

**THE SPECIAL COURT FOR SIERRA LEONE**  
**IN THE TRIAL CHAMBER**

Case No: SCSL-2004-16-PT

Monday, 8th March 2004

Before

**JUDGE BANKOLE THOMPSON (PRESIDING)**  
**JUDGE MUTANGA ITOE**  
**JUDGE PIERRE BOUTET**

**SITTING IN OPEN SESSION**

**THE PROSECUTOR**

**V**

**ALEX TAMBA BRIMA**  
**BRIMA BAZZY KAMARA**  
**SANTIGIE BORBOR KANU**

**PRE-TRIAL CONFERENCE**

**MR. L. CÔTE**  
**MR. R. PETIT**  
**MS. B. STEVENS**

**Appeared on behalf of the Prosecution**

**MS. C. CARLTON HANCILES**

**Appeared on behalf of the Defence Office**

**MR. O. KAMARA**

**Appeared on behalf of Alex Tamba Brima**

**MR. K. FLEMING QC**

**Appeared on behalf of Brima Bazy Kamara**

**MR. J.O.D. COLE**  
**MR. A.E. MANLEY-SPAINE**

**Appeared on behalf of Santigie Borbor Kanu**

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1. PRESIDING JUDGE: Good morning, may we have representation please?
2. MR. PETIT: Good morning, Mr. President. Your Honours, Robert Petit, Luc Côte and Boi-Tia Stevens for the Prosecution.
3. MR. FLEMING: If the Court pleases, I am Ken Fleming. I appear for Mr. Kamara.
4. PRESIDING JUDGE: Thank you.
5. MS. CARLTON-HANCILES: I am Claire Carlton-Hanciles, legal officer, Defence Office and I have Mr. Kamara with me for Alex Tamba Brima.
6. MR. MANLEY-SPAINE: May it please Your Honour, I am A. E. Manley-Spaine. I appear with Mr. J. O. D. Cole for Kanu.
7. PRESIDING JUDGE: Thank you, counsel.
8. Let me ask first of all; are there translation and interpretation facilities?
9. THE CLERK: Yes, My Lord.
10. PRESIDING JUDGE: Before we commence the actual proceedings designated status conference of which you have been notified, we need to settle at this stage a key question of a preliminary nature. It is whether the status conference proceeding should be conducted as an open court hearing. This is precisely the purpose of the instant proceeding conveniently described as a pre-status conference.
11. *(At this point in the proceedings, a portion of the transcript was extracted and sealed under separate cover, as the session was heard in camera)*

12. JUDGE BOUTET: Do you all have a copy of the agenda, not the detailed agenda? No, you do not.
13. PRESIDING JUDGE: What agenda does counsel have?
14. MR. PETIT: As far as we are aware we have the original scheduling order that (inaudible).
15. PRESIDING JUDGE: Well, let me take you through it. Let me take you through the agenda items quickly. The first agenda item is appearances of the parties, open session. The second is the accused, open session. The third is general housekeeping matters, open session. The fourth is disclosure, closed session. Item 5 is witnesses, closed session. Item 6 is protective measures, closed session. Item 7 is points of agreement on facts or law, closed session. Item 8 is judicial notice, closed session. And then there is this miscellaneous item, pending motions which will be open session. Probably we should even designate it 9. And then 10, trial schedule, open session.
16. Did all counsel get those items? Right.
17. Well, we now move on to item 2. There are two main enquiries here. One, a short one. Do all the accused follow the proceedings in a language they understand? Do your clients follow the proceedings in a language they understand translated from English?
18. JUDGE BOUTET: Is there any requirement for interpreters today?
19. MR. MANLEY-SPAINE: Yes, we would require that there be an interpreter from English to Krio.

20. JUDGE BOUTET: English to Krio?
21. MR. MANLEY-SPAINE: Yes.
22. JUDGE BOUTET: Which accused is this?
23. MR. MANLEY-SPAINE: The third.
24. JUDGE BOUTET: The third accused.
25. PRESIDING JUDGE: Do we have that facility?
26. THE CLERK: Yes, My Lord.
27. JUDGE BOUTET: Right.
28. PRESIDING JUDGE: Right any other requests for interpretation?
29. MR. FLEMING: No, Your Honour.
30. PRESIDING JUDGE: Counsel?
31. MS. CARLTON-HANCILES: My Lord, the same for us, English to Krio.
32. PRESIDING JUDGE: English to Krio, thanks.
33. The next enquiry, under the accused --
34. JUDGE BOUTET: If I may, Mr. President, on the last session we had, the arrangement that was made was a sort of simultaneous translation whereby the interpreters were sitting at the table with the accused and translating directly

for them. So we could, essentially, conduct our proceedings in English, but obviously through the interpretation as such, the accused that required translation have access to that. So is it what we can do today because it would be much better rather than wait for consecutive translation which delays the proceedings? Is this an acceptable proposition to counsel, those that require translation?

35. MR. MANLEY-SPAINE: Yes, My Lord.

36. MS. CARLTON-HANCILES: Yes, My Lord.

37. PRESIDING JUDGE: The next inquiry under item 2: Do counsel have any reports to make or issues to raise relating to the health of the accused, their physical and mental wellbeing, and any comments in relation to the environment in which they are detained and any other germane issues? We hope that counsel will abbreviate their comments on this. Counsel for the first accused?

38. MS. CARLTON-HANCILES: Your Honours, I come from the Defence Office as the legal officer attached to the three accused persons. This morning I received a fax from the lead counsel, Mr. Terrence Terry, which said copy is with me in court. And he indicates in this fax that he sends his apologies that he could not be here today. He is in Lagos, he could not make his flight to Freetown and that he again spoke to me over the weekend on the phone that there is one of his counsel in the team, a Ghanaian, is supposed to come from Ghana this morning. He is not yet here. So, Your Honour, I have this fax letter, it was actually sent to the Registrar and I was given a photocopy, but I know it is not before you. With your permission, Your Honour, maybe I should just tender it to the Court.

39. PRESIDING JUDGE: Well, I am pretty sure that -- Mr. Kamara would you want to accept -- the records will reflect that information.
40. MS. CARLTON-HANCILES: Your Honour, I have with me his legal assistant, Mr. Osman Kamara.
41. PRESIDING JUDGE: Thanks. The records will reflect that, anything else?
42. MS. CARLTON-HANCILES: Not for now.
43. PRESIDING JUDGE: The second accused.
44. MR. FLEMING: No issues.
45. PRESIDING JUDGE: No issues, thank you, counsel. Third accused, any issues you wish to raise in respect of your client's physical and mental condition or condition relating to his detention?
46. MR. MANLEY-SPAIN: Yes, as My Lord knows, we are being led by Mr. Knoop and he has asked me to submit, My Lord, Defence notes for status conference which we would like you to have a copy of.
47. JUDGE ITOE: Defence?
48. MR. MANLEY-SPAIN: Notes for status conferences. He states his position or our position in the current proceedings. I would like the Court to have a copy, but furthermore, he has stated that he is of the position or opinion that this issue could best be dealt with by the client himself, by the accused himself. Instead of counsel stating what his position is, that the accused be allowed to voice out what his position is.

