

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL-2004-15-T  
Trial Chamber I

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

FRIDAY, 1 OCTOBER 2004  
3.20 P.M.  
TRIAL

Before the Judges:

Bankole Thompson, Presiding

For Chambers:

Ms Candice Welsh  
Mr Matteo Crippa

For the Registry:

Mr Geoff Walker

For the Prosecution:

Mr Luc Cote  
Ms Boi-Tia Stevens  
Mr Christopher Santora  
Mr Bobby Gboyor - Case manager

For the Principal Defender:

Ms Haddijatou Kah-Jallow

For the Accused Issa Hassan Sesay:

Mr AF Serry-Kamal  
Mr Wayne Jordash  
Ms Sareta Ashraph

For the Accused Morris Kallon:

Mr Melron Nicol-Wilson

For the Accused Augustine Gbao:

Ms Simone Monasebian

1 Friday, 1 October 2004  
2 [The accused Sesay and Kallon entered court]  
3 [The accused Gbao not present in court]  
4 [Open session]  
15:19:27 5 [Upon commencing at 3.20 p.m.]  
6 MR WALKER: This is Friday, the 1st of October 2004, case  
7 number SCSL-2004-15-T. The Prosecutor against Issa  
8 Hassan Sesay, Morris Kallon and Augustine Gbao which is  
9 listed for status conference.  
15:21:35 10 JUDGE THOMPSON: Good afternoon, learned counsel, on both  
11 sides. I'm assuming, I hope rightly, that counsel did  
12 receive notice of this proceeding through the  
13 instrumentality of scheduling order for status conference  
14 under Rule 65 bis, dated the 30th of July 2004.  
15:22:03 15 We will conduct this proceeding in open session and  
16 let me, for the records, straight away ask for  
17 representation. Who appear for the Prosecution?  
18 MS STEVENS: Good afternoon, Your Honour; good afternoon  
19 members of the Defence team. On behalf of the  
15:22:29 20 Prosecution I am Boi-Tia Stevens. I'm assisted today by  
21 Christopher Santora and Mr Luc Cote.  
22 JUDGE THOMPSON: Thank you, and who appear for the first  
23 accused?  
24 MR JORDASH: Good afternoon, Your Honour, for the first  
15:22:42 25 accused Mr Kamal; myself, Mr Jordash; and Ms Ashraph.  
26 JUDGE THOMPSON: Thank you. And who appear for the second  
27 accused?  
28 MR NICOL-WILSON: Good afternoon, Your Honour, Melron  
29 Nicol-Wilson for the second accused.



1 JUDGE THOMPSON: And who appear for the third accused.

2 MS MONASEBIAN: Good afternoon, Your Honour, for the third  
3 accused Mr Gbao, Simone Monasebian, Principal Defender.

4 JUDGE THOMPSON: Thank you. Learned counsel, for the records,  
15:23:19 5 let me indicate that this proceeding is being held  
6 pursuant to 65 bis of our Rules of Procedure and Evidence  
7 which provides as follows: "A Status Conference may be  
8 convened by the Designated Judge or by the Trial Chamber.  
9 The status conference shall: (i) organise exchanges  
15:23:47 10 between the parties so as to ensure expeditious trial  
11 proceedings; (ii) review the status of his case and to  
12 allow the accused the opportunity to raise issues in  
13 relation thereto."  
14

15:24:11 15 Based on this statutory authority, let me further  
16 indicate what we intend to cover this afternoon by way of  
17 agenda items, hopefully with reasonable dispatch. They  
18 are as follows: One, appearances of the parties; two,  
19 recognising the presence of the accused; three,  
15:24:43 20 interpretation matters, the state of the health of the  
21 accused, detention issues; four, trial preparation and  
22 logistics; five, witness issues; six, outstanding  
23 motions; seven, agreed facts; and eight, any other  
24 matters.

15:25:14 25 Let me begin by noting that the accused are present  
26 here except for the first accused. On the issue of  
27 representation --

28 MR JORDASH: Your Honours, the first accused is here. It is  
29 the third accused, Your Honour.

JUDGE THOMPSON: The third accused. Thanks for the



1 correction. Let the records reflect that correction.

2 On the issues of representation on the Defence side,  
3 the Chamber has information that there may be some  
4 changes in the works in the membership of Defence teams  
15:25:53 5 that might - emphasise might - adversely impact upon the  
6 expeditious conduct of the second trial session of this  
7 case and probably subsequent sessions. It would seem to  
8 me that learned counsel -- learned Principal Defender, by  
9 virtue of her office, should be able to respond to that  
15:26:23 10 insinuation. In other words, I'm suggesting that by  
11 virtue of your office, you are the best person to  
12 indicate whether the Chamber's information is accurate.  
13 Perhaps I should give you leave at this stage to brief me  
14 fully on this, but also to tell you that you are at  
15:26:50 15 liberty to control whatever presentation you want to make  
16 on the subject.

17 MS MONASEBIAN: I thank Your Honour for the opportunity. Yes,  
18 indeed, there has been a change in the Kallon team. Your  
19 Honours will recall that in March there was already one  
15:27:13 20 change formalised in that the assigned counsel, Mr Oury  
21 and Powels, left the Kallon team. That was subject of a  
22 decision that was duly noted by this Court. Thereafter  
23 Mr. Shekou Touray was brought on as the assigned counsel  
24 and Mr Melron Nicol-Wilson was re-employed by what was  
15:27:38 25 the new team under Mr Touray. Not long thereafter - a  
26 few weeks thereafter - Mr Raymond Brown was brought in as  
27 lead counsel number two, not as assigned counsel, and  
28 also Wanda Akin-Brown and later on as legal assistant.  
29 They appeared at the last session, as Your Honour will



1 recall.

2 I have been informed over the course of the last two  
3 weeks that there were some problems in the team that  
4 could not be rectified, apparently and unfortunately.

15:28:16 5 And by the 27th of September, it was determined, by the  
6 client and by the counsel, that the team would now be  
7 structured without Mr Brown, Ms Akin or that legal  
8 assistant. I am, indeed, concerned that there have been  
9 two changes in counsel in such a short period of time. I  
15:28:45 10 am also concerned that this client receive the best  
11 possible representation. I have discussed this matter  
12 with all the counsel involved. I've attempted to speak  
13 with Mr Touray about that and I have not been able to get  
14 in contact with him, unfortunately. I am told by  
15:29:01 15 Mr Wilson that he will be in court on Monday.

16 At this juncture, Your Honours, I can only say that  
17 when there was an entire team, one deadline was missed in  
18 the Appeals Chamber by 23 days and there is a decision of  
19 17 September on that issue. I've talked to the team  
15:29:25 20 about this and expressed concern about this matter and  
21 I'm informed by the team now at this juncture, through  
22 Mr Wilson, that they will, in fact, be prepared for  
23 trial; that Mr Touray will, in fact, be here on Monday;  
24 and that they are preparing vociferously at this juncture  
15:29:45 25 for this trial despite the presence of international  
26 counsel.

27 What I would suggest at this juncture, Your Honour,  
28 is that we monitor the proceedings and, of course,  
29 continue with the trial as is, and that any disclosure



1 served upon this team also be disclosed to my office so  
2 that in the event that I would have to employ Article 10  
3 on the assignment -- on the Directive on Assignment of  
4 Counsel, which would mean bringing counsel in in the  
15:30:19 5 interest of justice, or in some other manner, that my  
6 office is fully prepared to fill in that role or assign  
7 another individual in that role so that this trial could  
8 continue without any interruption and so that there would  
9 not be a need to take time to prepare, which would result  
15:30:34 10 in unnecessary adjournment. If any disclosure is  
11 provided by the Office of the Prosecutor to my office for  
12 that purpose, we will, of course, be subject to whatever  
13 witness protection measures there are in the team as  
14 well.

15:30:53 15 I would also just note for Your Honours that there  
16 were some other concerns regarding health of some of the  
17 counsel in this case that we're watching and, at this  
18 juncture, I'm informed that this team can continue,  
19 despite any health concerns that may exist with regard to  
15:31:15 20 the counsel who remain in the case.

21 That is all I can report at this juncture, and we  
22 will monitor the proceedings and report further to Your  
23 Honours as the proceedings develop.

24 JUDGE THOMPSON: I do thank you for your short presentation on  
15:31:33 25 this. If I get you rightly, you do not think that we've  
26 reached the stage justifying any judicial intervention in  
27 this matter and, having said that, I should indicate to  
28 you that whatever proposals you might want to come out  
29 with in case there are problems, I want to assure you of



1 the overwhelming resolve of the bench to proceed with  
2 this trial and not to slow down the conduct of these  
3 proceedings.

4 Does the Prosecution have any great consideration to  
15:32:26 5 make on this?

6 MR COTE: With your permission, Your Honour, I have nothing to  
7 say about what my colleague says. I think we will  
8 welcome a motion and debate the fact that yes or no  
9 disclosure should be done to the Public Defender. We  
15:32:46 10 have a -- Principal Defender -- excuse me. We have some  
11 concerns about legal issues regarding that, but we're  
12 ready to fully argue that. As soon as we will receive a  
13 motion requesting us to act on it, we will respond to it.

14 I would have -- since the point that Your Honour  
15:33:03 15 raises about representation, I would like to have some  
16 information about the case of Mr Gbao's representation.  
17 I understand that there are lawyers appointed by the  
18 Principal Defender to represent Mr Gbao and I question  
19 the fact that the Principal Defender is now representing  
15:33:24 20 Mr Gbao. If I applied a rule, as I understand it, it  
21 would mean that the lawyer of Mr Gbao was fired, since  
22 the Principal Defender is now representing the accused,  
23 which is the only consideration where she could sit here  
24 and represent the accused -- it is because there is no  
15:33:38 25 more lawyer in the case. So could we know what happened  
26 with the representation of Mr Gbao, please?

27 JUDGE THOMPSON: Yeah, perhaps she could respond to that.

28 MS MONASEBIAN: Well, Mr Gbao is ably represented by his team  
29 which, as of the July session, included a co-counsel by



1 the name of John Cammegh who will be here for this  
2 session as of Monday and I expect will be here for most  
3 of the session.

4 What I can say is that my learned counsel Mr Cote is  
15:34:12 5 incorrect in suggesting in any way that the only  
6 circumstance in which my office can or should appear  
7 before this Court is if counsel no longer exist for that  
8 accused. And I think if my colleague were to read the  
9 Directive on Assignment of Counsel and other internal  
15:34:29 10 memorandum of this Court, he would see that there are  
11 circumstances when the counsel is not present, for  
12 reasons that I accept as appropriate, that I may, in  
13 turn, step in for that counsel.

