



Case No. SCSL-2004-16-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
ALEX TAMBA BRIMA
BRIMA BAZZY KAMARA
SANTIGIE BORBOR KANU

FRIDAY, 27 OCTOBER 2006
9.15 A.M.
STATUS CONFERENCE

TRIAL CHAMBER II

Before the Judges:

Richard Lussick, Presiding
Teresa Doherty
Julia Sebutinde

For Chambers:

Mr Simon Meisenberg

For the Registry:

Ms Advera Kamuzora

For the Prosecution:

Mr Karim Agha
Mr Charles Hardaway
Mr Vincent Wagana
Ms Maja Dimitrova (Case Manager)
Mr Sean Morrison (intern)
Ms Leigh Lawrie

For the accused Alex Tamba
Brima:

Mr Kojo Graham

For the accused Brima Bazy
Kamara:

Mr Andrew William Kodwo Daniels

For the accused Santigie Borbor
Kanu:

Mr Ajibola E Manly-Spain
Mr Silas Cherkera

1 [AFRC27OCT06A - MD]

2 Friday, 27 October 2006

3 [Open session]

4 [The accused present]

09:09:51 5 [Status Conference]

6 [Upon commencing at 9.15 a.m.]

7 PRESIDING JUDGE: Yes, well, good morning. This is a
8 status conference for the purposes indicated in our scheduling
9 order of 26 October. Well, with reference to the agenda
09:18:26 10 mentioned therein, we should first start with the Defence, who
11 are under no obligation at all to file a final trial brief or
12 present a closing argument. So, let's start with the Defence
13 counsel and find out whether they intend to do so.

14 MR GRAHAM Good morning, Your Honours.

09:18:54 15 PRESIDING JUDGE: Good morning, Mr Graham

16 MR GRAHAM Your Honours, that is the case, I believe, at
17 least on behalf of the first accused in this matter, and I
18 believe also in respect of the second and third accused that we
19 will be filing closing briefs in response to that of the
09:19:10 20 Prosecution, but Your Honour, further on, in respect of the other
21 related issues, we had a meeting yesterday with our --

22 JUDGE SEBUTINDE: Sorry, Mr Graham, you said you will be
23 filing a brief?

24 MR GRAHAM Yes, that is so, Your Honour. Your Honour, I
09:19:27 25 was saying that we had a meeting yesterday with our friends on
26 the other side and I agreed on a number of issues relating to the
27 agenda as set out in the scheduling order by the Court, and
28 pursuant to that, I would see it the floor, with the permission
29 of the Court, with my learned friends on the other side, because

1 I believe we literally almost agreed on -- it's a common position
2 in respect of all the issues that I have just set out here. So
3 if the Court may permit, I will let my learned friend on the
4 other side address the Court in respect of the issues arising. I
09:20:04 5 am very grateful for the time.

6 PRESIDING JUDGE: Thank you, Mr Graham. Yes, well, we will
7 hear from the Prosecution, then.

8 MR AGHA: Yes, thank you, Your Honour. And indeed we had a
9 very useful meeting with the Defence yesterday, whereby we tried
09:20:21 10 to put forward a common position towards this Court this morning
11 so that the Court, if it is minded to agree, may pass orders by
12 consent. Now, the first issue we addressed was number one, of
13 course, which is the length of final trial brief and all parties
14 want to file a final trial brief. And in terms of the length of
09:20:50 15 the final trial brief, we sought guidance from the CDF case, and
16 in that case there were fewer Defence witnesses, by more than
17 half. I think no rebuttal and certainly less emphasis on the
18 complexities of the JCE, and in that case the Prosecution had
19 been allowed a maximum of 400 pages including headers, footnotes
09:21:22 20 et cetera, and each of the Defence counsel 200 pages. So the
21 parties came to the agreement that for the Prosecution 400 pages,
22 a maximum thereof, would also be sufficient, and for each Defence
23 counsel, a maximum of 200 pages, and this was what we proposed
24 jointly to put forward.

09:21:54 25 PRESIDING JUDGE: Now, do I take that to mean, Mr Agha,
26 that the Prosecution will be submitting a joint final trial brief
27 in relation to all three accused? Is that right? Rather than
28 separate trial briefs?