49. JUDGE ITOE: But why can he not speak through his duly appointed counsel, that is the traditionally -- I mean, we are not saying that he cannot address himself to the Court, but why can he not, you know --
50. MR. MANLEY-SPAIN: Well (inaudible) in this issue--
51. PRESIDING JUDGE: Right. Our position is that counsel should do that and if you are not in a position to do that, we can also reserve some time for counsel in some other possible status conference to make some report if necessary. But we do not intend to depart from a precedent which we have laid down and remember these are status conferences, they are not other kinds of consultation. Counsel should be able to know what the position is in relation to their clients.
52. MR. MANLEY-SPAIN: Yes, My Lord. The point is this, My Lord, I would wish to refer to the scheduling order in which it was stated that the order for the opportunity for each accused to raise any issues in relation to his case, as well as issues related to his physical and mental condition, we are of the opinion that this could best be done by the accused himself.
53. PRESIDING JUDGE: Counsel, we do not intend to restate our position several times, we have already ruled against you on this issue and we would like to proceed. If you are not in a position to raise issues then let us move on to something else.
54. MR. MANLEY-SPAIN: As My Lord pleases.
55. PRESIDING JUDGE: We want to thank you. We will now move on to item--
56. JUDGE ITOE: If I get you right, is this your position or the position of Mr. Knoops?



57. MR. MANLEY-SPAINE: Well, we are being led by Mr. Knoops, My Lord.
58. JUDGE ITOE: I see.
59. PRESIDING JUDGE: Yes, yes.
60. INTERPRETER: Mr. Alex Brima said that he wants to say something; he wants to speak for himself.
61. PRESIDING JUDGE: We have, in fact, already ruled that we will hear comments on issues relating to the condition of the accused through counsel and at this stage -- and that is our ruling. If he wants to talk to his counsel that could be done after an adjournment.
62. JUDGE ITOE: If he wants to talk to his counsel, we can adjourn this session and then he talks and we come back.
63. MR. MANLEY-SPAINE: We request that, My Lord.
64. PRESIDING JUDGE: How long would this consultation take? We need to have some kind of indication as to time. Counsel?
65. MR. MANLEY-SPAINE: Ten minutes, My Lord.
66. PRESIDING JUDGE: All right, then we will rise.

*(Adjournment)*

67. PRESIDING JUDGE: We resume the proceedings in open session.

68. THE CLERK: My Lord, I respectfully draw your attention to the contents of this document.

*(Document handed)*

69. PRESIDING JUDGE: Yes, this is a fax from Mr. Terrence Terry, counsel for Alex Tamba Brima, and I will read it quickly:

“Mr. Robin Vincent, the Registrar Special Court for Sierra Leone:

“Dear Sir,

Just to inform you for ultimate transmission to the Trial Chamber that I only arrived in Lagos late Saturday night on the 6<sup>th</sup> of March 2004, but couldn't make the connection to Freetown early on Sunday morning, 7<sup>th</sup> March 2004. As apparently there was some problem with my ticket which was issued by the travel section. I shall, however, be paying my return ticket to Freetown from Lagos and as such regrettably will not be able to arrive in time for the status conference scheduled for the 8<sup>th</sup> of March 2004.

“That being the case, may I take the liberty of asking you kindly to inform the judges of the Trial Chamber that I am requesting an adjournment of the hearing of the status conference which was schedule for the 8<sup>th</sup> of March 2004 and for the said status conference involving my client, Tamba Alex Brima, to be graciously rescheduled for next Monday, the 15<sup>th</sup> of March 2004, or any other day convenient to the Court. I intend to return to Freetown latest 10<sup>th</sup> March 2004. In the meantime I shall be contacting Mrs. Claire Hanciles or Mr. Ibrahim Yillah of the Defence section for them to convey my profound apologies to the judges of the Trial Chamber in seeking the necessary adjournment on behalf of my client, Tamba Alex Brima.

"With thanks. Yours faithfully, Terrence Terry."

70. Well, we accept the apology, but we unfortunately decline to grant the application as this would, in fact, impede the expeditious dispatch of judicial business in the light of the impending trials. Thank you.
71. We need to emphasise that counsel from the Defence Office are here to protect the clients' interests to the best of their professional ability.
72. MS. CARLTON-HANCILES: Much obliged, My Lord.
73. PRESIDING JUDGE: And the Chamber is informed that there is also learned counsel from Mr. Terry's chambers who we are sure will in fact help to protect the interests of the client for the purposes of the status conference. And counsel we invite you to do that as vigorously as you can.
74. Right, we will move on to our next item. Item 3, general housekeeping matters. Mr. Spaine, would you like to intervene at this stage --
75. MR. MANLEY-SPAINE: Yes, Your Honour.
76. PRESIDING JUDGE: -- in respect of your client before we move on to item 3 here?
77. MR. MANLEY-SPAINE: Your Honour, I am instructed to raise the following issues relating to the physical and mental condition of the third accused.
78. PRESIDING JUDGE: Right, well let us hear that and please try and abbreviate your remarks.

79. MR. MANLEY-SPAIN: Unfortunately, it's those two words, bad food.
80. PRESIDING JUDGE: Bad food?
81. MR. MANLEY-SPAIN: He seems to be of the opinion that the only time there is good food, reasonably palatable food, is whenever there are court sittings.
82. PRESIDING JUDGE: Thank you, the records will reflect that.
83. JUDGE ITOE: But we do not see the food.
84. PRESIDING JUDGE: Next complaint.
85. MR. MANLEY-SPAIN: The second is with regards to the treatment of their family visitors.
86. PRESIDING JUDGE: What is the gist of their complaint?
87. MR. MANLEY-SPAIN: That they are subjected to extra scrutiny.
88. PRESIDING JUDGE: Yes, all right.
89. JUDGE ITOE: Scrutinous searches?
90. MR. MANLEY-SPAIN: Inside their bodies are being searched.
91. PRESIDING JUDGE: The records will reflect that.
92. MR. MANLEY-SPAIN: He is also complaining that whenever there are searches of his cell, he is not allowed to be present.

93. PRESIDING JUDGE: Right, we will make a note of that.
94. MR. MANLEY-SPAIN: That might lead to accusations of certain things being found in his cell. Fourthly, My Lord, he is of the belief that his telephone is being bugged.
95. PRESIDING JUDGE: Yes, electronic bugging. Yes. Another?
96. MR. MANLEY-SPAIN: Again, My Lord, he wishes me to raise the point of the matter of conjugal visits.
97. PRESIDING JUDGE: Yes, what is the complaint there?
98. MR. MANLEY-SPAIN: My Lord, the complaint is that he is a married man with a wife and his long incarceration would definitely affect his family life.
99. PRESIDING JUDGE: Yes.
100. MR. MANLEY-SPAIN: And finally, My Lord, he is also complaining that the soap supplied is bad.
101. PRESIDING JUDGE: How is that?
102. MR. MANLEY-SPAIN: He itches after using it.
103. PRESIDING JUDGE: I see, in other words possible allergic reaction to that. Right, that will be reflected.

104. MR. MANLEY-SPAIN: Your Honour, I must state at this point that I have been informed that some of these matters have been taken up by the Registrar's office.
105. PRESIDING JUDGE: With the Registrar?
106. MR. MANLEY-SPAIN: Yes.
107. PRESIDING JUDGE: Well, whatever we can do here to catalyse the process in terms of attention from --
108. MR. MANLEY-SPAIN: I don't know whether my learned friend would like to elaborate on that.
109. PRESIDING JUDGE: Well just to confirm whether they have been referred to the Registrar's office.
110. MS. CARLTON-HANCILES: Your Honour, we have and in fact the Defence Office held a joint meeting with the Chief of Detention, the supervisors, some time ago and for some of -- maybe I would just address the issues individually and what came out of them.
111. PRESIDING JUDGE: Yes.
112. MS. CARLTON-HANCILES: With regards to the bad food, the food which --
113. PRESIDING JUDGE: The allegation is bad food.
114. MS. CARLTON-HANCILES: The allegation of bad food. The Chief of Detention in that meeting indicated that he has given the caterer an ultimatum and a specific period during which the food must -- the condition of the food

must either be improved or the contract would be terminated and presently we are waiting to see what happens after that.

