



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

MONDAY, 7 MARCH 2011  
2.00 P.M.  
STATUS CONFERENCE

TRIAL CHAMBER II

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**Before the Judges:**

Justice Richard Lussick, Presiding  
Justice Julia Sebutinde  
Justice El Hadji Malick Sow, Alternate

**For Chambers:**

Mr Simon Meisenberg  
Ms Erica Bussey  
Ms Doreen Kiggundu

**For the Registry:**

Ms Fidelma Donlon  
Ms Rachel Irura  
Mr Alhassan Fornah

**For the Prosecution:**

Ms Brenda J Hollis  
Mr Nicholas Koumjian  
Mr Mohamed A Bangura  
Ms Maja Dimitrova

**For the Accused Charles Ghankay  
Taylor:**

Mr Terry Munyard  
Mr Morris Anyah  
Mr Silas Chekera  
Ms Logan Hambri ck  
Ms Salla Moilanen

1 Monday, 07 March 2011

2 [Status Conference]

3 [Open session]

4 [In the presence of the Accused]

13:56:22 5 [Upon commencing at 2.00 p.m.]

6 PRESIDING JUDGE: Good afternoon. I'll begin by explaining  
7 that Justice Doherty is unable to come to court today owing to  
8 medical reasons, but we are expecting her to be available as from  
9 tomorrow.

14:01:25 10 Now, yes. We will take appearances, please.

11 MR KOUMJIAN: Good afternoon, your Honours and counsel  
12 opposite. For the Prosecution this afternoon, Brenda J Hollis,  
13 Mohamed A Bangura, Maja Dimitrova and myself, Nicholas Koumjian.

14 MR MUNYARD: Good afternoon, Mr President, your Honours,  
14:02:05 15 counsel opposite. For the Defence this afternoon, myself,  
16 Terry Munyard, Morris Anyah, Silas Chekera, Logan Hambrick, our  
17 case manager, Salla Moilanen and today we are joined for the  
18 first time by our latest intern, Peter Mwesigwa Katonene.  
19 Mr. Katonene should have joined us about two months ago, but fell  
14:02:30 20 victim to various forms of bureaucracy and has only been with us  
21 for the last four weeks. But we are glad that he's got the  
22 opportunity to be in court today.

23 PRESIDING JUDGE: Yes, thank you, Mr. Munyard. And  
24 Mr. Katonene, welcome to the Trial Chamber.

14:02:48 25 As we all know, this is a status conference charged  
26 primarily with fixing a date for the delivery of the Defence  
27 closing argument, and also for rebuttal arguments. We will stick  
28 to the agenda and the order of the agenda, and the first matter  
29 on the agenda is the Prosecution motion to substitute final trial

14:03:43 1 brief. And Mr. Munyard, correct me if I'm wrong, but  
2 I understand that the Defence has no objection to the - I think  
3 the trial brief - the Prosecution substitute brief is referred to  
4 as a revised and refined final trial brief. The Defence has no  
5 objection to that being substituted; is that correct?

6 MR MUNYARD: Mr President, that is correct. We support the  
7 Prosecution's motion to substitute a revised and refined version  
8 of their brief.

14:04:01 9 PRESIDING JUDGE: All right. Thank you. Well, we will  
10 move on to the next item now and that is submissions on whether  
11 the Trial Chamber should accept the corrigendum to the Defence  
12 final trial brief. And I understand, Mr Koumjian, that the  
13 Prosecution has no objection to that, subject to the length of  
14 the trial brief; is that correct?

14:04:26 15 MR KOUMJIAN: That is correct, and also in light of the  
16 Court's ruling that portions of that brief that were filed  
17 publicly and revealed protected witnesses is now confidential.

18 PRESIDING JUDGE: Yes. Now, the third matter is the length  
19 and format of the corrected Defence final trial brief, and  
14:04:56 20 I think the Prosecution does not accept the appendix as being a  
21 proper appendix, inasmuch as it contains substantive arguments.  
22 Is that the Prosecution position?

23 MR KOUMJIAN: That is correct, your Honour. In addition,  
24 in the order that your Honours gave for the final brief,  
14:05:21 25 your Honours set a page limit. That was overriding the practice  
26 directive which would, I believe, call for a 200-page page limit,  
27 and Your Honours' order was that the final briefs be limited to  
28 600 pages. It would make any rule on page limits meaningless if  
29 you can simply characterise additional parts of your brief as an

1 annex. This Court has itself previously ruled in the same way in  
2 the case filing number 209 in this file, in the Taylor trial, a  
3 decision that was issued - let's see if I have that - a decision  
4 that was issued on the Defence motion to lift redactions on  
14:06:22 5 identifying information of 15 core witnesses on the 21st of March  
6 2007. Your Honours did say, in paragraph 9 of that motion, that,  
7 "In our opinion, neither annex can correctly be called by that  
8 name; they don't contain merely additional information but  
9 additional submissions."