29 MR AGHA: Well, that would be the preferable position as we

1 did in 98, whereby we had the common law but, to a degree, dealt
2 with the three accused, but it would be one brief, that is our
3 proposal, up to a maximum of 400 pages.

09:22:31 4 PRESIDING JUDGE: All right. Well, that makes it clear,
5 then. The Prosecution will follow guidelines as set by the CDF
6 to file a maximum 400 page final trial brief and the accused,
7 according to your understanding, Mr Agha, will file final trial
8 briefs up to a maximum of 200 pages, as set out in the practice
9 direction?

09:22:54 10 MR AGHA: Yes, I understand it's a maximum of 200 each, but
11 it may be, and the Prosecution would have no objection if, for
12 example, the legal part was, say, combined and that took maybe
13 300 of the pages but then the balance was split accordingly,
14 because it may be that one of the briefs will contain all of the
09:23:17 15 legal arguments.

16 PRESIDING JUDGE: Well, that sounds reasonable, but that is
17 something we should really leave to the Defence. As long as they
18 know that their limitations are 200 pages each.

19 MR AGHA: Yes, Your Honour. How they choose to split it is
09:23:34 20 for them.

21 PRESIDING JUDGE: Yes, well, that is very helpful. Thank
22 you, Mr Agha.

23 MR AGHA: And the second issue was the date for filing of
24 the final trial briefs. Now, we looked at the CDF case which, as
09:23:49 25 I have indicated, had fewer witnesses, no rebuttal and less
26 emphasis on the JCE factor. And in that case, the CDF Chamber
27 initially allowed three weeks from the closing of the evidence.
28 And at that stage it was unclear whether that would be closing of
29 the entire evidence, should rebuttal be allowed.

1 In any event, the parties jointly asked that they be
2 allowed six weeks to submit their final briefs, and the Court
3 allowed them five weeks in the event. And no rebuttal was
4 allowed in that case so it was five weeks after the close of the
09:24:37 5 Defence case.

6 Now, this case, depending on the Court's decision, may have
7 to put a small -- each party indeed will have to put some period
8 of time aside should the Court be minded to grant rebuttal for
9 preparation of cross-examination or leading those witnesses and
09:24:58 10 the parties will, under those circumstances, and the fact that
11 perhaps our case was slightly longer than the CDF case, that we
12 would take the common ground of requesting six weeks from today
13 whereby final trial briefs will be submitted simultaneously no
14 later than Friday, 8th of December.

09:25:23 15 PRESIDING JUDGE: That's notwithstanding whether there is
16 rebuttal evidence or not?

17 MR AGHA: Yes, Your Honour. We built in the factor that
18 there may or may not be but even if there isn't we feel that six
19 weeks is a reasonable time, bearing in mind the greater amount of
09:25:41 20 evidence we have to address, especially as in the Defence case
21 there was many insiders who were later brought on.

22 JUDGE SEBUTINDE: Sorry, what was that date again?

23 MR AGHA: It was six weeks I believe from today, which is
24 Friday, the 8th of December.

09:26:01 25 PRESIDING JUDGE: Yes, Mr Agha.

26 MR AGHA: And with a view to at least winding up the
27 evidence in the case before the recess, the common position of
28 the parties is that we would all like to submit oral arguments
29 and these would perhaps be reserved for Wednesday, the 13th, and

1 if need be going on slightly into the 14th, so that the matter
2 can actually be completed by the recess.

3 PRESIDING JUDGE: Well, that brings us to the point. As
4 you know, the Trial Chamber can limit the length of those closing
09:26:38 5 arguments. Did you discuss with the Defence the anticipated
6 length of your closing arguments and the Defence closing
7 arguments?

8 MR AGHA: Yes. I think both sides agreed that it wasn't
9 the place to recite for hours on end the evidence et cetera, and
09:26:56 10 that is better placed in the final trial brief. So again we took
11 guidance from the CDF case, and we were suggesting a maximum of
12 three hours for the Prosecution, and a maximum of two hours each
13 for the Defence, subject of course to the Trial Chamber's ability
14 to limit that time period, or those time periods, if it felt
09:27:24 15 minded to do so.