14 It is contemplated that when I do assign a counsel,  
15:34:47 15 that counsel should be here. It is also contemplated  
16 that there are instances, not only instance of illness,  
17 not only instances where Your Honours would say we also  
18 want somebody like Mr Yillah, in the Norman case, to be  
19 part of the team for a given period of time. There are  
15:35:04 20 instances where I do, fortunately, have the discretion as  
21 the Principal Defender to appear or have one of my  
22 officers appear on behalf of an accused for a given  
23 purpose.

24 JUDGE THOMPSON: So, in fact, your presence here today is  
15:35:22 25 purely at interim. It is on an interim basis, because of  
26 the absence of counsel who has been appointed to  
27 represent Mr Gbao, is it? Is that what you say?

28 MS MONASEBIAN: With regard to day -- to today, Your Honour,  
29 yes.



1 JUDGE THOMPSON: Yes. Well, I think the issue will not, in  
2 fact, be debated today. It might come up for some  
3 litigation at some point in time when we examine possible  
4 submissions on both sides as to your institutional role  
15:36:01 5 within the Court structure, whether you can appear and  
6 argue cases, or whether your role is purely  
7 administrative and all that. We look forward to that  
8 opportunity to pronounce upon that issue, but I think now  
9 the issue is clearly not of great moment, since you are  
15:36:22 10 factually here only on an interim basis. Thank you.

11 Anything else from the Prosecution?

12 MS STEVENS: None at this time, Your Honour.

13 JUDGE THOMPSON: Right. Then I think I'll move on to agenda  
14 item 3, which is interpretation matters. Do we have --  
15:36:51 15 can we have someone from the Court Management Section or  
16 the Translation Unit respond to --

17 MS EHRET: Yes, Your Honours, if I may say something --

18 JUDGE THOMPSON: Yes.

19 MS EHRET: As -- with regards to interpretation and our  
15:37:06 20 endeavours to speed up the procedures here, we did -- as  
21 I promised during the last status conference, we did have  
22 training, intensive two-weeks training with the  
23 interpreters and now, actually, the interpreters are  
24 interpreting simultaneously all the dialogues within  
15:37:30 25 court, other than those directly with the witness.  
26 Witness interpretation they will still do consecutively,  
27 as is the normal all over the place.

28 If I may just remind you of the fact that legalese  
29 is sometimes difficult to understand so, please, again do



1 accommodate your speech to an acceptable space and also  
2 provide suitable spaces for the interpreters to do  
3 consecutive interpretation.

4 For all documents that are being read, we do side  
15:38:20 5 translation, which means that every document that is  
6 being read should also be in front of the interpreters.  
7 Even if it is two seconds before you start reading it,  
8 please give me a copy. Side translation means that the  
9 interpreters are still listening to what you are saying  
15:38:43 10 and interpreting that, but they also, during that time,  
11 they read what is written in English. So -- yes, that is  
12 very important. I do not need to say that all texts are  
13 always treated with the utmost confidentiality.

14 Please, also everybody, and I think this is a  
15:39:07 15 repetition, but everybody in Court should be aware of the  
16 fact that an interpreter is only a communication channel  
17 that is very closely monitored. And we're trying to help  
18 the Court, so if there is any recommendations, any  
19 complaints, please contact me and let me know. I will  
15:39:28 20 seek every now and then contact with you and we'll  
21 discuss the matters that arise. Thank you very much.

22 JUDGE THOMPSON: Well, thank you very much for that  
23 technological guidance on the Interpretation Unit. We  
24 certainly -- I'm sure the records will reflect your  
15:39:50 25 suggestions and Court Management will seek to implement  
26 those and on the Bench, here, we'll certainly cooperate  
27 as much as we can.

28 Let's move on to agenda item 3(B).

29 MR JORDASH: Your Honour, I beg your pardon. I'm sorry to



1 interrupt  
2 JUDGE THOMPSON: Go ahead,  
3 MR JORDASH: It is an issue of interpretation.  
4 JUDGE THOMPSON: Okay, that's all right. Then let's get back  
15:40:14 5 to it.  
6 MR JORDASH: It is more of an issue for Your Honours than it  
7 is for the Translation Unit. I don't know if Your Honour  
8 recalls at the last trial session of the RUF there was  
9 some disagreement between Your Honours as to whether  
15:40:27 10 legal discussions should be interpreted to witnesses and  
11 I'm simply raising the issue now as an issue of -- well,  
12 seeking Your Honour's guidance as to whether you would  
13 require a motion to have this issue resolved, or whether  
14 there has been some resolution of this issue amongst Your  
15:40:46 15 Honours.  
16 JUDGE THOMPSON: I would have hoped that there would have been  
17 some resolution, but, apparently, we've not been able to  
18 resolve it in the way that would assist you. I would  
19 definitely appreciate if we could have a motion on that,  
15:41:08 20 because I seem to -- I remember the particular situation  
21 was that I expressed a position, I think concurring with  
22 your submission, and my learned brother Boutet disagreed,  
23 and I think we've never been able to work out a  
24 compromise until now. But it may well be that perhaps a  
15:41:31 25 motion to have it resolved might -- with the guidance of  
26 counsel on both sides might help us, you know, and  
27 perhaps -- I will certainly communicate to my learned  
28 brothers the observation that you've made that is an  
29 outstanding matter. We need to have it resolved before



1 the commencement of this session or take a position  
2 during the commencement of the new trial. Yes, it is  
3 held in abeyance, quite right.  
4 Yes, learned counsel.

15:42:11 5 MS MONASEBIAN: If I could just join in on behalf of Mr Gbao  
6 with Mr Jordash's request, I would also note that there  
7 is enough confusion for the witnesses just having the  
8 questions interpreted and for that reason in the  
9 Barayagwiza, Nahimana, Ngeze case, which has often been  
15:42:31 10 cited this Court, the entirety of that trial there were  
11 no arguments communicated to the witnesses. It was shut  
12 down.

13 JUDGE THOMPSON: Quite right, yes. Well, thank you. I think  
14 it's -- now that it has resurfaced, we certainly will  
15:42:45 15 treat it with some degree of peremptoriness. Yes, quite.

16 MR JORDASH: Your Honour, thank you.

17 JUDGE THOMPSON: We'll move on to the -- do the accused, who  
18 are present, or their counsel have any reports to make on  
19 the condition of their health that they want this Court  
15:43:06 20 to be apprised? First accused?

21 MR JORDASH: Not for Mr Sesay, no. Thank you.

22 JUDGE THOMPSON: Second accused?

23 MR NICOL-WILSON: Nothing, Your Honour.

24 JUDGE THOMPSON: Then we move on to sub-item (C) of agenda  
15:43:18 25 item 3. Does learned counsel for each the accused have  
26 any detention issue that they wish to raise at this  
27 point?

28 MR JORDASH: Your Honour, again, nothing. Thank you.

29 JUDGE THOMPSON: Yeah. Learned counsel, anything on detention



1 issue?

2 MR NICOL-WILSON: Yes, Your Honour.

3 JUDGE THOMPSON: Yeah, what is it?

4 MR NICOL-WILSON: The second accused is of the view that the  
15:43:41 5 detention condition is still to be improved, particularly  
6 in the area of conjugal visits. He is therefore calling  
7 for an expedited decision on the motion already before  
8 you. And he is also concerned about the issue of the  
9 quality of food, particularly with regard to the  
15:44:03 10 provisions of Rule 23.

11 JUDGE THOMPSON: Yes, yes.

12 MR NICOL-WILSON: And then, he is of the opinion that the Rule  
13 is being observed more in the breach.

14 JUDGE THOMPSON: Than its observance.

15:44:17 15 MR NICOL-WILSON: He requests for a very urgent consideration;  
16 he is of the opinion that the quality of the food is not  
17 good.

18 JUDGE THOMPSON: Well, on the issue of conjugal rights, there  
19 is a motion before the Chamber, which is clearly under  
15:44:28 20 consideration, and I hope that matter will be dealt with.  
21 Perhaps in another week there might be some -- I think we  
22 were awaiting response or reply from the other side. So  
23 that is a matter which certainly is receiving the urgent  
24 consideration of the Chamber.

15:44:47 25 And on the question of the quality of food, we never  
26 like, as we say -- the Chamber has always taken a view  
27 that our position should be one of non-intervention,  
28 because I understand that when it comes to such matters,  
29 the International Red Cross Committee pays periodical



1 visits to examine some of these issues. But I would  
2 suggest that if there are any new concerns, or old  
3 concerns regarding the quality of the food, that you  
4 continue to make those complaints to the Registrar, and  
15:45:33 5 when nothing has happened, then you invite our  
6 intervention, because we're trying not to get into a  
7 position in which we substitute our judgment for the  
8 Registrar's. What I can do here is to order some  
9 investigation further on this. And I think we will order  
15:45:59 10 some further investigation as to whether the quality of  
11 the food is below the required standard, yeah.

12 Yes, I am, in fact, advised that there is a memo  
13 being prepared on the conjugal visits and remember also  
14 that the conjugal visits motion was filed confidentially,  
15:46:32 15 so all I can inform you is that it is under  
16 consideration.

17 MR NICOL-WILSON: Grateful, Your Honour.

18 JUDGE THOMPSON: Let's then proceed to agenda item 4, which is  
19 Trial Preparation and Logistics. As regards subsection  
15:46:53 20 item (A) of that agenda item, it is noteworthy here that  
21 the Trial Chamber did issue an order on the 26th of May,  
22 2004 detailing the judicial calendar for the RUF trial.  
23 The order provided that the second session of the RUF  
24 trial would run from the 4th of October 2004 to the 29th  
15:47:29 25 of October 2004, inclusive. The second order of the  
26 Trial Chamber detailing the judicial calendar for the RUF  
27 trial was issued on the 23rd of July 2004 providing that  
28 the third session of the RUF trial would run from the  
29 10th of January 2005 to the 4th of February 2005,



1 inclusive. Nothing has been changed in respect of that.  
2 The hours of court operation will ideally be Monday,  
3 Tuesday, Thursday and Friday, from 9.30 a.m. to 5.30 p.m.  
4 with a break for lunch at 1.00 p.m. to resume at 2.30  
15:48:29 5 p.m. On Wednesday, the hours of court operation will be  
6 from 9.30 a.m. to 1.00 p.m. and this timetable or  
7 schedule will remain in force until the end of this year.  
8 So that is -- are there any short comments -- any short  
9 comments? Prosecution, any problem with that?

