



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 8 JUNE 2009
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Richard Lussick, Presiding
Justice Teresa Doherty
Justice Julia Sebutinde
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr Simon Meisenberg
Ms Doreen Kiggundu

For the Registry:

Mr Gregory Townsend
Ms Rachel Irura
Mr Benedict Williams

For the Prosecution:

Ms Brenda J Hollis
Mr Mohamed A Bangura
Ms Maja Dimitrova

For the accused Charles Ghankay
Taylor:

Mr Courtenay Griffiths QC
Mr Terry Munyard
Mr Morris Anyah
Ms Salla Moilanen

1 Monday, 8 June 2009

2 [Open session]

3 [The accused present]

4 [Upon commencing at 9.30 a.m.]

09:32:34 5 PRESIDING JUDGE: Good morning. We'll take appearances
6 first, please.

7 MS HOLLIS: Good morning, Mr President, your Honours,
8 opposing counsel. Appearing this morning for the Prosecution are
9 myself Brenda J Hollis, Mohamed A Bangura and Maja Dimitrova.

09:32:53 10 PRESIDING JUDGE: Thank you.

11 MR GRIFFITHS: Good morning, Mr President, your Honours,
12 counsel opposite. For the Defence today are myself, Courtenay
13 Griffiths, and my learned friends Mr Morris Anyah, Mr Terry
14 Munyard and Ms Salla Moilanen, case manager.

09:33:09 15 PRESIDING JUDGE: Thank you, Mr Griffiths. Mr Griffiths,
16 we have your filings. Is there anything you wanted to add or
17 explain in relation to those?

18 MR GRIFFITHS: Well, I think we've made it obvious in
19 relation to our Rule 73 filing that the initial filing made was
09:33:29 20 incomplete and we're hoping by close of play today to provide the
21 Court with a further filing which hopefully will complete that
22 aspect of the process.

23 I will add that we will be filing pursuant to your order a
24 list of exhibits later today. Again because of pressure of time
09:33:55 25 that list will not be complete, but we anticipate being able to
26 complete it I can say no more than as soon as possible. But what
27 we have endeavoured to do is to deal with at least those exhibits
28 which will be pertinent at the commencement of the Defence case.

29 PRESIDING JUDGE: Yes, thank you, Mr Griffiths. Well, you

1 should be in possession of the matters that the Prosecution
2 wanted to raise at the conference. Perhaps it might be a good
3 idea if we go through those particular agenda items and I think
4 the judges, we all would have one or two questions as well
09:34:56 5 regarding the filings.

6 MR GRIFFITHS: Mr President, can I suggest then, in order
7 that we can deal with these matters in the round, that we add one
8 further matter to the list of five issues raised by the
9 Prosecution so that number 6 would become the question of when
09:35:13 10 and if we have a recess in the coming session.

11 PRESIDING JUDGE: Yes, that actually is one of the matters
12 I hope to settle before we adjourn today, Mr Griffiths.

13 MR GRIFFITHS: I'm grateful.

14 PRESIDING JUDGE: Ms Hollis, I see the first thing you
09:35:40 15 wanted further particulars on was the length of the Defence
16 opening statement.

17 MS HOLLIS: That's correct, Mr President. Simply the time,
18 simply for our management purposes.

19 PRESIDING JUDGE: Are you in a position to shed any light
09:36:02 20 on that at the moment, Mr Griffiths?

21 MR GRIFFITHS: I can only make this observation. It's
22 unlikely that the Defence opening will last any longer than the
23 Prosecution opening did.

24 JUDGE DOHERTY: I take it therefore, Mr Griffiths, that you
09:36:27 25 will be making an opening statement?

26 MR GRIFFITHS: Yes, I will be making an opening statement.

27 JUDGE DOHERTY: Thank you.

28 PRESIDING JUDGE: Well, the second item on the Prosecution
29 agenda is Defence counsel's access to the accused during the

1 accused's testimony regarding matters related to his testimony.
2 Could you expand on that, please, Ms Hollis.

3 MS HOLLIS: Certainly, Mr President. Mr President, of
4 course the general rule for witnesses is that once they are sworn
09:37:01 5 they have no contact with either party. The Prosecution
6 appreciates that the accused is not similarly situated in that
7 regard and that the accused has a right to counsel throughout the
8 proceedings.

9 However, it would be our question number one that does the
09:37:16 10 Defence intend to have contact with the accused once he begins to
11 testify regarding his testimony? There are guidelines that have
12 been set that could assist the Court by the ICTY Appeals Chamber
13 realising there is a right to counsel, setting out some
14 guidelines and also indicating that this area would be a proper
09:37:41 15 area of inquiry for the Prosecution should such contact occur.
16 We do have copies of that decision and if it would be of
17 assistance we can provide those.