16 PRESIDING JUDGE: So we would be looking at a maximum of
17 nine hours. That would take, fully, two hearing days.

18 MR AGHA: Well, in that case, Your Honour, then perhaps we
19 could reduce it to, let us say, Prosecution, maybe two hours, and
09:27:48 20 each Defence counsel, an hour-and-a-half, depending on what my
21 learned friends would think.

22 PRESIDING JUDGE: All right. Well, we will decide that
23 issue when we make our final order on the matter.

24 MR AGHA: And then finally, looking at point number five,
09:28:06 25 which is other issues relating to this case, one of them is of
26 course rebuttal which Your Honour has mentioned, and clearly this
27 application is still pending, and it may or it may not be granted
28 but to whatever extent it may be granted, the Prosecution and
29 Defence thought that it would be a reasonable period of time for

1 the Prosecution to bring whatever witnesses it may be allowed
2 between ten and 14 days of that decision, which would allow the
3 Prosecution sufficient time to bring any rebuttal witnesses who
4 may be out of the country, and also give the Defence a reasonable
09:28:50 5 opportunity to prepare for cross-examination of any rebuttal
6 witnesses, bearing in mind that the scope of their evidence will
7 be limited. So, that is a decision which is obviously still with
8 Your Honours.

9 The only other issue which I'd like to raise is the issue
09:29:11 10 which learned counsel, Mr Knoops, raised yesterday and that is in
11 respect of witness TF1-511. Now, this is quite a problematic
12 position in the sense that there is an order of 24th November
13 2003 whereby this witness was given global protective measures
14 and at "K" of that decision, essentially the starting point is
09:29:43 15 for the Defence to approach the Court for a modification, if you
16 like, of those protective measures and then, if the Court was so
17 minded, for the Prosecution to assist in finding that witness --
18 well, not finding but putting the Defence in contact with that
19 witness. Now, the position of the Prosecution is, and it may be
09:30:13 20 that the Court could vary these orders today, should the Defence
21 apply to do so, is we have no difficulty in disclosing the name
22 of that witness to the Defence. However, we've not been in
23 contact with that witness until 2003. As we've informed the
24 Defence we don't have his contact details. So if the Defence
09:30:37 25 were minded to make an application today, to vary that protective
26 measures order, and allow it, the Prosecution would suggest that
27 we can certainly provide the name to the Defence, and, in those
28 circumstances, they would be at full liberty to make contact with
29 that person, interview him, and, if need be, if they felt he was

1 required, make an application to call him as a witness in their
2 case.

3 And under those circumstances, the Prosecution feels that
4 would be the most expeditious way of dealing with the matter
09:31:10 5 because even if the first limb of the Court varying the
6 protective measure was granted, the Prosecution would not be in a
7 particular position to actually find or locate this witness.
8 Those are the submissions, Your Honour.

9 PRESIDING JUDGE: Yes, thank you, Mr Agha. Now, I
09:31:32 10 understand that most of what Mr Agha said is by consent, as far
11 as the Defence is concerned, but go ahead, Mr Manly-Spain. You
12 were about to say something?

13 MR MANLY-SPAIN: Yes, Your Honours. It's only about the
14 witness TF1-511. We appreciate the suggestions made by learned
09:31:55 15 counsel with regard to this witness but we were of the opinion
16 that to go through that would delay the trial and the proceedings
17 and that an easy way out is by an application under Rule 92bis
18 for the statement of the witness to be tendered in evidence, and
19 that can be dealt with today and the matter is over with.

09:32:25 20 PRESIDING JUDGE: Well, have you discussed that with the
21 Prosecution?

22 MR MANLY-SPAIN: Yes, Your Honour. We suggested that to
23 the Prosecution by email and the reply is that they would be
24 objecting to that application. Though we do not wish to prolong
09:32:43 25 this matter and I believe that I can make the application at this
26 moment and it is dealt with, so that when we leave here today we
27 will know what we are coming for. We don't want to have this
28 matter hanging.

29 PRESIDING JUDGE: Well, it's Rule 92bis(C) says that a

1 party wishing to submit information as evidence shall give ten
2 days' notice to the opposing party. I suppose you would be
3 saying that that notice is redundant in these circumstances since
4 it was the opposing party who gave you the statement in the first
09:33:22 5 place?

6 MR MANLY-SPAIN: I think my learned friend should be
7 magnanimous and allow this application to be made, since they
8 gave us this information two days ago. I think so.