15:48:57 10 MS STEVENS: None, Your Honour.

11 JUDGE THOMPSON: Defence counsel, nothing. Okay. Then the  
12 Trial Chamber will endeavour to provide, as soon as  
13 possible, a further schedule for the subsequent sessions  
14 of the RUF trial with adequate notice to the parties.  
15:49:21 15 I'm advised that a draft schedule covering the period  
16 until August 2005 has been approved by the judges and has  
17 been circulated to the parties for their written  
18 responses. Does the Prosecution have any comment on  
19 that? Defence? No.

15:49:53 20 Well, let's move on to sub-item -- the sub-item  
21 dealing with the tendering of exhibits. And here I would  
22 like to make the point that the Trial Chamber is  
23 reiterating its request to learned counsel on both sides  
24 that before parties submit documentation in court, they  
15:50:32 25 should ensure that copies are available for all parties  
26 that are represented. In addition to a copy for each  
27 member of the Bench, a copy for Court Management and  
28 also, a copy for the legal officers of the Chamber, and  
29 should a party seek to tender a document as an exhibit,



1 Court Management should receive a copy of the original  
2 for the Court record, and number the exhibit accordingly.  
3 I mean, we observe that the trend so far has been one of  
4 noncompliance and all I can do from the Bench here is to  
15:51:22 5 urge the parties to adhere to this requirement so as to  
6 ensure a smooth running of the judicial process.

7 Let's move on now to sub-item (C) of agenda item 4,  
8 and here I'm referring to case presentation. And here,  
9 perhaps we need to -- again experience has helped us in  
15:51:55 10 making a judgment on this. It is the view of the Trial  
11 Chamber that sometimes examination-in-chief and  
12 cross-examination of Prosecution witnesses has been, and  
13 I emphasise, unduly lengthy and repetitious, and I say  
14 sometimes, and do not appear to be relevant, because all  
15:52:23 15 I can do from the Bench is to say to learned counsel on  
16 both sides to cooperate with the Bench in giving efficacy  
17 to our joint commitment to ensure that the accused  
18 persons receive a fair and expeditious trial. We know  
19 this is a very sensitive area, because we do not intend  
15:52:49 20 to impose artificial limitations upon the presentation of  
21 examination-in-chief and also upon the latitude that is  
22 traditionally accorded to cross-examination, and we  
23 should do nothing from the Bench to want to impose any  
24 limitations.

15:53:11 25 I understand that other tribunals impose time  
26 limitations. This is one area where we feel strongly  
27 that we should not follow what other tribunals are doing  
28 and, of course, we're not enjoined by our Statute to  
29 emulate slavishly what obtains in other tribunals, but we



1 just want to appeal to colleagues on both sides that  
2 sometimes we need to be a little more economical with our  
3 time. I mean, we've had experience where probably in one  
4 case, which I know of, five questions were asked on the  
15:54:00 5 same issue and hoping that different answers will be  
6 given, but I'm just appealing to all of us to try and  
7 ensure that the accused persons receive an expeditious  
8 trial.

9 Our next item is agenda item 5 and it is Witness  
15:54:30 10 Issues. Let me deal with the sub-item Additional  
11 Witnesses. The profile from the Chamber's perspective is  
12 as follows: The Trial Chamber delivered a decision on  
13 the 29th of July this year granting leave to the  
14 Prosecution to add six additional witnesses to the  
15:55:02 15 witness list. These witnesses are identified with the  
16 follow willing pseudonyms: TF1-359, TF1-360, TF1-361,  
17 TF1-363, TF1-314, TF1-362. The Prosecution did not seek  
18 further protective measures for these witnesses at the  
19 time they sought leave. The Trial Chamber notes that  
15:55:40 20 there are currently no decisions on protective measures  
21 in respect of these witnesses. And perhaps we should  
22 have some comments here by the Prosecution as to what  
23 their intentions are. Any comment by the Prosecution on  
24 that? Have we reflected the situation correctly?

15:56:09 25 MS STEVENS: Your Honours, my understand is that we, indeed,  
26 filed a motion on the 15th of September requesting  
27 protective measures for these witnesses.

28 JUDGE THOMPSON: Very well, let me go to that. So on the 15th  
29 of September the Prosecution filed a document entitled



1 Protective Measures for Additional Witnesses, asserting  
2 that, and I quote, "The Prosecution respectfully informs  
3 the Trial Chamber of its intention to extend the existing  
4 protective measures applicable to its existing witnesses  
15:56:40 5 to six additional witnesses." So this is an update.

6 Well, perhaps the caution here would be that under the  
7 Rules the Prosecution should bring an application seeking  
8 permission to have any protective measures applied to  
9 these new witnesses and does it then follow that if no  
15:57:07 10 application is brought, then we should not apply  
11 pseudonyms to them?

12 MS STEVENS: Your Honour, in the context of the witness  
13 protection orders and motions that have been filed before  
14 this Chamber, the understanding of the term "witness" has  
15:57:34 15 been a broad one to include "potential witnesses". So it  
16 is our submission then, that these witnesses fitting the  
17 category of potential witnesses do at minimum qualify  
18 for --

19 JUDGE THOMPSON: Protective measures.

15:57:51 20 MS STEVENS: Protective measure, yes, including use of  
21 pseudonyms.

22 JUDGE THOMPSON: Yes. Does the Defence have any comment on  
23 that?

24 MR JORDASH: At this stage, no.

15:58:04 25 JUDGE THOMPSON: Okay, no.

26 Well, let's move on to the next sub-item under 5.  
27 It is Order of Witnesses. And the Chamber's appreciation  
28 of the position is this - and you will bear with me as  
29 I go through that - that the Prosecution did file the



1 proposed order of appearance of its witnesses for the  
2 first trial session of this case on the 11th of June this  
3 year. During the July session 12 of the witnesses were  
4 heard; the 12 who were on the list were heard. One  
15:58:49 5 witness, TF1-155, was withdrawn by the Prosecution on the  
6 19th of July this year, while the testimony of an another  
7 witness, TF1-060, was postponed to the upcoming second  
8 trial session. Finally, Witness TF1-139 and Witness  
9 TF1-151 were not heard. They did not testify due to lack  
15:59:31 10 of time, so on the 15th of September this year, the Trial  
11 Chamber issued an order to the Prosecution to provide  
12 order of witnesses and in that order we required the  
13 Prosecution to indicate the order of testimony of its  
14 witnesses for the second trial session 14 days prior to  
16:00:02 15 the beginning of the session.

16 On the 21st of September, this year, the Prosecution  
17 filed its proposed order of appearance dated 16th  
18 September 2004. However, due to an alleged oversight,  
19 the order was filed one day late on the requested time  
16:00:29 20 limit. Perhaps at this point one would ask whether the  
21 Defence has any response to that. Anything they want  
22 to -- a brief comment on that?

23 MR JORDASH: No, no, thank you.

24 MR NICOL-WILSON: None, Your Honour.

16:00:49 25 JUDGE THOMPSON: All right. Thank you. So according that --  
26 the Prosecution, the proposed order was ready for filing  
27 on the 16th and they said they'll communicate on that.  
28 But the point which the Chamber wishes to make, in  
29 respect of which I invite some short response from the



1 Prosecution, is that the proposed order does not contain  
2 any reference to the two of the three witnesses not heard  
3 during the first session; namely, witnesses TF1-060 and  
4 TF1-151. The Trial Chamber's inquiry then is: Why were  
16:01:42 5 these witness -- why these witnesses will not be heard in  
6 the second session. In other words, can the Prosecution  
7 provide some short explanation, of course, without  
8 meaning to indicate that they must be heard; in other  
9 words, your intention. Do you intend to call them?

16:02:08 10 MS STEVENS: Indeed, Your Honour, we do intend to call these  
11 witnesses. After the first session and also looking at  
12 what we focused on this session, it really was not  
13 consistent with Prosecution strategy for these witnesses  
14 to testify during this session. It was for that reason  
16:02:29 15 that we decided to put them off until later, Your Honour.

16 JUDGE THOMPSON: All right. I'm satisfied with that. And  
17 further, the Prosecution declare that it had made prior  
18 full disclosure of the witness statements for all the  
19 witnesses in its proposed order in compliance with the  
16:02:51 20 42-day disclosure requirement. Does the Defence have any  
21 comments in respect of timely disclosure? Learned  
22 counsel for the first, they declared that they had made  
23 full disclosure of the witness statement for all the  
24 witnesses in their proposed order in compliance with a  
16:03:20 25 42-day disclosure requirement. And do you have any  
26 comments in respect of timely disclosure, or otherwise?

27 MR JORDASH: Yes, please. If I can take it in two parts.

28 JUDGE THOMPSON: Yes, okay.

29 MR JORDASH: In relation to the witness statements we have had



1 in our possession for some time now, disclosure of those  
2 have been unobjectionable. In relation to supplemental  
3 statements, we have received so far, for this month  
4 session, seven supplemental statements. Whilst some of  
16:04:05 5 them are not voluminous, they are all significant and the  
6 difficulty the Defence have is that we are effectively  
7 being -- I won't use the word bombarded, but we are  
8 being --

9 [4.08 p.m. HS011004B]

16:08:12 10 JUDGE THOMPSON: Well, that's a good word.

11 MR JORDASH: I think I would use the word "bombarded" with  
12 statements at the last minute. A new statement --  
13 supplemental statements perhaps, but new statements  
14 nevertheless --

16:08:22 15 JUDGE THOMPSON: Yes.

16 MR JORDASH: -- which are placing the Defence in a very  
17 difficult situation, because a single statement -- a  
18 single supplemental statement may entail many hours of  
19 legal work --

16:08:36 20 JUDGE THOMPSON: And the question might arise, from a semantic  
21 perspective, how supplemental when in fact the  
22 controlling statement may be even less than that.

23 MR JORDASH: And, of course, it raises issues of new  
24 investigations, it raises issues of new work for counsel.

16:08:58 25 JUDGE THOMPSON: But, learned counsel, remember that we  
26 decided this issue; we have a decision on it, and I think  
27 in our decision we did indicate what one of the remedies  
28 was and -- because this was a decision in which I took  
29 some very strong position in terms of the reasoning -- I



1 think our thinking is that we cannot preclude the  
2 Prosecution because they bear the burden of proving the  
3 guilt of the accused persons. We cannot preclude them  
4 from disclosing or filing supplemental statements, nor  
16:09:38 5 can we preclude them from expanding oral testimony to  
6 include supplemental statements, but I think we were very  
7 strong in our position that where we feel that the  
8 supplemental statement comes out with entirely new  
9 evidence, the Defence is entitled to some remedy. And I  
16:10:04 10 think our decision clearly indicated that that  
11 entitlement was predicated upon the doctrine of  
12 fundamental fairness, and also that the Prosecution  
13 should not adopt a strategy which might be construed as  
14 trial by ambush.

16:10:20 15 So if there is timely disclosure of these  
16 supplemental statements, of course you are not in any way  
17 precluded from taking objections at the point in time  
18 when those statements are sought or when the testimony is  
19 going on and you feel that the witness is going outside  
16:10:52 20 the bounds of what the controlling statement said. But  
21 that's entirely how our thinking was. We have no role  
22 which would -- because remember we said that, as far as  
23 these proceedings are concerned, the operative principle  
24 is the principle of orality; what they say here, but we  
16:11:16 25 also said that we would not allow supplemental statements  
26 to amplify oral testimony and then just let the Defence  
27 acquiesce that; that you have certain rights. You can  
28 object, you can ask us to apply certain remedies, but  
29 that's just what I thought the -- our own evolving



1 jurisprudence the direction it's moving [overlapping  
2 microphones] as to supplemental statements. Yes.

3 MR JORDASH: The issue for the Defence is not so much that we  
4 are every so often served with a supplemental statement.  
16:12:02 5 Consistent with Your Honours' ruling, that might be  
6 expected --

7 JUDGE THOMPSON: Yes.

8 MR JORDASH: -- that a witness might --

9 JUDGE THOMPSON: Amplify --

16:12:06 10 MR JORDASH: -- want to clarify --

11 JUDGE THOMPSON: -- or correct something, yes.

12 MR JORDASH: Exactly.

13 JUDGE THOMPSON: He might virtually say, "Look, I was mistaken  
14 in what I told the Prosecutors and now I did not tell A,  
15 and so I want to correct." Of course our ruling was  
16 clearly that if that supplemental statement brings new  
17 evidence -- new evidence, which amounts to probably a new  
18 charge or something like that, then the Defence is  
19 entitled to protection.

16:12:42 20 MR JORDASH: I would submit there is a further issue, which  
21 is -- as I understood Your Honours' ruling, the spirit of  
22 that ruling suggested what was consistent with the idea  
23 that a witness may come out spontaneously with a  
24 clarification to his statement, or may approach the  
16:13:00 25 Prosecution and say, "I really need to tell you something  
26 extra I missed out." Now, what we have here, it seems,  
27 on the face of it, is actually more of a Prosecution  
28 procedure. The first seven witnesses so far to be called  
29 in this trial period have all given supplemental



1 statements. We expect that the rest will, in due  
2 course -- because it appears as if the Prosecution are  
3 calling their witnesses to their office and asking them  
4 to give additional statements. Now, I don't know if that  
16:13:34 5 is true, but on the face of it, it appears that way.

6 JUDGE THOMPSON: A technique of verification.

7 MR JORDASH: A technique, but more than a technique of  
8 verification; a technique of obtaining additional  
9 remarks, additional comments, additional clarification;  
16:13:50 10 actually seeking from a witness supplemental statements.

11 JUDGE THOMPSON: That's a distinction you are making and  
12 that's a distinction which I think we are trying to make.  
13 We were not saying -- I think we were expressing concern,  
14 too, in our ruling that the kind of supplemental  
16:14:06 15 statement that would seem to be a little objectionable,  
16 if we want to call it that, would be the supplemental  
17 statement that clearly amounts to adding new evidence in  
18 the sense of bringing out new evidence which can form the  
19 basis of new charges, but ones which are meant to clarify  
16:14:32 20 would not be really the kind of statements that we would  
21 say are not permissible, because statements that are  
22 meant to clarify or correct what might have been given  
23 would properly come under the umbrella of corrigendum; in  
24 other words, we're correcting what we said -- what I said  
16:14:50 25 in a previous statement. And that distinction was very  
26 much present to our collective minds and our individual  
27 minds.

28 MR JORDASH: But what we seem to be facing is, yes,  
29 supplemental statements because they do not -- although



1 we haven't analysed them finally, but we do not see in  
2 them a wholly new allegation, although some of them I  
3 suspect do contain new allegation -- but the nature of  
4 the supplemental statement, nevertheless disclosed new  
16:15:20 5 things to investigate - new work for the Defence.

6 JUDGE THOMPSON: Yes.

7 MR JORDASH: When you are bombarded with a supplemental  
8 statement in relation to each and every witness, when it  
9 appears as if it is the Prosecution's tactic to obtain  
16:15:32 10 supplemental statement, we will, in a year's time, be  
11 facing a case, or have faced a case, which is double  
12 perhaps the size of what it is now even though it consist  
13 half of that case of supplemental statement. So while  
14 supplemental statements, consistent with Your Honours'  
16:15:50 15 ruling, are not objectionable, they nevertheless contain  
16 a great deal of work for the Defence --

17 JUDGE THOMPSON: Yes, I see.

18 MR JORDASH: -- and I would respectfully submit -- and of  
19 course this can be undoubtedly [inaudible]

16:15:56 20 JUDGE THOMPSON: Well, we can reinterpret our previous  
21 decisions. We have a right to either limit them or  
22 expand our decision; it's part of the nature of the  
23 jurisprudence process.

24 MR JORDASH: Well, I think -- just to sum up what I'm seeking  
16:16:16 25 to submit at this stage is that it is not that we are  
26 seeking to go behind the ruling; it is that we will be  
27 seeking, because of the way the Prosecution's tactics  
28 seems to have rolled itself out --

29 JUDGE THOMPSON: In other words, you're saying that there is a



1 kind of snowballing kind of effect here.

2 MR JORDASH: Well, to have a witness give a clarification is  
3 one thing; to have each and every witness called into the  
4 office to give a further supplemental statement is wholly  
16:16:36 5 a different thing.

6 JUDGE THOMPSON: Well, let us hear what our colleagues on the  
7 other side have to say. Response.

8 MS STEVENS: Let me assure my learned colleague that the  
9 Prosecution is not in the business of calling witnesses  
16:16:54 10 to the office solely for the purpose of giving  
11 supplemental statements.

12 JUDGE THOMPSON: In other words, there is no technique of  
13 verification?

14 MS STEVENS: None at all, Your Honour. What we are in the  
16:17:06 15 business of doing is talking to witnesses before they  
16 come to testify with their statements in our hands. If a  
17 witness at that point amplifies on a particular piece of  
18 information that is contained in the statement, if the  
19 witness adds information, Your Honour, we feel that it  
16:17:26 20 is --

21 JUDGE THOMPSON: Or subtract.

22 MS STEVENS: Or subtract, as the case may be and sometimes  
23 they do that, we feel, Your Honour, that it is our  
24 obligation to inform the Defence, and that's all we've  
16:17:44 25 been doing.

26 JUDGE THOMPSON: Good. Well, let us agree that you're right,  
27 but do you also -- how do you respond to their own  
28 position that they have a right to in fact -- if such  
29 supplemental statements are -- they contain new



1           allegations, or they are of such significance as to  
2           materially affect their case, are they entitled to some  
3           remedy in terms of --

4   MS STEVENS: Certainly Your Honour, and we are also quite --  
16:18:26 5           we appreciate the ruling that this Chamber has given on  
6           that particular issue. Obviously, if there are totally  
7           new elements whereby the Defence is caught by surprise --

8   JUDGE THOMPSON: Yes, in other words, taken by surprise.

9   MS STEVENS: Exactly.

16:18:40 10   JUDGE THOMPSON: And they cry havoc -- they say "Ambush!  
11           Ambush!"

12   MS STEVENS: Exactly.

13   JUDGE THOMPSON: I mean, I have called your approach a  
14           technique. I don't know what they want to call it. I  
16:18:44 15           mean, it may well be that it's all in the quest for the  
16           truth; in other words, you want to make sure that when  
17           your witnesses come here they speak the truth, and  
18           nothing but the truth.

19   MS STEVENS: Precisely, Your Honour.

16:19:00 20   JUDGE THOMPSON: I mean, I am prepared to attribute that good  
21           faith to the Prosecution, but their point is that when  
22           these supplemental statements come and they contain new  
23           allegations, and they come like an avalanche, they are  
24           prejudiced because they've got to do some extra work;  
16:19:22 25           they probably are taken by surprise. So I sense what  
26           they are saying, that the doctrine of fundamental  
27           fairness requires that they be given some time to be able  
28           to rebut some of the allegations, since the original  
29           statements, or the controlling statements did not contain



1 those allegations.

2 MS STEVENS: Your Honour, precisely so. I mean, as I said,  
3 the Trial Chamber has given a ruling on that particular  
4 issue as to how to evaluate this additional information,  
16:19:54 5 and as to how to fashion remedies accordingly.

6 JUDGE THOMPSON: Quite.

7 MS STEVENS: What is most telling however, Your Honour, it  
8 seems as if my colleague is complaining more about  
9 quantity as opposed to content or quality. He indicated  
16:20:06 10 that they --

11 JUDGE THOMPSON: Well, he may be complaining about both -- he  
12 may be complaining about both; not so?

13 MS STEVENS: Well, he indicated that they have not analysed  
14 the statements. So perhaps it might not even be an  
16:20:20 15 issue.

16 JUDGE THOMPSON: Perhaps it's premature. Yes, Mr Jordash?

17 MR JORDASH: I said I haven't finished analysing was the  
18 phrase I think I used. And quantity is an issue, with  
19 limited budget, limited resources, a team presently  
16:20:32 20 compiled with it's job presently described, to be then  
21 bombarded with extra statements at the last minute within  
22 the 42-day period, it is an issue for the Defence, as  
23 well as quality.

24 JUDGE THOMPSON: Well, I take it that the points on both sides  
16:20:40 25 have been well made, but our decision stands and we think  
26 that our decision comes very close to providing the kind  
27 of justice that we are supposed to provide in a situation  
28 like this. I think we will take note of this, and be on  
29 guard ourselves.



1 MR JORDASH: Your Honour, can I just raise -- I don't know if  
2 it is appropriate to raise it at this stage, but --  
3 JUDGE THOMPSON: Yes, go ahead; let me hear you.  
4 MR JORDASH: It's an issue of the way the statements are being  
16:21:36 5 taken, and if I can briefly summarise the complaint.  
6 JUDGE THOMPSON: Yes.  
7 MR JORDASH: Some of the statements have been taken in the  
8 third person, which means, for example, a statement we've  
9 received for the second witness of this trial session,  
16:21:56 10 witness 167, and it starts off by saying -- this is the  
11 additional statement dated the 15th of September 2004 --  
12 it starts off with saying, "The witness states that he  
13 was in Pademba Road prison..." and the rest of the  
14 statement goes on in that third person.  
16:22:12 15 JUDGE THOMPSON: In other words, direct -- reported speech.  
16 MR JORDASH: And there is a problem that I would respectfully  
17 submit. We haven't been served with the notes which  
18 should support that statement and we don't have the  
19 statement in the first person, and our fear is that this  
16:22:30 20 is going to turn into a trial of investigators, rather  
21 than a trial involving an assessment of a witness's  
22 testimony. If the statement was taken in the first  
23 person and was the witness's own words, signed, approved  
24 and confirmed, a witness can be cross-examined as to  
16:22:56 25 inconsistencies with that statement and subsequent  
26 statements.  
27 JUDGE THOMPSON: Well, we've laid that matter to rest in one  
28 of our decisions, and this afternoon I just read, on  
29 behalf of the Chamber, that we think that interview notes



1 by an interrogator of a witness constitute witness  
2 statements within the meaning and contemplation of Rule  
3 66(i)(A). We have so decided that we were not in fact  
4 convinced by the argument -- the Defence argument that,  
16:23:34 5 because a statement is in the third person, it does not  
6 constitute a statement. We're not -- we're not -- we're  
7 not -- we laid that matter to rest; we made short shrift  
8 of it that because a statement grammatically or  
9 synthetically is not in the third person does not make it  
16:23:52 10 a statement; that for some reason -- and we are not  
11 expert in the investigation business -- it would seem as  
12 this is an investigative methodology, which the Special  
13 Court Prosecutors and investigator have adopted, but we  
14 have ruled and we do not see any reason -- compelling  
16:24:18 15 reason to depart from our ruling that interview notes of  
16 an investigator in the third person, which are the  
17 product of an interview between him and a witness  
18 constitute witness statements. In other words, for us,  
19 we are suggesting that's a matter of substance, and  
16:24:36 20 usually you put the witness in the witness box, he  
21 may -- he will accept that, "Yes, after they've recorded  
22 everything, it was read over to me. I admitted it to be  
23 true and correct. I appended my signature there."

24 So we gave a very broad compass or meaning to  
16:25:00 25 witness statement, because any attempt to give a  
26 restrictive meaning would clearly frustrate the ends of  
27 justice. Perhaps within the national systems we might  
28 have adopted a restrictive approach, but we are dealing  
29 here with an entirely different set of scenario. And I



1 think the position that you -- the thing you complained  
2 about is that if you feel that there may be some primary  
3 source or secondary source of the statement and that the  
4 Prosecution have it in their control, custody and  
16:25:34 5 possession, this Chamber has the authority to compel them  
6 to disclose them -- to disclose them and in that decision  
7 recently we just said that the Prosecution should  
8 disclose handwritten interview notes, and to be able to  
9 make some comparisons, you know, between what is  
16:25:54 10 purporting to be a statement and a handwritten note.

11 It's a particularly difficult kind of situation we find  
12 ourselves in. Remember, Mr Jordash, the Prosecution is  
13 an autonomous unit and we cannot impose constraints that  
14 may well limit them in term of the efficacy as to how  
16:26:14 15 they prove their case.

16 MR JORDASH: Your Honour, just to clarify, I wasn't seeking  
17 per se to criticise their approach to taking statements  
18 in the third person, but when a statement is taken in the  
19 third person, there must, I would submit, exist the notes  
16:26:28 20 and it's the note, but I'm afraid --

21 JUDGE THOMPSON: Good point. But we have ruled, in fact, that  
22 the notes, too, are subject to disclosure, and they  
23 cannot hide under the privilege communication or  
24 confidentiality rule.

16:26:42 25 MR JORDASH: I'll sit down. Thank you. Yes, counsel.

26 MR NICOL-WILSON: Your Honour, the Defence for the second  
27 accused share a similar concern with regard to the issue  
28 of the supplemental statement, but then I will not repeat  
29 what counsel for the first accused has said. I would say



1 that the gravamen of our own complaint is that the  
2 supplemental statement contains new allegations, and they  
3 have been disclosed outside the 42-day period as provided  
4 for by Rules and I could give you like four such  
16:27:20 5 statements, specifically TF1-078, TF1-197, TF1-355 and  
6 TF1-319, and the issue for us is whether the late  
7 disclosure -- whether these statements -- these witnesses  
8 can properly testify at the next trial session.

9 JUDGE THOMPSON: Well, I could tell you that the response of  
16:27:48 10 the Chamber would be that those are legitimate objections  
11 you can take at the trial.

12 MR NICOL-WILSON: Okay. I'm grateful, Your Honour.

13 JUDGE THOMPSON: And we can move on to the other item here  
14 which is that the Prosecution indicated that it intends  
16:28:20 15 to apply for the modification of the protective measures  
16 regime in respect of witness TF1-141. This witness was  
17 originally considered by the Prosecution as a child  
18 witness under category B. Our records show that the  
19 Prosecution is now seeking that this witness be  
16:28:52 20 re-categorised or re-characterised as an insider witness  
21 and I'm sure this means that there is a request for the  
22 witness to be moved from category C. And also, there is  
23 the request that this witness give the testimony with the  
24 use of a voice alteration device. Is the Prosecution  
16:29:18 25 applying -- intending to apply at this stage for this  
26 modification, or do you have a revised position on this?

27 MS STEVENS: No, Your Honour. It is our position that indeed  
28 the witness's category should be changed. However, we  
29 did not intend to make that application today, given



1           that --

2   JUDGE THOMPSON: Yes, quite. At some appropriate time.

3   MS STEVENS: Exactly.

4   JUDGE THOMPSON: But it is still within your contemplation?

16:29:50 5   MS STEVEN: Yes, and --

6   JUDGE THOMPSON: What about the protective measure -- voice

7           distortion?

8   MS STEVENS: That's exactly what we'll be seeking for this

9           particular witness, Your Honour.

16:30:02 10   JUDGE THOMPSON: Yes. Okay.

11   MS STEVENS: And, Your Honour, whilst we are at this point,

12           let me just take the opportunity, too, to inform yourself

13           and my learned colleagues that for witness TF1-071 we

14           would also similarly be making an application at the

16:30:20 15           appropriate time for him to receive category C measures;

16           in other words, for him to also testify using voice

17           distortion mechanisms.

18   JUDGE THOMPSON: So this witness is --

19   MS STEVENS: This witness is an insider witness, Your Honour.

16:30:42 20   JUDGE THOMPSON: And a witness also who made a supplemental

21           statement.

22   MS STEVENS: I believe so.

23   JUDGE THOMPSON: What's the Prosecution's -- sorry, the

24           Defence response to this idea of re-categorising

16:31:04 25           witnesses? Is it material to your -- well, I probably

26           should take that back. Go ahead.

27   MR JORDASH: We would like to see the basis of the

28           application --

29   JUDGE THOMPSON: Okay, all right. Thanks.



1 MR JORDASH: -- before making comments. Thank you.

2 JUDGE THOMPSON: I take it this is the case for learned  
3 counsel? You, too, associate with Mr Jordash's position?

4 MR NICOL-WILSON: I do associate with my learned friend's  
5 position.

6 JUDGE THOMPSON: All right. Thank you.

7 MS STEVENS: Your Honour, one last point --

8 JUDGE THOMPSON: Go ahead, counsel.

9 MS STEVENS: -- on that subject. The first witness,  
16:31:26 10 witness TF1-139, was initially categorised as a category  
11 C witness.

12 JUDGE THOMPSON: Yes.

13 MS STEVENS: We would like to inform the Chamber and our  
14 learned colleagues that this witness will be testifying  
16:31:48 15 without the aid -- without the use of the screen and  
16 without the use of a pseudonym; basically without the  
17 protective --

18 JUDGE THOMPSON: In other words, you're in fact lifting the  
19 veil?

16:32:00 20 MS STEVENS: Yes, the veil of anonymity.

21 JUDGE THOMPSON: Okay. And that's very refreshing in the  
22 sense that a court with the right of the accused persons  
23 to a public trial.

24 MS STEVENS: Unless, of course, there is any objection from  
16:32:08 25 the Defence.

26 MR JORDASH: Still speechless.

27 JUDGE THOMPSON: How disingenuous. Okay. Well, thanks.  
28 Shall I ask one short question on this question of  
29 witnesses: Have you indicated yet the possibility of



1 applying for the closed session measure for part or all  
2 the testimony of any of your witnesses appearing in the  
3 second session, because -- is that within your  
4 contemplation?

16:32:52 5 MS STEVENS: Your Honour, it really is on a case-by-case  
6 basis. At this moment it's difficult to say whether or  
7 not there is a particular witness who -- maybe questions  
8 are put to that witness by the Defence would reveal the  
9 identity of the witness, but should that be the case,  
16:33:06 10 Your Honour, then we would reserve our right to --

11 JUDGE THOMPSON: To apply.

12 MS STEVENS: -- apply, yes.

13 JUDGE THOMPSON: Of course the -- one of your motions to us  
14 indicated clearly that you reserve the right to apply for  
16:33:18 15 further protective measures beyond those that you've been  
16 granted --

17 MS STEVENS: Exactly, Your Honour.

18 JUDGE THOMPSON: But I think -- so you will be perfectly  
19 within your rights to do that. It's just that the issue  
16:33:30 20 of closed session has become one of great sensitivity in  
21 the sense that it touches on concerns -- the -- one of  
22 the great fundamental freedoms of the right of the public  
23 to know and the right of the public to be involved in the  
24 administration of justice, and it's becoming a little of  
16:33:58 25 concern that, if every time we move from open session to  
26 closed session, we are in fact eroding not just the right  
27 of the public to know, but also the right of the accused  
28 persons to a public trial, although Article 17 clearly  
29 says that that right can be derogated from to protect the



1 victims and witnesses. But I will leave that to the  
2 discretion of the Prosecution and when this comes up  
3 before the Chamber, I'm sure we will respond  
4 appropriately in the interest of justice.