14:06:48 10 In both - in cases at both the ICTY and the ICTR, the  
11 Appeals Chambers have ruled in those cases that an annex or  
12 appendix to a document cannot include either legal or factual  
13 arguments. The three annexes that the Defence has are factual  
14 arguments. They are not simply transcripts from the evidence,  
14:07:18 15 they are not documents from the case. They are summaries that  
16 the Defence has prepared of what they say the evidence states.  
17 So in our view, they are part of the final trial brief.  
18 Your Honours gave a limit of 600 pages and the Defence has  
19 exceeded it by over 200 pages.

14:07:41 20 PRESIDING JUDGE: Mr. Munyard?

21 MR MUNYARD: Thank you, Mr President. Mr President,  
22 your Honours, our submission is quite simply this: That the  
23 Prosecution, in their objection, seek to characterise Defence  
24 summaries of evidence prepared solely for the assistance of the  
14:08:04 25 Court and not in any attempt to persuade the Court one way or the  
26 other of how they should find the evidence summarised in those  
27 annexes. The Prosecution are seeking to characterise those  
28 summaries as factual arguments. They are not. An argument on  
29 the facts arises where the evidence points to - in different

1 directions. There is evidence from a number of sources, and the  
2 one party or the other party seeks to persuade the Court that  
3 they should find a particular set of facts based on that evidence  
4 and reject other facts from that evidence. That is not what  
14:08:57 5 these summaries do. These summaries are no more than what they  
6 say they are, a summary of the evidence. They don't contain  
7 argument that seeks to persuade the Court to accept the evidence  
8 of some of the witnesses and reject the evidence of other  
9 witnesses. That would be an argument on the facts.

14:09:20 10 There is no such argument on the facts contained in our  
11 annexes. They are purely and simply annexes - sorry, purely and  
12 simply summaries put in in an effort to save the Court the time  
13 of going right through all of the transcripts. And they amount  
14 to no more than that. I can't really make the point any better  
14:09:46 15 by repeating it.

16 The practice direction on the filing of documents in  
17 Article 6 at paragraph F says:

18 "Headings, footnotes and quotations count toward the word  
19 and page limit set out in the present Article. Any appendices or  
14:10:10 20 authorities do not count towards the page limit."

21 And these appendices are no more than the summaries I've  
22 referred to. In passing, may I make this point? Mr Koumjian  
23 says that it would render a page count meaningless if the - if  
24 one party or another was to put in large numbers of appendices.  
14:10:33 25 It also makes the page count meaningless if vast numbers of the  
26 pages in the actual final trial brief are themselves footnotes,  
27 and you will have noted that in many of the pages of the  
28 Prosecution's final trial brief, more print on the page is  
29 footnote than text. Now, we don't take a point on that. There

1 is an element of artificiality, however, about my learned  
2 friend's argument about our appendices making a nonsense of page  
3 limits, when their own layout of their own arguments in their  
4 final trial brief very often contains much of the argument in the  
14:11:16 5 small print of the footnotes. However, to go back to the main  
6 issue that the Prosecution take, they haven't pointed to any  
7 arguments of fact that we have put in those appendices and we  
8 invite the Court to say that they should stand and that they fall  
9 fairly and squarely within the terms of Article 6(F) of the  
14:11:38 10 practice direction.

11 PRESIDING JUDGE: All right. We'll reserve on that  
12 particular issue for the moment and move on to the next agenda  
13 item, which is the filing of written responses to the final trial  
14 briefs. And I think the first question that arises is do we, at  
14:11:59 15 this stage, need written responses? I'll hear from the  
16 Prosecution first on that.

17 MR KOUMJIAN: Your Honour, our position is that the  
18 responses to the final trial brief should be oral. In the  
19 decision of the Appeals Chamber that was just handed out, they  
14:12:19 20 pointed out that when the Defence violated unlawfully two court  
21 orders in not filing its trial - its final trial brief as  
22 ordered, that the Prosecution was prejudiced, and they do that in  
23 paragraph 20 of the decision. Another factor that the Appeals  
24 Chamber was not aware of is that also the Prosecution, based upon  
14:12:50 25 the Court's scheduling for the remainder of this trial, from the  
26 Status Conference of 22 October, 2010, we have lost several of  
27 the key personnel in our trial team that would be involved in  
28 writing a response. They have left according to the plans and  
29 the schedule that your Honours had set back in October and are no

1 longer with us. So while we certainly wish to respond to the  
2 Defence final brief and we have - in fact, I'll address this, but  
3 I think we would ask for additional time in oral argument to  
4 respond to the Defence final brief, unlike the Defence which had  
14:13:32 5 our brief, will have had our brief when they argue, we did not  
6 have their brief to argue during our submissions. We don't think  
7 that written submissions are appropriate. They would slow down  
8 the completion of the trial, and, based on the schedule set in  
9 October, we do not have the staff available to respond as we  
14:13:54 10 would like to in written fashion.