115. PRESIDING JUDGE: Yes, all right. The next issue.
116. MS. CARLTON-HANCILES: The family visitors are now governed by a visiting protocol, a protocol of search which the Chief of Detention has actually brought into force and we have been apprised of the protocol and we have a copy of it and in the instance in which it is breached, Your Honour, then definitely counsel will be informed.
117. PRESIDING JUDGE: Right, next.
118. MS. CARLTON-HANCILES: Then the searching of the cells is something which has again been raised -- was again raised in that meeting with the Chief of Detention --
119. PRESIDING JUDGE: Yes.
120. MS. CARLTON-HANCILES: -- and he promised to do something about it.
121. PRESIDING JUDGE: Thank you.
122. MS. CARLTON-HANCILES: The monitoring of telephone calls is something which is in force, but not for counsel–client conversation.
123. PRESIDING JUDGE: Yes, privileged.
124. MS. CARLTON-HANCILES: And conjugal visits is still very high for all of them and it is something which we were discussing in the Defence Office and assigned counsel are in discussion over (overlapping microphones)

125. PRESIDING JUDGE: Okay.
126. MS. CARLTON-HANCILES: And then the issue of the soap, as intimated his counsel, it may happen that he is allergic to it and the Defence Office would raise it up as well as assigned counsel.
127. PRESIDING JUDGE: Thank you, counsel, that is very helpful.
128. Next accused, Mr. Kamara -- counsel for Mr. Kamara. Any issues?
129. MR. FLEMING: No, Your Honour, any issues that he may have in his mind have already been raised.
130. PRESIDING JUDGE: Very well. I appreciate it.
131. Well, let us move on to our third item, housekeeping matters. We are still in open session and as far as the Chamber is concerned, the Prosecution filed pre-trial briefs on the 5<sup>th</sup> of March 2004 as a result of the order of the Trial Chamber and the Defence teams are expected to file in their own defence briefs not later than the 26<sup>th</sup> of March 2004. Are there any responses from the Defence? There is a date set for the filing of pre-trial briefs. Any comments the Defence have. Mr. Fleming?
132. MR. FLEMING: No, we have no comments. I have not seen the Prosecution pre-trial brief yet, Your Honours. I am not in position to make any comment.
133. PRESIDING JUDGE: All right, thanks.
134. Counsel for the second accused -- for the first.



135. MR. FLEMING: Would Your Honour like me to lead on each occasion that will get the ball rolling (overlapping microphones)
136. PRESIDING JUDGE: Yes, okay. Counsel for Alex Tamba Brima, any response? What we have is the projected closure date of filing Defence brief which is 26<sup>th</sup> March. Are you in a position to make any statement about that?
137. MS. CARLTON-HANCILES: I am not in a position to make any statement about that.
138. PRESIDING JUDGE: What about the gentleman from -- counsel for Mr. -- what is your name?
139. JUDGE ITOE: What is your name, please?
140. MR. KAMARA: Osman Kamara.
141. JUDGE ITOE: Osman Kamara?
142. PRESIDING JUDGE: Counsel?
143. MR. KAMARA: Legal assistant.
144. PRESIDING JUDGE: Do you have anything to say about the possibility of your complying with the obligation to filing a Defence brief on the 26<sup>th</sup> of March?
145. MR. KAMARA: Your Honour --
146. PRESIDING JUDGE: Are you instructed to say anything?

147. MR. KAMARA: No, My Lord, I haven't got any instructions from Mr. Terry.
148. JUDGE BOUTET: But before we move to the next counsel, I would urge you and ask you to make sure that Mr. Terry is clearly informed that this is expected to be filed by 26<sup>th</sup> of March.
149. MR. KAMARA: Yes, My Lord.
150. JUDGE BOUTET: Thank you.
151. PRESIDING JUDGE: Now, Counsel for Santigie Borbor Kamara -- Kanu.
152. MR. MANLEY-SPAINE: My Lord, we are aware of the brief (inaudible).
153. PRESIDING JUDGE: All right. Thanks.
154. The other inquiry is that, are the Defence teams fully formed, in other words, ready for trial? Is the list on record with the Chamber of all its members as ordered by the Trial Chamber? Do you have anything to say Mrs. Hanciles? Do you know whether the teams are all fully formed from your own inside knowledge?
155. MS. CARLTON-HANCILES: I could safely say yes because Mr. Terence Terry made just -- he is on this trip actually to seek more counsel and then he's informed the Defence Office of the names of two lawyers; one from Ghana, who is coming in today, and one, Professor Saggy, former Dean of the Law School of Ille Efe in Nigeria.
156. PRESIDING JUDGE: Thank you. Well, we will move on to the next item and here we are moving into closed session.

157. *(At this point in the proceedings, a portion of the transcript was extracted and sealed under separate cover, as the session was heard in camera)*

*(Luncheon adjournment)*

158. PRESIDING JUDGE: We now resume these proceedings in open session. We will proceed with the item designated 9 on the agenda, pending motions.
159. The position here is that the Chamber is seized of a motion -- the Chamber has before it a motion, filed by the Prosecution on the 9th of February this year, for leave to amend the indictment. The Chamber would like to put certain questions to the Prosecution about the nature and scope of the proposed amendment.
160. We may be inclined also, after the Prosecution has answered our questions, to put certain questions to the Defence. Of course the whole purpose of this exercise is to assist us in our deliberations in determining the question whether to grant leave for the amendment of the indictment or not.
161. Mr. Prosecutor, our first question is this, it is stated that the new charge of forced marriage is based upon prior allegations. The question is why did the Prosecution not seek leave to amend the indictment prior to now? Put slightly differently, why has the Prosecution waited for so many months after the original indictments were approved? That is question one.
162. The second is, why does the Prosecution believe that inclusion of the "bush wife" phenomenon is sufficient in the witnesses' statements, perhaps that is what I should say, "bush wife" phenomenon in the witnesses' statements is sufficient and the accused -- they will entail criminal liability for forced marriage. In other words, that they will be charged with the offence of forced marriage.

163. The third question, what precisely does the Prosecution mean by forced marriage? Expanding this question a little further, the Chamber needs to be satisfied as to the legal distinction between forced marriage and sexual slavery.
164. Again, if we can elaborate further, we can say by charging separately sexual slavery as an offence and also forced marriage as a separate offence, does not the Prosecution risk exposing the indictment to the possible objection that in relation to those two offences the indictment may be duplicitous or multiplicitous?
165. Number four, in relation to the expansion of the time period in paragraph 5(a) of the Prosecution's request, the Prosecution is seeking to insert the word "about". In relation to the expansion of the time period in paragraph 5(a) of the Prosecution's request, the Prosecution is seeking to insert the word "about". What time period does the Prosecution intend to include in or with reference to "about"?
166. Question five, in relation to the expansion of time periods in paragraph 68, the Prosecution is seeking to extend the time frame by approximately 1.5 years. Seeking to extend the time frame by approximately 1.5 years. When was the evidence of this expansion discovered? In this context has the amendment sought been brought before the Court expeditiously? In this context also has all the new evidence been disclosed?
167. And the last question, as regards the location, the additional location in paragraph 57, that is Port Loko district, what prior notice did each accused have that he may or would entail criminal liability for crimes committed in that area?