16:34:44 5 MR COTE: With your permission, Your Honour, on that issue,  
6 unfortunately sometimes closed session is the only way to  
7 be able to fulfil your order of witness protection -- to  
8 protect the identity, but I think that there is a  
9 technique that can be put in place which may ease the  
16:35:00 10 work of closed session; notably by regrouping the  
11 question - even if it comes from the Defence or from our  
12 side - that may reveal the identity at the same moment,  
13 so that we are not always going from open session to  
14 closed session. It is sometimes possible, with the  
16:35:14 15 permission of the Court, if one of my colleagues knows  
16 that some questions will reveal the identity -- to  
17 reserve his right after his colleague has finished to  
18 come back with it so that the three lawyers can have the  
19 same time in the closed session to avoid going in and  
16:35:22 20 out.

21 JUDGE THOMPSON: In other words, there is a kind of  
22 cooperative or collaborative venture here.

23 MR COTE: There is the possibility that we are looking at.  
24 Then we going to have to discuss that with our colleagues  
16:35:38 25 to prepare some kind -- like it's done in ICTR and  
26 ICTY -- biographical notes on which both parties could  
27 agree and that we can give to the Court, so that we can  
28 dispense the court of dealing with questions like  
29 biography -- where they come from, which village --



1 JUDGE THOMPSON: Yes.

2 MR COTE: All those questions that the court may want to know  
3 but that we are unable to ask in open court, and which  
4 normally are not making a big debate for the Defence  
16:36:04 5 about the -- it's not really a contentious issue. So we  
6 are trying now to put together a simple system like that  
7 with the possibility of giving it to the Defence a day in  
8 advance so that they have time to look -- if yes or no,  
9 they agree with it, and file it in the court in the  
16:36:20 10 morning so you have it in front of you and we can then  
11 move on to specific issues.

12 JUDGE THOMPSON: Contentious areas.

13 MR COTE: Yes.

14 JUDGE THOMPSON: Well, that would be immensely helpful,  
16:36:32 15 because that is one of the irritating points that has  
16 arisen in the context of another trial.

17 Has the Prosecution been able to give any indication  
18 with regard to the language and interpretation  
19 requirement for seven of its witnesses included in its  
16:37:04 20 proposed order, having regard to the importance of this  
21 and the amount of delay that this can cause?

22 MS STEVENS: Your Honour, as at the time of the filing of the  
23 order for appearance of witnesses, we did give some  
24 indication as to the languages in which the witnesses  
16:37:32 25 would be testifying. We hope by the end of next week to  
26 provide the information that had not been provided  
27 earlier.

28 JUDGE THOMPSON: Okay. Our next sub-item on witness issues is  
29 the number of witnesses. The Trial Chamber did issue an



1 order to produce witnesses and witness summaries on the  
2 7th of July this year. The Prosecution has been ordered  
3 to provide the Trial Chamber with a confidential copy of  
4 the unredacted witness statements of the witnesses to be  
16:38:14 5 called one week prior to their testimony, and this same  
6 order requires the Prosecution to produce a list of core  
7 witnesses, pursuant to which the Prosecution did file  
8 their new witness list of 173 witnesses that they intend  
9 to call at the trial. Added to this list is the six  
16:38:44 10 additional witnesses for which leave has since been  
11 granted, and subtracting or deducting from this list 12  
12 witnesses who have already testified, and the one witness  
13 that was withdrawn. Our calculation is that the total  
14 number of Prosecution witnesses at present is 166; are we  
16:39:16 15 right?

16 MS STEVENS: We'd hate to question your mathematical  
17 abilities, Your Honour, but I think you are right.

18 JUDGE THOMPSON: I think we did put this to very careful  
19 computation. Yes.

16:39:30 20 MS MONASEBIAN: If I could just inquire whether in terms of --  
21 for the Prosecution, is this number of 166, or whatever  
22 else it may be, also including the two potential overview  
23 witnesses in their list of 2 June 2004; is this also  
24 including potential witnesses whose pseudonyms they have  
16:39:50 25 disclosed to us, but statements they have not?

26 JUDGE THOMPSON: Well, Counsel, that question is directed  
27 through me to you. Yes, Prosecuting counsel?

28 MS STEVENS: Yes, it is.

29 JUDGE THOMPSON: Now, let's come to the -- rather, another



1           touchy area that's the sub-item D; expert witnesses. The  
2           position as we understand it is this: The Prosecution  
3           included six expert witnesses in its witness list, and  
4           namely, TF1-150, TF1-272, TF1-296, TF1-301, TF1-332,  
16:40:44 5           TF1-348 and TF1-351. A short summary of the testimony of  
6           such witnesses has also been provided by the Prosecution.  
7           Well, as of now as I speak, no expert report by any of  
8           the expert witnesses has been disclosed pursuant to  
9           Rule 94 bis. I think the inquiry that I will make at  
16:41:16 10          this stage before I go further is, how many expert  
11          witnesses does the Prosecution intend to call? Are they  
12          in a position to tell us at this stage; and when do they  
13          intend to call them? And the reason why I posed this  
14          question -- probably don't answer yes -- is that from our  
16:41:34 15          own records the history of the Prosecution's disposition  
16          to call expert witnesses is, in my view, and I speak for  
17          myself -- a checkered one.

18                 I say so -- this does not represent the view of the  
19                 Chamber -- I say so because at the pre-trial conference  
16:42:12 20          held on the 29th of April this year and also during the  
21          status conference held on the 23rd of June this year, the  
22          Prosecution indicated that it had not yet received any  
23          report from the intended experts; that it was also  
24          seeking permission for them to testify from some of their  
16:42:26 25          employers.

26                 In addition - and the Prosecution complicated the  
27                 issue - the Prosecution did express a negative opinion on  
28                 the indication from the Bench to impose a deadline for  
29                 its expert reports. Let me now pose the question for the



1 Chamber and I will invite the Prosecution to respond to  
2 that. After a period of five months has elapsed, would  
3 it not seem expedient for the interest of justice for the  
4 Prosecution to provide an update of its effort to secure  
16:43:14 5 testimony of these experts, as well as some tentative  
6 schedule? Would it not be conducive to the interest of  
7 justice? I ask the question both as a philosophical  
8 question and as a practical question, and I invite the  
9 Prosecution to respond.

16:43:40 10 MS STEVENS: Practically and philosophically, we are very  
11 anxious ourselves to resolve this matter of expert  
12 witnesses. Your Honour, the situation in which we find  
13 ourselves at this moment is that to date some of the  
14 expert witnesses are in the process -- are still in the  
16:44:04 15 process of drafting the response. We have not to date  
16 received a final copy from anyone of the expert  
17 witnesses. There have been drafts that have been sent to  
18 us, but to date not a finalised copy of any of the  
19 reports have been sent to us.

16:44:26 20 Included in the category of expert witnesses are  
21 what we have termed as overview witnesses. These are  
22 witnesses who -- they may not necessarily be giving an  
23 opinion, per se, as expert in the true sense of the word  
24 would, but nonetheless they would be testifying to facts  
16:44:48 25 within their knowledge as well as facts that are outside  
26 of their knowledge. And in this category of witnesses,  
27 we have indeed disclosed the statement of one of the  
28 overview witness.

29 The other overview witness that we intend calling,



1 Your Honour, we have already disclosed that; that would  
2 be Ozonio Ogilo, who worked on the TRC report. Now, we  
3 have some indication that the TRC report may be coming  
4 out later on this month and, as soon as the report is  
16:45:34 5 available, we would be filing that report with the court.  
6 But indeed we have made available to the Defence the  
7 names of the witnesses and a brief background on at least  
8 five of the witnesses. We do have an issue with two of  
9 the witnesses. One of them that is the child soldier  
16:45:56 10 expert, we are still wrangling with bureaucratic red tape  
11 to release -- get permission from the employer for the  
12 witness to testify for us. We have recently -- just  
13 quite recently, within a month or so, received a letter  
14 from the employer of the witness indicating his  
16:46:22 15 willingness to assist us in contacting the parent  
16 organisation and facilitating the process.

17 Now, as for the other witness, the one whose  
18 statement I indicated had already been disclosed, now  
19 she -- her name unfortunately has not been disclosed to  
16:46:38 20 the Defence, and that, Your Honour, is because we are  
21 seeking to ask for protective measures for that  
22 particular witness. She has indicated great fear in  
23 having her name being disclosed at this point. There is  
24 also some concerns by her employer in having her being  
16:47:02 25 associated with the Special Court. So these are matters,  
26 Your Honour, that we are wrangling with, but we are  
27 zealously working trying to resolve these matters.

28 MR JORDASH: Sorry, just to -- I'm sorry to leap up; I'm just  
29 seeking clarification as to which witness the Prosecution



1 is talking about when my learned friend said that the  
2 witness statement has already been served.

3 JUDGE THOMPSON: Yes, which one?

4 MS STEVENS: That would be TF1-272 I believe. Let me just  
16:47:36 5 verify -- and her statement was disclosed sometime in  
6 February in redacted format.

7 JUDGE THOMPSON: Yes, if you have a response --

8 MS MONASEBIAN: Yes, if I may, Your Honour. First, let me  
9 just point out as far as the jurisprudence  
16:47:54 10 internationally and nationally that counsel is aware of,  
11 we only know of two types of witnesses that tribunals  
12 have; one is a factual witness and the other is an expert  
13 witness. This idea that there are also overview  
14 witnesses is intriguing to me. But what I find difficult  
16:48:20 15 is not so much using that word "overview" witness, but  
16 using the word that they will speak about facts outside  
17 of their knowledge.

18 JUDGE THOMPSON: But you don't mind learning from day-to-day  
19 new concepts and new categories and new  
16:48:34 20 characterisations.

21 MS MONASEBIAN: I am grateful.

22 JUDGE THOMPSON: I thought that lawyers are always open minded  
23 to learn new concepts. I like the term "overview  
24 witness". Go ahead, go ahead.

16:48:50 25 MS MONASEBIAN: I'm grateful for the clarification in  
26 apprising us of what they will indeed talk about to some  
27 extent. What I am somewhat uncertain about is, if they  
28 are an overview witness, we'll get an expert report, and  
29 if we look at the 2 June 2004 document prepared by the



1 Prosecution addressing this matter -- on paragraph 3 to  
2 be precise, it says, "With regards to the four expert  
3 witnesses the Prosecution intends to disclose their  
4 respective expert reports as soon as they become  
16:49:28 5 available."

6 JUDGE THOMPSON: Available, yes.

7 MS MONASEBIAN: My first question would be: One, is the  
8 Prosecution suggesting with regard to the overview  
9 witnesses who may be testifying to matters outside of  
16:49:38 10 their knowledge - are they going to provide expert  
11 reports, and if they are not providing expert reports,  
12 then it is their duty, indeed, to provide witness  
13 statements and those would be untimely because they  
14 should have been submitted very long ago. What also  
16:49:52 15 troubles me -- point two, Your Honour -- is counsel's  
16 suggestion that with regard to the expert reports, they  
17 will only be provided -- quote paragraph 3 of the same  
18 letter - "as soon as they become available." This is in  
19 clear contradiction to Rule 94 bis which says, "as early  
16:50:18 20 as possible". "As soon as they become available" is not  
21 the standard; "as early as possible" is.

22 It is only within the Prosecution's power and not  
23 the Defence's power to determine whether or not an expert  
24 is capable of complying with both their duties at their  
16:50:32 25 institutions in which they work, and their  
26 responsibilities to give the accused a fair trial, and so  
27 I would say to Your Honour that a deadline now, this many  
28 months into the trial, must be imposed upon the  
29 Prosecution as to these reports.



1           Unlike the CDF case, these are seven expert or  
2           overview witnesses and the kind of documentation  
3           [inaudible] with well into the trial is astounding to me  
4           based on overview of the jurisprudence of the ICTY and  
16:50:58 5           the ICTR that so much of the judgments are often based  
6           upon these expert witnesses' testimony, but at least at  
7           the ICTR and the ICTY the Prosecutors were required, in  
8           complex cases like this, to provide the report on a  
9           certain date -- on a date certain, rather than just "as  
16:51:30 10          soon as they become available".

11           The only other comment I would make, Your Honour --  
12          point three -- is that they say that one of their experts  
13          with regard to child soldiers cannot be disclosed at this  
14          time to the Defence, because they have concerns for this  
16:51:48 15          witness's safety. Well, the Prosecution I'm sure knows  
16          that, as officers of the Court, all of the Defence  
17          counsel here will hold that name under seal. So there is  
18          no need to have fear that this witness won't somehow have  
19          some difficulty envisaged upon them. But, moreover, I'm  
16:52:06 20          concerned -- is this the same expert witness on child  
21          soldiers that they were unable to disclose in the CDF  
22          case, because if it is, the excuse for not disclosing it  
23          there was not that it was the employer who did not allow  
24          the disclosure, but rather, the former employer. And I'm  
16:52:22 25          referring to a 9th September 2004 document in the CDF  
26          case, which indicates that, "Once we have secured the  
27          cooperation of the expert's former employer, the  
28          Prosecution will disclose the name of the potential  
29          expert to the Defence on a confidential basis."



1           Your Honours, all I can say is that there is a lot  
2           of problems here -- resources problems --  
3   JUDGE THOMPSON: Thank you.  
4   MS MONASEBIAN: And that we would just respectfully request  
16:52:46 5           that a date certain be given in the interest of  
6           efficiency of this trial, and that the names of the  
7           witnesses that have not been given to us be given  
8           forthwith as well. Thank you, Your Honour.  
9   JUDGE THOMPSON: And it is from a resource of physical  
16:52:58 10           perspective that you are speaking.  
11   MS MONASEBIAN: I'm sorry, Your Honour.  
12   JUDGE THOMPSON: I say it's from a resource of physical  
13           perspective that you are speaking.  
14   MS MONASEBIAN: Not so much --  
16:53:06 15   JUDGE THOMPSON: Well, both; a mixture of that.  
16   MS MONASEBIAN: -- also on behalf of Mr Gbao and I --  
17   JUDGE THOMPSON: Well, I know, but a mixture -- but you said  
18           resource, so I thought you talk about physical resources.  
19           In other words, you hold the [inaudible] for that  
20           particular --  
21   MS MONASEBIAN: In this instance unlike the CDF case, that's  
22           my secondary concern. It's a [inaudible] of so many of  
23           them in this case. Thank you.  
24   JUDGE THOMPSON: One question I want to ask you is that -- I  
16:53:30 25           mean, here one is trying to find sensible solutions to  
26           problems which are difficult, I mean, they have their  
27           legal dimensions and they have their practical  
28           dimensions. The question of having the -- Rule 94 bis  
29           requiring that they be made -- they be produced as soon



1 as possible, isn't that subject to the concept of when  
2 they become available; in other words, would the  
3 Prosecution be required to disclose something they don't  
4 have?

16:53:56 5 MS MONASEBIAN: Your Honours --

6 JUDGE THOMPSON: I mean you're not suggesting that your  
7 colleagues have these reports now, and they are refusing  
8 to disclose them, but I would have thought that the only  
9 sensible way to interpret Rule 94 bis is that as soon as  
16:54:16 10 possible subject to their being available - as they  
11 become available.

12 MS MONASEBIAN: Let me just make a clear distinction, because  
13 perhaps I have not communicated that point effectively  
14 and I take note.

16:54:22 15 JUDGE THOMPSON: Yes.

16 MS MONASEBIAN: I just would like to first say that of course  
17 Rule 94 bis says "as early as possible," and what the  
18 Prosecution says is "as soon as they become available."  
19 I suggest --

16:54:36 20 JUDGE THOMPSON: Well, are they applying -- they are not  
21 applying a different standard. They're virtually -- what  
22 I'm saying is that ought not that Rule -- that Rule to be  
23 read in the context of the practical reality that if they  
24 don't have the report, how can they disclose them as soon  
16:54:52 25 as possible to satisfy the Rule? It would seem as if --  
26 I mean, the only time I think the Rule will be  
27 implicated -- would come into force would be if we can  
28 establish the factual foundation that they have the  
29 reports now, and they have been stalling or sitting on



1 those reports. I'm not holding a brief for them, but I'm  
2 just -- my duty is to put the arguments on both sides if  
3 I understand the position.

4 [HS011004D 4.57 p.m.]

5 PRESIDING JUDGE: I am not holding brief for them, but I'm  
6 just -- my duty is to put the arguments on both sides to  
7 see if I understand the position.

8 MS MONASEBIAN: Well, I find that intriguing, Your Honour, for  
9 one reason and one reason only, because it was not long  
10 ago that I was making that very argument and it was  
11 swiftly rejected, and the reason why the argument was  
12 rejected -- when I was a prosecutor and I was sitting  
13 there and explaining all the difficulties I had in  
14 disclosing five expert reports -- I believe I was having  
15 difficulties juggling many things and I felt that my  
16 Prosecution office was understaffed -- but I was reminded  
17 by the judges -- I was reminded that the Defence has a  
18 right and, in this instance, the only reason why my  
19 experts finished their reports on time - and they did it  
20 the very last day at midnight from the deadline that the  
21 judges gave them -- the only reason they did it is  
22 because the judges pushed them, and one of them -- one of  
23 them --

24 JUDGE THOMPSON: Yes.

25 MS MONASEBIAN: -- the night before asked for an extension and  
26 the judge said this has been going on for months and  
27 months.

28 JUDGE THOMPSON: Yes.

29 MS MONASEBIAN: So I would just say to Your Honours we also



1 have to remember in the CDF case it is going to require  
2 Mende interpretation and translation of the report to  
3 Kondewa and to Fofana. In this case, there may or may  
4 not be translation of the report, but this is - this Rule  
5 is written "as early as possible" not to give the  
6 witnesses leeway to make their own priorities, but for  
7 this Court to establish what the priorities are which  
8 must always be the accused's right to a fair trial.

9 JUDGE THOMPSON: Well, I do agree with you, I mean, that's why  
10 I have appealed to that question. My initial question to  
11 them was, both philosophical and practical, saying to  
12 them, "Wouldn't it conduce to the ends of justice if we  
13 expedite the process of securing these reports?" And  
14 that was the premise of my question, but I don't want  
15 to -- for one moment, I have no evidence of bad faith on  
16 the part of the Prosecution. I don't know whether they  
17 have these reports in their custody at this time.

18 MS MONASEBIAN: One last thing, knowing Ms Stevens very well  
19 and all the colleagues there, I'm sure -- I am sure it is  
20 not an issue of bad faith. I am sure it is an issue of  
21 them being overwhelmed, as we all are --

22 JUDGE THOMPSON: Yes, quite right.

23 MS MONASEBIAN: -- with work, but that's not acceptable. And  
24 the only last thing I would just say to Your Honours with  
25 regard to these experts reports, I think it would assist  
26 the Bench if Your Honours could see well before what  
27 these reports are. Your Honours may find that some of  
28 them are irrelevant, that these overview reports  
29 regarding things outside of the knowledge of a witness is



1           redundant and that we don't need 166 witnesses, seven of  
2           which having reports this big dumped on the Defence at  
3           the end when Your Honours can say to the Defence -- I  
4           mean say to the Prosecution, with respect to Rule 73 bis,  
5           I think it is, or 73 ter, that these are cumulative, or  
6           these are irrelevant under the Rules of Evidence. It  
7           will give Your Honours enormous ability to manage this  
8           case in a way that we can get out of here soon if we  
9           could get those reports beforehand in Your Honour's  
10          hands. Thank you.

11 JUDGE THOMPSON: Well, that is appreciated, because, of  
12          course, that is presuming a proactive role for the Court  
13          and, of course, these particular judges are very  
14          conscious that traditionally judges play a reactive role,  
15          but, of course, international tribunals require us also  
16          to see if we can play a proactive role and I am trying to  
17          find the right balance between the proactive role and the  
18          reactive role. But very much sensitive to prosecutorial  
19          autonomy and also the difficulties which they have  
20          sometimes to procure their witnesses. But I do  
21          understand your perspective. Counsel.

22 MR JORDASH: Just two very quick points. Firstly, I will  
23          adopt everything my learned friend has said --

24 JUDGE THOMPSON: Yes.

25 MR JORDASH: -- and has said very well. Firstly this, that  
26          clearly we are about to move into some very important  
27          insider witnesses.

28 JUDGE THOMPSON: Yes.

29 MR JORDASH: Who will give evidence ranging across a broad



1 range of subjects. Undoubtedly expert evidence will be  
2 served by the Prosecution relating to that evidence, but  
3 the Defence will be hampered if we do not have a firmer  
4 idea as soon as is possible as to what those expert  
5 witnesses are saying.

