testify that
9 he and his children were forced to watch while his wife and their mother was raped by eight different
10 RUF rebels before she was stabbed to death with a bayonet by the last RUF rapist. Why does he
11 recall their being eight rapists, he will be asked, because the witness had to count out loud the
12 number as they tore into his wife? Two other women were likewise gang raped and then murdered.
13 Note, while this is taking place, 25 human beings are roasting to death in a burning house, their cries
14 adding to this true living hell on earth.

15
16 Fifteen of the men were then marched away by the rebels armed with knives. Two who attempted to
17 run were shot. The remaining 13 had their throats cut.

18
19 Incredibly the witness and eight others still remained. Each of them was called forward and had a
20 hand cut off. When the witness attempted to retrieve his severed hand he was struck in the back with
21 a bayonet. The commander of the rebels told the witness to go to Tejan Kabbah.

22
23 Murder, rape, mutilation and pillage, a slaughter in Penduma that captures the essence of the war
24 crimes and crimes against humanity perpetrated by the RUF and AFRC overall led by such
25 commanders as Sesay, Kallon and Gbao.

26
27 Raphael Lemkin, the distinguished professor of international law reflecting upon the horrors of war
28 crimes and crimes against humanity committed during World War II, stated that he could not believe
29 the reality of the intent behind the crimes themselves. They seemed so much against nature, against
30 logic, against life itself.

31
32 The reality of these crimes done in Sierra Leone that were committed by the RUF are so much against
33 nature, against logic, against life itself. These crimes in our joint indictment against Sesay, Kallon and
34 Gbao certainly defy any logic, any reason; the purely evil of these deeds of destruction are so horrific,
35 terrible and devastating in their scope, words in any language do not describe the offences committed
36 by these indictees. We are in the presence of crimes beyond description, but our witnesses, the
37 people of Sierra Leone, will testify in their proud, yet humble, way and relive these crimes for this

1 Tribunal.

2
3 Ironically, it must be noted, however, that the RUF coined the names of military operations which in
4 some ways do capture the core meaning of these war crimes, "Operation Pay Yourself," and
5 "Operation No Living Thing," among others. As a commander what signal you are sending, what are
6 you telling your soldiers? Loot, burn, terrorise, punish and murder, among other inhumane acts. Ruin
7 was their motto and destruction was their creed.

8
9 In a cable from London to the World Jewish Congress in New York, late in 1942, after seeing the
10 evidence of the Holocaust in Europe, Ignacy Schwarzbart declared in chilling words, "Believe the
11 unbelievable." "Believe the unbelievable."

12
13 I will close with another tragedy in this ten year long tale of horror. It involves a child. He lived in a
14 village in the Kono District. They were told the rebels were going to attack. The witness will testify
15 that he fled into the bush with his parents and brother, but were caught by the RUF. The rebels took
16 his younger brother and himself to Kaiama along with 13 other boys. The rebels lined the 15 children
17 up and offered them a choice: Join one line if they wanted to be a rebel, another line if they wanted to
18 be freed and allowed to go home. All 15 of these boys -- and they were just boys -- joined the line for
19 freedom. It was the wrong choice. They were accused of sabotage to the revolution. To keep them
20 from escaping each was held down screaming, one by one had AFRC and/or RUF carved into their
21 chests with the blade of a sword. The witness was now just marked property and treated as such. He
22 will be in this very chamber to tell you his horror story and show you his scarred chest that to this very
23 day bears the letters A-F-R-C R-U-F.

24
25 What took place in Salone marks the limits of our language to communicate and falls outside the
26 realm of expression. However, we will attempt to do so, one witness at a time, by the dozens, to
27 show how the beast of impunity fed on SALONE. You most certainly will, beyond reasonable doubt,
28 believe the unbelievable international crimes committed by Sesay, Kallon and Gbao.

29 MR. PRESIDENT:

30 Mr. Crane, just a minute. Yes, Mr. O'Shea, you are on your feet, what is it? Can you sit down,
31 Mr. Crane, please?

32 MR. O'SHEA:

33 Mr. President, Mr. Crane. I do apologise for interrupting Mr. Crane's opening. I don't know how much
34 longer it is going to be, but my client needs to relieve himself quite desperately, it would seem.

35 MR. PRESIDENT:

36 Pardon me.

37

1 MR. O'SHEA:

2 He needs to relieve himself quite desperately, it would seem.

3 MR. PRESIDENT:

4 I see. I see. Mr. Crane, are you rounding – or are you wrapping up?

5 MR. CRANE:

6 Your Honour, I am just finishing up my part.

7 MR. PRESIDENT:

8 Please, if you will be long we had better rise.

9 MR. CRANE:

10 Not at all. In fact --

11 MR. PRESIDENT:

12 Okay. Can you wrap up. I know your statement is in two stages.

13 MR. CRANE:

14 Yes. I was just about to say will be followed by, if I may finish my last paragraph --

15 MR. PRESIDENT:

16 Yes, please go ahead.

17 MR. CRANE:

18 Thank you. I would suggest then we take a break and we could finish up with part two, with due
19 respect.

20

21 What took place in Salone marks the limits of our language to communicate, it falls outside the realm
22 of expression. However, we will attempt to do so one witness at a time, by the dozens, to show how
23 the beast of impunity fed on Sierra Leone. You most certainly will, beyond reasonable doubt, believe
24 the unbelievable international crimes committed by Sesay, Kallon and Gbao.

25

26 After the break, Your Honour, I will be followed by Mr. Abdul Tejan-Cole from Sierra Leone, who will
27 give the second part of this opening statement.

28 MR. PRESIDENT:

29 Thank you. Ladies and gentlemen, the Court will rise to allow Mr. O'Shea's client to fulfil the call of
30 nature.

31

32 The Court will rise for ten minutes.

33 *(Court recessed from 1207H to 1224H)*

34 MR. PRESIDENT:

35 We are resuming this session. The Prosecution, Mr. Crane, yes, yes, you may make --

36 MR. O'SHEA:

37 Mr. President.

1 MR. PRESIDENT:

2 Yes, Mister --

3 MR. O'SHEA:

4 Before my learned friend takes the floor, I personally refrained from interrupting Mr. Crane, a course
5 taken by my learned friends on this side of the Bar. However, I would like to place a formal objection
6 to certain aspects of that opening statement which, in my submission, clearly fall outside the rule that
7 Your Honour has mentioned. The matters refer to before the 30th of November 1996, the expression,
8 "army of evil," the expression, "dance with the devil," the expression, "gutted an entire nation," the
9 expression, "macabre dance of death," the expression, "ruin was their motto, destruction was their
10 creed," and, most significantly for my client, the reference to the 7th July 1999 and the Lome Peace
11 Agreement, which for our client is their biggest bone of contention. Therefore, all I do at this stage,
12 Your Honours, is I request that when the Defence make their opening statements, that they be given
13 the same degree of latitude as the Prosecution has been given in this -- on this occasion.

14 JUDGE THOMPSON:

15 Learned Counsel, let me tell you how I am looking at the law here. Unless you can point to some
16 legal authority whereby the Bench, in listening to the opening statement from the parties, is given
17 some kind of latitude to edit the opening statements, in other words, apart from the requirement that
18 the statement must conform to Rule 84. If you are saying that those passages are objectionable,
19 which, of course, I am not suggesting that we can't argue about that, would it not be proper to look at
20 the issue from the perspective of the composition and the ability and the capability of the Tribunal of
21 fact. I would readily, as a lawyer, agree with you that some parts of the opening statement may well
22 be using language of an emotive nature, in other words, a little on the high side from an emotive
23 perspective. But wouldn't that be more relevant in the context of a jury trial where jurors may well be
24 carried away by the high emotive tone of an opening statement where perhaps sometimes it is difficult
25 to know whether jurors may well determine guilt or innocence on the basis of the opening statement of
26 the Prosecution, plus the evidence and vice versa.

27
28 The objections here would seem to me to fade into insignificance considering that this panel
29 comprises judges who, by their training and education, are expected not to be carried away by
30 emotionalism and hyperbolic statements, if you want to call them that, about crime situations. Is that
31 a fair analysis of --

32 MR. O'SHEA:

33 Your Honour, I do not in any way in making this formal objection contest the ability of Your Honours
34 to --

35 JUDGE THOMPSON:

36 We have listened to the opening part of the opening speech and we already indicated to you that, as
37 far as we are concerned, the tribunal of fact will not, in fact, be guided upon or bound by the opening

1 speech.

2

3 It is the evidence that comes from the witness box and also the state of the law the opening speech,
4 as I say, may set high expectations for the Prosecution, but at the end of the day, in the interests of
5 justice, it is whether the Prosecution have proved the counts that they allege and have brought
6 evidence in support of these counts beyond a reasonable doubt. And so it would seem to me that this
7 Chamber may not even have a way of controlling the content of opening statements, whether the
8 Prosecution and whether the Defence, except to say, that every opening statement must conform to
9 Rule 84, but in terms of the language, how -- the level of rhetoric, the kind of oratory that is adopted, I
10 am not sure whether we can inject some kind of judicial control over that. Of course, if language is
11 used here which is not in conformity with the fine traditions of our profession, then I think we can
12 intervene, but at this stage wouldn't really intervention be premature?

13

14 MR. O'SHEA:

15 Well, Your Honour, I am grateful for that indication, the damage is already done. The statement which
16 has just been --

17 MR. PRESIDENT:

18 I can assure you that no damage is done.

19 MR. O'SHEA:

20 No damage from the perspective of the judges --

21 MR. PRESIDENT:

22 Let me assure you, Mr. O'Shea, no damage is done, this is a Bench we know what we are looking for
23 and we know how to get around what we are looking for. And if you are measuring your damage in
24 terms of public imagery, well that is entirely your business, but I think that the damage which should
25 be of a lot of concern to you is what the Court perceives from the statement of the Prosecution.

26 JUDGE THOMPSON:

27 Perhaps I should underscore what my brother is saying, that we are sworn solemnly to determine guilt
28 or innocence on the basis of the evidence adduced before this Court conscientiously, objectively and
29 impartially. We are not called upon here to determine guilt or innocence on the basis of rhetoric,
30 oratory, embellishment or flourish.

31 MR. O'SHEA:

32 Yes, yes. Well, Your Honours, all I am doing here is placing in a formal objection and flagging it up for
33 the purpose of equality of arms, because, in my submission, the matters which I have raised, whether
34 one describes them as emotive language or not, are assertions which do not --

35 MR. PRESIDENT:

36 Mr. O'Shea, I don't want to cut you short, please, we have to move. When the time comes and you
37 go beyond the red line, the Court will perform its duty.

1 MR. O'SHEA:

2 Well it is my submission that the Prosecution has gone beyond the red line, I flag up the --

3 MR. PRESIDENT:

4 Where the Prosecution went beyond the red line and objections were raised, we examined them and
5 we ruled.

6 MR. O'SHEA:

7 Yes.

8 MR. PRESIDENT:

9 The substance of what the Prosecution have said -- I do not know, I mean, let us -- let us understand
10 ourselves. The substance of what the Prosecution has said does not go to the merits, you know, of
11 this case. It is an embellishment, I mean, it is opening a case and I think we should move on, let's
12 move on, you know, and ensure that -- because we have heard what your complaints are. If it is you
13 who will address you will make the opening statement, you know, for your client and you overstep the
14 red line, we will draw your attention to it or maybe the Prosecution -- the Prosecution may like you did
15 and it is for us to see whether everybody is making his submissions or his statements, you know,
16 within the context of what is expected under Rule 84.

17

18 I think we should move ahead, Mr. O'Shea.

19 MR. O'SHEA:

20 I understand, Your Honours, but I would like to --

21 JUDGE THOMPSON:

22 And perhaps I should make the point that I certainly, learned counsel, would take exception to any
23 insinuation about the damage has already been done if that is a reflection on probably the Bench,
24 because I think I assured you just now that we are sworn solemnly to do justice on the basis of the
25 evidence adduced before this Court and our oath obliges us to approach our task conscientiously,
26 impartially and objectively. And I certainly feel slightly offended, though you may probably have
27 misspoken, that if you are suggesting that the damage has been done and the Bench is being brought
28 into this, I think I would take very strong objection to that. I have no -- I have no preconceived or
29 predetermined status here, except to do justice as I have sworn to do it.

30 MR. O'SHEA:

31 Your Honour, as I tried to indicate after you raised this point on the very first occasion, but was not
32 allowed to do so, I do not in any way contest the ability of these three judges to be able to divide what
33 is relevant from what is not relevant. I simply object to matters being raised in an opening statement
34 suggesting that my client did not respect some peace treaty or that my client is evil, these are not
35 things that my client is charged with. And that is my simple point. So if in our opening statements we
36 digress in a similar way, I simply indicate that I hope that we are accorded the same latitude.

37

1 MR. PRESIDENT:

2 That is why I have told you, Mr. O'Shea, that when you cross the red line, I suppose you will be called
3 to order in one way or the other. So can we move, please.

4 MR. O'SHEA:

5 Thank you.

6 MR. PRESIDENT:

7 Thank you.

8

9 Mr. Brown.

10 MR. BROWN:

11 Yes, Your Honour, I will be brief. Now and in the future I cannot imagine at any time raising any
12 question about the impartiality or skill or (*inaudible*) ability of this Bench. I do think, however, that the
13 equality of arms remains a continuing concern and that the opening statements that go out over radio
14 UNAMSIL and are heard throughout the country have the capacity to affect our ability, and have so in
15 the past, to talk even to witnesses or to procure their willingness to come voluntarily to this Court as
16 witnesses. So to that extent -- and I think that was the reference my learned colleague was making
17 when he said about damage potentially being done -- not in any way including Your Honours, but we
18 do have a continuing concern about equality of arms in terms of a focused and unnaturally sensitive
19 population.

20 JUDGE THOMPSON:

21 But the prejudicial publicity there would really, I mean, as I say, if we complain about prejudicial
22 publicity in terms of some of those statements, at the end of the day they do not affect the
23 adjudicating process. The problem of prejudicial publicity in national systems has always been when
24 the system allows for jury trial, but where we talk about it in this particular case we are not -- I don't
25 see how those influences can interfere with the integrity of the adjudicating process where the judges
26 are just sworn to listen to the evidence.

27 MR. BROWN:

28 That was my point, that we have no question about Your Honours, but we do have a question, which
29 is based on experience, about witnesses being intimidated, unwilling even at times to speak because
30 of inflammatory rhetoric of the kind to which counsel has wisely objected. So it implicates equality of
31 arms.