18 PRESIDING JUDGE: Thank you, Ms Hollis. I'll hear from
19 Mr Griffiths first. While the accused is giving evidence, what's
09:38:04 20 your attitude to your and co-counsel's access to him?

21 MR GRIFFITHS: Whilst appreciating that in most domestic
22 jurisdictions, including the one in which I primarily practice,
23 it's normally not possible to have contact with the accused
24 during the course of the accused's testimony, in our submission
09:38:27 25 the position here has to be treated quite differently and firstly
26 because the rules of evidence as practised in this Court have
27 always been applied with a greater degree of flexibility, taking
28 into account the particular difficulties which confront counsel
29 in a case of this magnitude.

1 We should also bear in mind that as a result of the
2 timetable set by the Court our investigation so far as witnesses
3 are concerned are still ongoing and consequently we would require
4 access to the accused in order to progress those investigations,
09:39:11 5 and indeed it's important that the accused himself has access to
6 witnesses, some of whom are personally known to himself, and
7 where such access will of course ease the passage of our work as
8 his lawyers and investigators.

9 Bearing all of that in mind, I would suggest the following.
09:39:34 10 Firstly, that Mr Taylor does have access to counsel and all
11 Defence staff in order to progress the investigation of his case
12 whilst he is giving evidence, so that relates to matters outside
13 of and beyond his own testimony, but secondly we submit he should
14 have access to counsel in relation to the testimony he is giving
09:40:21 15 in light of the length, detail and necessarily comprehensive
16 nature of the evidence he will be giving.

17 We submit that it would only be fair and just in the
18 circumstances, given the length of the historical period this
19 witness will have to traverse, that he be provided with all
09:40:50 20 necessary assistance in order that he may present his case in its
21 best light and in as comprehensive and as detailed a fashion as
22 possible in order to assist this Court as best he can.

23 Finally, thirdly we submit that given the particular
24 difficulties in terms of the ongoing investigation of the Defence
09:41:16 25 case that he should have the ability to converse directly with
26 potential witnesses.

27 PRESIDING JUDGE: Thank you, Mr Griffiths. Ms Hollis, did
28 you want to reply to anything that has been said there?

29 MS HOLLIS: No, Mr President, simply to reiterate that we

1 do have that case available should your Honours feel it would
2 assist you. It's the Prlic case. It was an Appeals Chamber case
3 in the ICTY.

09:41:55

4 PRESIDING JUDGE: I think it would be of some assistance if
5 it's available, Ms Hollis.

6 MS HOLLIS: If we could have the Court Officer to assist us
7 in distributing this.

09:42:22

8 JUDGE SEBUTINDE: Ms Hollis, just to seek your
9 clarification, I know you've said that you have no comment on the
10 Defence's proposed manner of proceeding, but is it acceptable to
11 you the propositions they've made?

09:42:42

12 MS HOLLIS: We believe it's within your Honours' discretion
13 to grant those provisions, certainly in terms of Defence contact
14 with the accused and the provision relating to the accused's
15 direct contact with witnesses. We can understand that the
16 Defence may require that for their investigation and for that
17 reason we would have no objection to that. We would, however,
18 suggest to your Honours that that would then become also a
19 suitable area of cross-examination.

09:43:05

20 PRESIDING JUDGE: Anything you want to reply to there,
21 Mr Griffiths?

09:43:21

22 MR GRIFFITHS: Well, I do take exception to the last
23 suggestion that it thereby becomes a suitable area for
24 cross-examination for this reason. It is through no fault of our
25 own that we find ourselves in a situation where the defendant is
26 being required to give evidence before all his Defence
27 investigations have been completed. That is a matter totally
28 outside of our control. It seems to us that the defendant should
29 not be open to any prejudicial comment at a later stage because

1 of the imposition upon him of conditions which require him to
2 continue his investigation whilst he is giving evidence, and it
3 seems to us that issues as to legal professional privilege also
4 arise in such a situation because in effect for him to be open to
09:44:05 5 cross-examination as to what discussions he may have had with
6 counsel, or with a potential witness, or indeed with any member
7 of the team, prima facie it appears to us breaches legal
8 professional privilege and consequently should not be an
9 appropriate matter for cross-examination.

09:44:32 10 PRESIDING JUDGE: Thank you, Mr Griffiths. We'll move on,
11 I think. By the way, Ms Hollis, and I'll make this clear to the
12 Defence as well, this is a conference and we're reasonably
13 flexible if there's further matters either side wishes to put to
14 us on any particular issue, but what I intend to do now is move
09:44:55 15 on to your next agenda item unless something arose from what
16 Mr Griffiths said.

17 MS HOLLIS: If I may seek the Court's indulgence very
18 briefly, the Prosecution position - and it is supported by the
19 Appeals Chamber decision that we have provided to you - is that
09:45:12 20 certainly if there is such contact which is not the norm but is
21 outside the norm that the Prosecution would have the right to
22 question both the accused and witnesses in terms of whether such
23 contact actually went to how a person should testify, the way in
24 which they should testify, anything to do with the witness's bias
09:45:36 25 or prejudice, their credibility. So we suggest that by allowing
26 this contact, which we again suggest is not the norm, that
27 certainly this area of cross-examination must be open in order
28 for your Honours to be able to properly weigh the amount of
29 credence or lack of credence you should give to any testimony

1 before you. Thank you, your Honour.

2 PRESIDING JUDGE: Thank you. Yes, Mr Griffiths?

3 MR GRIFFITHS: I'm grateful for the flexibility you're
4 allowing us in this pre-trial conference, Mr President, and
09:46:12 5 frankly we find it somewhat offensive, the submission made by the
6 Prosecution, for this reason. It naturally assumes that I, or
7 indeed any member of my team as counsel and officers of this
8 Court, would so breach their professional responsibilities and
9 obligations to this Court as to seek to inform the defendant, or
09:46:38 10 indeed any witness, as to how their evidence should be given.

11 We find that quite offensive, because we do appreciate our
12 duties and responsibilities to the Court and we of course
13 appreciate that, although we have been granted this indulgence,
14 it is not an indulgence which should be abused in the way
09:47:00 15 suggested. And so consequently we maintain our position that
16 this area should not be a legitimate area for cross-examination,
17 because in effect the Court should trust us to behave
18 professionally, as we always have done with this Court.

19 PRESIDING JUDGE: Yes, I did not take what Ms Hollis said
09:47:20 20 to be mainly offensive. I think she was just trying to establish
21 some guidelines as to how far the allowance by the Court went.
22 Yes, Ms Hollis?

23 MS HOLLIS: Mr President, the Prosecution really must
24 comment on this because throughout the Prosecution case exactly
09:47:42 25 such cross-examination was carried out by the Defence and so are
26 we to take it that the Defence should be trusted to have acted
27 professionally and with integrity but the Prosecution wasn't
28 given that sort of presumption? They continually asked our
29 witnesses, "Were you told to say this?", "Did the Prosecution

1 tell you this?", and so that really is not a good faith argument
2 for the Defence to be making at this point in time.

3 PRESIDING JUDGE: Well, it's going to be - I can see it's
4 going to be a matter where the Court will rule on the
09:48:18 5 circumstances of particular issues as they arise in any event.

6 I think we'll move on to your third agenda item, Ms Hollis,
7 and you're asking for the Defence to provide one month's in
8 advance of a list of anticipated Defence witnesses to be called
9 in each calendar month. Is there any problem with that,
09:48:48 10 Mr Griffiths?

11 MR GRIFFITHS: The only suggestion we make perhaps,
12 Mr President, is that items 3 and 4 could be read together and
13 that we have the same two week lead in period in respect of both.
14 I don't know if that might meet with approval.

09:49:11 15 PRESIDING JUDGE: What's your attitude to that, Ms Hollis?

16 MS HOLLIS: We would suggest that they suit different
17 purposes and they're consistent with the practice of the
18 Prosecution in relation to the Defence case in that we would have
19 a much smaller universe of possible witnesses provided to us a
09:49:32 20 month ahead of time, but only two weeks before the week in which
21 they're to testify would the Defence be required to give the
22 exact order so that it would assist us in our preparations to
23 have the global list for a month, understanding that we only get
24 the order two weeks before the week in which the witnesses are
09:49:49 25 scheduled to testify.

26 PRESIDING JUDGE: Mr Griffiths, if you want to reply we'll
27 hear your reply. The Court will make orders on these particular
28 issues anyway.

29 MR GRIFFITHS: I have nothing to add.

1 PRESIDING JUDGE: All right, thank you. We'll come to the
2 fifth item now, the length of trial session and availability of
3 the ICC courtroom. That's a matter we're going to address,
4 Ms Hollis, and that's the end of the Prosecution agenda. Is
09:50:32 5 there any other - I have a few questions myself, but are there
6 any other matters that you'd like to raise now?

7 MR GRIFFITHS: Apart from the one I mentioned earlier,
8 Mr President, no.

9 MS HOLLIS: Mr President, we would simply note that we had
09:50:50 10 indicated that in addition to issues arising from the filing we
11 had these additional agenda items. We certainly do have some
12 questions and concerns about the materials themselves which were
13 filed that we think would be appropriate to raise during this
14 session.

09:51:07 15 PRESIDING JUDGE: Yes, thank you. I think the parties and
16 the Court are concerned about the coming recess and you should
17 have been provided with a copy of a letter sent by the Head of
18 Office in The Hague dealing with discussions he'd had with the
19 ICC Registry.