168. These are the questions and we would be grateful for some specific answers and this time counsel, we advise no rolled up answers, but these are specific questions, however short the answers will be, it doesn't matter, they don't need to be all that elaborate, but if you could give us very short answers that will guide us.
169. MR. PETIT: Yes. At the risk of being repetitive, Mr. President.
170. PRESIDING JUDGE: That's okay, that is okay.
171. MR. PETIT: I will deal with the inclusion of forced marriage. The amendment was sought, as previously stated, when we became convinced that we had sufficient evidence to show that this phenomenon was indeed widespread enough to warrant considering the charge of crimes against humanity. This became clear following our investigations, following the collection of evidence, and it followed the initial indictment.
172. The set of facts necessitated then a careful legal analysis for us to be convinced that it did fit the elements of an inhumane act, and once we did make that assessment we also took into consideration the fact that we had at the time nine separate indictments and we made the decision to wait to get your decision on joinder before seeking amendment. So, in other words, a series of factors which over time led us to seek this amendment which we believe was timely.
173. Your second question, the inclusion of bush wife in terms of --
174. PRESIDING JUDGE: Sufficient notice.
175. MR. PETIT: Well sufficient notice. We gave sufficient notice that we believed that there was a crime by seeking to amend the indictment and including a charge of inhumane treatment for this particular set of factual facts

which constitute the phenomenon of bush wife. We put the Defence on notice when we saw that amendment.

176. Now in terms of the evidence itself, as I said, this evidence has been basically - since we've been collecting statements we have run into this -- we have, over time, collected evidence, from statements of women, obviously, for the most part, and as this evidence became known we disclosed it as a matter of course. In other words, we did not hold onto statements because they were talking about bush wives, while we were thinking about how to legally characterise this conduct, this is not what happened. We collected evidence during the course of our investigations. We've disclosed this evidence as a matter of course, either because it fits within 66 or because it fits within 68. Upon analysis of that evidence, even after it was disclosed, we became convinced that a particular set of factors did constitute an inhumane treatment, did warrant a charge of inhumane treatment because of the factual basis of this phenomenon that we call bush wives.
177. As to your third question, again I am sorry to be repetitive, but what is sought here is a charge of inhumane treatment. I would say that this phenomenon of bush wife or forced marriage has the same elements as any other inhumane act because that is what is charged, the charges of inhumane act, which is causing serious mental and physical harm, and which is not covered by the other elements of crimes against humanity. That is what the jurisprudence tells us.
178. As to the particular set of facts that support a charge of inhumane act, I would say that they essentially refer to a conduct which over a time and, in fact, over prolonged periods of time, a person forces another person, another woman, into a relationship that has all the trappings of what is normally a marriage, a consensual marriage, but which is indeed forced upon that person. Again I am trying to be brief.

179. The inclusion of time, of the time period in paragraph 5(e) or actually the inclusion of the word “about”. As I believe I stated beforehand, this is sought for two reasons. The main reason is that is essentially the same wording that is used throughout the indictments for that particular paragraph, but which was not included for whatever reason. And the time frame sought, and actually the reason why words like “about” are used, is that seldom in these types of crimes do we have people who can give us exact dates, exact times as to some of these events. As your Chamber decided the use of the word “about” in this particular context of these crimes and these indictments is lawful and put sufficient notice on the Defence. I would say that it does not, in and of itself, call for a particular period of time, it just gives the most accurate time frame reference that we can give as we have throughout the indictment by using such a phrase.
180. Your fifth question as to the increase in the time period sought in paragraph 68. As I stated before, we had at the time of the indictments statements that referred to forced labour, not only for the period charged, obviously, but which also referred to the extended period of time and I would be -- this is an accurate reflection. However, after the indictment -- let me back-track. These statements for the most part, at the time of the indictment, were mostly of victims who were forced to labour and mine in these circumstances. I say mostly. After the indictment, we collected other statements, other evidence, some of which from people that you could call insider, which gave us a more accurate breadth of the conduct, which told us how extensive it is and which convinced us how extensive it was over that particular period of time. That is why we sought that amendment and, as I told you, we had some of the evidence before the indictment, maybe at the time we should have. We, however, became convinced of the full breadth of the criminal conduct afterwards and that is why we are seeking the amendment to try and reflect and put before you the evidence for the complete criminal conduct that we allege happened.

181. As to your sixth question regarding Port Loko, that evidence was collected after the initial amendments in the initial indictments for the most part, actually for almost the whole of it, and that evidence, as soon as it was collected, was redacted and communicated. We therefore have disclosed, I would think, probably in the last one or two disclosures, the evidence, the witness statements relating to Port Loko which, as I said, was collected after the initial indictment. This is an area that we had not gone through or worked in at the time of the initial indictment.
182. I hope this is of assistance.
183. PRESIDING JUDGE: Thank you. Well, I note from the records that the counsel for Kamara and Brima did not file responses, but that counsel for Kanu did file a response. But before I ask questions of counsel for Kanu, I would like to give counsel for Kanu the opportunity to respond or react to the answers which the learned prosecuting counsel has given or to make any comments or submissions. You heard the questions also?
184. MR. MANLEY-SPAINE: Yes, Your Honour.
185. PRESIDING JUDGE: You heard the answers?
186. MR. MANLEY-SPAINE: Yes.
187. PRESIDING JUDGE: Are you in a position to comment on the answers?
188. MR. MANLEY-SPAINE: I would only like to say, Your Honour, that we were taking the view that as long as they are necessary to bring an issue before you, we will not be objecting.



189. PRESIDING JUDGE: To the leave for amendment?
190. MR. MANLEY-SPAINE: Yes.
191. PRESIDING JUDGE: All right, I appreciate that. Well, exceptionally now, even though counsel for Kamara and Brima did not file responses, do they want to make any short comments?
192. MS. CARLTON-HANCILES: No, Your Honour, I have no comment to make.
193. MR. FLEMING: No, Your Honour.
194. PRESIDING JUDGE: Thank you. So, in fact, the response of -- my learned brother Judge Boutet wants to pose some questions.
195. JUDGE BOUTET: Mr. Petit, I am just trying to grasp and understand what you are explaining to us as to the reasons why the Prosecution took the approach they did, and refer most specifically to your motion at paragraph 24 and 25 where you say that you will avoid unfair surprise and ensure that the accused are fully informed of the case against them in advance of trial. I am just trying to understand what you mean by this in the context of this particular motion. And before you answer my question, I would like also to draw your attention to paragraph 10 of your motion that refers to factual basis. The factual allegations underlying the new counts are the same factual allegations contained in the consolidated indictment against the accused, and essentially, you are saying you do not need to disclose any more information because the information has all been disclosed. So I am trying to make sense of this, and what you are stating to the Court that this was discovered only lately. So how do you equate the fact that on the one hand you say, "We have disclosed all this information to the Defence and, therefore, there is no need to give any additional or further disclosure," and yet, and if I understand correctly from

that, I can conclude that that information was in your possession and control for some time. It is your analysis that took a long time, but not the collection of evidence.

196. MR. PETIT: It is partly our analysis that factored into the time. It is partly, as I said also, our waiting for a decision on an amended -- on a joinder. However, we did not have all the evidence at the time of the indictment. We collected some of the evidence and we had that at the time of the initial indictment, and the point to reaching a conclusion that this particular set of conduct was so widespread was that it took us -- we realised that as we were collecting in the evidence over that period of time, before and after the indictment, this conduct was reflected in the statements of an inordinate amount of women who had been captured, who had been raped, sometimes often times, numerous times, who had then been forced over a period of time in conditions of initially forced labour to conduct all kinds of activities that are normally associated with marriage; to stay with the person who had either captured them or whom they had been given to and to be submitted to that conduct over literally a period of years. There are still women in Kailahun district who are still with their bush husbands, for lack of a better term, for different sets of reasons.