32 MR. PRESIDENT:

33 We have taken note of that, the witnesses will appear in front of you and you will have all the time to
34 cross-examine them, Mr. Brown, I suppose --

35 MR. BROWN:

36 I meant potential Defence witnesses.

37

1 MR. PRESIDENT:

2 Oh yes, well, I suppose your potential Defence witnesses are committed enough, you know, to your
3 cause and to what they have to come and say because it is -- it is -- I do not want to believe, it could
4 be possible, but do you think that they are intimidated by the statement of the --

5 MR. BROWN:

6 Yes, sir.

7 JUDGE THOMPSON:

8 *(Inaudible)* protective measures.

9 MR. BROWN:

10 And we will develop this further, I just wanted to indicate that -- and I do not wish to speak for my
11 brethren to the extent that I join in this objection, it has nothing to do whatsoever with the capacity of
12 this Bench -- but rather the fact that we are running into on a concrete basis daily, people who are
13 frightened not to join our cause but for the cause of truth, but even --

14 MR. PRESIDENT:

15 You know what, people are frightened all over, Prosecution witnesses are frightened, Defence
16 witnesses are frightened, that is where we are caught in the middle.

17 JUDGE THOMPSON:

18 We have protective measures --

19 MR. PRESIDENT:

20 We have to move, we have to move because, you know, witnesses are frightened on both sides of the
21 aisle, you know, so --

22 MR. BROWN:

23 My only point is it is relevant for us to bring to it your attention when acts occur in your presence --

24 MR. PRESIDENT:

25 Yes, we have taken note of it, Mr. Brown.

26

27 Yes, Mr. Jordash.

28 MR. JORDASH:

29 Simply to adopt what has been said. What Mr. Crane has done is effectively send a message out to
30 Sierra Leone that if they come to this Court they are either giving evidence against the dogs of war or
31 for the dogs of war, that helps nobody in these proceedings.

32 MR. PRESIDENT:

33 *(overlapping microphones)* Sierra Leone is watching us live and hearing us. Hearing -- they know the
34 position of this Court, I mean, it was not for flimsy reasons that I made an initial statement, you know,
35 to indicate our position on these matters. This was the same statement that I made on the 3rd of
36 June, you know, on behalf of the Chamber and I think that even your witnesses now have the
37 message, you know, that they will not be disadvantaged by any statements, you know, that I made. I

1 mean, we had made it constantly clear that we are not bound by the statement -- the statement made
2 by the Prosecution under, you know, Rule 84. And so I don't think we should bother much about that.
3 Mr. Jordash, do you think we should bother much about that or we should spend more time on this?

4 MR. JORDASH:

5 Our concern is not Your Honours' ability to be able to put those comments aside, of course, we know
6 and expect you will. Our concern is that the members -- the citizens of Sierra Leone, who are looking
7 to come to this Court, will not be able to put those things out of their mind. You as professional
8 judges, of course, can. They, as frightened citizens, looking, as we all are, I hope, to find out the truth
9 may well not be able to do the same.

10 MR. PRESIDENT:

11 Right, can we move on? Mister --

12 MR. TEJAN-COLE:

13 Tejan-Cole, Your Honour. Thank you, Your Honour, and I am at grateful that I can at last have a word
14 in edgeways.

15

16 MR. PRESIDENT:

17 I hope you will not take much time, I hope so.

18 MR. TEJAN-COLE:

19 I will do my best, Your Honour.

20 MR. PRESIDENT:

21 Right, do your best.

22 MR. TEJAN-COLE:

23 "High we exalt thee, realm of the free; great is the love we have for thee; firmly united ever we stand;
24 singing thy praise O native land. We raise up our hearts and our voices on high; the hills and the
25 valleys re-echo our cry ..."

26 MR. PRESIDENT:

27 What relevance has this to the facts of the case?

28 MR. TEJAN-COLE:

29 My Lord, these are the words --

30 MR. PRESIDENT:

31 Please go to the facts of case Mr. Tejan-Cole.

32 MR. TEJAN-COLE:

33 These are the words --

34 MR. PRESIDENT:

35 No, no, no, no, no, no, please, go to the facts of the case, I don't want any sentiment here. Go to the
36 facts of the case, straight to the facts of the case.

37

1 MR. TEJAN-COLE:

2 As Your Lordship pleases.

3 MR. PRESIDENT:

4 No poetry, please.

5 MR. TEJAN-COLE:

6 My Lord, these are words which, if Your Lordship would bear with me which --

7 MR. PRESIDENT:

8 We are not listening to them at all, go to the facts, they are out of the records.

9 MR. TEJAN-COLE:

10 As Your Lordship pleases.

11 MR. PRESIDENT:

12 Yes.

13 MR. TEJAN-COLE:

14 These are words which every Sierra Leonean, boy and girl, man and woman --

15 MR. BROWN:

16 Your Honour, I object --

17 MR. PRESIDENT:

18 Please, Mr. Cole, go to the facts of the case.

19 MR. TEJAN-COLE:

20 I am going to the facts, My Lord, I --

21 MR. PRESIDENT:

22 I don't want derail you, I know you are not easily derailable, but I am sure you know where you should
23 start and go on.

24 MR. TEJAN-COLE:

25 I am going to go to the facts. I crave Your Lordships' indulgence --

26 MR. PRESIDENT:

27 Leave Sierra Leone alone, go to the facts, it is not Sierra Leoneans who are indicted here, it is these
28 three people, it is not Sierra Leoneans --

29 MR. TEJAN-COLE:

30 My Lord, true to the words of the Sierra Leonean national anthem Sierra Leoneans sang the praise of
31 this nation. The Athens of West Africa. With all due respect to Professor O'Shea and the South
32 Africans, we have the oldest college in the south of Sahara --

33 MR. PRESIDENT:

34 Please, I do not want to hear you have the oldest college or not Fourah Bay College has no relevance
35 to the proceedings. Please go to the facts of the case.

36 MR. TEJAN-COLE:

37 As Your Lordship pleases.

1 MR. PRESIDENT:

2 Yes.

3 MR. TEJAN-COLE:

4 My Lord, this is not so --

5 MR. PRESIDENT:

6 We acknowledge that Fourah Bay College was the light of Africa, but --

7 MR. TEJAN-COLE:

8 As Your Lordship pleases.

9 MR. PRESIDENT:

10 I don't think Fourah Bay was an accomplice to the crimes you allege in your indictment.

11 MR. TEJAN-COLE:

12 Certainly not, My Lord.

13 MR. PRESIDENT:

14 Right.

15 MR. TEJAN-COLE:

16 My Lord, today the name Sierra Leone conjures images of brutality, it conjures images of mutilation,
17 abduction --

18 MR. PRESIDENT:

19 Yes, you are right, go ahead.

20 MR. TEJAN-COLE:

21 -- rape, murder and, Your Lordship, children with arms bigger than themselves.

22 MR. PRESIDENT:

23 Now you are on track.

24 MR. TEJAN-COLE:

25 The RUF, in its decade-long desire for political control of the land and its unquenchable and glutinous
26 lust for diamonds and the arms they bought, was the chief architect of this brutality.

27

28 Make no mistake. This brutality was not a mere happenstance of the conflict that gripped Sierra
29 Leone throughout the 1990s. It was not a by-product of military combat. The RUF and its
30 commanders were not fighting a just war. No reference to the theology of St. Thomas Aquinas, or the
31 seven principles of just war drawn from it, will mask its brutality. This brutality was intended. It had
32 purpose. It was designed. The RUF took aim and launched a campaign of terror directed against the
33 innocent unarmed civilians of this country.

34

35 That terror had certain macabre signatures: systematic amputation; the herding of frightened and
36 crying people into groups to be murdered en masse; repeated, relentless sexual offence; men,
37 women and children forcibly taken by RUF soldiers from their villages and homes; the carving of the

1 initials R-U-F into the chests and foreheads - the very skin, sinew and muscle of this country's youth.

2
3 These macabre signatures of RUF brutality will be repeated time and time again throughout the
4 evidence, the evidence, Your Honours, that will be given before this Court.

5
6 The evidence will cover seven districts of Sierra Leone: Kono, Bo, Kenema, Kailahun, Koinadugu,
7 Bombali, Port Loko and Freetown and the Western Area.

8
9 The similarity of the stories from all parts of the country will become hauntingly familiar.

10
11 The witness from Kono who heard the screams of 25 people burnt alive by rebel forces in Penduma
12 village will echo in the evidence of the witness from Koinadugu who saw people rounded up and burnt
13 alive in his village. The testimony of both of these witnesses will resound in that of the witness from
14 Port Loko who will describe the 73 innocent and helpless people burnt alive in a house in Manaarma,
15 and again in the testimony of the many witnesses from Freetown who saw families die together in the
16 flames of their houses.

17
18 Within these court room walls the terrifying words, "Go to Kabbah," "Go to Kabbah," will reverberate
19 again and again and again. "Go to Kabbah." These words were said by thousands of rebels to
20 thousands of Sierra Leonean men, woman and children the vast majority of whom have never met,
21 who have never seen or did not even know the President of Sierra Leone. "Go to Kabbah," these
22 words were said by rebels as the blood of the people of Sierra Leone dripped from their blunt and
23 crude machetes, axes, cutlasses and swords, and the chopped-off hands and limbs of the people lay
24 severed on the ground.

25
26 Witnesses from Kono, Koinadugu, Bombali, Freetown and Port Loko will tell a similar harrowing tale of
27 vicious and primitive amputation by rebel forces. The RUF decided upon amputation as a punishment
28 for civilians whose only crime was to support democracy.

29
30 Left faint or unconscious, left vomiting and in agony, and simply left to die, the RUF told these people
31 to go to Kabbah for new hands.

32
33 In fact, the evidence will show that it did not matter which government the citizens of Sierra Leone
34 supported. Amputation was a tool of fear systematically used by the RUF to terrorise the population
35 into submission.

36
37 This Court will hear the evidence of girls and women who were subjected to sexual violence and

1 sexual slavery; the unmistakably atrocious and ghastly signature of RUF signature.

2 MR. PRESIDENT:

3 Mr. Tejan-Cole, don't you think there are some of these facts have all been heard by this Court in the
4 opening statement of the Prosecutor, Mr. Crane?

5 MR. TEJAN-COLE:

6 My Lord, most of the facts I will cover, My Lord, may be similar and, as I insist, Your Lordship, they
7 may be similar, but they are not the same, the tales are different. And that is why I am emphasising
8 again to Your Lordships —

9 MR. PRESIDENT:

10 When you are saying — when you are saying, “Go to Kabbah, he'll give you arms,” and so on, this
11 came out, you know, during the statement and --

12 MR. TEJAN-COLE:

13 In respect of one witness, but as I have emphasised, Your Lordship --

14 MR. PRESIDENT:

15 I suppose we are going to generalities, you are not treating witnesses here, you are examining -- you
16 are presenting your case, you know, generally and the way you would like it to be. I think if we have
17 handled certain facts or we have heard certain facts, it is good to work on the economy, you know, of
18 time and move forward. You can go on, I just wanted to make this remark, but you can move forward.

19 MR. TEJAN-COLE:

20 The evidence of the teenager from Kono who was publicly raped by eight rebels and so badly injured
21 that she bled for three days, My Lord, I emphasise, has terrible parallels with that of the witness from
22 Koinadugu who was pregnant, but miscarried after being publicly raped by three rebels. The
23 Prosecution will invite this Chamber to juxtapose these stories with the gruesome account of the
24 witness from Freetown who was taken to Waterloo, raped by seven rebels and saw another girl
25 abandoned by her captors because she had been gang raped to the point where she could no longer
26 walk.

27

28 Ample evidence, Your Honours, will be adduced before this Chamber of girls from Freetown who were
29 abducted and held by retreating rebels and used and abused on a daily basis as the sexual slaves of
30 their captors. These were not isolated incidents. This did not only happen in Freetown. Indeed, if the
31 rebels could do it in Freetown where the world was watching, they could do it everywhere in Sierra
32 Leone.

33

34 Evidence adduced before this Court will show the same pattern of RUF behaviour in Bombali,
35 Koinadugu, Kono, Kailahun, and Port Loko.

36

37 These and other patterns of violence, of brutality, of criminality that will be traced through the

1 evidence, will show that the crimes committed by the RUF were planned and had method. The
2 finding of these patterns in the behaviour of the RUF throughout the territory of Sierra Leone is
3 significant. These patterns will show that the RUF high command and, in particular, the three
4 Accused before this Court, Sesay, Kallon and Gbao, not only knew of, but condoned of these crimes.
5 They ordered the rebel troops to commit these atrocities against the civilians of this country. Your
6 Honour, I reiterate once more the patterns will be found and the stories will become easily
7 recognisable because there are so many of them, but they must not be confused with one another.

8
9 It is crucial that it does not obscure one extraordinary yet simple and critical point, that is this, these
10 crimes were committed upon individuals. Every single witness who will come to this Court will tell of
11 the brutality that they endured. The rape victim from Koinadugu must not, Your Honour, I emphasise,
12 must not be mistaken for the rape victim from Kono. The 73 people who were burned alive in
13 Manaarma must not, Your Honours, be confused for the 25 people burned alive in the Penduma
14 village. The amputee from Freetown, Your Honour, is distinct from the amputee from Port Loko.

15
16 The stories may be familiar, they will reveal a similar pattern, but they are not the same. The pain that
17 each endured cannot be the same.

18
19 The first witnesses who will be called in this trial will demonstrate both pattern and individual
20 difference. Drawn from all over Sierra Leone, their evidence will reveal the design of RUF terror and
21 cruelty. Their evidence will also establish that it was the innocent individual citizens of Sierra Leone
22 who suffered the terrible consequence of that terror and brutality.

23
24 This trial will provide history with a record of the organised terror that the RUF unleashed upon
25 citizens of Salone and the responsibility of the three RUF Commanders, Sesay, Kallon and Gbao,
26 who stand indicted before this Court for that terror. It will also be a legacy to the bravery of individual
27 Sierra Leoneans who are willing to relive their individual terror and tell their story in front of this Court
28 and the world.

29
30 Your Honours, the rhetorical question one may ask at this stage and for which evidence will be led is:
31 who are the RUF and why did they unleash a campaign of terror in Sierra Leone?

32
33 Founded in about 1989, the RUF was led by Corporal Foday Sabayana Sankoh, alias Popay, alias
34 Pa. But he did not act alone. He had the help of other insurgents he met in training camps in Libya
35 and Burkina Faso. The most important of these is the war crimes indictee, Charles Ghankay Taylor.

36
37 Though now a fugitive from justice, Taylor was, in the mid 1980s, an official in the government of the

1 then Liberian President, Samuel K. Doe. He was accused of embezzlement and fled to the United
2 States. There he was arrested and detained pending extradition to Liberia. He joined a group of
3 Liberian exiles determined to overthrow Samuel K. Doe's government. Moving between Burkina Faso
4 and Libya, this group crystallised as the National Patriotic Front of Liberia or the NPFL. The Liberian
5 civil war began in December 1989.