11 JUDGE SEBUTINDE: Mr Koumjian, where would you place the  
12 rebuttal arguments? Would you merge or marry the two?

13 MR KOUMJIAN: Your Honours, actually, I would ask for the  
14 Prosecution to be given an opportunity before the Defence  
14:14:16 15 argument - this is up to your Honours and we are flexible on it -  
16 but we would ask to respond for two hours or at least an hour to  
17 the Defence final brief before the Defence arguments and then we  
18 would also address their arguments in our oral response. We  
19 would ask for two hours to respond to the Defence 550 or 850 -  
14:14:39 20 whichever your Honours decide about the annexes - brief, and also  
21 we would respond to their oral arguments in our rebuttal. We did  
22 not have that opportunity --

23 JUDGE SEBUTINDE: You want the Prosecution to have an  
24 opportunity of two hours to respond to the Defence written final  
14:14:55 25 trial brief before the Defence is given an opportunity to present  
26 its closing argument?

27 MR KOUMJIAN: Yes, that would be our preference and we  
28 think that that is in the interests of trial efficiency. It  
29 would be much more efficient than the time we needed for written

1 responses.

2 PRESIDING JUDGE: Mr. Munyard, firstly, do you agree with  
3 the submission that the written responses to the final trial  
4 brief should be oral at this stage?

14:15:34 5 MR MUNYARD: Mr President, no, this is the first we've  
6 heard of any such suggestion. We are of the view that it would  
7 be helpful to have written responses for the reasons that  
8 I outlined back in October last year.

9 Can I add this? That it would be helpful, though, before  
14:15:53 10 I respond in full to Mr Koumjian's suggestion, if the Prosecution  
11 could give us some sense of what - of the timetable that they are  
12 now proposing because we've had a suggestion that we abandon  
13 written responses, that they then have their two hours - I'm  
14 sorry, my throat is going along with that of many other people in  
14:16:14 15 the building - they are then saying they want more time. It  
16 would be helpful if we just had a rather clearer picture from the  
17 Prosecution of the precise timetable that they are putting  
18 forward. If we could have that, then I would probably be in a  
19 better position to respond to that.

14:16:36 20 PRESIDING JUDGE: Mr Koumjian, the way I understand your  
21 submission is that you wanted two hours' oral addresses on the  
22 Defence final trial brief before the Defence begins its closing  
23 arguments; is that correct?

24 MR KOUJIAN: That's correct, and then the Defence would  
14:17:01 25 have six hours to address their brief and ours, and then we each  
26 would have, as previously scheduled, two hours to respond. And  
27 those two hours in our view would - are appropriate to give to  
28 the Prosecution because we did not have an opportunity to address  
29 the final brief in our oral arguments as parties normally do,



1 because of the issue of whether that brief was filed or accepted.  
2 Secondly, I'd also note that we lost about a half hour in our own  
3 arguments due to the proceedings at the beginning of - I believe  
4 it was the 8th of February, when counsel left the courtroom. So  
14:17:44 5 we would think two hours, I think that's very efficient to  
6 respond to an entire final trial brief in two hours. We would  
7 ask for two hours for ourselves, six hours for the Defence and  
8 then each have two hours as your Honours previously scheduled in  
9 oral responses.

14:18:01 10 JUDGE SEBUTINDE: Mr Koumjian, in reality the two hours  
11 you're asking for is in lieu of a written response, isn't it?

12 MR KOUMJIAN: Yes, your Honour.

13 PRESIDING JUDGE: Mr. Munyard, does that answer your  
14 question?

14:18:16 15 MR MUNYARD: I'm afraid it doesn't give us any better idea  
16 of what the period of the timetable is that the Prosecution is  
17 suggesting. But can I deal with it as it stands?

18 First of all, if the Prosecution got an extra two hours to  
19 respond to our final trial brief, that would give them more hours  
14:18:35 20 orally but in our submission, a much more trial-efficient  
21 approach to a case as complex as this is to put in written  
22 submissions which can go into considerably more detail than oral  
23 submissions inevitably do. And it's our view that there is a  
24 great deal to be addressed that can be addressed more efficiently  
14:19:02 25 in writing and then simply highlighted in oral submissions, and  
26 so we would submit that the original approach that the Court took  
27 is by far the better approach, both because it enables the  
28 parties to address the arguments in more detail, and it also  
29 restores to the Prosecution the preparation time that they would

1 have had in addressing our trial brief.

2 PRESIDING JUDGE: All right. Thank you. That's a matter  
3 we'll reserve on for the moment. And move on to the next agenda  
4 item which is the date and time for Defence closing arguments.

14:19:54 5 Now, for the purposes of discussion, I would suggest Defence  
6 closing arguments on Wednesday, and rebuttal arguments on Friday.  
7 What's the Prosecution have to say about that?