197. So, as I said, we had some of that evidence and as we continue to collect it, even after the indictment, we realised that indeed this was a widespread conduct and that the elements, the factual basis for it, did satisfy the elements of crimes against humanity. Now that conduct would have come out at trial, it would have come up because, as I said, the statements of women that we take who have been raped, who have been abducted, who have been forced to do labour, most of these tell us that at one point at least they were forced into this type of relationship, for lack of a better word. So those facts were there and would have come out at trial.

198. Now I remind the Chamber of the decision of *Akayesu*, to amend the indictment while at trial when the evidence of rape came out from the witnesses. Actually, the order from the Chamber to amend the indictment to reflect the evidence that was put before it. That is the reasoning behind paragraph 24(a), I believe. That these woman would have come to testify to their victimisation, which fits within the Counts 6 to 8, as you mentioned, in paragraphs 51 to 57. That's why we referred you. These women suffered a whole set of victimisation of facts -- of criminal acts which were reflected in 6 to 8, but which upon analysis also recently constitute a charge of inhumane act, which is the facts that we call bush wives or bush marriage.
199. JUDGE BOUTET: So when the evidence that you will be leading and that you refer to as 51 to 57, dealing with sexual violence as such, this evidence, when given in court, will also reveal the commission of a different and additional offence?
200. PRESIDING JUDGE: Is that what you are saying?
201. MR. PETIT: That's what we are saying. In other words, there is not one woman who would come to testify as to her forced marriage without also testifying about her sexual assault, about her abduction, about her forced labour, about her abuse.
202. JUDGE BOUTET: I put it the other way round, would they testify about their sexual violence, to use that -- in giving evidence about that, they would of necessity talk about something more and the (inaudible) question, you are submitting, will be, for example, forced marriage?
203. MR. PETIT: At one point indeed -- at one point the conduct becomes so specialised that it becomes -- or that it fits within the elements of a crime, and that's why we say the elements of the facts behind the forced marriage do fit

the elements of an inhumane act which is not contemplated in the other. I have to stress again that these facts are particular to that phenomenon, that bush wife phenomenon. They are not only sexual, they represent forcing a person into the appearance, the veneer of a conduct by threats, by physical assault, by coercion of different kinds. That is why they constitute an inhumane act.

204. PRESIDING JUDGE: But if the concept of forced marriage is inclusive of the concept of sexual slavery, what is the advantage to the Prosecution in charging it? If the evidence to support sexual slavery is the same evidence that supports forced marriages, is that what you are suggesting?

205. MR. PETIT: No, I'm not. Respectfully, what I am suggesting is that you can have a sexual slave without having her pretend that she is your wife.

206. PRESIDING JUDGE: All right I can see that.

207. MR. PETIT: In other words, they are different elements. That is why I said not one forced -- one bush wife will come to testify that she had not been abused with sexual assaults, forced into -- abducted, sexual assaults, forced to perform, et cetera.

208. However, you could have a person -- we do have witnesses who will come to tell you that they were kept for a period of time, usually much less longer than the bush wives, but who were forced to perform sexual acts with their captors over a repeated period of time. That is not a forced marriage; that is sexual slavery.

209. PRESIDING JUDGE: Sexual slavery?

210. MR. PETIT: Yes.

211. PRESIDING JUDGE: Then, of course, it logically follows, therefore, that forced marriage will be inclusive of sexual slavery, does it follow practically?
212. MR. PETIT: In terms of the conduct, and because --
213. JUDGE ITOE: It should. It should follow.
214. PRESIDING JUDGE: It should follow logically.
215. JUDGE ITOE: It should follow.
216. PRESIDING JUDGE: What you say does not follow logically is that sexual slavery does not necessarily amount to forced marriage, but it seems to me it would follow logically that forced marriage would include sexual slavery.
217. MR. PETIT: That is why I said that not one bush wife will come to testify that she hadn't been forced to perform sex for her husband, yes. But she has been forced, and (inaudible) of them are still being forced, to perform all the other duties that are normally associated with a consensual marriage. That is why it's different from sexual slavery, it's different from abduction, it's different from enslavement, it has its own particular characteristics. That is why, we submit, it is, in and of itself, an inhumane act.
218. PRESIDING JUDGE: Let me ask further too, how do you view the machinery of amendment of indictment from a prosecutorial perspective in terms of the law? In other words, are you saying that our system of administration of justice, whether at the national level or at the international level, does not provide for checks and balances in terms of how the machinery of amendment of an indictment should be used? In short, you said that if the evidence discloses at the trial a new offence, the Prosecution would be obliged to do what? To come and ask for an amendment, is that what you are suggesting?

In other words, does the Court not have some judicial control as to how far this mechanism can be utilised so as not to avoid oppressive conduct to the defendant who clearly, in terms of the -- all the discretions, is at the mercy of the Prosecution. I want you to address that question from that perspective. I mean, if you say, "Oh as soon we are leading the evidence, if we have something more where the evidence discloses, the machinery of amendment is there." So, in other words, where do we draw the line?

219. MR. PETIT: In your scenario, if indeed evidence came to light through testimony at the time of trial, evidence that we did not lead -- sorry, that we did not charge a particular count for, and if, indeed, we then decided to seek an amendment, or if, indeed, the Chamber again directed the indictment to be amended, it is still within your discretion to (a) grant this amendment, and we are asking that obviously, and explain the reasons why --
220. JUDGE ITOE: Not to do it?
221. MR. PETIT: Yes, not to do it, or why not doing it would cause serious prejudice.
222. PRESIDING JUDGE: Right. Would it also be a discretionary matter for the Prosecution, or would it be just a mandatory obligation? In other words, you come up with -- going through a trial, some new evidence comes out and you say, "Oh once more we've got some new evidence, let's ask the Chamber for an amendment." Would there be a matter of prosecutorial discretion?
223. MR. PETIT: I think it is always within the discretion of the Prosecutor to seek a charge or an amendment to an indictment. I don't think we would have to wait -- we would have to wait -- what is our duty, in these circumstances, between the rights of a fair trial, among other things, to the accurate depiction of the criminal conduct and the interest of justice as a whole.

224. PRESIDING JUDGE: Doctrine of fundamental facts.
225. MR. PETIT: And the interest of justice as a whole, that included the victims.
226. PRESIDING JUDGE: So, I mean, as you said earlier on, so in fact for the Chamber it is not a matter of course -- I mean amendments not granted as a matter of course. We weigh all the various interests.
227. MR. PETIT: But you referred to the machinery of this, and if I can just point out, you do, for example, again in your scenario where such an amendment would be sought and granted at trial, you would have the option, for example, of postponing whatever hearing, you would have the option of ordering the Crown, or the Prosecution, to present that evidence at a certain point, giving time for the Defence to prepare. You would have, in other words, an array, as you do now -- an array of options to make sure that the interests of everyone and everybody is respected.
228. PRESIDING JUDGE: Thank you.
229. JUDGE BOUTET: Before you sit down, I would like to come back again on this forced marriage issue. Could you, first of all, along the lines of my presiding judge, that it could be argued that forced marriage would invite *res judicata* for sexual violence or, in other words, the elements of forced marriage would be such that they would be inclusive of some other offences and, therefore, there could be this kind of jeopardy in the process?
230. MR. PETIT: I would invite you -- I would invite the Chamber to consider first the definition of sexual slavery, which has its specific element, as well as the charge of inhumane treatment, which in itself has also specific elements. Now

it is well established in the jurisprudence that inhumane act is for everything that is not considered specifically in the other crimes against humanity.

231. Now we say that -- and we alleged our motion and we respectfully submit that it should be convincing. We say that the factors that we have elaborated justify a new specific charge. They are so specific that they are a conduct which falls within inhumane act. Once the evidence is in you will be in a position to weigh indeed, if we have proven our case obviously, and if these elements do support a separate charge of inhumane act, as you will for all the other counts which are charged either alternatively or which share some elements.
232. JUDGE BOUTET: Thank you.
233. PRESIDING JUDGE: Thank you. Does the Defence -- I mean, counsel, Manley-Spaine, even though you've taken a position, I am assuming that you will not be filing any preliminary motion in respect of -- in case the Court decides to grant the indictment. Of course, I do not want to say that, but you may well want to keep your options open.
234. MR. MANLEY-SPAINE: Yes. Yes, Your Honour.
235. PRESIDING JUDGE: Yes, all right, all right. I probably should not press you on that.
236. Well I think that should suffice for our enquiries on this side on the motion for leave to amend the indictment.
237. MR. COTE: With your permission, Your Honour.
238. PRESIDING JUDGE: Yes.



239. MR. CÔTE: I would like to add just a little to what my colleague said relating again to the amendment. First of all, when you asked the question, "When did you put them on notice?" I mean we were looking everywhere in the rule to see where there is such a thing as notice that they are going to seek leave to amend and we couldn't find anything in the rule. I presume, and I understand the rule as when you decide to amend it you seek leave to amend, this is where the notice is given and then the Defence is on notice that this may come on, but even this -- I mean, the important thing is the amendment as such, which is the notice, like the indictment is also to put the accused on notice of what is going on.
240. PRESIDING JUDGE: No, I think that is a plausible response.
241. MR. CÔTE: Yes. And the second point that I would like to raise is the question of preliminary motion that were also raised, in the sense that it may cause a delay because there may be preliminary motion. I think preliminary motion will have to be dealt with by this Court -- by this Chamber, who will have to decide if they are serious enough or raise a serious jurisdiction issue that would start the operation of Rule 72 and set it in front of the Appeal Chamber. And I think that the Court has to take that because sometimes there may be the belief that if something is done we may raise a lot of preliminary motions. I think that if preliminary motion there is, so it be, and you will deal with it with all your wisdom and decide what you are going to do with it on the different motions that are possible.
242. PRESIDING JUDGE: No, we appreciate that. That is what we are saying, we are virtually saying that the Defence would not be foreclosed or precluded from bringing preliminary motions and, of course, we will decide whether such motions are (inaudible) or not.
243. MR. CÔTE: Or (inaudible) proceeding or not.

244. PRESIDING JUDGE: Yes, quite, yes, quite right. I was making the point really about the question of the indictment just -- not necessarily with reference to any specific rule requiring you to give notice, but just again under the doctrine of fundamental fairness, which is now part of our adjudicatory process, a very compendious doctrine.
245. Right, well, thanks. Let's move on to the next motion. We have also listed a motion brought by Kanu, Santigie Borbor Kanu, the third accused on abuse of process due to infringement of principles of legality and non-retroactivity. The principles of legality and non-retroactivity. That was brought in October last year and the Chamber has an oral decision to give on this and I will give the decision.
246. On 20th October 2003, Counsel for Santigie Borbor Kanu filed a motion titled "Motion on abuse of process due to infringement of principles..." I mean the translation -- the thing is in Latin, but I will give you the translation, legality, but it is called nullum crimen sine lege, but just call it legality. "...on principles of legality and non-retroactivity as to several counts."
247. The Prosecution responded on the 30th of October 2003 and the Defence reply was filed on 5<sup>th</sup> November 2003. It is proposed that because of the fact that this status conference is being held now, we, the Chamber, should read a brief decision on that motion and we indicate that the parties will receive a reasoned written decision in due course.
248. So here is our decision -- tentative decision:

DECISION

249. In its motion of 28th October 2003, the Defence for Santigie Borbor Kanu alleged that all counts in the indictment against him be dismissed on the basis that such counts violate the principle of non-retroactivity. Well, let me explain that non-retroactivity is something that should not be regarded as criminal backwards. In other words, an act which was not criminal should not be regarded as criminal by way of retroactive effect or *nullum crimen sine lege*, that is or legality. Presumably as a separate ground on the basis that Article 3, common to the Geneva Conventions and or Additional Protocol II and other serious violations of international humanitarian law were not implemented in the national legislation of the Republic of Sierra Leone. In other words, he was challenging this indictment on the grounds that all these offences that have been charged against him were not part of the laws of Sierra Leone at the time -- the material time.
250. The Defence contend that these alleged violations amount to an abuse of process on the part of the Prosecution and have thereby brought this motion pursuant to Rule 72(B)(v) of the Rules of Procedure and Evidence.
251. So that is the background to this motion, the procedural background.
252. The Trial Chamber now proceeds to make a preliminary comment on the basis upon which this motion was brought and will then address briefly the alleged violations.
253. In effect -- and here we are trying to make it as intelligible as possible -- in effect what the Defence is arguing is that the Prosecution by bringing an indictment, as he is empowered to do under Article 15 of the statute, which specifies crimes which fall within the subject matter of the Special Court for Sierra Leone as defined in Articles 2 through 5 of the statute. And furthermore, by seeking review and approval of that indictment by a designated judge in accordance with Rule 47, and having received approval for

the said indictment has been guilty of an abuse of process. That is what the Defence is saying.

254. Now the Prosecution, by preferring an indictment against him, by getting a judge to approve the indictment, has been guilty of an abuse of process.
255. It would appear that the Defence is also saying, if only implicitly, that the designated judge contributed to the abuse of process by approving the indictment and the charges embodied in it. Well that is what the Defence complain about. Here are the findings of the Trial Chamber.
256. The Trial Chamber finds that neither the lawful exercise of the powers of the Prosecutor to bring an indictment, based upon the alleged commission of crimes within the jurisdiction of the Special Court, nor the approval of such an indictment by a judge of the Court would, and indeed could, constitute an abuse of process.
257. The insinuation, that is the hint, that the designated judge may have contributed to the alleged abuse of process is objectionable, especially where (inaudible) that is when you look on the face of the records, there is no evidence to rebut the presumption of regularity. In other words, forsake everything, that is what I mean by rebut the presumption of regularity. Counsel to bring such motions admonished that such insinuations, depending on the particular facts and circumstances, may well (inaudible) a contempt of court.
258. On the findings of the Trial Chamber, therefore, it is sufficient to dismiss this motion in its entirety. In order to prevent the Defence in this case, or for that matter Defence in other cases, from bringing a similar motion in which the alleged violations are characterised as mistakes of law in defining the

competence or jurisdiction of the Special Court the trial court now briefly addresses this issue.

259. It is well established, clearly so, under customary international law that crimes against humanity, violations of Article 3 common to the Geneva Conventions and of Additional Protocol II and serious violations of international law entail individual criminal responsibility.
260. As a matter of reference, Sierra Leone is signatory to the four Geneva Conventions, Additional Protocol II to the Geneva Conventions and the Statute of the International Court. Therefore, there is no violation of the fundamental principle, the basic principle of legality in this case. In other words, the Prosecutor did everything that the law said he should do and the judge who approved the indictment did everything that the law said he should do. Of course it is an entirely different matter whether in fact evidence will be able -- will be led to prove that what they allege did happen.
261. The motion is hereby dismissed. A written reasoned decision will be rendered in due course. Thank you.
262. PRESIDING JUDGE: We also have another motion that was brought on behalf of Tamba Alex Brima, by his counsel, Terry, against denial by the Acting Principal Defender to enter a legal service contract for the assignment of Terrence Terry for and on behalf of the accused. That is Tamba Alex Brima. That was filed on 6<sup>th</sup> January this year. A written reasoned decision will be out shortly.
263. My brother Justice Itoe will give some idea of how we have structured our thoughts on that.

264. JUDGE ITOE: Even though judgment was reserved in that motion, the Chamber did consider -- and this in conformity with the primary interests of reserving the rights of the defence of an accused, as spelt out in Article 17 of the Statute -- did make a preliminary order that learned counsel, Mr. Terrence Terry, continues to assume the full defence of Mr. Alex Tamba Brima pending the delivery of the final decision in this matter. And of course it is in the light of that ruling which was delivered, on the day it was heard, that Mr. Terry sent the fax which was brought to us and it was also in the light of that ruling that we got in touch with the Defence Office for the interests of Mr. Alex Tamba Brima to be fully represented in the proceedings of today.
265. PRESIDING JUDGE: Thank you. Well, we also have one more preliminary motion, that is a preliminary motion brought on behalf of Brima Bazzy Kamara, alleging certain defects, that is fault, mistakes, in the form of the indictment brought on 7th January this year. Because the notice had been sent out that that particular motion will be determined on the basis of the written submissions of the parties and that there will be no oral hearing. The position now is that a decision is pending and ready for publication. But it may just be mentioned, since learned counsel Fleming is here, that from the Chamber's perspective it may be that that motion is now overtaken by events.
266. If the Chamber's evaluation is correct, then one of the options open to learned counsel is to withdraw the motion, but if the Chamber's analysis is not correct, then it would seem as if the Chamber must proceed to deliver a judgment on the matter.
267. At this point I invite learned counsel Fleming, if he wishes to accept the invitation, to respond.
268. MR. FLEMING: I am trying to think what events might have overtaken it, Your Honour.

269. PRESIDING JUDGE: Good point. My brother knows --
270. JUDGE BOUTET: It is the motion by the Prosecution for amendment of the indictment, which was filed shortly -- the week after, and this is sort of subsuming what you are raising in your old motion at this particular moment.
271. PRESIDING JUDGE: But let me also intervene straight away and say that the joinder motion to the consolidated -- but actually, counsel does not have to respond peremptorily to just our own random thinking on this, and Counsel can advise himself at some point, but it is just that this is one way of looking at it. Counsel may, in fact, be able to have another perspective of it who were not in any way pressing. You do not have to make a commitment now and I think it would be unfair to expect you to do that.
272. MR. FLEMING: Thank you, Your Honour, I appreciate that.
273. PRESIDING JUDGE: You can turn it over in your mind. It may be that, as we say in the law, there are so many different perspectives sometimes, we probably get so confused about these perspectives. Right, thanks.
274. MR. FLEMING: Thank you, Your Honour.
275. PRESIDING JUDGE: On appeal there are two matters that have gone for reference to the -- pursuant to two preliminary motions, pursuant to Rule 72, that have gone to the Appeals Chamber for determination. One is by Bazy Kamara alleging lack of jurisdiction of the Special Court on grounds of some allegedly grave defects in the indictment; and there is also one by Santigie Borbor Kanu on lack of jurisdiction of the Special Court on grounds of abuse of process. So that's the inventory we have here for you. Any response?

276. MR. FLEMING: Did Your Honour say there was one pending in respect of Mr. Kamara?
277. PRESIDING JUDGE: Yes, I think --
278. JUDGE BOUTET: In the Appeals Chamber.
279. PRESIDING JUDGE: In the Appeals Chamber?
280. JUDGE BOUTET: Other than your motion for --
281. PRESIDING JUDGE: Yes, other than yours before us, yes.
282. JUDGE ITOE: There is one of yours before us at this moment.
283. PRESIDING JUDGE: But that was -- it was a jurisdictional one, we determined it to be raising an issue of jurisdictional importance.
284. MR. FLEMING: Yes, that was the matter we argued in November.
285. JUDGE ITOE: Before the Appeals Chamber.
286. PRESIDING JUDGE: It is pending.
287. MR. FLEMING: Yes, thank you, Your Honour. I simply didn't quite understand the way Your Honour described it, that was all.
288. PRESIDING JUDGE: Yes. Well, it's pending there under the reference jurisdiction, I think.
289. MR. FLEMING: Yes, it is a question of jurisdiction.



290. PRESIDING JUDGE: Yes. We will now move on to the next item; trial schedule. The first enquiry here is for the Prosecution. How long does the Prosecution estimate its case will take, estimate not (overlapping microphones) how long does the Prosecution estimate its case will take?
291. MR. PETIT: Again on a worst case scenario, based on our estimate of previous experience, would probably run us around six to seven months.
292. PRESIDING JUDGE: Shall I invite short responses -- any relevant responses, learned counsel with limited role?
293. MS. CARLTON-HANCILES: None, Your Honour.
294. PRESIDING JUDGE: Learned Counsel –
295. MR. FLEMING: Goodness gracious.
296. PRESIDING JUDGE: Learned counsel for the third accused, Mr. Manley-Spain, what is your response, six months worst scenario? Then the second inquiry here is that we have been exploring some new concepts on -- again on some jurisprudential innovation necessitated by the granting of a joinder motion and having three separate joint trials in contradistinction to two separate joint trials as the Prosecution wanted.
297. And some new concept has come out and my learned brother Boutet seems to be the one who has been studying that concept. It is called a trunk case, a common trunk case concept. Common trunk for the joint RUF/AFRC evidence. So I would let him explain to us what this entails.

298. JUDGE BOUTET: I must say this is -- the concept is rather an idea at this moment and that resulted from preliminary discussion I had with the office of the Principal Defender and the office of the Prosecution and together with representatives from the Registrar to see if there were some avenues that we could explore to see how we could try to move in a different manner to, on the one hand, enforce the protection of witnesses that is required and requested by the Prosecution, but at the same time, try to move ahead in a way that would not cause any harm, either to the accused or the RUF or AFRC. One suggestion was that -- and it was based largely on the fact -- and I asked the Prosecution to explain that further -- that the common trunk, which is the common witnesses that are common to RUF and AFRC, is composing about 70 per cent, maybe 60 per cent, but I think it was 70 per cent that we were told, of the evidence they intend to lead. And, therefore, at this juncture we only have one trial chamber. One is likely in the process of being appointed and created, but as we speak there is only one trial chamber.
299. So the exploration at that time was trying to determine how we could, if at all possible, proceed with some innovative approach to dispose of some of these problems. So that is where the -- and the common trunk concept is witnesses - - when evidence is led for these witnesses, we would sit -- we would hear all of these witnesses jointly, that is accused with counsel for AFRC would be there together with accused and counsel for RUF. And obviously, when we move into a scenario where a witness is specific to the AFRC or specific to RUF, then there is no more jointness. So that is the concept and the idea that was being assessed. No decision has been taken. This is strictly for discussion purposes at this moment.
300. PRESIDING JUDGE: Of course, this is all predicated on the idea that one chamber may be undertaking the two trials. That is a very important premise. In other words, one chamber will try, probably this week and next week, this armed faction, that armed faction. So as my learned brother said, the whole

idea is in its embryonic stage, we don't know how to move around -- we are trying to configure it, it's intricate. Of course, the important thing is that it would seem to be novel because we -- it hasn't been suggested that there is precedent anywhere, but we must be very careful with our innovations so that they do not prejudice the overall interests of justice. But there is nothing signed, sealed and delivered on this side, so we can hear you on that. The Defence.