6
7 Foday Sankoh, leader of the RUF, travelled to Liberia and assisted both Charles Taylor and the
8 NPFL. In turn, Charles Taylor assisted Sankoh as he began the military training of Sierra Leonean
9 refugees and expatriates in Liberia. Sankoh's aim was to overthrow President Joseph Saidu
10 Momoh's one-party dictatorship and gain political power in Sierra Leone. One of Taylor's objectives
11 was to retaliate against Sierra Leone for its support of ECOMOG in blocking the NPFL from taking
12 control of Liberia. Both Taylor and Sankoh needed to gain access to the rich diamond mining areas of
13 Sierra Leone to bring their objective to fruition. So, in March 1991, the RUF entered Bomaru in the
14 Kailahun district of eastern Sierra Leone from Liberia. The campaign of terror then began.

15
16 Your Honours, from the very outset the RUF was a military organisation with a clearly defined
17 structure and chain of command. Leadership decision -- leadership decision-making and control
18 rested with those at the top of that command. Target commanders answered to battalion
19 commanders, who answered to a battalion group commander, who answered to a battle field
20 commander. Individuals within the RUF held military titles such as major, colonel, brigadier and even
21 general.

22
23 NATO-like nomenclature was adopted for its functional branches, the G4 was in charge of RUF
24 logistics. The G5 was in charge of "sensitising" the civilians. A People's War Council was
25 established. Its role was to plan the RUF military strategy. It always met before a major RUF
26 offensive was launched.

27
28 Fighting forces were organised. Special forces, who had trained with Sankoh, were superior to
29 Vanguard, who had trained in Liberia. Vanguard were superior to junior forces -- Vanguard who
30 were superior to junior forces who had trained in Sierra Leone. Targets with names like Bronze
31 Warriors, Jungle Warriors and Alligator Forces were established within battalions and these battalions
32 fought along axes.

33
34 Training camps were also set up. The Court will hear the names such as Camp Lion, Camp
35 Superman, Camp Rosos and Zimmi Camp. At these camps men, women and children who had been
36 captured from their villages were given not only military training but ideological indoctrination. For the
37 RUF did indeed have pretensions to ideology. Sankoh wrote the manifesto called Footpaths to

1 Democracy. The RUF even had an anthem which was sung every morning four verses interspersed
2 with a chorus.

3
4 “RUF is fighting to save Sierra Leone. RUF is fighting to save our people. RUF is fighting to save our
5 country. RUF is fighting to save Sierra Leone.”

6
7 The evidence adduced before this honourable Court will show crystal clearly that the RUF was no
8 saviour. The RUF was not fighting to save Sierra Leone. It was fighting to take control of Sierra
9 Leone.

10
11 “Go and tell the President, Sierra Leone is my home. Go and tell my parents, they may see me no
12 more. When fighting in the battle field and I’m fighting forever. Every Sierra Leonean is fighting for
13 his land.”

14
15 The RUF, Your Honours, did indeed send people with messages to the President, but it was only after
16 they had amputated their arms and limbs. The messages were of terror.

17
18 “Where are our diamonds, Mr. President? Where is our gold, NPRC? RUF is hungry to know where
19 they are. RUF is fighting to save Sierra Leone.”

20
21 The evidence will show why the RUF was hungry to know where the diamonds and gold were. It will
22 show how the RUF accounted for our minerals and how they made the people of Sierra Leone,
23 “enjoy” their land.

24
25 “Our people are suffering without means of survival. All our minerals have gone to foreign lands.
26 RUF is hungry to know where they are. RUF is fighting to save Sierra Leone.”

27
28 The evidence that will be adduced before this Court will show that the RUF took our minerals to
29 foreign lands and exchanged them for arms and ammunition. These arms and ammunition, Your
30 Honour, were used to exacerbate the suffering of the people of Sierra Leone. “Sierra Leone is ready
31 to utilise her own. All our minerals will be accounted for. The people will enjoy their land. RUF is the
32 saviour we need right now.”

33
34 The RUF was no saviour. They failed to account for the minerals they mined and the properties they
35 looted. Their thirst for diamonds, and for the arms they bought -- for the arms they could buy meant
36 that RUF did not walk Footpaths to Democracy. They trampled democracy underfoot. Who were the
37 people that made up the RUF, who were so hungry for the gold and diamonds, who ran roughshod

1 over democracy? Three of these people stand indicted before this Court today. Issa Hassan Sesay,
2 RUF Area Commander, RUF Battle Group Commander, RUF Battle Field Commander, RUF Interim
3 Leader. Morris Bilai Karim Kallon, Deputy Area Commander, Battle Field Inspector, Battle Group
4 Commander, Battle Field Commander. Augustine Gbao, Commander of the RUF Internal Defence
5 Unit, Overall Security Commander, Area Commander.

6
7 These three men were senior commanders with the RUF. They planned, ordered, witnessed and
8 participated in the criminal activities of the RUF. They are responsible for these crimes for what they
9 did personally, for what other commanders did, and for what their subordinates did.

10
11 The evidence will show that the first Accused, Sesay, was in Kono between February and September
12 1998 and again from 1999 onwards, when he was the mining commander of the RUF and personally
13 collected diamonds which were then exchanged for arms and ammunition. As such, he requested
14 that the 24-member Small Boys Unit be prepared for him. The evidence will show that he always had
15 a Small Boys Unit with him. In Koidu, he addressed the meeting of civilians who had been captured
16 and brought to Kono to mine diamonds for the RUF. He told them that anyone who did not co-operate
17 would be punished. The punishment ranged from flogging to execution.

18
19 Sesay was present in Kailahun when about 60 civilians, accused of being *Kamajors*, were executed
20 by his subordinates.

21
22 In Kenema in October 1997, Issa Hassan Sesay, on the orders of Bockarie, arrested and severely
23 assaulted a civilian with a firearm.

24
25 Sesay led attacks on Koidu and Makeni as the offensive that culminated in the invasion of Freetown
26 intensified. The evidence will show that he used child soldiers in these attacks in which civilians were
27 brutally murdered, maimed and raped.

28
29 Sesay organised retreat forces from Freetown. At Masiaka, following the 1999 retreat, captured
30 women complained directly to him that they had been raped by rebels. His response was that the
31 rebels were their "husbands" and that they therefore had nothing to complain about.

32
33 Issa Hassan Sesay ordered the arrest of UN personnel in Kailahun and ordered Morris Kallon to
34 mobilise men to attack the Kenyan peacekeepers in Magburaka. He supplied ammunition for the
35 attack. He ordered that Zambian peacekeepers detained in Makeni be transported to Kono. He
36 addressed the men in transit telling them that the UN and white men were to blame for the problems
37 in Africa, that his men were ready to fight the UN. Sesay said, "I could have killed all of you and

1 nobody would question me.”

2
3 The time for questions has now arrived.

4
5 The second Accused, Morris Kallon, alias Bilai Karim, used child soldiers in attacks he led, including
6 on Koidu town and in Lunsar. He attempted to prevent the repatriation of 90 child combatants from
7 Makeni to Freetown. He oversaw the use of civilian labour in the mining fields. He broke into the
8 National Development Bank in Bo in 1998 and looted all the money. He killed a civilian in Kono over
9 a sheep. He was present in Tombudu Town when civilians were killed by rebel forces. He was
10 present in Koidu Town when civilians were tied up and shot. He participated in the attack on Makeni
11 that was part of the offensive that culminated in the invasion of Freetown, and led reinforcements to
12 Freetown. He organised retreat forces from Freetown. Kallon threatened peacekeepers at the
13 Makeni DDR camp. He abducted UN military observers and attacked Kenyan peacekeepers.

14
15 The third Accused, Augustine Gbao, was a senior RUF commander in Kailahun. He controlled its
16 civilian population and RUF fighters. He ordered the various Chiefs to congregate before him and
17 gave them orders to provide materials and civilians for use by the RUF. He captured civilians to carry
18 ammunition from Buedu to Pendembu and Mobai. He was present when women and girls were
19 brought to Kailahun, raped and forced to marry RUF fighters. Gbao was present when 60 men,
20 accused of being *Kamajors*, were killed in Kailahun.

21
22 Gbao's influence extended beyond Kailahun. He was the head of the Internal Defence Unit of the
23 RUF and had children as young as 10 and 11 trained with guns at a camp in Bunumbu. At the end of
24 the conflict he was involved in the negotiation for the release of children and ordered his subordinates
25 to kill staff members of Caritas after children had been released. He also threatened death to children
26 who had been released. He attacked the UN peacekeepers at Magburaka and read a "charge sheet"
27 to the captives justifying his actions. He was present at the Makeni hospital when the UN Milobs were
28 taken and one was killed.

29
30 Of course, other RUF commanders also bear the greatest responsibility. Charles Ghankay Taylor
31 stands indicted, but temporarily hides from justice in Calabar, Nigeria. Foday Sankoh is dead. Sam
32 Bockarie - Mosquito - is dead. But the role they played, their dreadful deeds, as alleged in the
33 indictment, will be recorded in this trial.

34
35 Foday Sankoh, leader of the RUF, he ordered the capture and training of children to fight because,
36 once again, they are loyal and show no fear. It is because of him that today there are some children
37 and young adults who do not know their real names, their villages or their parents.

1 Sankoh, the man who signed peace accords while arming his soldiers and planning attacks. Sankoh,
2 the author of Footpaths to Democracy who wanted to sabotage democratic elections by ordering his
3 soldiers to amputate the hands of people who voted. Sankoh's control was such that he could still
4 order his troops even when detained in Nigeria. From outside Sierra Leone his order that the RUF
5 joined the AFRC was obeyed without question.

6
7 Sam Bockarie, Mosquito, Maskita, the name brings on the cold sweat and feverish shivers usually
8 associated with the deadly malaria disease down the collective spine of Sierra Leonean population. It
9 is no wonder. He was everywhere, biting and sucking the life blood from this country.

10
11 In June 1997 he led attacks in Bo District. Bo was under the control of the CDF for large parts of the
12 conflict. Prior to the attacks the rebels announced that the harbouring of *Kamajors* would not be
13 tolerated. Dozens of civilians were killed in Sembahun, Tikonko, Mambona, Gerihun, and Telu. The
14 civilians killed included the beloved, blind Chief Albert Sani Demby, Paramount Chief of Baoma
15 Chiefdom and the father of the former Vice President of Sierra Leone.

16
17 In Kenema, prominent civilians accused of supporting the CDF were arrested and tortured. One of
18 them, B.S. Massaquoi, a former government minister, was arrested, tied up and savagely beaten by
19 Mosquito. Mr. Massaquoi was released but later Mosquito threatened that the Kenema police station
20 would be burnt to the ground if he was not re-arrested. Mr. Massaquoi and five others were then
21 tortured and killed. Witnesses before this Court will tell of the wounds they observed on the body of
22 Mr. Massaquoi while he was in custody and of seeing his beaten corpse and other corpses in a mass
23 grave.

24
25 When the first AFRC accused, Tamba Alex Brima, alias Gullit, was in Freetown in January 1999
26 giving orders for the wholesale spreading of terror from State House, the other AFRC Accused, Brima
27 Bazy Kamara and Santigie Kanu, were in State House with him. Sam Bockarie, Mosquito, of the
28 RUF, may not have been physically present but, from Kailahun, he was directing the horror.

29
30 When Mosquito ordered Operation No Living Thing, he announced to the world, and I quote, "I am a
31 ruthless commander. I am ready to damage, but I am waiting until something happens to Sankoh.
32 When I take Freetown I shall clear every living thing and building. To my God, I'll fight. I will kill and
33 kill and the more they tell me to stop, the more I'll kill."

34
35 "I am a ruthless commander. I am ready to damage, but I am waiting until something happens to
36 Sankoh. When I take Freetown I shall clear every living thing and building. To my God I'll fight. I will
37 kill and kill and the more they tell me to stop the more I'll kill."

1
2 These men, dead and alive, in this courtroom or hiding in Nigeria, are responsible for every single
3 murder, every single amputation, every single rape, every single beating, every single burnt house
4 and each body marked with the terrible letters R-U-F or A-F-R-C, the suffering of every woman forced
5 to become the wife of one or more of her captors and every single person forced from their home and
6 made to carry goods or mine diamonds.

7
8 It does not matter that their subordinates fired the bullets, wielded the machetes, stole the goods or
9 raped the women, these men were in command, in control and failed to stop their subordinates in this
10 orgy of terror. Mosquito declared, "I am a ruthless commander. I am ready to damage." They all
11 were.

12
13 Post 30 November 1996, Your Honours, in pursuit of power and control of the country the RUF
14 committed the crimes alleged in the seven districts and the western area that formed the crime bases
15 of the indictment. The RUF had a plan; Kono had to be controlled. The prize was Freetown.

16
17 Kono meant diamonds, diamonds meant arms. From 1991 to 1996, the RUF sent diamonds to
18 Charles Taylor at NPFL headquarters in Gbanga, Liberia. After Taylor became President of Liberia in
19 1997, the trade in diamonds intensified. The structures and the players were all in place. Sankoh, the
20 leader, was directing his subordinates and dealing in diamonds with Charles Taylor for arms.
21 Bockarie was the Battle Field commander; Sesay was the Battle Group Commander; Kallon, was the
22 Deputy Area Commander North; and Augustine Gbao, was Commander of Kailahun.

23
24 Diamonds were brought to White Flower, Charles Taylor's mansion, first by Bockarie, occasionally
25 accompanied by Kallon and then by Sesay. Gbao also met with Taylor in Liberia and Burkina Faso.

26
27 In return consignments of AK-47s, RPGs, Uzis and ammunition would be delivered to the RUF in
28 Sierra Leone. Some consignments were brought in by air, others were brought in by truck. Some
29 were routine shipments of necessarily supplies to the RUF fighters.

30
31 Control of the north Koinadugu, Bombali and Port Loko was central to the RUF military strategy and
32 the jungle groups based in these districts helped maintain control of Kono. One of the keys to control
33 of Kono was controlling Kailahun. Kailahun in the Eastern Sierra Leone was the RUF's stronghold
34 from the beginning of the conflict until the end. It served as the corridor into Liberia. It was the home
35 of Augustine Gbao from 1997 to 1999. Mosquito was also based there. Sesay and Kallon were
36 regular visitors.

1 If controlling Kono was a means to an end, that end was Freetown. For the RUF believed that you
2 control the capital, you control the country. The ultimate Freetown invasion occurred in January 1999
3 and the inglorious retreat from Port Loko to Makeni a few weeks later.

4
5 Your Honours, central to this story of the RUF is its union with the AFRC in 1997. The AFRC, the
6 Armed Forces Revolutionary Council, was formed by some members of the armed forces of Sierra
7 Leone, particularly the Sierra Leone Army or SLA. On 25th May 1997, the RUF seized power in this
8 country. The leader of the AFRC was Johnny Paul Koroma. It's other commanders were Alex Tamba
9 Brima, also known as Gullit; Brima Bazzy Kamara, also known as Bazzy; and Santigie Borbor Kanu,
10 popularly known as Five-Five. These are the three Accused in the AFRC trial.

11
12 At the time Sankoh was detained in Nigeria and Bockarie was in *de facto* command of the RUF in
13 Sierra Leone. The evidence will show that Johnny Paul Koroma contacted Sankoh by telephone and
14 invited the RUF to join with the AFRC. Sankoh accepted this invitation.

15
16 Johnny Paul Koroma made a recording of Sankoh's voice issuing an order for the RUF to join with the
17 AFRC. This recording was played on the Sierra Leone Broadcasting Service radio in Freetown and
18 via VHF radio to RUF commanders and troops in the field. Within days thousands of RUF soldiers
19 had entered Freetown and major towns. Sankoh also wrote letters to various high-ranking RUF
20 Commanders and RUF supporters directing them to join the AFRC and exhorting the two groups to
21 work together.

22
23 Your Honour, thereafter the RUF and AFRC formed a joint Junta force. A governing body, the
24 Supreme Council, was created. It became the sole executive and legislative authority within Sierra
25 Leone. Its members were both RUF and AFRC and included Sankoh, Mosquito, the first Accused in
26 this trial; Issa Hassan Sesay, the second Accused in this trial; Morris Kallon; Alex Tamba Brima,
27 Gullit; Ibrahim Bazzy Kamara; Santigie Borbor Kanu; and Johnny Paul Koroma.

28
29 Your Honour, from May 1997 onwards the RUF and the AFRC acted jointly. Like any marriage there
30 were occasional difficulties. However, these difficulties were not so much between the two groups as
31 between individuals in the two groups. These individuals were violent and ruthless men and the
32 difficulties did erupt into violence. But the RUF/AFRC marriage having been contracted, it was not put
33 asunder by this sporadic squabbling of individual commanders.

34
35 The two groups shared a common goal and shared information and resources. From the RUF base in
36 Kailahun, Mosquito sent troops to Rosos, the RUF base in Bombali and home of Gullit, Bazzy and
37 Five-Five. Indeed, the marriage was such that certain field commanders who were originally either

1 RUF or AFRC would control combatants who were mixed RUF and AFRC. The combatants dressed
2 alike and were referred to as one by each other and the populace of Sierra Leone. The witnesses
3 who will give evidence in this Court will refer to Junta, rebels and People's Army when speaking about
4 both RUF and AFRC forces.

5
6 This marriage of the two forces bears directly on the criminal responsibility of the three Accused
7 before this Court. The RUF and the AFRC shared a common plan to gain control over Sierra Leone.
8 These three RUF high commanders, Sesay, Kallon and Gbao, are responsible for the crimes
9 committed by the RUF and AFRC in pursuit of that common plan. Sesay, Kallon and Gbao, are
10 responsible because they knew that these crimes were being committed and did nothing to prevent
11 them. Sesay, Kallon and Gbao, are responsible because the fact that crimes were going to be
12 committed was foreseeable.

13
14 Sesay, Kallon and Gbao, are responsible for the countless murders, rapes and mutilations performed
15 by the faceless AFRC soldiers. As well as for the properties burnt and stolen and the civilians
16 abducted by them.

17
18 Sesay, Kallon and Gbao, are responsible for the crimes committed by the senior AFRC commanders,
19 Johnny Paul Koroma, Alex Tamba Brima, Bazzy Kamara and Santigie Borbor Kanu. They are
20 responsible for the civilians killed and abducted on the orders of Gullit as AFRC troops moved from
21 Koidu and Koinadugu. Sesay, Kallon and Gbao are responsible for the people burnt alive in Yiffin
22 during the attack led by Gullit and Bazzy. They are responsible for the human sacrifices ordered by
23 Gullit in Bombali. Sesay, Kallon and Gbao, are responsible for the sexual violence done to the three
24 women abducted from Freetown who were forced to become the "wives" of Five-Five in Masiaka.

25
26 Sesay, Kallon and Gbao, are responsible for the living hell that was Freetown in January 1999 as
27 civilians were murdered, amputated, raped, as the city was burnt and looted, as civilians were
28 abducted and forced to carry loads for the retreating junta forces. They may not have given the
29 physical orders in Freetown to burn and kill, but there were RUF troops and commanders in the city
30 and from Freetown Tamba Alex Brima was in radio communication with the RUF leadership and
31 receiving directions from Mosquito.

32
33 Your Honours, many things happened after the day of the marriage of the RUF and AFRC --

34 MR. PRESIDENT:

35 Provided you are getting towards rounding up because the computation of the time which was agreed
36 on during the status conference is virtually out. Yes, you can go on. Yes.

37 MR. TEJAN-COLE:

1 As Your Honour pleases.

2
3 From May 1997 the Junta forces stayed in power in Freetown until forced out by ECOMOG on the
4 14th of February 1998. Your Honour, it is important that I state that 1998 was a year of crucial
5 importance to the case of the Prosecution, for two operations were launched in 1998: Operation Pay
6 Yourself and Operation No Living Thing.

7
8 Operation Pay Yourself was a command to steal and loot; food, clothing, money and furniture were
9 stripped from the people by the ravenous rebel forces. Operation No Living Thing, sometimes called
10 Operation Spare No Soul, needs no elaboration.

11
12 A widespread and systematic programme of punishing civilians for supporting President Kabbah,
13 ECOMOG or CDF forces was also instituted.

14
15 Following the expulsion of the junta from Freetown in February 1998, the Junta factions regrouped in
16 both Koinadugu and Kono District. The first Accused, Sesay, and second Accused, Kallon, ensured
17 that the RUF organised a safe passage for Johnny Paul Koroma to Kailahun. The marriage of the
18 RUF and the AFRC was re-affirmed and explicit plans were made to keep control of Kono at all costs.

19
20 Throughout all of these areas the same macabre signature of brutality will be seen as witness after
21 witness tells the Court their story. These witnesses in many different languages and overcoming
22 many cultural and psychological difficulties will paint this picture. Even making allowances for these
23 difficulties this picture will clearly emerge.

24
25 Counts 1 and 2, terrorising the civilian population and collective punishment, will be established by
26 viewing the evidence as a whole, but particular features of the evidence --

27 MR. PRESIDENT:

28 I hope you will not go through the 18 counts --

29 MR. TEJAN-COLE:

30 No, My Lord, I do not intend --

31 MR. PRESIDENT:

32 -- because we have heard all about that, we have the indictment.

33 MR. TEJAN-COLE:

34 I will just touch on the key evidence that we intend to adduce in respect of each count, My Lord.

35
36 MR. PRESIDENT:

37 Yes.

1 MR. TEJAN-COLE:

2 Counts 1 and 2 will be proved, Your Honours, when evidence is led that shows soldiers amputating
3 civilians and telling them to, "Go to Kabbah for new hands," or give them a letter to Kabbah, there can
4 be no other reasons for the actions of the RUF/AFRC than to instil terror or to punish.

5
6 When entire villages are burnt to the ground there can be no reasons other than to instil terror or to
7 punish. Counts 3 to 5, unlawful killings, the murders committed by the RUF/AFRC also bear their
8 macabre signature: victims were shot, hacked to death and burnt alive. They were often herded
9 together to be killed en masse. Other civilians were often forced to watch.

10
11 The evidence will establish that across the crime bases in the indictment thousands and thousands of
12 people were killed at the hands of the RUF and the AFRC.

13
14 Counts 6 to 9, sexual violence. The sexual violence of the RUF was vicious and endemic. This will
15 be demonstrated throughout the evidence relating to Kono, Koinadugu, Bombali, Kailahun, Freetown
16 and Port Loko. Gang rape, sexual slavery, forced marriage, often accompanied by other physical
17 violence, these crimes left deep wounds both physical and psychological.

18
19 Counts 10 and 11, physical violence, the damage done to the very bodies of the civilians of this
20 country is perhaps the most notorious of the RUF signature of violence. The reason for the
21 amputation and the carving of the initials on the chest and foreheads is almost unfathomable.

22
23 Count 12, child soldiers. Thousands of children were abducted from all over Sierra Leone and forced
24 to undergo training at RUF and AFRC camps. They were indoctrinated, drugged and often given new
25 names. Organised into Small Boys Units and Small Girls Units, they were forced to carry ammunition,
26 take part in military attacks and to participate in the criminal activities of the rebel forces.

27
28 Count 13, abduction and forced labour, although not as enduringly visible as the amputations and
29 sexual violence, the abduction of people and the use of these people as labour were just as
30 pernicious. The evidence will show that thousands of people from Kenema, Kono, Koinadugu,
31 Bombali, Freetown and Port Loko were forcibly taken from their homes and made to work for the RUF
32 and the AFRC.

33
34 Count 14, looting and burning, Operation Pay Yourself.

35
36 MR. PRESIDENT:

37 *(Microphone not activated)*

1 MR. TEJAN-COLE:

2 There can be no – there can be no clearer directions to loot than Operation Pay Yourself.

3

4 Counts 15 to 18, attacks on UNAMSIL personnel. Between April and September 2000, the RUF
5 attacked UNAMSIL peacekeepers and humanitarian assistance workers who were there on behalf of
6 international community to help restore peace following the Lome Peace Agreement, 7 July 1999.

7 Radio communication between the accused Kallon and Sesay and Foday Sankoh resulted in Sankoh
8 ordering the arrest of UNAMSIL personnel. Kallon threatened the peacekeepers in Makeni at the
9 DDR Camp that the camp should be dismantled in 72 hours.

10

11 Your Honours, the Prosecution's case will be presented as follows: The first witnesses who will be
12 called -- the first witnesses will be called to demonstrate the nature of the crimes committed and the
13 geographic spread over which the crimes were committed.

14

15 The next witnesses will be a few of the insiders, those who can explain the history and structure of the
16 RUF and the place of the three Accused within it. These witnesses who will give evidence about the
17 structure and methods of the RUF come from the core of the organisation. Former soldiers and
18 commanders, they saw and participated in the activities of this group.

19

20 The Prosecution will then move through the crime bases in the following order. We will start with
21 Kono, then Bo, Kenema, Kailahun, Koinadugu, Bombali, Freetown and Port Loko. As the evidence
22 for each crime base is presented, the Court will hear evidence from men, women, insiders and former
23 child soldiers.

24

25 Interspersed between the crime bases will be the evidence of expert witnesses.

26

27 The Prosecution will then present concentrated evidence relating to Count 12, the conscription of child
28 soldiers. The Court will hear further testimony of former child soldiers and child victims.

29

30 Finally, the Prosecution will present evidence relating to Count 15 to 18, the attacks on UNAMSIL
31 personnel and peacekeepers.

32

33 In concluding, Your Honours, the evidence that will be presented before this Court will be harrowing,
34 disturbing and upsetting. Many of the witnesses are fearful of the Court process, of being on display,
35 of having to relive traumatic and humiliating experiences, but they have agreed to come because they
36 understand that this Court and its findings are important to more than just the people of Sierra Leone.

37

1 The scale of the criminality of the three Accused, Sessay, Kallon and Gbao, who stand before you, is
2 such that they committed international crimes. There must be no impunity for those who bear the
3 greatest responsibility for them.

4
5 The threat of those who ignore universal standard of civilised behaviour, who seek power and control
6 for their own ends, who unleashed terror on the civilians of their own country becomes less by the
7 establishment of international courts and the fairness of their proceedings. Such will be the legacy of
8 this Court.

9
10 Your Honour, that concludes the opening statement for the Prosecution. I am grateful, Your Honours,
11 for your indulgence. Thank you.

12 MR. PRESIDENT:

13 We'll adjourn the proceedings to three o'clock, 3:00 p.m. today, when we will continue with whatever
14 the other side of the aisle decides to do. So, we will adjourn and --

15
16 Yes, Mr. Crane.

17 MR. CRANE:

18 Yes, Your Honour, even though, of course, our learned colleagues can certainly say whatever they'd
19 like to say, but we are ready to present witnesses and we have them standing by.

20 MR. PRESIDENT:

21 We are aware of that. We will take care about that, there is no problem about that.

22 JUDGE THOMPSON:

23 We are looking to a full day, but we need to take care of their concerns too.

24 MR. PRESIDENT:

25 I am sure, you know, there are some members of the Bar, and maybe yourself, who are used to the
26 lunch tradition and time is very fast spent. I think we had better have a break, you know, for lunch and
27 resume at three o'clock.

28
29 The Court will rise, please.

30 *(Court recessed from 1337H to 1510H)*

31 MR. PRESIDENT:

32 We are resuming this session and I think we suspended at a time where we were to turn to the left
33 side of the hall.

34 JUDGE THOMPSON:

35 Learned counsel for the Defence, we listened to the two segments of the Prosecution opening
36 statement before we adjourned for lunch. It would seem now that we have to ask the Defence
37 counsel if they are electing to make an opening statement at this point in time, pursuant to Rule 84, or

1 whether they are reserving the right to an opening statement at the point when they decide to present
2 their case. Because our records show that at the last Status Conference, the most recent Status
3 Conference, each counsel for the Defence, each leading counsel indicated that they would not be
4 making an opening statement after the Prosecution's opening statement. I do not know whether that
5 position remains the same or has changed or been reversed.

6 MR. PRESIDENT:

7 My attention has been drawn to another batch of interpreters who need to be sworn in. I think we had
8 better get through that, you know, before we continue. Can you, Mister -- Can you please swear
9 them in or they do it themselves. For the afternoon sessions were they not sworn.

10 MR. WALKER:

11 They weren't sworn this morning.

12 MR. PRESIDENT:

13 They were sworn in this morning? Oh, they weren't, okay.

14 *(Interpreters sworn)*

15 JUDGE THOMPSON:

16 Learned counsel, I indicated that at the last Status Conference on this matter held on the 23rd of June
17 this year, learned counsel for all three Accused persons stated that they are not electing to make
18 opening statements pursuant to Rule 84 after the Prosecutor's opening statement. The inquiry now is
19 whether that position has been revised or altered in respect of any of the Accused persons. First
20 Accused.