8 MR KOUMJIAN: That was exactly going to be our suggestion.  
9 This Wednesday and Friday.

14:20:17 10 PRESIDING JUDGE: Is that okay by you, Mr. Munyard?

11 MR MUNYARD: We are talking about - are we talking about  
12 this week, your Honour?

13 PRESIDING JUDGE: Yes.

14 MR MUNYARD: It would be possible for us to do that. I  
14:20:35 15 know we had originally set down a timetable that included a gap  
16 between the oral submissions by both sets of parties and then the  
17 rebuttal. It would be more helpful if it were Thursday and  
18 Friday but we could do Wednesday and Friday. I should also say  
19 this: That we are now dealing with item number 5 on the agenda.

14:21:03 20 If the Trial Chamber is with us in that we should keep to the  
21 original approach, that's to say with written submissions also,  
22 then the original approach is to have the written submissions and  
23 then the oral arguments. Now I know that's been put out to an  
24 extent by the events that have happened, but it would in our  
14:21:26 25 submission make more sense to have the written submissions first  
26 and then to have oral arguments by the Defence and, in  
27 particular, to have the rebuttal arguments by both sides. So, in  
28 other words, our submission is that the Trial Chamber would be in  
29 a better position to decide item 5 once it's resolved the

1 question of item 4.

2 PRESIDING JUDGE: Yes. Mr Koumjian?

3 MR KOUMJIAN: Your Honours, we would request the Court to  
4 stick to Wednesday and Friday. That would give us, if we hear  
14:22:04 5 the Defence submission Wednesday - actually since I asked for two  
6 hours on Wednesday, then the Defence submission may go over into  
7 Thursday, but when we - then we would have a little bit of time  
8 to respond to their oral submissions on Friday. If we had the  
9 responses the day after the Defence submission, we have no time  
14:22:26 10 at all, other than overnight, to prepare while the Defence has  
11 had our principal oral submission since the 8th of February when  
12 we gave it.

13 I would also point out in regard to the responses to our  
14 brief versus our responding to their brief, the Defence, of  
14:22:45 15 course, did have the opportunity on the 31st of January to file a  
16 written response, up to 100 pages, to our brief, which was not  
17 taken advantage of. We only - we now would like to do the  
18 response orally to their brief in the interests of trial  
19 efficiency, so our suggestion is we begin Wednesday, with two  
14:23:09 20 hours, the Defence has four hours on Wednesday, two hours on  
21 Thursday, and then we do the responses on Friday.

22 PRESIDING JUDGE: Mr. Munyard?

23 MR MUNYARD: Mr President, if the Prosecution want extra  
24 time and if the Court feels it appropriate to give the  
14:23:29 25 Prosecution extra time to put in oral arguments, might I suggest  
26 this, that whatever day the Defence make their submissions -  
27 sorry, whatever day the Prosecution make their extra oral  
28 submissions this week, that we have the Defence submissions on  
29 Friday and the rebuttals on Monday? That would then give the

1 weekend to the parties to prepare their rebuttal. I know that  
2 people are very anxious - and I think this Court knows that  
3 I share that anxiety - to conclude the trial as expeditiously as  
4 possible. But if we are talking about hearings in the next few  
14:24:12 5 days, then taking it over one day into next week, in our  
6 submission, is not inefficient in any way. And if the Court is  
7 going to give the Prosecution that extra time, then in our  
8 submission, having the Defence on Friday and the rebuttals on  
9 Monday makes perfect sense.

14:24:31 10 PRESIDING JUDGE: Just before you sit down, Mr. Munyard,  
11 you have suggested written responses to the final trial briefs.  
12 Seeing those would be written responses to the final trial briefs  
13 and not to the Prosecution closing arguments, would the time for  
14 filing the written response necessarily interfere with the date  
14:24:58 15 fixed for Defence closing arguments?

16 MR MUNYARD: Your Honours, not necessarily, no. But we  
17 nevertheless feel that it would be appropriate to stick to the  
18 original timetable for the reasons that I've said. Also, of  
19 course, although they are written responses to the final trial  
14:25:18 20 briefs, the final submissions in the case are oral submissions  
21 and it would be perfectly proper for either party to seek, in  
22 those oral submissions, to address something that had been put in  
23 the written submissions. The written submissions would consist  
24 of two parts, one, the final trial brief, and, two, the written  
14:25:37 25 responses to the final trial brief, and it's, generally speaking,  
26 the purpose of the rule is to have oral submissions to address  
27 what has been put in in writing. That's why we feel that oral  
28 submissions should be the concluding stage of this part of the  
29 trial.

1 PRESIDING JUDGE: Thank you, Mr. Munyard.

2 JUDGE SEBUTINDE: Mr Koumjian, do I get you clearly, when  
3 you say the Prosecution prefers oral responses, is it because you  
4 do not have the manpower to write the responses?