09:52:35 20 Now the Registrar of this Court has already sent notice to
21 the ICC Registry that the Trial Chamber would sit through the ICC
22 recess, but we have a new development now in that the ICC is very
23 politely asking for the use of this courtroom from 12 October
24 2009 for two weeks because they anticipate that the Abu Garda
09:53:19 25 confirmation hearing will be scheduled during that time.

26 Now, it seems clear to the Trial Chamber that we can't sit
27 right through until December in any event. That's about a 24
28 week session, which I don't think will be physically possible for
29 the parties or the judges. One suggestion for the summer recess

1 is to advance the 12 October date to say 5 October and take three
2 weeks of summer recess from there. That will give the ICC the
3 use of the court during their requested two weeks. Did you have
4 anything that you wanted to say about that?

09:54:20 5 MS HOLLIS: That would be fine with the Prosecution, your
6 Honour.

7 PRESIDING JUDGE: Thank you. How does that sit with the
8 Defence, Mr Griffiths?

9 MR GRIFFITHS: I think that would be gratefully accepted so
09:54:33 10 far as the Defence are concerned, Mr President.

11 PRESIDING JUDGE: All right, thank you. We'll put that
12 matter down as one of the orders we'll make eventually.

13 Now I think the next thing we may dispense with -
14 Ms Hollis, you said you had a few other matters you thought it's
09:55:00 15 appropriate to raise at this conference. We may as well hear
16 those now because they may dovetail into some questions the Bench
17 has as well.

18 MS HOLLIS: Thank you, Mr President. Mr President, these
19 questions and concerns have to do with the filing that we
09:55:26 20 received Monday - this last Monday - morning and they relate to
21 the number of witnesses and time estimates for the witnesses, as
22 well as the content of the summaries.

23 We do have some questions in terms of the summaries we have
24 been provided in terms of times that were given. First of all,
09:55:51 25 for the accused no time estimate was given and so we would ask
26 that a time estimate be given for that testimony.

27 Secondly it's not clear on the filing if the time estimates
28 are direct examination only, or purport to estimate both direct
29 and cross-examination. We did have an incidental conversation

1 with Mr Chekera about this issue. It was his understanding that
2 the time estimates were for direct examination only, but we would
3 like to have that clarified if we could. That would be very
4 helpful.

09:56:27 5 Also, in the Defence filing the Defence speaks of an
6 additional 32 witnesses. I believe that's in paragraph 8. It's
7 not clear to us if those 32 are included in the chart that we
8 were given, or if these are additional to the chart that we were
9 given, and so we'd like that clarified. And, of course, if
09:56:47 10 they're additional then we would need summaries and time
11 estimates for them.

12 Now those questions aside, turning to the number of
13 witnesses that have been listed and the estimated times that have
14 been given we have a list of 227 that includes two who are
09:57:07 15 identified as expert witnesses, 001 and 002.

16 Now it appears that there are four numbers actually missing
17 from the chart, that is 054, 087, 213 and 222, so we would have a
18 question as to whether there are witnesses who have these
19 numbers, or if indeed there are no witnesses that have those
09:57:35 20 numbers. If there are witnesses who have those numbers, we would
21 need the summaries and the time estimates for them. If those
22 numbers were left out and there are no witnesses with the
23 numbers, then that brings us down to 223 including the two
24 experts, so 221 witnesses.

09:57:56 25 Now of the 221 that appear to be listed as fact witnesses,
26 it appears to us that there are five whose summaries are worded
27 exactly the same and we wonder if there was an accidental
28 repetition. Number 188 and 191 have the same wording, but if you
29 look at the time estimates there are different time estimates and

1 so are these different witnesses who will testify to exactly the
2 same thing, or is it repetitive?

3 Also witnesses 189, 194 and 195 have the same wording.
4 Now, for witness 189 there is no time estimate. For witnesses
09:58:41 5 194 and 195 they each have a two day estimate. Again we would
6 ask if these are indeed the same witness, two witnesses or three
7 witnesses?

8 So if we look at these being duplicates, not the same
9 witnesses, then we would look at a Defence list of about 220
09:59:03 10 witnesses. That's about two and a third times the number of
11 witnesses in total that the Prosecution presented. If the 32 are
12 in addition to that list, then we would be looking at a list of
13 about two and two thirds times the number that the Prosecution
14 called or presented through Rule 92.

09:59:26 15 If we look at the times allotted for these witnesses, there
16 are 40 of them for which no time estimates are given and so the
17 time estimates that we can talk about would be exclusive of these
18 40 and if the 32 are in addition of course we have no time
19 estimates for them.

09:59:54 20 Now if we count 220 witnesses and of those we look only at
21 the ones for whom the time estimates are given and if the time
22 estimates are for both direct and cross, we're looking at about
23 348 days in court to present the Defence case. If there are
24 duplicates, then we could possibly be down to 339 and a half days
10:00:25 25 or thereabouts to present the Defence case. If that's direct
26 examination only then you can probably double that, or at least
27 another 75 per cent of that can be added on when we look at
28 cross-examination.