21 MR. CLAYSON:

22 Your Honours, I respect the fact that the Trial Chamber wishes to proceed with this case as
23 expeditiously as possible, but just before the break for the luncheon adjournment the Presiding Judge
24 did indicate that after the adjournment the Defence would be invited to raise their concerns. I have
25 three concerns of which --

26 JUDGE THOMPSON:

27 But before you proceed --

28 MR. CLAYSON:

29 Well, forgive me, I am not allowed to finish my sentence.

30 JUDGE THOMPSON:

31 Let me interrupt. Of course, because I think we want to take --

32 MR. PRESIDENT:

33 We, who have also practised in the Bar know, you know --

34 MR. CLAYSON:

35 *(overlapping microphones)*

36 MR. PRESIDENT:

37 Excuse me, sorry. We have also practised in the Bar and we know that time and again, you know, the

1 Court can come in and interrupt a bit. There is no discourtesy about it, so don't get inflamed about it
2 whatever --

3 MR. CLAYSON:

4 Well I --

5 MR. PRESIDENT:

6 No, it is okay. I just want to let you know that we are not new in this business and that we are just
7 doing what the practices have been --

8 MR. CLAYSON:

9 My concern is to raise --

10 MR. PRESIDENT:

11 You can go on.

12 MR. CLAYSON:

13 My concern is to raise issues with the Court.

14 JUDGE THOMPSON:

15 May I -- actually we are trying to keep the sequence with -- here that after listening to the opening
16 statement of the Prosecution, the sequence here is that we ask counsel for the Defence or the
17 accused persons, if they are not represented, whether they intend to make an opening statement. We
18 just want to proceed as tidily as the Rules allow us to do that. Of course, if you have any issues that
19 you think should come before opening statement, you should seek the leave of the Bench --

20 MR. CLAYSON:

21 That is what I tried to do.

22 JUDGE THOMPSON:

23 -- because we are in control of the proceedings, as the learned President has said, we want to make
24 sure that we proceed as expeditiously as possible and to keep the normal trend, making exceptions
25 only when we grant our leave. So, if you can make a case for not proceeding with opening
26 statements, if any, for the accused persons and that you want to raise issues, intervening issues, we
27 will listen to what you have to say and decide whether we will allow you to raise those intervening
28 issues.

29 MR. CLAYSON:

30 I am grateful.

31 JUDGE THOMPSON:

32 My question to you was: Does your client intend to make an opening statement either in person or
33 through you? You are having difficulty in answering that question before raising the issue, is that what
34 you are saying? You want to raise the issue before you answer the question?

35

36 MR. CLAYSON:

37 Forgive me, I will answer as soon as I have an opportunity.

1 JUDGE THOMPSON:

2 Quite, quite.

3 MR. CLAYSON:

4 There are three issues I would wish to raise with the Court as soon as the Court considers it proper
5 for me to do so. May I indicate what they are?

6 JUDGE THOMPSON:

7 Yes, quite.

8 MR. CLAYSON:

9 One concerns the issue of an opening statement which the defendant that we represent would wish to
10 make himself exceptionally, and if I may, in a moment turn to Rule 84, I would seek to address you
11 briefly about that Rule and its application.

12

13 The other two matters that I would wish to raise are, first of all, I wish to record, on behalf of the team
14 that represents Issa Sesay, the deepest possible objection to the terms of the Prosecution opening
15 which you heard this morning and I shall do so very briefly.

16 JUDGE THOMPSON:

17 But I would like to interrupt you at that point in time. I think we need to proceed sequentially and
18 logically. If you are raising the issue of -- if you are raising the issue of whether you intend to make or
19 your client intends to make a statement, in person or through you, I think we should dispose of that
20 first before we go into the question of what may have been alleged excesses or extravagancies in the
21 Prosecution's opening statement.

22 MR. CLAYSON:

23 So be it.

24 JUDGE THOMPSON:

25 And we insist on having it in that order.

26 MR. CLAYSON:

27 I respect that, Your Lordship made that clear, and at the moment I am only indicating the topics I
28 would wish to address you about.

29 JUDGE THOMPSON:

30 I see, very well. So, one election -- opening statement. And two, alleged -- shall we say,
31 extravagancies of language?

32 MR. CLAYSON:

33 Objection which we would wish to outline.

34 JUDGE THOMPSON:

35 Yes, alleged objection to Prosecution statement. And issue number three?

36 MR. CLAYSON:

37 Yes, the third issue concerns disclosure by the Prosecution --

1 JUDGE THOMPSON:

2 Disclosure by the Prosecution.

3 MR. CLAYSON:

4 -- of exculpatory material.

5 JUDGE THOMPSON:

6 Of exculpatory material.

7 MR. CLAYSON:

8 -- and material under Rule 66 as well.

9 JUDGE THOMPSON:

10 So both Rules 66 and 68?

11 MR. CLAYSON:

12 Yes.

13 JUDGE THOMPSON:

14 Here you are alleging non-compliance.

15 MR. CLAYSON:

16 Yes, absolutely. And there are some very fundamental matters which I will have to address Your
17 Lordships about in that regard.

18

19 Can I deal with the first matter?

20 JUDGE THOMPSON:

21 Right, we have noted them. Go ahead.

22 MR. CLAYSON:

23 The position here is that we seek Your Lordships' leave for the defendant that we represent to make --
24 and it will be a brief statement -- but a brief statement, as soon as you consider it appropriate, without
25 any derogation from his right under Article 84 to make, or for there to be made on his behalf --

26 JUDGE THOMPSON:

27 You mean Rule 84?

28 MR. CLAYSON:

29 Yes. Rule 84 in terms says that, "At the opening of his case, each party may make an opening
30 statement." There is, therefore, in our submission, an absolute right vested in the defendant or those
31 who represent him to make such a statement. That right, in our submission, cannot be prohibited or
32 restricted by virtue of any other fact. That is why we say that our application is exceptionally to ask
33 you to permit the defendant that we represent to make a brief statement soon, as soon as you would
34 permit it, about this case. That would be in addition to the right under Rule 84 which, as I submit, in
35 its terms plainly vests an absolute right in each party to make an opening statement at the opening of
36 his case. That is our argument.

37 JUDGE THOMPSON:

1 And the practice of the Court has not been that such right is subject to what has been the usual
2 practice, that if the Defence -- the Defence makes a statement, an opening statement, at the -- in
3 response or after the statement of the Prosecutor, that this would amount to an election not to make
4 an opening statement at the beginning of the presentation of the Defence case.

5 MR. CLAYSON:

6 Well --

7 JUDGE THOMPSON

8 Is that not the accepted practice, that has not become almost a rule of procedural rule of law in not
9 only international tribunals, but I am sure that in the national systems?

10 MR. CLAYSON:

11 Your Honours, I would submit the rule is plain in its terms, there can really be no derogation by way of
12 election or otherwise from its terms. What I am asking for the leave of this Court for is that he
13 additionally be entitled, because he seeks your leave so to do, to make a brief statement --

14 JUDGE THOMPSON:

15 Short statement.

16 MR. CLAYSON:

17 -- of his response, essentially, to what he has heard from the Prosecutors. Such a statement will not
18 cause any significant delay to the proceedings or disrupt them in any way and, of course, this Court
19 can control its own procedure, it is in the interests of justice and fair play that a defendant at an early
20 opportunity be given this additional chance.

21 JUDGE THOMPSON:

22 In other words, you want us to grant our leave with reservation of a right for him to make an opening
23 statement when the Defence presents its case.

24 MR. CLAYSON:

25 I do. That is all have to say on that matter and there is nothing else I would wish to add.

26 JUDGE THOMPSON:

27 Would you, before you sit down, would you -- would you care to cite any authorities for this where this
28 particular approach has been adopted and --

29 MR. CLAYSON:

30 Well, My Lords, it comes to mind that in the other cases which Your Lordships are dealing with, as I
31 understand it --

32 JUDGE THOMPSON:

33 Yes.

34 MR. CLAYSON:

35 -- one of the Defendants was accorded a right to speak in these circumstances. I can do no better
36 than cite that example.

37 JUDGE THOMPSON:

1 Well, it was in fact, if the case is the same that I am thinking about, it was with reservation -- no
2 reservation at all, in fact, on the express understanding that the Accused in question would not be, in
3 fact, exercising that right at the beginning of the presentation of the case of the Defence.

4 JUDGE BOUTET:

5 If I may add to that, it was clearly explained to the Accused in that case that you are making reference
6 to that it was one or the other, it was not "May I get permission now and again keep my rights open?"
7 The answer to that was no. It was very clearly expressed that if they were making an opening
8 statement they could do so, but if they were to do so now they would be precluded from doing so after
9 the case for the Prosecution closed.

10 JUDGE THOMPSON:

11 Before we proceed further, if you can give us one compelling reason why we should depart from what
12 I consider in my own years of practice to be the accepted procedure, well, if you can give us one
13 compelling reason to persuade us to depart from this accepted procedure, and then after that we will
14 consider whether to grant your client leave or not.

15 MR. CLAYSON:

16 May I just have a moment? Yes, I am reminded that indeed it is very common in civil law jurisdictions
17 for a Defendant to have the right immediately to respond to what the Prosecution says at the
18 beginning of its case. Indeed, I think in many such jurisdictions the Court is actually required to afford
19 him that right rather than it being a matter of discretion. And indeed, as I understand it, there is at
20 least one case proceeding, a case called *Ngeze*, in the Rwandan Tribunal, where remarks were
21 permitted to be made by a defendant at the -- as I understand it, at the end of the Prosecution case.
22 Now, whether it goes further than that and that those remarks were additional to an opening
23 statement by the Defendant, I can't say at the moment. But, as I hope I have made clear, my
24 submissions are that Rule 84 provides for an absolute right, which cannot be derogated from, for a
25 Defendant to make a statement at the opening of his case.

26 JUDGE THOMPSON:

27 But you agree that Rule 84 doesn't govern the situation --

28 MR. PRESIDENT:

29 But you see is --

30 JUDGE THOMPSON:

31 It does not mean to say that that there would not be an election.

32 MR. PRESIDENT:

33 Is the Defendant opening his case now?

34 MR. CLAYSON:

35 No, he is not, that is why as I said I am asking your leave that he should be able to make a statement
36 now rather than insisting on his right to do so because we are not at the opening of his case. So this
37 is, insofar as it is a departure, one that is already provided for in broad terms under Your Lordships'

1 much greater general powers --

2 JUDGE THOMPSON:

3 Let me give you a little further enlightenment on the law, as far as I understand it. You have cited the
4 law in civil law situation. In common law, as far as I know, it is the standard practice, the one which
5 we are using now. Of course, this Tribunal is not bound by national legal principles or procedural
6 tenets, but, of course, I think it is -- it would be naive to say that international criminal tribunals have
7 not borrowed extensively from the national law systems and the Special Court is authorised that
8 where it doesn't have any particular provisions governing the issue at hand, it would have recourse to
9 the procedure that is applicable in Sierra Leone and Sierra Leone is one of the common law countries
10 and this has always been the accepted practice. Of course, you are seeking our leave -- your seeking
11 our leave is a recognition of the limitation of your applications, but I think we can -- my brother judges
12 and I will confer and decide whether it would be appropriate to --

13 MR. CLAYSON:

14 I am sure it may be that others would wish to make submissions about this point as well. I don't know
15 if it's convenient for Your Lordships to hear them before ruling.

16 JUDGE THOMPSON:

17 Yes.

18 MR. O'SHEA:

19 Yes, good afternoon, Your Honours. I would like to support the submission that has just been made.
20 I do not in any way contest the statements that Your Honours have made with regard to the practice
21 with regard to opening statements in national jurisdictions. I would, however, like to draw Your
22 Honours' attention to Rule 54 of the Rules of Procedure and Evidence which gives this Court a
23 general power to make such orders or decisions which may be necessary *inter alia* for the conduct of
24 trial.

25
26 Your Honours have quite properly pointed out that expediency is an important aspect of the running of
27 this trial. Now, it is our submission -- and in a sense this is a submission both to Your Honours and to
28 the Prosecution as well because I anticipate the Prosecution's initial reaction would be to object to
29 This, but it is a submission to the Prosecution and Your Honours that in the interests of expediency it
30 would, in fact, assist to allow these three Defendants, or two Defendants, to make a brief statement.
31 When one looks at the prejudice to the proceedings and expediency I would submit the prejudice is
32 minimal. Your Honours can limit the amount of time that they can speak. The potential benefit to
33 these proceedings is, however, great.

34
35 These defendants find themselves before a forum they are not familiar with, they find themselves
36 before a forum that they disagree with the legitimacy of. In those circumstances, there may be some
37 benefit --

1 MR. PRESIDENT:

2 Do you continue to contest the legitimacy of their being here, Mr. O'Shea?

3 MR. O'SHEA:

4 Well, I must point out, Your Honours, that there is an Appeal Chamber --

5 MR. PRESIDENT:

6 You are, up to this point in time, continuing to contest the legitimacy of their being here?

7 MR. O'SHEA:

8 Well, my client does from a legal point of view --

9 MR. PRESIDENT:

10 I mean you, you yourself as counsel?

11 MR. O'SHEA:

12 Well, as counsel, I cannot contest the fact that the Appeal Chamber has made a number of rulings
13 regarding the legal legitimacy of this Court.

14 MR. PRESIDENT:

15 That's the point I wanted to hear from you.

16 MR. O'SHEA:

17 Yes. This is not a matter of concern to Your Honours, but it is a matter of great concern to the
18 Accused that there may still be a question mark over the political legitimacy of this Court. This is a
19 court that has been set up in special circumstances and it is not the national courts. I am not trying to
20 open this question here --

21 JUDGE THOMPSON:

22 No, in fact, I would like to come in here and ask you to desist from -- desist from going down that road
23 which we are not prepared to travel along with you because of two principles: one, the doctrine of
24 judicial hierarchy --

25 MR. O'SHEA:

26 Yes.

27 JUDGE THOMPSON:

28 -- a matter that has been legally laid to rest by a higher tribunal whose decisions bind us unless we
29 distinguish them. And the second reason would be that in a sense, broadly speaking, we can say that
30 this is an issue which is *res judicata*.

31 MR. O'SHEA:

32 Yes.

33 JUDGE THOMPSON:

34 And so to encourage you to travel along that road, even though maybe academically enlightening,
35 would be for the purposes of the speedy administration of justice of this Court, having regard to its
36 limited mandate, an extremely futile exercise. And I would like respectfully to caution you not to invite
37 us to travel along that road.

1 MR. O'SHEA:

2 Yes.

3 JUDGE THOMPSON:

4 The issue here for me is a precise one. At this point in time it is whether your clients should be put to
5 their election as to whether to make an opening statement in response to the Prosecution's opening
6 statement at this stage and lose their right to do so when they come to present their evidence
7 pursuant to Rules 95 (*inaudible*). So that is the precise issue for determination. And it is of benefit to
8 the Chamber, as well as to the other side, that we hear your submissions with the necessary relevant
9 case authorities on precisely that issue. The question of whether we will have to limit the length and
10 content of any opening statement is a subsequent issue, the antecedent question is whether we
11 should Rule on that. If we agree that they should speak then, of course, we go the next stage. Rule
12 84 gives us the right to say, "Confine the substance of your speech to the evidence and not to matters
13 of an extraneous nature and also we don't want to stay here and listen to a two-hour speech." So I
14 want us to proceed legally, tidily and neatly on this issue. I don't think you have persuaded the Bench
15 yet as to whether they should be given the right to make an opening statement at this stage and at the
16 same time, so to speak, have a second bite at the cherry at the time when they present their
17 evidence.