14:26:20 5 MR KOUMJIAN: It's for that reason, your Honour, and also  
6 because we believe we can then submit the case to your Honours  
7 for deliberations much sooner than with written responses.

8 JUDGE SEBUTINDE: And would you object if the Defence  
9 presented their responses in writing? Provided, of course, that  
14:26:39 10 it was within the time limit set by the judges? Would you have  
11 any objections to that?

12 MR KOUMJIAN: Well, if it's due the same day as our oral  
13 argument I wouldn't have an objection to that, but I don't think  
14 the Defence should be given additional time that we don't have.  
14:26:57 15 They've actually had our brief longer than we've had theirs to  
16 prepare a written response when we are doing an oral response  
17 with less notice.

18 PRESIDING JUDGE: Just before you sit down, Mr Koumjian,  
19 for the purposes of our deliberations, have you totally written  
14:27:16 20 off the possibility of a written response?

21 MR KOUMJIAN: Well, your Honours, we will obey, of course,  
22 any order your Honours give and we are, of course, going to obey  
23 your orders and we will do a - prepare a written response. We  
24 will do it with a reduced team that we have and I think - as I've  
14:27:35 25 mentioned, we do believe, we submit, that the prejudice we  
26 suffered is exacerbated by the fact that written responses that  
27 we begin, due now, we have a reduced team in order to - available  
28 to write those. It's easier for us to do oral responses because  
29 less people are involved.

1 JUDGE SEBUTINDE: Mr Koumjian, one last question on the  
2 annexes of the Defence final trial brief. It is the Prosecution  
3 position that the content of all three annexes is argumentative?  
4 Could you illustrate for me just one example of argument in, say,  
14:28:26 5 the first annex?

6 MR KOUMJIAN: Your Honour, the Defence has said that the -  
7 that the annexes are merely the testimony of the witnesses.  
8 Well, the testimony of the witnesses, the transcripts, are  
9 available to your Honours in any event. The words that are on  
14:28:49 10 the page in the first annex are the Defence rephrasing of what  
11 the witnesses say and what they say Mr Taylor responded. In  
12 order for - that's not helpful to your Honours because your  
13 Honours will have to look those up anyway, to see what the -  
14 whether the witness said what the Defence alleges and whether  
14:29:10 15 Mr Taylor's response is, in fact, a response that's accurate as  
16 to what he said.

17 If I can just have a moment I'll try to find an example.

18 JUDGE SEBUTINDE: What I was hoping for you to do is to  
19 show me arguments, an argumentative content, because the Defence  
14:29:35 20 submission was these are summaries of transcript.

21 MR KOUMJIAN: Yes, in our view, a summary is the Defence  
22 argument of what its witnesses said. That - the Defence is not  
23 likely to ask your Honours to accept our summaries of the  
24 witnesses. If we had put in an annex of all the testimony about  
14:29:56 25 individual crimes, for example, that is argument. That's part of  
26 the findings that your Honours have to make, the factual findings  
27 depend upon the evidence. In the third annex, for example, the  
28 Defence seeks to identify who the witnesses said were the  
29 perpetrators. Sometimes that may be accurate and sometimes it

1 may be less than accurate because it's a summary. The Defence  
2 says, for example, I recall in one instance in the third annex,  
3 they say that a witness, I believe it's a Mr - I better not say  
4 the name because I'm not sure if he's protected or not - that the  
14:30:31 5 witness said that ECOMOG was responsible for crimes that occurred  
6 and they are identified as the perpetrator, ECOMOG, during the  
7 intervention. If you look at the context of what the witness  
8 said, the witness absolutely said that and he said he's still -  
9 the people of Sierra Leone - he and his neighbours welcomed the  
14:30:51 10 ECOMOG intervention because it was so much better than the  
11 junta's crimes. So by selectively picking out part of the  
12 testimony of the witness, the Defence -- in our view, that's  
13 argumentative. That would be the same as ourselves giving a  
14 summary of a witness's evidence regarding Charles Taylor without  
14:31:15 15 anything from the cross-examination of the witnesses.

16 JUDGE SEBUTINDE: Mr. Munyard, do you want to say anything  
17 in response to that?

18 MR MUNYARD: Briefly, but importantly in our submission,  
19 these annexes are, if you like an index to where the Court will  
14:31:31 20 find the evidence on this point. Mr Koumjian's argument seems to  
21 us to be a good argument for the need for written responses  
22 because there is much that is - we will be submitting, if granted  
23 written responses, there is much evidence that is taken out of  
24 context in the Prosecution brief, but these summaries are no more  
14:31:56 25 than summaries. They are not there intended to persuade the  
26 judges, yourselves, one way or another. They are there to  
27 indicate this is where this evidence is to be found, and  
28 obviously you have your own notes of the evidence and the context  
29 in which particular pieces of evidence were given. We are not

1 seeking to persuade you at all by these annexes. We are simply  
2 putting them there, we hoped, for the assistance of the Court and  
3 for no - we don't seek to rely on them for any reason other than  
4 that.

14:32:32 5 PRESIDING JUDGE: While you're on your feet, Mr. Munyard,  
6 in the Defence filing of the 7th of February, that's the Defence  
7 response to Prosecution motion to substitute Prosecution final  
8 trial brief, et cetera, at page - at paragraph 2, the Defence  
9 says, "The Defence final brief is not substantive argument but  
14:33:03 10 is, rather, a useful reference tool for arguments made throughout  
11 the brief."

12 Now, I presume you would still abide by that statement.

13 MR MUNYARD: Would your Honour give me a moment? Because  
14 it seems to me to contain an inherent inconsistency. I think  
14:33:22 15 there may have been a typographical error. Would you give me  
16 just a moment for me to respond to that while I look at it?

17 PRESIDING JUDGE: Well, just before you do, Mr. Munyard,  
18 perhaps - I was quoting in context. Perhaps I'll read the whole  
19 sentence: It starts off, "The Defence notes that, contrary to  
14:33:46 20 the Prosecution's arguments at paragraph 12, the material  
21 contained in annexes A to C of the Defence final brief is not  
22 substantive argument but is, rather, a useful reference tool for  
23 arguments made throughout the brief." Perhaps I should have read  
24 the whole sentence out. I confused you.

14:34:08 25 MR MUNYARD: I'm very grateful you did and I'm now clear as  
26 to what we said. The point about those annexes is they refer the  
27 Court to the areas of the evidence which we refer to in the final  
28 trial brief itself. So that the Court can then look at those  
29 witnesses and those areas of evidence in order to determine



1 whether or not you accept our arguments mounted within the pages,  
2 the 548 or whatever it is pages, of the final trial brief. They  
3 are an indicator to the court and that's all.

4 PRESIDING JUDGE: Well, what I was going to ask you is  
14:34:57 5 this: If the annexes are put forward as a useful reference tool,  
6 and the Defence, for instance, were to consider that, well, they  
7 are not all that useful because we have to look up the references  
8 anyway, I gather that a finding such as that would not induce the  
9 Defence to claim any prejudice.

14:35:24 10 MR MUNYARD: Your Honour is absolutely right.

11 PRESIDING JUDGE: Thank you, Mr. Munyard. We will have an  
12 adjournment and come up with a schedule. Hopefully we won't be  
13 too long.

14 [Recess taken at 2.36 p.m.]

15:15:12 15 [Upon resuming at 3.15 p.m.]

16 PRESIDING JUDGE: We've done our best to consider the  
17 points of view of both parties on the submissions they have put  
18 to us. I can begin by saying that we had to put next Monday out  
19 of the question. There are some logistical problems on that  
15:16:31 20 date.

21 Now, if we can deal with the matters as in the order listed  
22 in the agenda, the first matter is the Prosecution motion to  
23 substitute final trial brief, and the Trial Chamber grants the  
24 Prosecution request to substitute the revised and refined  
15:17:03 25 Prosecution final trial brief.

26 Incidentally, if any of these orders are not 100 per cent  
27 clear, please let us know.

28 The second item, the submissions on whether the Trial  
29 Chamber should accept the corrigendum to the Defence final trial

15:18:20 1 brief, the corrigendum, I think the full title is, "Public with  
2 annex A and confidential annex B corrigendum to Defence final  
3 brief as filed on 3rd of February 2011," that corrigendum is  
4 accepted, provided the confidentiality - confidentiality  
5 requirements are observed.

15:18:54 6 The third item, the length and format of the corrected  
7 Defence final trial brief, the Trial Chamber considers that the  
8 material in annexes A, B and C, can be regarded as factual  
9 argument and, as such, properly belongs in the main document, and  
10 therefore, the Defence final trial brief will be limited to 600  
11 pages, as originally ordered. We do point out, however, that the  
12 Defence final trial brief, as it stands, is 544 pages long. And  
13 we get those figures in this way: The first three pages of that  
14 final trial brief are concerned with a motion, and the last page  
15:19:32 15 bears just a signature and nothing else. So that the proper  
16 length of that brief, taking those considerations into account,  
17 is 544 pages, which the Defence therefore has 56 pages to  
18 accommodate the material in the annexes.

15:20:03 19 Now, item 4 and item 5, are the filing of written responses  
20 to the final trial briefs and the date and time for Defence  
21 closing arguments.

15:20:40 22 The Prosecution will be permitted to deliver an oral  
23 response to the Defence's final trial brief on Wednesday, that is  
24 the 9th of - that's this week, the 9th of March, between 9 and  
25 11. Now, that means the Defence will begin its closing arguments  
26 on Wednesday, the 9th of March, from 11.30 and going over to the  
27 following day, on Thursday, the period of the Defence closing  
28 arguments will be from 9 to 11 a.m. in the morning, in other  
29 words, the Defence closing arguments will conclude at 11 a.m. on

1 Thursday, the 10th of March.

2 As to the Defence request to file a written response to the  
3 Prosecution's final trial brief, the Defence may do so provided  
4 that the written response is filed no later than close of  
15:21:47 5 business, 4 p.m., Thursday, the 10th of March.

6 Now, rebuttal arguments, that is the final item, are  
7 scheduled as follows: On Friday, the 11th of March, between 9  
8 and 11, the Prosecution will deliver its arguments in rebuttal,  
9 and the Defence rebuttal arguments will take place between 11.30  
15:22:34 10 to 13.30, on Friday, the 11th of March.

11 There is just one other matter that I didn't cover, and  
12 Justice Sebutinde has reminded me. The Prosecution - I beg your  
13 pardon, the Defence corrigendum to the Defence final trial brief,  
14 with the amended - as amended by the Court, in other words  
15:23:54 15 confined to 600 pages, shall be filed by close of business  
16 Wednesday, the 9th of March.

17 JUDGE SEBUTINDE: There is one other item that we had not  
18 canvassed and that's the item of the public filings of your  
19 various final trial briefs. Perhaps we should make an order in  
15:24:52 20 that regard. Normally it's an option, but this being an  
21 important document, there should be a public filing to which the  
22 public should have recourse to see where the - what arguments  
23 were put forward. And so, in addition to your various  
24 confidential trial briefs, you should please ensure that there is  
15:25:18 25 a public version filed at the same time.

26 MR MUNYARD: Mr President, may I inquire of your definition  
27 of close of business? When you were dealing with Defence written  
28 response, you said that we can do so provided it's no later  
29 than - by close of business, i.e. no later than 4 p.m. on

1 Thursday, the 10th. You've also referred to a filing by close of  
2 business - I don't know where I've put it now - but my  
3 understanding has always been that close of business is later  
4 than 4 p.m. It's either 5 or 5.30 and that's varied at different  
15:26:02 5 stages during the three and a half years. But can I clarify what  
6 the Court's understanding of close of business is generally, and  
7 if it's beyond 4 p.m., are you making that order about the  
8 final - about the written responses slightly different from the  
9 normal close of business?

15:26:20 10 PRESIDING JUDGE: No. I think that needs to be clarified.

11 MR KOUMJIAN: Your Honour, could I possibly be heard on  
12 that time for the filings on these two in relation to exactly  
13 what Mr. Munyard has just raised?

14 PRESIDING JUDGE: Go ahead.

15:26:39 15 MR KOUMJIAN: Because of the schedule for the oral  
16 arguments, we are to respond Wednesday morning to the Defence  
17 brief. So it's our request that we know what the Defence brief  
18 is by Tuesday afternoon. I understand your Honours in giving the  
19 Defence the option of picking which 56 pages they want to add to  
15:26:56 20 the brief from the annexes, are not giving the Defence permission  
21 to rewrite their brief, just to select 56 pages from the annexes  
22 and I would hope that they could do that by tomorrow by noon and  
23 then we would be able on Wednesday to at least respond to the  
24 brief, we know what the Defence brief is that we are responding  
15:27:15 25 to.

26 And also on the Defence oral - excuse me, the Defence  
27 written response, 4 p.m. means we would get that at about 5  
28 o'clock probably on Thursday, when we have to give our response  
29 Friday morning at 9. I would request a couple of hours earlier,

1 sooner, on that also. If that could be filed by noon on  
2 Thursday, then we would have a chance to read it in order to  
3 respond in our oral argument.

4 PRESIDING JUDGE: Yes, Mr. Munyard?

15:28:18 5 MR MUNYARD: Can I reply in relation, first of all, to the  
6 option of having a written response? It's an option that we have  
7 asked the Court to grant us, but the option is equally open to  
8 the Prosecution, and so when they say they want to truncate the  
9 time for us filing our written response by making it earlier,  
10 really, they could put in a written response to our brief if they  
11 so wished.

12 The oral hearings that are going to take place are  
13 fundamentally in response to the final trial brief, as  
14 I understand it.

15:29:01 15 PRESIDING JUDGE: Yes. Well, we are not going to revisit  
16 those orders, Mr Koumjian, but, Mr. Munyard, you raised that  
17 point in clarification what do we mean by "close of business"?  
18 Can we say this? That in the orders where we mention "close of  
19 business," substitute "4 p.m.," "by not later than 4 p.m." Is  
20 that clear or does that complicate matters even more?

15:29:30 21 MR MUNYARD: If you say 4 p.m., then personally I would  
22 prefer if you simply say by 4 p.m., rather than by close of  
23 business, because --

24 PRESIDING JUDGE: No. I said where "close of business" has  
15:29:47 25 been used, substitute "by 4 p.m."

26 MR MUNYARD: Ah, very well. I was hearing things from two  
27 different places at that time. Thank you. That is now clear.

28 One thing we do need to know, when we file a public version  
29 of our final trial brief we need a decision on what exactly is

1 said to be confidential and what isn't in order for us to make  
2 sure that we comply properly with the orders of the Court.

3 JUDGE SEBUTINDE: You expect the judges to tell you what's  
4 confidential and what's not, Mr. Munyard?

15:30:25 5 MR MUNYARD: Would your Honour give me just a moment?

6 [Defence counsel confer]

7 MR MUNYARD: Yes. I'm aware that there are currently  
8 filings before the Court, not yet resolved, in which the  
9 Prosecution take one view on what is confidential, in particular  
10 in relation to closed session testimony, and the Defence take  
11 another view, and we need to know whether or not reference can be  
12 made to closed session testimony, obviously without revealing the  
13 identity of the witness. That, at the moment, remains an  
14 unresolved dispute as between Prosecution and Defence. That's  
15:31:19 15 what I meant by needing to know the precise meaning or the  
16 precise ambit of confidential.

17 JUDGE SEBUTINDE: But Mr. Munyard, this is not to reinvent  
18 the wheel, really. When we were hearing the evidence, closed  
19 session or otherwise, everybody was enjoined to respect the  
15:32:04 20 witness protection, protecting the identity of those witnesses  
21 that did enjoy protective measures. And where the content of the  
22 evidence they were giving was also likely to reveal their  
23 identity because it was unique, then that evidence was heard in  
24 private session or closed session. So the same rules would apply  
15:32:30 25 in the filing. If you think that the closed session testimony  
26 can be referred to without disclosing the witness's identity,  
27 then that can be made public, but you run the risk, because  
28 whatever was in private session was in private session for a  
29 reason. It wasn't in private session for fun.

1           So when you're filing a public filing, these are the kinds  
2 of considerations that you take into account. Now, we sitting  
3 here cannot tell you page this, paragraph that, should be  
4 confidential. We don't know. But we are depending on the good  
15:33:13 5 judgment on both sides to measure and know what is likely to  
6 reveal the identity of a witness, a protected witness, and what  
7 is not, to balance, in other words, the publicity of the trial  
8 with the protection of witnesses.

9           MR MUNYARD: Your Honour, all I can say is we always do our  
15:33:33 10 very best to make sure that we don't reveal any identifying  
11 evidence. However, where there is a dispute between Prosecution  
12 and Defence, and we take the view that in referring to something  
13 we clearly aren't identifying the witness, it may well be that  
14 the Court is the only arbiter of whether or not that material can  
15:33:56 15 be disclosed. Can I also raise another question about the filing  
16 of the public version of the brief? I didn't hear your Honour  
17 giving a specific date, or your Honours giving a specific date,  
18 in relation to when such a public version should be filed. And,  
19 indeed, if I'm right, if you didn't give a specific date, then  
15:34:17 20 I would invite you to give us a period of time in which to do  
21 that. It obviously is a task that requires a great deal of care,  
22 and I would have hoped that that isn't a document that we have to  
23 file in a hurry, within the next week or so, and I would invite  
24 the Court to give us plenty of time to make sure that the public  
15:34:40 25 version can be properly - sorry, that the confidential version  
26 can be properly edited so as to turn it into a public version.

27           JUDGE SEBUTINDE: Do I correctly recall that the  
28 Prosecution has filed a public version of your revised version?

29           MR KOUMJIAN: No, your Honour, we filed a public version of

1 the introduction only. That's public. But certainly, we agree  
2 that both parties, and actually we are more concerned with the  
3 Defence, be given plenty of time to make sure they get it right  
4 and we'll be prepared to file a public version of our entire  
15:35:17 5 brief within a month, within one month of today.

6 JUDGE SEBUTINDE: Mr. Munyard, do you reckon a month is  
7 reasonable?

8 MR MUNYARD: Yes.

9 PRESIDING JUDGE: All right. Well, that can be the final  
15:36:05 10 direction, then, that the public versions of the Prosecution and  
11 Defence final trial briefs to be filed within one month from  
12 today.

13 Now, before we adjourn, is there anything that's not clear  
14 in the orders we've set out? I realise we have not reduced them  
15:36:29 15 to writing, and I'm just hoping that nobody has been confused or  
16 is unclear on anything we've said.

17 MR MUNYARD: No, thank you.

18 MR KOUMJIAN: No, thank you.

19 PRESIDING JUDGE: Thank you. We will adjourn then until  
15:36:47 20 9 a.m. on Wednesday, this Wednesday.

21 Whereupon the hearing adjourned at 3.36 p.m.,  
22 to be reconvened on Wednesday, the 9th of March  
23 2011, at 9.00 a.m.

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