29 So we have these figures compared to 197 days for the

1 entire Prosecution case and about 24 of those days involved the
2 testimony of witnesses that were initially filed by the
3 Prosecution as Rule 92 bis witnesses. That would mean that if we
4 sat every day except Saturdays and Sundays we'd have about 261
10:01:11 5 days a year available, so if we used all those days it would take
6 about 1.3 years for this case. If it is direct only, then you
7 could increase that by another 75 per cent to twice that long and
8 again that's excluding those for whom we have no time estimates.

9 PRESIDING JUDGE: You're working on the assumption that the
10:01:42 10 227 listed witnesses are all core witnesses.

11 MS HOLLIS: Well, that was a request that we're going to
12 make because we really don't know.

13 Now when we talk about these numbers and the times, we
14 would look at Trial Chamber I when it was discussing equality of
10:02:05 15 arms in relation to numbers and times. Trial Chamber I referred
16 to the Oric case, which was an appeals case at the ICTY in terms
17 of equality of arms. They indicated that there was under the
18 equality of arms doctrine no right to even the same number of
19 witnesses as the Prosecution had but to a proportionate number,
10:02:36 20 and that when you're looking at numbers and times for the Defence
21 case it's proportionate, not mathematical, equality that you're
22 looking at.

23 Now, that's for a variety of reasons. The predominant
24 reason of course is that the Prosecution has the burden of proof
10:02:53 25 in this case. It has to tell the entire story and prove every
26 element beyond a reasonable doubt. So it's a basic principle of
27 proportionality, not a strict principle of mathematical equality.

28 We would suggest that on their face the number of witnesses
29 and the estimated times that you have are unreasonable and

1 they're excessive and they're not supported by the principle of
2 equality of arms. They're not proportionate to the Prosecution's
3 time or number of witnesses.

10:03:25 4 We would request that perhaps in a way to further clarify
5 who these witnesses really are that your Honours consider
6 ordering the Defence to indicate which of these witnesses are
7 core and if there are any which are backup witnesses and then you
8 could review numbers once you have that. That would be our
9 suggestion in that regard.

10:03:48 10 Now we also have some concerns about the fact that all of
11 their witnesses were given pseudonyms, including four witnesses
12 who are described as "Former African Head of State", "Former
13 African Leader", "Former West African Leader", and we wonder if
14 indeed they asked for protective measures, if they were asked
10:04:14 15 about them and if they asked for non-disclosure.

16 We have the same questions for the witnesses - and the ones
17 I just mentioned, your Honours, are 031, 101, 127 and 150. We
18 also have the same question about senior ECOWAS or ECOMOG
19 officials. Did they ask for protective measures? Did they ask
10:04:39 20 for non-disclosure? Were they even asked about this? Those
21 would be numbers 027, 029 and 122.

22 Finally we have the same question for witnesses who have
23 been described as "High ranking member of the United Nations",
24 "Senior United Nations official", "Member of UNAMSIL". Did they
10:05:01 25 ask for protective measures? Were they asked about this? We're
26 referring here to 006, 048 and 077.

27 The second main topic that we would like to address with
28 your Honours is the adequacy of the summaries that we received.
29 Except for 39 we believe that these summaries are inadequate, and

1 we do have a list of the 39 we believe are adequate if it would
2 be of assistance to your Honours and the Defence.

3 For the others, they list topics, not facts. They have
4 inadequate information. If we look at examples of the inadequacy
10:05:47 5 of some of these others, we see that 009 has been put down as
6 testifying for two days and we have a three line summary. 035
7 has been listed as testifying for three days and we have a four
8 line summary. 083 has been listed as testifying for two days and
9 we have a two line summary. 089 testifying for three days, a
10:06:18 10 four line summary. 146 testifying for five days, a six line
11 summary. 172 testifying for seven days, an eight line summary.
12 These are indicative of the other summaries that we have
13 received.

14 We would ask that your Honours consider ordering the
10:06:44 15 Defence to provide adequate summaries with more detail as to the
16 information these witnesses are expected to give, bearing in mind
17 that this is the only source of information that the Prosecution
18 has from which to prepare its cross-examination in a timely
19 fashion.

10:07:02 20 Now we don't want remedying inadequate summaries to delay
21 the proceedings, so we would suggest that the Defence be
22 requested to provide these more detailed summaries with a list of
23 witnesses expected to be called for each month if they're unable
24 to provide more detailed summaries earlier. That would at least
10:07:25 25 give us more of an opportunity to study these for the month in
26 which the witness would be called, so that is why we would ask
27 for that.

28 Many of the summaries contain opinions that the witnesses
29 will purportedly give. Now that general issue aside, it appears

1 that three of them would give evidence that should more properly
2 be given by experts and so we would object to these witnesses as
3 fact witnesses.