6 JUDGE THOMPSON: Yes, yes.

7 MR JORDASH: And secondly, I would simply urge the Chamber to  
8 look at the -- for example, a case that I am  
9 personally -- that I have knowledge of; a Mr Stanisic.  
10 He is not going to be tried for another year and the  
11 Prosecution have served all of the expert reports. That  
12 is the type of standard that has been set.

13 JUDGE THOMPSON: Yes, quite right, yes.

14 MR JORDASH: Of course, we don't have to follow that  
15 slavishly, but just to give an indication.

16 JUDGE THOMPSON: No, but if it's constructive, why not?

17 MR JORDASH: Thank you.

18 JUDGE THOMPSON: Yes. Right, learned counsel on that side.

19 MR COTE: I just want to make a point; if you gave me five or  
20 ten years of case law and expert usage, I may be a little  
21 bit more efficient also. This is a new field here,  
22 finding experts for Sierra Leone is not like finding  
23 experts for ICTY - my colleague would agree on that  
24 because they have been going out for experts for the last  
25 ten or 12 years.

26 JUDGE THOMPSON: Well --

27 MR JORDASH: They have been found. Employment -- the  
28 permission of their employers have been sought for the  
29 last five months.



1 JUDGE THOMPSON: Well, I think what we need to do again is to  
2 ensure that we cooperate here, because the Chamber is  
3 resisting the temptation of intervening here with some  
4 kind of mandatory injunction, but -- and I am sure that  
5 learned counsel for the Prosecution have taken the hint  
6 from me when I posed the question that if after a period  
7 of five months, would it not seem expedient for the ends  
8 of justice that we should have some movement in that  
9 direction? And I would like to leave the issue on that  
10 note. And, of course, this issue is also related to the  
11 question of some of these experts who will be testifying  
12 and would need protective measures. So I -- again, we  
13 want to ask the Prosecution to indicate, without further  
14 delay, whether the protective measures of some of these  
15 experts, when they do have their -- would in fact  
16 include, for instance, testifying with a screen from the  
17 public gallery, or again, whether some of these experts  
18 would want to testify in closed session. So some  
19 movement towards specificity.

20 The other item here is disclosure of witness  
21 identities by the Prosecution to the Defence. The only  
22 inquiry I could make now is how many witness identities  
23 and statements have been disclosed in full to the  
24 Defence, in accordance with the 42-day requirement? Does  
25 the Prosecution want to guide us on that one?

26 MS STEVENS: Your Honour, the unredacted statements of all 16  
27 witnesses envisaged for this session have been disclosed  
28 to the Defence, and naturally, the statements would  
29 contain the names of the witnesses.



1 JUDGE THOMPSON: Yes, any response?

2 MR JORDASH: That's correct, Your Honour.

3 JUDGE THOMPSON: Right. Thanks. Okay. The outstanding  
4 motions -- as item -- general item six, the Chamber is  
5 currently seized of different motions of a confidential  
6 nature. One of them is the confidential motion on behalf  
7 of Morris Kallon, which was filed on the 14th of this  
8 year, and it concerns the disclosure of exculpatory  
9 evidence regarding witness TF1-046, pursuant to Rule 68.

10 There is also a confidential motion on behalf of  
11 Kallon and Gbao, filed on the 15th of July this year,  
12 seeking the disclosure of certain documentation  
13 pertaining to a previous decision of the Trial Chamber of  
14 the 15th of June 2004. And today there was also a motion  
15 filed on issues of urgent concern to the accused Kallon  
16 and was filed today. So that, again, is outstanding.

17 We also have outstanding confidential -- Sesay,  
18 Kallon, Gbao motion. In fact, I think it is all nine  
19 accused on the issue that we had referred to earlier;  
20 that is, the detention issue in respect of the  
21 Registrar's decision not to allow conjugal visits.

22 A decision will be rendered soon on closed session  
23 for witness TF1-235, a written decision. The oral ruling  
24 allowing the testimony of this witness to be heard in  
25 closed session was granted on the 29th July this year.

26 In the Appeals Chamber there are pending three  
27 motions: Sesay, appeal against refusal of bail, 4th  
28 August this year; then Sesay motion seeking the  
29 disqualification of Justice Robertson from all judicial



1 functions. Involving -- Yes.

2 MR JORDASH: Your Honour, that has been withdrawn.

3 JUDGE THOMPSON: Withdrawn. All right. Thanks very much.

4 Yes.

5 And then there is also a motion from the third  
6 accused appeal on decision and application to withdraw  
7 counsel 1st September 2004.

8 Let us move quickly now to the agreed facts item on  
9 the agenda. It may be recalled, that on the 16th June  
10 this year, the Trial Chamber delivered a decision on  
11 cooperation between the parties. In that decision it  
12 ordered: 1. That the parties submit a joint statement,  
13 signed by both Prosecution and Defence, no later than the  
14 1st July 2004 stating all the agreed points of fact and  
15 law reached by them.

16 And the second order was that the parties intensify  
17 their efforts to identify further points of agreement and  
18 to submit a report on the progress made every 15 days  
19 from the date of this decision until further notice by  
20 the Trial Chamber.

21 To date the Trial Chamber has received four status  
22 reports. The fifth report was received on the 8th  
23 September this year and it stated that the Prosecution  
24 and Defence do not have any additional points of  
25 agreement at that point in time, but discussions and  
26 conversations were ongoing between the parties.

27 I think all we can do at this point is to again urge  
28 further cooperation and collaboration. I am not sure  
29 myself whether counsel on both sides see much efficacy in



1 the machinery of reports, or whether today -- have we  
2 reached a point where we would say that we have come to  
3 the end of -- [inaudible] that you don't -- I mean -- or  
4 shall we just leave the mechanism open in case some --  
5 maybe some progress. Well let me hear on both sides, I  
6 don't know --

7 MR COTE: If Your Honour may permit that comment, it seems to  
8 me like you have in front of you lawyers with experience  
9 that are able to talk to each other when need be.

10 JUDGE THOMPSON: Yes.

11 MR COTE: I have seen that obligation to report on a regular  
12 basis, like a teacher would look at the student who has  
13 done his homework.

14 JUDGE THOMPSON: Yes.

15 MR COTE: I think Your Honour can trust that both parties are  
16 talking to each other on a regular basis.

17 JUDGE THOMPSON: I am of that mind myself. Go ahead, counsel.

18 MR JORDASH: I completely agree and I think --

19 JUDGE THOMPSON: Yes, quite right.

20 MR JORDASH: -- in all seriousness, I think cooperation is  
21 inclusive and getting better with time.

22 JUDGE THOMPSON: Quite right. Yes, I think I take the same  
23 view.

24 Lastly, residual agenda item, any other matters. It  
25 may be recalled that on the second day of the trial, the  
26 first accused personally made an opening statement which,  
27 after several warnings, was stopped by the Court since he  
28 was persisting or he persisted in making -- that the  
29 third accused, I apologise, the third accused. He



1 persisted in making a statement that fell outside the  
2 scope of Rule 84. The Court had previously informed his  
3 counsel then that the -- or, in fact, informed all  
4 counsel that they could elect to make an opening  
5 statement immediately after the Prosecution's opening  
6 statement, but that this would preclude them from making  
7 an opening statement at the beginning of the Defence  
8 case.

9 On the 9th of July this year the Prosecution sought  
10 clarification as to whether Mr Gbao's opening statement  
11 would still be considered as the opening statement, or  
12 whether his counsel would be permitted to make an opening  
13 statement at the commencement of the Defence case. The  
14 Chamber takes the view - and we, in fact, are unanimous  
15 on this - that due to the nature of the declarations made  
16 by the third accused in person, this should not be  
17 considered as an opening statement within the purview and  
18 contemplation of Rule 84. Therefore, in the interests of  
19 justice, counsel for the accused shall be allowed to make  
20 an opening statement if they wish to do so at the opening  
21 of the Defence case and that is the Chamber's position.

22 Yes.

23 MR COTE: With your permission.

24 JUDGE THOMPSON: Yes, you have my leave, yes.

25 MR COTE: I would like to raise two very small issues that  
26 were raised to me by lawyers who were involved in a  
27 recent hearing.

28 JUDGE THOMPSON: Yes.

29 MR COTE: That it may be -- that it may be practical for this



1 Court to - even if it is not fixed - but to provide for a  
2 really short break in the morning or in the afternoon,  
3 not necessarily to wait for a witness who is sitting  
4 there during three hours drinking a full bottle of water  
5 to have to raise his hand and say, "I would like to have  
6 a break."

7 JUDGE THOMPSON: Good point.

8 MR COTE: If everybody in the room know that normally the  
9 Court will take a ten minute break at this time, I think  
10 it would help a lot of people around the room to  
11 synchronise that time with their natural needs. I mean  
12 it is just a suggestion.

13 JUDGE THOMPSON: Excellent point. Response? Do you agree  
14 with that?

15 MR JORDASH: Agreed, yes.

16 JUDGE THOMPSON: You are preaching to the choir. I will tell  
17 you what the constraints are, but of course I don't  
18 consider them constraints. There are some statistical  
19 compilation within the Court office as to how long the  
20 judges sit, how many breaks they take and all that kind  
21 of thing. I have dismissed them as complete hogwash.  
22 I think that even if we sit here for five hours  
23 sometimes, we may be able to produce quality work, but  
24 there is also what is called the law of diminishing  
25 returns and intensive five hours can be  
26 counterproductive, but there is some school of thought  
27 which measures quality in term of quantitative criteria.  
28 It is all the corporate culture impinging upon  
29 territories that they have never -- that were never



1 intended to be measured in terms of their productivity by  
2 the number of hours, and I couldn't agree with you more.  
3 On that note, perhaps, I shall ask if any counsel on both  
4 sides has any good to offer for the interests of justice  
5 in general. If not, I will call this meeting to a close.  
6 Our proceedings will end. Anything else?

7 MR JORDASH: No, thank you.

8 MS STEVENS: None for the Prosecution.

9 JUDGE THOMPSON: Well, thus ends our proceedings. Thank you  
10 very much for your cooperation.

11 [Whereupon the hearing adjourned at 5.15 p.m., to be  
12 reconvened on Monday, the 4th day of October 2004 at  
13 9.30 a.m.]

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C E R T I F I C A T E

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

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

Roni Kerekes

Momodou Jallow

Susan G Humphries