9 PRESIDING JUDGE: What is your attitude then, Mr Agha?

09:33:37 10 MR AGHA: Your Honour, the attitude of the Prosecution is
11 when it comes to these kind of time frames here the Prosecution
12 certainly can be magnanimous but the main objection to the
13 Prosecution, or for the Prosecution, for allowing this
14 application of 92bis is that the evidence is from a witness who
09:34:02 15 is of quite some standing. It was just a transcript taken from
16 him in 2003 and it is certainly a witness which the Prosecution
17 would rely, well would require and would need and request
18 cross-examination of. So even if the statement were tendered
19 under 92bis the problem of the cross-examination of that witness
09:34:24 20 would still arise and as a 92bis would be tendered by the
21 Defence, the Prosecution would submit that it would be for the
22 Defence to make that witness available to us for
23 cross-examination. So it's really on those grounds that the
24 objection would be made.

09:34:45 25 PRESIDING JUDGE: When you say a transcript, was it a Court
26 proceeding or some other type of transcript?

27 MR AGHA: My understanding is that the gentleman concerned
28 was interviewed by investigators and there were taped interviews
29 and they were transcribed and it is actually the transcript of

1 those interviews rather than any written statement which we are
2 discussing here.

3 PRESIDING JUDGE: I understand.

4 JUDGE SEBUTINDE: Mr Agha, we had an opportunity to look at
09:35:47 5 the redacted statement, I think, that was exchanged between
6 yourselves. It appears to me as if this interview was an
7 interview with the media. Are you sure it was an interview with
8 investigators?

9 MR AGHA: My understanding is it was an interview carried
09:36:05 10 out by members at least of the office of the Prosecution,
11 investigators I believe, of the particular witness. That is at
12 least my understanding.

13 PRESIDING JUDGE: All right. Mr Manly-Spain?

14 MR MANLY-SPAIN: Yes, Your Honour.

09:37:31 15 PRESIDING JUDGE: We take it that you are in open Court
16 making an application under Rule 92bis for the admission of this
17 statement?

18 MR MANLY-SPAIN: Yes, Your Honour.

19 PRESIDING JUDGE: Did you have any further submissions to
09:37:47 20 support your application?

21 MR MANLY-SPAIN: Yes, Your Honour. Having read the
22 statement, we believe that this witness has in his statement
23 evidence that goes to the -- relevant evidence that goes to, that
24 go to the charges before the Court, particularly on the matters
09:38:19 25 of joint criminal enterprise, and also the matter of the
26 co-operation between the RUF and the AFRC, and the planning of
27 operations. We also believe that the information contained in
28 the statement is exculpatory in respect of the accused persons.
29 That it will assist the Defence of the accused persons. We do

1 not believe, and I respectfully submit that the Prosecution would
2 not be prejudiced in any respect by the contents of this
3 statement. Moreover, Your Honours, if we are assured it is not
4 the case that it is imperative that the Prosecution cross-examine
09:39:49 5 this witness, having regard to the fact that they came up with
6 the statement, and were kind enough to pass it on to us. With
7 regard to the protective measures, that, I haven't seen the order
8 so it is difficult for me to make an application for a variation
9 of that order, and to request the name of the witness but, the
09:40:27 10 reason basically for our application at this stage is to save the
11 time of the Court, and for the proceedings to go on to its
12 conclusion, as we have been trying to do, and trying to determine
13 today although, as I said, I don't want it to -- this small
14 matter -- to be hanging for us to fix a date to come for that et
09:40:53 15 cetera et cetera and, at the end of the day, from what my learned
16 friend the Prosecution has said, it is possible that we might not
17 even be able to get in contact with this witness. That is all,
18 Your Honour.

19 PRESIDING JUDGE: Well, just one other thing. As you no
09:41:10 20 doubt realise under Rule 92bis(B), the Trial Chamber must be
21 satisfied that the information -- its reliability is susceptible
22 to confirmation. What do you say on that aspect?

23 MR MANLY-SPAIN: Well, from what I have seen, Your Honour,
24 and from what has transpired in this Court, we respectfully
09:41:41 25 submit that this is really an authentic document from the
26 Prosecution. And I do not believe that the matter of veracity is
27 an issue at this stage. It is after the document is tendered
28 that the Court can and will, I am sure, look at the value of its
29 contents. That is all.

1 PRESIDING JUDGE: All right. Thank you, Mr Manly-Spain.
2 What do you wish to reply, Mr Agha?

3 MR AGHA: Yes, Your Honour. As we've mentioned, the
4 question obviously of the notice period isn't there at any rate,
09:42:26 5 as required by the rules. We come to the question of 92bis and
6 the position of the Prosecution is that, and I believe has been
7 the case so far, is that all witnesses have been subject to
8 cross-examination, if they were 92bis, in order that that
9 evidence may be tested. We think there is relevant evidence in
09:42:50 10 that transcript, hence the Defence would not be wanting to tender
11 it through 92bis. And I think an important point which Your
12 Honours have raised, and that is 92bis(B), is that the
13 information submitted may be received in evidence if, and this is
14 a pre-condition, in the view of the Trial Chamber, it is relevant
09:43:15 15 to the purpose for which it is submitted and if reliability is
16 susceptible to confirmation.

17 Now I have been informed that this transcript is not
18 reliable and the witness who gave it was not regarded as being
19 reliable at the time and that is one reason why, although he was
09:43:36 20 put on initial protective measure in 2003, there was no
21 follow-ups to that because, under the circumstances, we formed
22 our own opinion that he was not a truthful witness who we may
23 want to put before this Court.

24 Now, I don't have the exact details as to why he was deemed
09:44:00 25 to be unreliable, or what he was saying was unreliable but, if we
26 were able to have half-an-hour adjournment then I could bring
27 someone from the OTP who could give and explain the circumstances
28 in which that transcript was taken, and help the Bench in making
29 an informed decision on its reliability. And certainly one of

1 the points which I did speak to the Prosecutor yesterday, on this
2 issue of the statement, is that should an application be made
3 then the Prosecution should certainly be allowed to make
4 submissions as to why it was deemed to be unreliable and
09:45:12 5 therefore would not be subject to a 92bis application. And even
6 then, if that hurdle were to be crossed, we would still require
7 the witness to come for cross-examination.

8 PRESIDING JUDGE: Yes. Just before I consult my
9 colleagues, there's actually three statements, aren't there?
09:45:12 10 It's not just the one transcript. I notice three different
11 dates. There is the 12th of February 2003; the 11th of February
12 2003 and the 11th of January 2003. So it's three different
13 transcripts, isn't it?

14 MR AGHA: Yes, there was a series of transcripts which I
09:45:52 15 believe were taken from this gentleman over a period of time.

16 PRESIDING JUDGE: I see. Just pardon me for one moment.
17 [The Bench conferred]

18 PRESIDING JUDGE: Yes, all right, Mr Agha. We would like
19 to hear that witness on the reliability being susceptible to
09:46:40 20 confirmation. We will adjourn in due course and you can make
21 your arrangements. Mr Manly-Spain, you made the application; did
22 you want to reply to anything Mr Agha said?

23 MR MANLY-SPAIN: No, your Honour, everything has been said.

24 PRESIDING JUDGE: All right. If we can just move on to the
09:47:03 25 other things that the Prosecution said, getting back to say the
26 length of the Defence final trial briefs, it's been agreed,
27 according to Mr Agha, that the maximum final trial brief for each
28 accused will be 200 pages; is that correct? There is no issues
29 there at all?

1 MR GRAHAM That is so, Your Honours.

2 PRESIDING JUDGE: And also the dates agreed by the parties
3 are not necessarily agreed by the Court, but the dates that are
4 the subject of a mutual agreement are that the final trial briefs
09:47:52 5 would be submitted not later than Friday, 8th of December, and
6 the closing arguments to be delivered starting Wednesday, the
7 13th, and possibly going over into the 14th of December; is that
8 by common agreement as well?

9 MR GRAHAM I confirm that is so, Your Honours.

09:48:14 10 PRESIDING JUDGE: And at this stage the agreement as to the
11 length of the closing arguments was three hours for the
12 Prosecution and two hours each maximum for the Defence; is that
13 your understanding, Mr Graham?

14 MR GRAHAM That is also the case, Your Honour.

09:48:32 15 PRESIDING JUDGE: All right. