

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 Based on this statutory authority, let me further
15:24:11 15 indicate what we intend to cover this afternoon by way of
16 agenda items, hopefully with reasonable dispatch. They
17 are as follows: One, appearances of the parties; two,
18 recognising the presence of the accused; three,
19 interpretation matters, the state of the health of the
15:24:43 20 accused, detention issues; four, trial preparation and
21 logistics; five, witness issues; six, outstanding
22 motions; seven, agreed facts; and eight, any other
23 matters.
24 Let me begin by noting that the accused are present
15:25:14 25 here except for the first accused. On the issue of
26 representation --
27 MR JORDASH: Your Honours, the first accused is here. It is
28 the third accused, Your Honour.
29 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