10:08:03 4 Witness 034 is supposed to testify as to the ethnic nature
5 of the Liberian conflict. We think that would more properly be
6 the subject of expert testimony. 052 is listed as a geologist,
7 who will testify about the 2000 report of Ian Smillie, and we
8 suggest again that would more properly be expert testimony. 082
9 is listed as a mortician, who would testify among other things
10:08:27 10 about cause of death, and again we suggest that more properly
11 would be expert testimony and that they should be filed as
12 experts.

13 Those are our questions and concerns about what has been
14 filed. We understand from what the Defence has indicated in
10:08:44 15 court today that today we will be getting a list of exhibits that
16 will be - I think the word was they would use at the beginning of
17 their case. We would ask they give us a list of the exhibits to
18 be used with the accused if not today, by the end of this week.

19 Now by letter of 8 May we had requested the Defence to
10:09:08 20 provide us copies of exhibits they were going to use which had
21 not been provided to them by the Prosecution, so if it's an
22 exhibit that we have not provided them we ask they provide us
23 either copies, or if it's a public document the website that we
24 could go to so that we could have copies in advance. We would
10:09:30 25 ask that those copies be provided to us at least 21 days before
26 witnesses testify so we have an opportunity to review the
27 documents. That would prevent any type of undue delay while we
28 have to examine documents.

29 Those are the comments that we wish to make relating to the

1 materials that were filed and to the documents, the exhibits
2 list, Mr President.

3 PRESIDING JUDGE: Thank you, Ms Hollis. Anything you
4 wanted to reply to, Mr Griffiths? We're well aware that you've
10:10:08 5 already explained that some of the summaries are not satisfactory
6 at the moment due to time constraints.

7 MR GRIFFITHS: Mr President, can I deal with five matters
8 raised by Ms Hollis. Firstly, the time estimate for the accused.
9 I have on more than one occasion indicated that in our view his
10:10:33 10 testimony is likely to last between six and eight weeks and I
11 hope that assists.

12 JUDGE DOHERTY: Mr Griffiths, is that both
13 examination-in-chief and cross-examination?

14 MR GRIFFITHS: We anticipate it covering both. Now so far
10:11:03 15 as time estimates for potential Defence witnesses are concerned,
16 the estimates given by us are estimates as to how long the
17 evidence-in-chief of that particular witness is likely to last.

18 Point number three. We will be providing today a list of
19 additional witnesses which we hope will complete the total number
10:11:42 20 of witnesses likely to be called on behalf of the accused. I say
21 that because we appreciate that the Rule 73 filing we made did
22 have its failings and inadequacies. However, as we've indicated
23 on more than one occasion we were working against a very tight
24 timetable. We were anxious to meet the deadline set by this
10:12:25 25 Court and in filing that initial document appreciated that it
26 contained errors, mistakes and in many respects would not meet
27 with either the approval of this Court or indeed satisfy those
28 opposite.

29 I do not intend to deal with the minutiae of the particular

1 complaints made by Ms Hollis. I will however indicate that we
2 will, on behalf of the accused, be engaging in a process of
3 clarification over the coming days and weeks which hopefully will
4 satisfy the concerns which Ms Hollis now voices on behalf of the
10:13:26 5 Prosecution, and it may well be that many of those minor details
6 could be dealt with more appropriately on a counsel to counsel
7 basis without engaging the Court and in particular we take note
8 of the we believe helpful suggestion made by Ms Hollis that
9 perhaps more detailed summaries could accompany the list of
10:14:01 10 witnesses to be provided for each month.

11 Now, so far as the list of exhibits is concerned - and this
12 is the final point I make - I note that just a moment ago
13 Ms Hollis suggested that such a list of exhibits could be
14 provided 21 days before the witness was due to be called and I
10:14:28 15 just want some clarification in relation to point 4 on the
16 original agenda which suggested a two week timetable. Now we
17 would ask which is it to be? Which one is being requested? Is
18 it three weeks or two weeks? We would say that two weeks is more
19 appropriate.

10:14:52 20 There is one final point. I will endeavour to ensure that
21 prior to the accused giving evidence the Prosecution have as
22 comprehensive a list of the exhibits we will be introducing
23 through the accused in good time before the start of his
24 testimony.

10:15:19 25 However, I must add this caveat. As our investigations
26 continue, further documentation will come to light and, in our
27 view, it would be an injustice for the accused to be denied the
28 opportunity of introducing such documentation if it comes to our
29 attention after he has commenced his testimony. So we would put

1 down a marker at this stage that so far as the accused in
2 particular is concerned there has to be a degree of flexibility
3 built into this overall exercise if justice is to be done to his
4 ability to properly present his case.

10:16:21 5 PRESIDING JUDGE: Thank you, Mr Griffiths. Ms Hollis, is
6 there anything you wanted to reply to there?

7 MS HOLLIS: Just the clarification that Defence counsel
8 asked for. It wasn't for a list of exhibits because the list of
9 exhibits are supposed to be filed today, so all of the exhibits
10:16:39 10 that they know of they're to use are to be filed today and then
11 as they discover more in the coming days we would expect that
12 they would update that list and file it.

13 What we had asked for is that when they give us the list of
14 the smaller number of witnesses, potential witnesses for a month,
10:16:57 15 they give us copies of potential exhibits to be used with those
16 witnesses, or give us a website if it's a public document. Now
17 of course if they're using documents we have provided to them
18 they simply - they don't need to give us any of that, but only if
19 these are documents we don't have.

10:17:14 20 So it was copies or website request that we were asking
21 for, and the difference between that and the two weeks is that
22 the documents provided for the month they wouldn't have to
23 specify what witnesses they're using the documents with, but the
24 two weeks before the week in which a witness testifies they would
10:17:34 25 indicate the witness's language, the length of testimony and the
26 documents that would be used with that particular witness. So
27 it's more particularity in the two weeks before the week in which
28 the witness would testify, so I hope that clarifies our position.

29 PRESIDING JUDGE: Yes, thank you. What we particularly

1 wanted to do today was make any orders, if necessary, that would
2 enable the trial to get underway. It seems to me that what
3 Mr Griffiths has suggested is that a lot of these matters can be
4 settled on a counsel to counsel basis, which has been our
10:18:26 5 experience not only through this trial but through a previous
6 trial as well. Nevertheless, there are a few other questions
7 that the Bench wanted to raise and I think at the end of that
8 we'll decide whether any specific orders are going to be
9 necessary.

10:18:58 10 Mr Griffiths, I'm well aware you've said that later today
11 you're going to provide a list of witnesses which you would hope
12 might be getting towards a final list. I've already raised this
13 point. We're looking at about 227-odd at the moment. Are you in
14 a position to say are they all going to be core witnesses, or
10:19:28 15 will some of them be backup witnesses in case some core witnesses
16 turn out to be not available?

17 MR GRIFFITHS: Well frankly, Mr President, the situation we
18 found ourselves in was this. We were hopeful that we would have
19 been in a position to conduct a sifting or screening process and
10:19:52 20 to weed out those witnesses who we were confident we would not be
21 calling.

22 Bluntly we've been unable to conduct that exercise and what
23 we have provided the Court and those opposite with is as global a
24 list of witnesses as possible from whom we will be selecting in
10:20:15 25 due course those witnesses we intend to call and so, although the
26 list at first blush appears somewhat daunting, it's unlikely that
27 we'll be calling all of the names on that list.

28 PRESIDING JUDGE: Right, thank you. I had a number of
29 questions, but I really think that the questions I was going to

1 ask all centre around a witness list and there's going to be a
2 final witness list, or approaching a final witness list, filed
3 later today and so I really don't think it's much point asking
4 those questions at this stage. I'll see if my colleagues have
10:21:21 5 anything further to ask.

6 JUDGE DOHERTY: Mr Griffiths, there is an indication in
7 your list of witnesses that you have filed that some will be
8 expert witnesses and Ms Hollis has also referred in the course of
9 her submissions to persons who she thinks may possibly be
10:21:56 10 experts. Will you be filing - will names et cetera be given?

11 MR GRIFFITHS: What we will do is it's quite clear that
12 some clarification is required regarding the content of the
13 testimony of certain of the witnesses on our list in order to
14 meet the question raised by Ms Hollis as to whether some
10:22:25 15 currently listed as witnesses of fact are indeed expert
16 witnesses. It is something we will clarify, because for my part
17 the only two witnesses included on that list who should properly
18 fall into the category of experts are the two who have been
19 specifically named. So we will in the course of this week look
10:22:52 20 at the various other issues raised by Ms Hollis and seek as best
21 we can to clarify those. I don't know if that assists.

22 JUDGE SEBUTINDE: Mr Griffiths, I know that this may sound
23 repetitive, but I don't think I've heard you respond to agenda
24 item number 4 of the Prosecution where they request that along
10:24:21 25 with the witness order given on a two-weekly basis you indicate
26 the language of testimony.

27 MR GRIFFITHS: We have no difficulty complying with that,
28 your Honour.

29 JUDGE SEBUTINDE: Thank you.

1 PRESIDING JUDGE: Well, we'll take quite a brief
2 adjournment. Perhaps we'll take an early morning break and we'll
3 be back in about half an hour with a few orders. We'll adjourn
4 now.

10:26:31 5 [Break taken at 10.25 a.m.]

6 [Upon resuming at 11.00 a.m.]