301. JUDGE BOUTET: But, Mr. Prosecutor, have I -- close enough description of your position?
302. MR. COTE: I think that you have been transparent to put my colleagues on notice as it seems to be something that this Court cherished. The Prosecution will this afternoon -- I promise that I will do it before six through the head of the Chamber of the -- legal officer of the Chamber, a proposed amendment to the Rule that will, if agreed by the plenary, would at least provide for the possibility to seek leave from the Chamber to apply for common hearing or concurrent hearing of common evidence in the case where it should apply. The idea behind it was that exactly that in front of the same -- if both trials are in front of the same trial chamber; that we would apply through a motion to have a common hearing of the same evidence that is against both (overlapping microphones) in front, naturally, of the six accused with the right to cross-examine of the six Defence lawyers. And at the end of that common part, the trial will separate again to avoid any conflict of interest in the Defence and will move on with one after the other, whichever one it would be.
303. That is creative, but I must say very honestly, Your Honour, that it was at least asked at two occasions at the ICTY and both times it was, from my understanding, rejected because both times it was from two different trial chambers and there was a huge logistical problem to have a bench of six judges hearing the same part of the evidence.

304. PRESIDING JUDGE: Well thank you very much for that clarification and we will hear learned counsel on that side. Shall we begin with counsel with a limited role?
305. MS. CARLTON-HANCILES: No comments.
306. PRESIDING JUDGE: Learned Counsel Fleming.
307. MR. FLEMING: Just one comment, Your Honour. This seems to be a wonderfully subtle way of appealing Your Honours' decision not to join the trials in the first place.
308. JUDGE ITOE: That's it.
309. PRESIDING JUDGE: Interesting, interesting. That's why I said these perspectives are very useful. What about learned counsel for Kanu?
310. MR. MANLEY-SPAINE: We are of the opinion that that will be highly prejudicial to this process -- to bring back the joint trial.
311. PRESIDING JUDGE: Yes. Well the whole thing is on -- cards are on the table and if you have any useful criticisms and constructive criticisms and, how shall I say it, evaluation of the advantages and disadvantages that the Defence can contribute to the Prosecution or to the Chamber feel free to let us know. I mean when you go and think about it. The idea is so new that it is important that we reflect on it, the advantages and disadvantages.
312. Well we have covered this third sub-item here, views on the same judges hearing the RUF/AFRC evidence that could be incorporated in the notion of a common trial.

313. The final matter to resolve is that there is a proposal that we hold a pre-trial conference, possibly the week of the 19th or the week of the 26th April, a pre-trial conference. Remember, we are dealing with three different concepts here; status conference, pre-trial conference and pre-defence conference. So we are trying to see whether April 19th or April 26th, the week of that, would be convenient to all concerned for a pre-trial conference?
314. JUDGE BOUTET: I should add to what my Presiding Judge has been saying that we have said to colleagues for the Defence in the other groups that we firmly intend to begin soon with the trial and soon means soon. If at all possible, we would like to do it in May and so if it is not May, early June. But this is essentially what we have in mind and therefore that's why we are talking here of a pre-trial conference (inaudible). So we will make sure that the information has been discussed in the other status conferences, as I say, essentially the same nature with you. So we have talked in very, very general terms, we did not fix a trial date to say it is 1st June, but these are the kind of discussions that took place. So you know what we have in mind at this particular time.
315. We say this because of the context of a pre-trial conference -- this is very important to know what we are aiming at, at this time -- at this moment.
316. PRESIDING JUDGE: Thank you, Judge Boutet. Any short comments from the Prosecution on the proposal?
317. MR. CÔTE: Our position is still the same, Your Honour. We believe that the week of 19th April would be an appropriate week to hold a pre-trial conference. We are also advising the Court that if no trial date is set before the pre-trial conference then because of the witness protection orders we need 42 days before we start disclosing the identity of the witnesses.

318. PRESIDING JUDGE: Yes, we will take cognizance of that.
319. MR. CÔTE: And then the trial will have to be beginning of June. We intend to have a trial beginning in the middle of May, this Chamber will have to fix a date of trial before the pre-trial conference is starting. This is our proposal that was agreed upon by the lawyers from the CDF and that was my understanding also more or less agreed upon -- maybe not the date of trial, but certainly the pre-trial conference date for the RUF.
320. I would insist again, very briefly, that if this Court is fixing a date of trial, I mean, we are talking of a real date of trial because we are going to have to put into place protection measures for witnesses six weeks before the beginning of trial, and if this Court is fixing a date of trial just for meeting certain delay on the day of trial, then there is another postponement of two or three months, then we would have put people in jeopardy or in witness protection for a much longer period than would -- I don't think that the witness support unit at the Registry unit will be able to support that if you determine that, Your Honour.
321. PRESIDING JUDGE: Thank you. We were reminded at some point that 19th April is not a particularly auspicious time to -- yes, for purposes of the trial because of some national holidays that is round at the time. It is the 27th not the 19th.
322. MR. CÔTE: The problem of the 19th, Your Honour was that --
323. JUDGE ITOE: Returning from --
324. MR. CÔTE: Exactly, everybody is returning from the Court recess and flying on the 19th.

325. PRESIDING JUDGE: In other words the Easter recess would just have begun.
326. MR. CÔTE: Finished.
327. PRESIDING JUDGE: Will have finished, quite right. What's the mind of the Defence on this, the 19th or the 26th as possible pre-trial conference date? Do you have any statement, Ms. Carlton-Hanciles?
328. MS. CARLTON-HANCILES: Your Honour, I have no statement to say on that .
329. PRESIDING JUDGE: What about Mr. Fleming.
330. MR. FLEMING: Your Honour, the 19th is a particularly bad week for me if I am to be here. I have an obligation before the Appeal Chamber of the ICTR on the 22nd. So I will not be able to be here in the week of the 19th, but certainly immediately after that the week commencing the 26th I would be able to be here.
331. PRESIDING JUDGE: Okay, the records will reflect that.
332. JUDGE ITOE: The 26th?
333. MR. FLEMING: The 26th, Your Honours, yes.
334. PRESIDING JUDGE: The records will reflect that. What about learned counsel for the third accused?
335. MR. MANLEY-SPAINE: We are convenient with the 19th.
336. PRESIDING JUDGE: Yes.

337. JUDGE ITOE: And the 27th we've been informed, is a public holiday. Is there any point starting on the pre-trial conference? What are the dates, do we have the dates? Do we have a calendar here?
338. MR. CÔTE: 19th is a Monday.
339. MR. FLEMING: 26th is a Monday.
340. PRESIDING JUDGE: 26th is a Monday, and 27th is a holiday.
341. MR. COTE: 26th is a Monday, and Tuesday the 27th is the Independence Day.
342. PRESIDING JUDGE: So probably the 28th -- it will be --
343. MR. FLEMING: Later in that week would certainly suit me best, but of course I am only one person to be considered.
344. PRESIDING JUDGE: Yes, well, I mean, we will factor the various positions into -- and come up with something acceptable to all.
345. MR. MANLEY-SPAINE: May I --
346. PRESIDING JUDGE: Yes.
347. MR. MANLEY-SPAINE: Your Honour, I have communications from our team leader that he will not be available --
348. PRESIDING JUDGE: Who is that, your team leader?



349. MR. MANLEY-SPAINE: Knoops. In the last week of April.
350. PRESIDING JUDGE: I see. Well let again the records reflect all these various --
351. MR. MANLEY-SPAINE: That is why we are asking for the 19th (overlapping microphones).
352. PRESIDING JUDGE: Yes. Well, we will work round these conflicting schedules.
353. Does any counsel have anything to proffer in the interests of the Special Court for Sierra Leone in particular or in the interests of justice in general? Any counsel anything else you want to say?
354. Well, if there is nothing to proffer before the Special Court in particular and the interests of justice in general, these proceedings are concluded.

*(Adjourned)*