18 MR. O'SHEA:

19 Your Honour, please don't misunderstand me. At the point at which Your Honour interrupted me, and
20 I say this respectfully, I was about to say that it is not my wish to open the question of legitimacy of
21 this Court. The only reason why I mentioned that is to convey to this Court that there are feelings,
22 amongst at least my client and perhaps the other Accused, and that those feelings influence the way
23 in which they defer or not defer to this Court. And what I am trying to convey to this Court is that
24 sometimes --

25 JUDGE THOMPSON:

26 If I may interrupt and ask you how far should such extraneous matters in my respectful judicial
27 opinion --

28 MR. O'SHEA:

29 Yes.

30 JUDGE THOMPSON:

31 -- factor into the determination of a neat and precise legal question. I am not suggesting that courts
32 should not in any way be sensitive to certain extra legal matters, but it is a matter of legitimacy. We
33 are determining a neat procedural issue and I'm not sure whether the Bench is inclined to have you
34 propound any sociological thesis as to factors which are extraneous to the law which should, in fact,
35 influence our decision.

36 MR. O'SHEA:

37 Well, Your Honour --

1 JUDGE THOMPSON:

2 Whether they believe in the legitimacy or the non-legitimacy of this Court would not seem to me to be
3 a factor which should influence this Court in deciding issues before it. Am I stretching it? Would it be
4 the same thing that if perhaps somebody outside thinks that certain political factors should influence
5 this Court we should not resist any attempt to politicise the process of the Courts because the Courts
6 are guided by the principle of legality and I want to be satisfied why I should take into consideration
7 the fact that accused persons believe in the legitimacy or illegitimacy of a court, a matter that has
8 been authoritatively settled, in an issue of such narrow compass. I am not persuaded.

9 MR. O'SHEA:

10 Can I put it in this way, Your Honour? We are at the very outset of this trial, these Accused, or at
11 least two of them at any rate, have expressed that they have something that they wish to get off their
12 chests at this juncture of the proceedings, the very beginning of the proceedings. I am not in any way
13 suggesting that this should form any kind of precedent for the way in which these proceedings
14 continue. What I am suggesting is that it may exceptionally be in the interests of the expediency of
15 this trial, given the novelty of the situation they find themselves in, for Your Honours to exercise
16 exceptional discretion here under Rule 54 --

17 JUDGE THOMPSON:

18 You mean even at the expense of sacrificing legality, because we have a principle practice which
19 says that once Defendants decide to make opening statements after the Prosecution's opening
20 statement, they are not going to exercise or be allowed -- it is not permissible to exercise that right at
21 the beginning of the presentation of their case. You are urging this Court to move away from that
22 hallowed practice and you are saying to us -- and that is what I am trying to process intellectually --
23 you are saying to us the fact that they believe in the non-legitimacy of this Court is such an important
24 factor or circumstance that should influence us to move from the ordinary to the extraordinary. I think
25 that is what you are saying.

26 MR. O'SHEA:

27 As I said at the outset, Your Honour, I would prefer not to rely on Rule 84 and interpret what is meant
28 by opening statements. I would prefer if we relied on Rule 54 and treat this as a separate issue from
29 opening statements.

30 Earlier when Mr. Clayson was making his submissions, you asked if there had been any precedent for
31 this kind of thing. I remember one case in the case of *Karemera et al* in the International Criminal
32 Tribunal for Rwanda, counsel made a request to the judges for the Accused, Mr. Nzirorera, even
33 though he was represented to make a short statement to the Court. It was an entirely exceptional
34 circumstance, it had nothing to do with opening statements or closing statements and it was in the
35 middle of the proceedings. I can't remember exactly what the issue was, but the Court did allow him
36 to make a brief statement, he made a brief statement which was highly respectful to the Court, it didn't
37 last more than ten minutes and in the final analysis of things it perhaps smoothed the proceedings in

1 that particular instance.

2 JUDGE THOMPSON:

3 Well, we have not had the assurances from you about the nature of this projected statement.

4 MR. O'SHEA:

5 Yes.

6 JUDGE THOMPSON:

7 What you have done is you have told this Bench of well-practised lawyers who are now on the Bench,
8 that your clients have some kind of doubts about the legitimacy of this Tribunal. How can we allow
9 that to influence —

10 MR. PRESIDENT:

11 I am sure Mr. O'Shea has abandoned that contention.

12 JUDGE THOMPSON:

13 Have you abandoned it, do you want to move on? Is it --

14 MR. PRESIDENT:

15 I understood him to mean that he was abandoning that premise.

16 JUDGE THOMPSON:

17 Let me be fair to you, I agree, let me be fair to you, you don't -- you are not asking for a dispensation
18 under Rule 84 now, you are moving the Court under Rule 54, is that what you are saying?

19 MR. O'SHEA:

20 My argument would be this, my client would like to make a statement, it would be my submission that
21 the Court allow him to make that statement under Rule 54.

22 JUDGE THOMPSON:

23 54 not 84?

24 MR. O'SHEA:

25 And if Your Honours are against me on that then he will make the statement under Rule 84. But it is
26 not -- that Rule 84 is perhaps not an appropriate forum for his statement, but I am in your hands I
27 have made the submission.

28 MR. PRESIDENT:

29 Mr. O'Shea, may I move the debate, you know, to somewhere else. Can you please sit down. The
30 Prosecution, I would like to hear from the Prosecution on this, please. You want -- Mr. Brown, Mr.
31 Brown --

32 MR. BROWN:

33 I was waiting for the Court to reach me, but as you indicated you would move in a tidy fashion, I'm not
34 in a hurry.

35

36 Our position is three-fold, but straight-forward. I am prepared to open on behalf of Morris Kallon when
37 the Court gives me that opportunity today or in the morning, depending on how long this discussion

1 goes. Secondly, our position is changed from that which was offered at the Pre-Trial Conference.

2 JUDGE THOMPSON:

3 Yes, quite right.

4 MR. BROWN:

5 Please forgive me, at the Status Conference. And three, should the Court establish that the laws of
6 the case that each Defendant is entitled to two openings, I will be back before you seeking to avail
7 myself of that Rule.

8 MR. PRESIDENT:

9 Thank you. Yes, is there any other enquiry any other finger up here, any hand raised here for any
10 observations? Yes, the Prosecution, please, do you have observations on this?

11 MS. TAYLOR:

12 Your Honours, the position of the Prosecution is that the practice, as has been clear in this Court, and
13 the indication of the practice as has been clear in this Court, is that Rule 84 --

14 MR. PRESIDENT:

15 May we have your name, please, for the records?

16 MS. TAYLOR:

17 Lesley Taylor, Your Honour.

18 MR. PRESIDENT:

19 Lesley Taylor, that's right. Yes, okay.

20 MS. TAYLOR:

21 Your Honour, the position of the Prosecution is that Rule 84 is clear and that the practice that this
22 Court has indicated it intends to adopt under Rule 84 is clear and that is that the Defence only gets
23 one bite at the cherry. They get to make an opening statement; they must elect when that is. They
24 can do it immediately after the Prosecution opening or they can do it when they open their case at the
25 end of the Prosecution case. But there is nothing that indicates that they may do so twice.

26

27 In relation to the motion under Rule 54, my learned friend moved from the position of it would be
28 expeditious to allow the Accused to address this Court directly because they find themselves in a
29 forum in which they are unfamiliar and because they disagree with the legitimacy of the Court, to a
30 position of saying, "They just have something to get off their chests."

31

32 As regards the forum with which they may be unfamiliar, that is why they are represented by counsel.
33 As regards something that they simply wish to get off their chests, there is nothing in the Rules that
34 indicates anything that allows the Accused before this Court to do so and, more than that, Rule 85
35 deals with the presentation of evidence. And Rule 85(C) says that, "The Accused may, if he so
36 desires, appear as a witness in his own Defence."

37

1 Now what my learned friends are asking this Court to do at the moment is tantamount to allowing the
2 Accused to make an unsworn statement before this Court and then later on open their case, and then
3 later on maybe give evidence. And there is nothing in the Rules of this Court that allows that
4 procedure, there has been nothing indicated which shows that it is expedient to depart from the
5 practice that this Court has indicated it will follow and, in my respectful submission, my learned friends
6 -- and for the first and third Accused should be put to their election and make an opening statement
7 now or make an opening statement at the beginning of their case. As Your Honours please.

8 MR. PRESIDENT:

9 Do you have any reply to that? No reply.

10 MR. CLAYSON:

11 I think we have made our submissions clearly. There is nothing new that has been raised by the
12 Prosecution. There is nothing further I would wish to say at this stage, I may wish to address the
13 Court once the Court has ruled on this matter.

14 MR. PRESIDENT:

15 Mr. Brown.

16 MR. BROWN:

17 I have nothing further to add at this time, Your Honour.

18 JUDGE THOMPSON:

19 Learned counsel on both sides, we have had the opportunity of conferring and this Court -- this
20 Chamber is satisfied that there has not been advanced any compelling arguments justifying departure
21 from the application of Rule 84 of our Rules. And in that regard, we have no alternative but to
22 overrule these submissions. In fact, we are unable to see our way clear to allow the Accused person
23 to make an opening statement at this juncture and then have to make an opening statement at a
24 subsequent stage during the presentation of the evidence for the Defence. We rule accordingly.

25 MR. PRESIDENT:

26 Right, this said, I mean, this is the unanimous opinion of the Tribunal and we have no objection taking
27 the opening statements from either counsel or from the Accused persons themselves, and we don't
28 mind what length -- I mean, we are not bothered about their being short or long. They should make
29 their statements provided, provided that they don't touch or border on politics nor should they have
30 political connotations, because we do not want to politicise these trials, this is a court of law and we
31 are looking at the commission, alleged commission, of crimes which are governed, you know, by rules
32 of law. We don't want -- we want as much as possible to estrange our proceedings from any political
33 considerations anywhere. So can we -- yes, Mr. Clayson?

34

35 Yes, Mr. Clayson, you had some other presentations which you wanted to make?

36 MR. CLAYSON:

37 Yes, simply request for the fact now for two reasons that the Court grant us a short adjournment,

1 please, firstly so we can take instructions as to the way that the Defendant wishes us to proceed and
2 secondly, because he wishes to use the toilet.

3 MR. PRESIDENT:

4 Right, okay. Is there any other application from the Defence? Right. How many — Mr. Clayson, how
5 many minutes do you want to consult?

6 MR. CLAYSON:

7 Would you give us 15 minutes, please?

8 MR. PRESIDENT:

9 Pardon?

10 MR. CLAYSON:

11 Fifteen minutes.

12 MR. PRESIDENT:

13 Fifteen minutes, we will grant you 15 minutes. We shall resume in 15 minutes. The court will rise.
14 *(Court recessed from 1555 to 1623)*

15 MR. PRESIDENT:

16 Yes, we are resuming the session. Can I call on the first Accused?

17 MR. CLAYSON:

18 Your Honours, I believe Mr. Sesay now wishes to address you to make a statement to you.

19 MR. PRESIDENT:

20 Right, Mr. Sesay. Yes, if you want to make a statement you have your microphone — you have your -
21 – put -- take it closer to yourself, please.

22 MR. BROWN:

23 Your Honour, one brief question.

24 MR. PRESIDENT:

25 Please.

26 MR. BROWN:

27 Your Honour, I should not like to object at all should there be things with which I differ during the
28 comments of an Accused, and I would ask for the opportunity, if there are any objections, I may
29 preserve them until the end of his presentation without being seen to waive them.

30 MR. PRESIDENT:

31 Mr. Sesay --

32 THE ACCUSED SESAY:

33 Yes, sir.

34 MR. PRESIDENT:

35 -- you are about to make your opening statement under the provisions of Article 84 of the Rules of
36 Procedure and Evidence --

37 THE ACCUSED SESAY:

1 Yes, sir.

2 MR. PRESIDENT:

3 I am going to read to you those provisions so that -- I know your counsel must have spoken to you
4 elaborately on this, but I would like to read to you the provisions of Rule 84. "At the opening of his
5 case, each party may make an opening statement confined to the evidence he intends to present in
6 support of his case. Confined to the evidence he intends to present in support of his case. The Trial
7 Chamber may limit the length of those statements in the interests of justice." I have been saying this
8 all along and those statements do not include political declarations or statements that have a political
9 connotation, they are supposed to relate to the facts of the case that has been brought against you as
10 per the indictment. Have you understood me?

11 THE ACCUSED SESAY:

12 Yes, sir.

13 MR. PRESIDENT:

14 Right. You can proceed.

15 THE ACCUSED SESAY:

16 Yes, sir, My Lord. I am making the following reasons for the attention --

17 MR. PRESIDENT:

18 And you can make reference, you know, to what the Prosecution has said, you know. You can do
19 that.

20 THE ACCUSED SESAY:

21 Yes, sir, My Lord.

22 MR. PRESIDENT:

23 Yes.

24 THE ACCUSED SESAY:

25 I am making the following reasons for the attention of the Judges of the Special Court, the people of
26 Sierra Leone and the world to know.

27

28 Since the application by the Government of Sierra Leone to the United Nations dealing with people
29 involved in the conflict in Sierra Leone did not allow --

30 MR. PRESIDENT:

31 You had better stop. These facts don't concern -- don't concern the facts relating to your case, you
32 are going contrary to section -- the provisions of Section 84 which I have just read to you, Mr. Sesay.
33 I would like you to confine yourself, you know, to that and I think that you are better advised -- you
34 must have been advised by your counsel. Mr. Clayson, did you have a chat with your client on this?

35 MR. CLAYSON:

36 I should not, I think, reveal the discussions that we have had --

37 MR. PRESIDENT:

1 Okay, that's all right, they are confidential discussions. That's all right.

2 MR. CLAYSON:

3 -- albeit that I make that remark respectfully. But I think we do take the view that we should ask the
4 Court, if you would grant us some further time in this situation, because the ruling which Your Honours
5 made is a matter obviously which very significantly affects the presentation of the Defence case and I
6 know that Mr. Sesay is very concerned about that. And whilst we have had a discussion within the
7 time limit which I asked for, and which you granted, it seems to me that I should say to you that further
8 time, I think, is needed so that I can be and we can be completely confident that the defendant has
9 understood all aspects of your ruling and can make a careful and considered choice about how he
10 wishes the case to proceed.

11 MR. PRESIDENT:

12 Mr. Clayson, I think we will grant you time --

13 MR. CLAYSON:

14 Thank you.

15 MR. PRESIDENT:

16 -- until tomorrow --

17 MR. CLAYSON:

18 Thank you.

19 MR. PRESIDENT:

20 -- to be able to consult exhaustively and sufficiently with your client and to advise him on what to do.

21 MR. CLAYSON:

22 Thank you very much.

23 MR. PRESIDENT:

24 Mr. Sesay, we are adjourning your presentation to tomorrow so that you can be able to have a further
25 consultation, tête-à-tête, with your -- with Mr. Clayson, your lawyer, yes.

26 THE ACCUSED SESAY:

27 Yes. This is just in the interests of justice because I am not -- I'm not going to challenge the Special
28 Court, but it's a matter of, I mean, giving the truth before this Court.

29 MR. PRESIDENT:

30 That is all right, we will adjourn the matter to tomorrow.

31 THE ACCUSED SESAY:

32 *(overlapping microphones)* the conflict *(inaudible)* no loser, so I believe that there is party to the
33 conflict.

34 MR. PRESIDENT:

35 We would adjourn the matter to tomorrow. You will consult sufficiently with Mr. Clayson and the panel
36 of lawyers who are representing you and I think they are in a better position to advise you on this
37 matter. That is why they are there and that is a role which they are fulfilling. Is that all right? So, you

1 will sit there and we will tell you when we shall start tomorrow morning, okay?

2 THE ACCUSED SESAY:

3 Thank you, sir.

4 MR. PRESIDENT:

5 Right, second Accused?

6 MR. BROWN:

7 I am sure on behalf of —

8 MR. PRESIDENT:

9 May we have your microphone, your microphone, please.

10 MR. BROWN:

11 Sorry, sir, I wish to open on behalf of Mr. Kallon. I was going to ask if I might make use of the podium
12 that is in front of —

13 MR. PRESIDENT:

14 Oh yes, why not, you can use it, you can use it. It's for everybody.

15 MR. BROWN:

16 Thank you, sir.

17 MR PRESIDENT:

18 -- who wishes to make use of it.

19 MR. BROWN:

20 Your Honour, I have been receiving a flurry of notes all of which say, "You must speak slowly," and so
21 I will try to overcome a lifetime of bad habits as I proceed.

22 MR. PRESIDENT:

23 You will have to speak very slowly in the interests of your client so that he follows you (*inaudible*).

24 MR. BROWN:

25 My Lord, learned adversaries, co-counsel, Morris Kallon, Mr. Gbao, Mr. Sesay, Your Honour, I have
26 been given the honour of being invited by Mr. Kallon and Mr. Touray to work with Miss Akin and
27 Mr. Melron Nicol-Wilson on behalf of Morris Kallon. And I wish to start by making points that are
28 fundamental. Please do not consider these are so fundamental as to suggest that I don't appreciate
29 the nuance and understanding of the Court.

30

31 But the first point is that this team represents Morris Kallon and not this marriage, so-called by
32 Mr. Tejan-Cole, of the AFRC/RUF and not something called the RUF, but Morris Kallon. And I make
33 that point because in listening to the arguments of our adversaries this morning, it seemed as though
34 some wild and large leaps of logic were being made in terms of how this Court might interpret the
35 evidence. And so I wish to make comments about interpreting the evidence in terms of the very
36 fundamental notions of whether this prosecution can prove beyond a reasonable doubt that there was
37 both a culpable mental state and criminal acts on behalf of Morris Kallon. And we wish to present

1 both some assessment of evidence which are likely to come in both parts of the case as they relate to
2 that part.

3
4 I cannot, however, pass by without comment Mr. Crane's eloquent references on at least three
5 occasions to something called the beast of impunity or comments about the army of evil and dancing
6 with the devil. The latter two because I am afraid they invite – and again I have no fear that this Court
7 will be misled -- but I regard this as a temple of a secular faith called justice and some things cannot
8 remain unchallenged on behalf of an Accused, but talking about an army of evil and dancing with the
9 devil invites a violation of the principle of legality. Those are not precise terms, those are not
10 analytical phrases about nature of the evidence in this case and they do not touch upon the law,
11 indeed they invite its disregard. Again, I want to be clear that I do not disrespect the Court or mistrust
12 it in any way, but those comments cannot be ignored.

13
14 And as for impunity it seems to me that it has been the practice of almost every prosecutor at a
15 moment as significant as this to want to think about the transcended values that bring us here and so
16 I cannot be personally critical of any of them for doing that in the name of advocacy. But there is
17 something troubling about talking about impunity by itself because it invites us to say, “Well there
18 clearly were,” and this Court is judicially noticed “wide-scale humanitarian violations in Sierra Leone
19 during the period of this conflict and someone must pay,” and the phrase “beast of impunity” invites us
20 to say, “Well we must find someone who can pay from among these Accused,” or perhaps from over
21 across the way when in fact the nature of impunity does not revolve such sacrifices, but rather a
22 continued adherence to the rule of law and the burden of this Prosecution and their obligation to prove
23 a case against Morris Kallon.

24
25 And so in looking at the language and listening to the words this morning, it seems to me the
26 suggestion that we should focus on the beast of impunity rather than on a phrase which is equally
27 important because the concept of the conscience of mankind is what must guide us and I note that it's
28 a clear and critical part of humanitarian law and the Marten's Clause in the Common Renunciation
29 clauses of the Geneva Convention of 1949, clearly part of humanitarian law, but it is also part of the
30 law of human rights and the preamble to the universal declaration of human rights. And so the
31 concept of impunity, while not to be regarded, cannot be our lode stone or our touch stone, but a fair
32 trial for Morris Kallon which means the evidence and matching it to the law and not rhetoric about
33 impunity.

34
35 The evidence about Morris Kallon will not demonstrate or even come close to suggesting that he is a
36 hand-maiden of evil as has been suggested in this hall.

37

1 In 1989, Morris Kallon was working for something where he actually had the opportunity to matriculate
2 with respect to something called the Liberian Opportunities Industrial Centre, a chance to develop
3 himself as a working man. And the evidence will show that shortly after he matriculated from that
4 institution he began to work for a furniture company and this work was being done in Liberia. And
5 then there started some events, events that we have been told -- and there is no reason to challenge
6 them -- or sparked by Mr. Taylor and during the flight from Monrovia in which Mr. Kallon was
7 participating, a vehicle carrying the furniture personnel was stopped, by whom? By the men of
8 Charles Taylor. And upon seeing that he carried a passport from Sierra Leone they incarcerated him
9 at Harbel Hill. They tied the ropes round him so tightly that to this day -- and I trust the Court will see
10 this -- he carries the scars of that unlawful and brutal incarceration. He was rescued from that state
11 by a person who seemed to him a gentle person, a person who called himself Pa Morlai. My
12 pronunciation is being corrected by my colleagues and I welcome it. It's Pa Morlai, forgive my
13 mispronunciation of the name.

14 MR. PRESIDENT:

15 For the records we would like to have maybe the precise spelling, you know, for our records.

16 MR. BROWN:

17 M-O-R-L-A-I.

18 MR. PRESIDENT:

19 For the records -- are the records right?

20 MR. BROWN:

21 Pa, P-A, M-O-R-L-A-I, my spelling is greater than my pronunciation.

22 MR. PRESIDENT:

23 That's all right.

24 MR. BROWN:

25 This person, Pa Morlai, took Morris Kallon to Camp Nama where he was effectively conscripted into
26 the RUF and the evidence will demonstrate that while Morris Kallon resented the succession of being
27 unlawfully incarcerated and then conscripted by force, he came to have some views that he had long-
28 held about politics come to the fore, and I don't want to suggest that Morris Kallon is (*inaudible*) to a
29 political theorist, Morris Kallon is an ordinary man of high intelligence who came to the conclusion that
30 the one-party state and other aspects of life in Sierra Leone to which he objected, were matters that
31 warranted his involvement in an armed struggle. Now, the Prosecution, which I think has to some
32 extent attempted to suggest certainty where there is chaos, and organisation and structure where
33 there is disorganisation, has really taken two views on this: one is, Mr. Crane suggested that there
34 should be no criticism of the initial political thrust of those in the RUF, I think he put it, "Sierra Leone
35 was not a paradise." Mr. Tejan-Cole, on the other hand, chose to introduce what I think with respect
36 was an extraneous legal concept by saying, "This was not a just war." I actually don't criticise either
37 of them for what seemed disparate views because they reflect the fact that these were not simple

1 times. But what is straight forward is that Morris Kallon was a man with a political view that led him to
2 act.

3
4 Now, if we go back to this period of 1989, late 1989 and the beginning of 1991 when he was in Camp
5 Nama, it is important to note in its resting factual juxtaposition. The Prosecution talked about a
6 February 1991 meeting where it suggested that evil and corruption were spawned at a meeting
7 involving Mr. Sankoh and Mr. Taylor. At that moment, the evidence will show, Morris Kallon didn't
8 even know that the man Pa Morlai, who had rescued him from Harbell Hill was Foday Sankoh, but he
9 learned it subsequently soon thereafter by listening to a broadcast and recognising the voice.

10
11 I say to suggest that that kind of fact, of which there will be more as the trial progresses, suggests that
12 this broad brush of saying, "There were humanitarian violations throughout Sierra Leone and this man
13 is accountable," without demonstrating or urging on this Court facts that reflect in detail or knowledge
14 or culpable mental state is an invitation to injustice.

15
16 It's important to observe that the facts in this case will demonstrate that Morris Kallon remained
17 committed to this idea of democracy and a struggle against a one-party state, as opposed to the kind
18 of involvement in a corrupt enterprise that has been alleged by this Prosecution. We have in prior
19 motions submitted a certification of General Opande, Force Commander of UNAMSIL on his role in
20 the disarmament process, not to argue Lome or any other matter that has been decided, but to
21 indicate that Morris Kallon's commitment continued to be one towards democracy. There were no
22 winners and losers in this war, but a peaceful end and the RUF, that involved Morris Kallon, was
23 involved in that. And that reflects on his mental state in a way that we ask you to take account as you
24 listen to a Prosecution that can indeed paint pictures of horrors that took place in this country that chill
25 the spine on listening to it. But they must, in ways that Your Honours are well familiar with, connect
26 them to Morris Kallon, they have not even done it in their opening statements and they will not do it in
27 the evidence of this trial.

28
29 One of the other concepts advanced by the Prosecution -- and this strikes me as being on the edge of
30 unbelievable to reverse a quote that Mr. Crane used this morning -- and that is that there was a
31 clearly defined command structure in the RUF. I cannot believe those words were uttered by people
32 who have read the same thousands of pages of documents, including members of this inner circle.
33 The RUF was a guerrilla organisation. It was civilian run by men who had, in most instances, the
34 most rudimentary of military training, whose concepts, for example, about a T O and E, which they
35 probably would not know to this day, were as sophisticated organisations are not even part of this
36 case. And indeed, one of the other kinds of evidence that this Court will hear is that Charles Taylor,
37 and even more often, Mr. Sankoh, gave commands directly to troops on the ground violating every

1 principle we know about chain of command. And that promotions, so-called, were arbitrary. I can call
2 myself a turtle or a swan, but that title will not transfer me into one. And I submit that in listening to
3 the evidence in this case, this Court must not start with the assumption, which defies logic and
4 reason, that there was a clearly defined chain of command in the RUF. Indeed, there were many
5 RUFs and the skirmishes and battles and shoot-outs between various factions and groups in the RUF
6 are not to be dismissed as mere organisational chaos that occasionally occurred, but rather reflecting
7 its genesis as an organisation of men largely untrained in military matters. Perhaps the witnesses
8 who come before us, xxxx and others, will tell us how long they had been trained and how thoroughly
9 they had been schooled in order to understand and maintain chains of command and the absurdity of
10 suggesting that the RUF had a chain of command, but its a purposeful suggestion, Your Honour,
11 because the purpose of the suggestion is to fill that gap between these things that happened that
12 horrify us all and this man.

13
14 And our concern about the beast of impunity concept is that if there is anything approaching horror,
15 things that have been done to the ordinary people of this country, it would be to have a man falsely
16 accused or falsely convicted on the basis of that kind of generalised notion.

17
18 There is the marriage, as Mr. Tejan-Cole called it, of the AFRC and the RUF. I think it in some ways
19 unfair to hold a man too literally to his metaphors, but a marriage that functions like that would indeed
20 be jeopardy from the opening day and would not lead to very much bliss.

21
22 To begin with, each of these organisations were different in their culture. The evidence will be
23 overwhelming about the civilian and disorganised nature of the RUF. The AFRC wasn't one group,
24 but a group of soldiers who staged a coup. But even within that organisation there were factions.
25 There will be testimony that after their retreat from Freetown SAJ Musa fell out with Johnny Paul
26 Koroma and came almost to firing at each other, and subsequently, SAJ Musa, who had held cabinet
27 positions fell out with both Superman and Mosquito and in the latter case said he would not serve
28 under a civilian, a civilian, what does that say about his view of this clearly defined chain of
29 command?

30
31 Then you take the fact that this marriage was performed over the radio, an agreement at the top, not
32 something that anyone suggests was organically put together because men will function together on
33 the ground. The evidence will suggest that there was anything but a marriage and that indeed the
34 chaos and confusion that existed on the ground between people pretending to be one thing and
35 another and between organisations that didn't meld, didn't mix or even a real alliance let alone a
36 marriage.

1 A generalisation is made because -- and this maybe the key -- because Mr. Tejan-Cole ended his very
2 eloquent presentation, by talking about faceless soldiers and the problem is that if you don't have
3 Bockarie, and you don't have Sankoh, and you don't have Taylor, and you don't have Koroma, then
4 who will you charge with the acts taking place on behalf of those faceless soldiers? Well, Kallon is
5 here and perhaps others.

6
7 For this beast of impunity ought not be satiated by feeding him Morris Kallon in the absence of
8 evidence of proof beyond a reasonable doubt.

9
10 There is another issue that hangs in this courtroom and hangs over these proceedings and has been
11 ripened in the work that is so important that has been done in terms of Additional Protocol II and that
12 is the question of child soldiers. And I urge the Court, as it looks at the evidence, to look closely at the
13 question of how knowledge may be established. Yes, there may be some people who say this or that
14 person was a child soldier and I knew him from youth or he was five, which is beyond question, but far
15 more often the descriptions are more vague, are of strangers. And the question of knowledge
16 becomes critical. This is a nation in which there will be evidence that less than ten per cent of
17 children will be found in the birth registry. So even subsequent determinations of age are uncertain,
18 let alone those made under circumstances like those that prevailed in Sierra Leone. And there will
19 also be evidence concerning the state of malnutrition so that many children may seem younger than
20 they were. This is not to suggest, just as we don't claim there were no violations or to suggest that
21 there were no child soldiers, of course, there were, but to deal with the question of a burden on this
22 Prosecution, not to bring rhetoric and I started to say not to inflame, and I remember the conversation
23 from this morning, I know I will be insulting Your Honours, I was inflamed in a negative way and I
24 apologised to you.

25
26 Now, the circumstances under which these kinds of judgments and about knowledge and mental
27 states are critical is very, very, very important. Because one of the ways in which the Court has to
28 view, for example, chain of command is a very factual question and even more fact intensive is
29 whether that chain of command can warrant an inference about command responsibility. And the
30 *Delalic* case and others have clearly set forth what are significant factors, and we can even go back to
31 the rather eloquent dissent in *Yashamita* whether or not under maximum pressure you have to look
32 carefully -- and by pressure I mean military pressure -- at the kinds of knowledge that may be
33 available on the ground.

34
35 Mr. Crane said in the CDF opening at page 9 on June 3rd, "The CDF's plan and purpose and that of
36 their subordinates was to defeat, by any means necessary, the Revolutionary United Front, to include
37 the complete elimination of the RUF and members of the Armed Forces Revolutionary Council, their

1 supporters, sympathisers and anyone who did not actively resist the RUF/AFRC occupation of Sierra
2 Leone.” I say that not because that would be a warrant to violate the laws of war, but I am aware of
3 honoured doctrine of (*inaudible*), but I say it to say under the circumstances and chaos that existed
4 and the pressure that was being exerted, the question has to be asked in each instance when the
5 Prosecution tries to say, “Well look at what happened in Port Loko and how you can draw inferences
6 about that concerning a man who was in Bo?” What was the capacity to know? What was the
7 capacity to foresee? Those are the elements, not broad rhetoric about beasts of impunity.

8
9 Your Honour, one of the things that can never be ignored in a case, and it is always difficult and
10 dangerous to go too much into detail because I learned a long time ago that cases on paper are
11 almost never the same as they are in the courtroom, but there was talk about an inner circle as
12 though somehow that a person who claims to be an accomplished or a knowledgeable insider can
13 come in here and because of that alone that person should be believed. I submit that one of the most
14 important tasks Your Honours will have to do would be to make credibility findings about such
15 persons. What have they to gain? What have they to lose? And have we been honestly supplied
16 with information about that by our learned adversaries?

17
18 I am not an expert in Sierra Leone, it's a country that each time I come here seems more complex
19 than the time before and I fear I will never be, but I know that from the investigations we have done
20 there is fear among former RUF people that to come forth is to walk into the jaws of incarceration.

21
22 I would ask the Court to ask the question of the insiders who will allegedly come in here, have you
23 been given the key? Is the key of value? Does it affect your credibility? Surely the Court will allow us
24 to do that in terms of questions, but I ask the Court to examine very carefully what that is about.

25
26 There was an examination of one of that person, a person has given 2000 pages of statements about
27 what happened and seemed remarkably, despite being a confidante of Mr. Sankoh and to know
28 everything that happened, to have never done anything himself. So remarkable was this that John
29 Barry and Louise Taylor who were working in the Prosecutor's office could not stop in terms of their
30 duty without saying to him, “Look at this paragraph of this document you have signed,” the document
31 we have not seen yet, “It provides that you have got to give truthful information to us in exchange for
32 what the OTP is going to do for you.” Well there is a lot there, what is the OTP going to do? What
33 does he expect the OTP to do? “But then ever since we have started interviewing you have all ways
34 down-played your role, you have down-played it to the point well what you did was really nothing, you
35 were kind of in the shadow, always on the sidelines, never in the front.”

36
37 It is this person who has pointed a finger at Morris Kallon, and all I ask -- and again I ask this most

1 respectfully not with any doubt about your fairness insight or impartiality -- is to look in human terms at
2 the issues of credibility carefully. In terms of this magical inner circle of the Prosecutors suggests to
3 you will in fact be the key to inside, it will be, but the insight will require intellectual labour and that
4 sacred engine of truth; cross-examination. But when the dust has cleared, this person, in particular,
5 and others like him, will not seem so pure, so believable, their words not worthy of sacrificing Morris
6 Kallon.

7
8 I want to make it very, very clear that not only are we aware of that which the Court is judicially
9 noticed, but we are aware and indeed we embrace the tremendous advances in the rule of law in
10 terms of humanitarian law broadly since the (*inaudible*) code and much more specifically since
11 Nuremberg. And we recognise that horrible events took place in this country and that some of them
12 were done by men who called themselves RUF, but it is a broad leap from there to a conclusion about
13 Morris Kallon that was urged on you this morning by those who were quite facile, but advanced
14 propositions that don't withstand logical analysis and cannot withstand the evidence that will be
15 adduced in the coming days and months.

16
17 I have been urged at this late stage to slow down, but my time is up, as is almost the court day.

18 MR. PRESIDENT:

19 Which (*inaudible*).

20 MR. BROWN:

21 I understand.

22 MR. PRESIDENT:

23 We will listen to you; equality of arms.

24 MR. BROWN:

25 Yes.

26 MR. PRESIDENT:

27 But it doesn't mean that --

28 MR. BROWN:

29 No, no, I understand it doesn't mean the quantity of arms.

30 MR. PRESIDENT:

31 Right, okay.

32 MR. BROWN:

33 I am glad, however, that you used that phrase for there is one last point I would like to bring to Your
34 Lordships' attention.

35
36 I have no warrant and no desire to suggest that the words of the people on that side of the room
37 should be muffled in any way and they have the right to go where they want and speak as they will as

1 long as they are as I would expect them to be, but the fear of which I spoke earlier is real and there is
2 fear that pertains not just to Prosecution witnesses, indeed it seems that every single one, including at
3 one point experts need to be protected, but also to Defence witnesses who are fearful of this
4 government, who are fearful of consequences and of prosecution, whether or not they are culpable,
5 and who are reluctant. And we will leave no stone unturned, no province unexplored in continuing to
6 talk to such witnesses, and indeed some of them have already come forth and indicated some
7 willingness to talk, for example, about the schools that Morris Kallon set up, which would suggest
8 something contrary to a willingness to use child soldiers.

9
10 I suggest that some in this inner circle who have been accepted by the Prosecution as believable are
11 not truthful in the things they say about Morris Kallon. But we do think it important that the Court be
12 aware that the background in which we work and which we toil and in which the sacred duty we have
13 to champion the cause of Morris Kallon, is profoundly affected by that fear that is on the other side,
14 and while we may make specific application as we move forward for relief that may help us, we think
15 we should not move beyond this point without bringing to your attention that that fear is palpable, it is
16 ubiquitous, it is powerful and sometimes it spawned and increased by the words, however well-
17 meaning, by our adversaries and that should not be a touchstone and deciding factor in this trial.

18
19 Your Honour, I turn for the last time to the beast of impunity. It is important to be aware of Article 1. It
20 is important, however, that the frustration that Sankoh and Bockarie will never be here, and Koroma
21 and Taylor seem remote possibilities, that those possibilities can have no effect on what this Court
22 does. That if it were necessary to acquit those nine Accused, the principle of impunity would not be
23 damaged, indeed it would be damaged were the Accused convicted on flimsy evidence, but
24 particularly as to Morris Kallon, about whom surprisingly little was really heard today, it would be
25 indeed a shame were he to be fed to that beast.

26 MR. PRESIDENT:

27 Thank you, Mr. Brown. The third Accused.

28 MR. O'SHEA:

29 Perhaps I can have Your Honours' guidance as to the situation with time. It will help me to make a
30 decision on this issue.

31 MR. PRESIDENT:

32 What guidance, Mr. O'Shea, what guidance?

33 MR. O'SHEA:

34 Well, at what time do Your Honours wish to rise?

35 MR. PRESIDENT:

36 For how long would you like to talk?

37 MR. O'SHEA:

1 Well, at the moment my position is that Mr. Gbao would like to make a statement.

2 MR. PRESIDENT:

3 And for you to complement this statement?

4 MR. O'SHEA:

5 I would like to think about that and it may be -- I think that I've advised my client comprehensively.

6 However, there may be some benefit in going along with the position requested by Mr. Clayson.

7 MR. PRESIDENT:

8 Yes, I was going to say, you know, because these are very important issues. On the same basis as
9 we granted the application, you know, to Mr. Clayson, you may wish to carry out, you know, further
10 consultations, you know, with your client and you will decide on who between you and him would
11 make the statement.

12 MR. O'SHEA:

13 Yes.

14 MR. PRESIDENT:

15 So we don't have duplications and what have you, so I think that --

16

17 Yes, Mr. O'Shea, yes.

18 MR. O'SHEA:

19 Yes, Mr. President, I think that would be wise.

20 MR. PRESIDENT:

21 You see what we were saying here is -- can the Court Management help Mr. Brown to lift that over,
22 please. Thank you.

23

24 Because we would like to take the statement, you know, the opening statement from either you on his
25 behalf or he does it himself. So, I would like you to consult with him extensively since you are not
26 very sure, you know, of what option he is likely to adopt --

27

28 MR. O'SHEA:

29 There is -- there was a third option which I am not --

30 MR. PRESIDENT:

31 Why don't you consult about this third option because we are not concerned with these options? We
32 want you to consult with your client and come up with the option you think best suits your Defence
33 strategy.

34 MR. O'SHEA:

35 I appreciate that, Your Honour, but I would like to mention what that third option is to see the reaction
36 of the Court because Your Honours have just indicated to me that you would like to hear --

37 MR. PRESIDENT:

1 *(inaudible)* please.

2 JUDGE THOMPSON:

3 Yes, I was going to suggest that the Bench is of the opinion that we cannot have you both, you know,
4 split the opening statement, it's either the Accused does it in person or you do it as his legal
5 representative. If the Accused were -- and that would be the preference of the Bench that one or the
6 other would deliver the opening statement, not have both yourself and the Accused do that. But
7 perhaps if we hear the third option might make a final determination on that.

8 MR. O'SHEA:

9 Well, Your Honour has answered my question because that was the third option.

10 JUDGE THOMPSON:

11 The -- perhaps, to keep an open mind on this, you might want to persuade us or endeavour to
12 persuade us why the third option --

13 MR. PRESIDENT:

14 What is this third option?

15 JUDGE THOMPSON:

16 In other words --

17 MR. PRESIDENT:

18 Mr. O'Shea, what is this third option?

19 JUDGE THOMPSON:

20 State it precisely.

21 MR. O'SHEA:

22 I am not inclined to push this point strongly, but simply put it forward as a possibility at this stage and
23 it is useful if the Court turns round to me at this stage and says that is not an option and that helps
24 me. But while it is quite a different situation where two counsels share an opening statement --

25 JUDGE THOMPSON:

26 That's it, yes.

27

28 MR. O'SHEA:

29 -- it does raise the question whether if the Prosecution have had two individuals sharing an opening
30 statement, providing the Court controls the time involved in the opening statement, why should the
31 Accused and his counsel not share it, if the Court accepts the principle that the Accused can deliver
32 it?

33

34 I am not going to push this submission very hard because I am not finally decided on what's best, but
35 if I were to make a submission to Your Honours as to why I should be allowed to employ that third
36 option, I think that would be it.

37

1 JUDGE THOMPSON:

2 In other words, you are suggesting that the best option may be that you share the workload, in other
3 words you both -- you take one part of it and he takes another part of it, just as the Prosecution has
4 done?

5 MR. O'SHEA:

6 Yes, and the fact --

7 JUDGE THOMPSON:

8 Because you yourself have answered the question that in the case of the Prosecution these are two
9 legally qualified persons.

10 MR. O'SHEA:

11 Yes.

12 JUDGE THOMPSON:

13 Of course, we have been struggling with the idea of trying to get your client to understand that if he
14 makes a statement it will have to conform to the prescriptions of Rule 84.

15 MR. O'SHEA:

16 Yes.

17 JUDGE THOMPSON:

18 Of course, you understand that because you are legally qualified. I am sure it is not disingenuous to
19 suggest that he would not even appreciate that, unless you take him through and advise him as
20 carefully as you can, whilst in the case of the Prosecution there is no difficulty there. The reason I am
21 not myself sure whether -- if you share this workload whether that would advance the interests of
22 justice here or whether that would not unnecessarily delay the trial. Except, of course, if you are
23 prepared to say that you would exercise all the control that you have, professional control, over what
24 is going to come from him as the opening statement which he would want to give and your part of it.
25 Perhaps I need to be persuaded on that.

26 MR. O'SHEA:

27 Yes, well in so far as the interests of justice are concerned it is exactly because my client may not fully
28 appreciate the meaning of Rule 84, notwithstanding my advice, that the interests of justice may dictate
29 that it would be fair to allow counsel to supplement the statement depending on the content of the
30 statement. I have to say quite frankly with the Court that I cannot control the content of the statement
31 which Mr. Gbao wishes to make.

32 JUDGE THOMPSON:

33 Well, that is my difficulty, that is my difficulty. And you would see that that would distinguish your
34 situation from the Prosecution situation where what was done here presumably -- and I think it is a fair
35 presumption to make -- was a result of some joint effort by both Prosecution counsel and they each
36 knew exactly what part of the opening statement they would take on and that, you could see, was very
37 helpful this morning, we got -- everything flowed very well in that context. But this procedure,

1 extraordinary procedure, which you are urging upon us, although you say are not pressing it, can
2 become problematic if you are saying that you cannot guarantee control over the content of what your
3 client might want to say.

4 MR. PRESIDENT:

5 I think Mr. O'Shea will be delighted with an adjournment to tomorrow so that he examines his options
6 with his client and comes before us tomorrow with a clearer view as to what he would do or what his
7 client, you know, would do, because we are working -- I mean, it is good, you know, that you --
8 because he may well concede to you, like Mr. Kallon conceded to Mr. Brown, to make an opening
9 statement for him. Why not? It could well be the same thing with Mr. Clayson tomorrow, why not?
10 We are keeping our minds, you know, very open and we look forward to having clear options
11 tomorrow when we resume the session.

12 MR. O'SHEA:

13 Very well.

14 MR. PRESIDENT:

15 Is there any other matter that is -- yes, please.

16 MS. TAYLOR:

17 There is one matter, Your Honour, with your leave I would like to raise and that is whatever option is
18 urged by my learned friends on Your Honours tomorrow, that my learned friends remember
19 themselves and, if it comes to that, remind their clients to respect the confidentiality of the Prosecution
20 witnesses and whatever is said before the Court in these open sessions. Thank you, Your Honour.

21 MR. PRESIDENT:

22 That is all right. So in the absence of any further requests or motions before the Court, we will rise
23 and adjourn to tomorrow, the 5th -- the 6th of July 2003 -- 2004, I'm sorry, at ten o'clock.

24

25 The Court will rise, please.

26 *(Court Adjourned at 1713H)*

27 *(Pages 1 to 83 by Susan G. Humphries)*

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CERTIFICATE

I, Susan G. Humphries, Official Court Reporter for the Special Court for Sierra Leone, do hereby certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (*machine writer*) and thereafter transcribed by computer; that the foregoing pages contain a true and correct transcription of said proceedings to the best of my ability and understanding.

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

Susan G. Humphries