7 PRESIDING JUDGE: As indicated this morning, we have been
8 considering a summer recess and it seems to us that it would be
9 appropriate to declare that recess at a time that coincides with
10 the need of the ICC for this courtroom. We have been advised
11 that the courtroom will be needed by the ICC for two weeks from
12 12 October 2009 when it is anticipated the Abu Garda confirmation
13 hearing will take place, so adding on to that five extra days
14 which will bring the summer recess into conformity with the usual
11:00:47 15 length of a summer recess we order that the summer recess for
16 this Court will commence on Monday 5 October and will go through
17 until Friday 23 October inclusive. Just to make that clear, what
18 that means is that the Court will resume on 26 October 2009.

19 I might mention here also that needless to say we'll be
11:02:06 20 taking the usual Christmas recess and we don't have the final
21 dates yet. That's normally fixed from headquarters in Freetown,
22 but we can indicate that it will be at the very least consistent
23 with the ICC Christmas recess.

24 Now in relation to the various procedural matters raised
11:02:35 25 today, we agree that, as suggested by Mr Griffiths, the
26 procedural matters are capable of being discussed and settled on
27 an amicable basis between experienced counsel and we'd like to
28 leave it at that. Of course counsel are well aware that, if any
29 matter proves absolutely not able to be settled, then there are

1 appropriate procedures to apply to the Court for an order.

2 However, there's one specific order we consider should be
3 made today and I understand that the order is not a disputed one
4 anyway. I'm referring to the matter raised in the Prosecution
11:03:37 5 agenda in paragraph 4, and in relation to that matter we will
6 order that the Defence provide a witness order, language of
7 testimony and anticipated exhibits to be used with the witness
8 two weeks prior to the week during which the witness is expected
9 to be called.

11:04:11 10 The last matter I wanted to raise now is the feasibility of
11 a status conference before the Defence case commences. Now,
12 we'll hear the parties on that. The Bench thinks it may or may
13 not be a good idea, depending on the progress of counsels'
14 discussions. What we would suggest, if a status conference was
11:04:45 15 to be scheduled, is it would be in the vicinity of a week or so
16 before the Defence case commences. Did you have any views,
17 Ms Hollis, one way or the other on that?

18 MS HOLLIS: Yes, Mr President. We would in fact request
19 that such a status conference be scheduled and that it be either
11:05:02 20 the 19th which would be the Friday, a little over a week before
21 the commencement, or Monday 22nd which would be a week before the
22 commencement of the Defence case. We think it's an excellent
23 idea and we request it.

24 PRESIDING JUDGE: Are you of the same view, Mr Griffiths?
11:05:27 25 It may come in handy for some last minute matters.

26 MR GRIFFITHS: I think it would be helpful as a useful way
27 of collecting our thoughts and seeing where we are prior to the
28 29th.

29 PRESIDING JUDGE: All right. Ms Hollis has suggested the

1 19th, which is the Friday, and the 22nd is the Monday, but I
2 think you'll be the one with the travel considerations to take
3 into account.

4 MR GRIFFITHS: I would prefer the Monday.

11:05:54 5 PRESIDING JUDGE: The 22nd.

6 MR GRIFFITHS: Yes.

7 PRESIDING JUDGE: That's okay with you, I take it,
8 Ms Hollis?

9 MS HOLLIS: Of course.

11:06:01 10 PRESIDING JUDGE: Right, thank you. The last order we'll
11 make today is that we'll schedule a status conference to be held
12 at 9.30 on Monday 22nd June. There will be an appropriate agenda
13 issued in due course.

14 MR GRIFFITHS: Mr President, can I raise one matter and
11:06:23 15 really it's just to give an indication to the Prosecution which I
16 hope will be helpful.

17 We have put together the final list of witnesses which we
18 promised we would file by today, but I think it would be of much
19 greater assistance to everyone if we were to delay that filing
11:06:48 20 perhaps until the end of the week so that we could seek to
21 accommodate and address a lot of the issues raised by Ms Hollis
22 this morning in the hope that through such a delay we can provide
23 a much more comprehensive and helpful list of summaries to the
24 Prosecution.

11:07:12 25 PRESIDING JUDGE: You're only asking for - instead of today
26 you're asking for Friday the 12th, is that right?

27 MR GRIFFITHS: Mr President, yes.

28 PRESIDING JUDGE: Is that okay by you, Ms Hollis?

29 MS HOLLIS: Yes, it is, Mr President.

1 PRESIDING JUDGE: All right, thank you. Well there doesn't
2 seem to be any issue on that as well, Mr Griffiths, so if you get
3 that list in by some time on Friday that will be suitable.

4 MR GRIFFITHS: I'm grateful.

11:07:43 5 PRESIDING JUDGE: Thank you. We'll adjourn the Court now.

6 [Whereupon the hearing adjourned at 11.08 a.m.
7 to be reconvened on Monday, 22 June 2009 at
8 9.30 a.m.]

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29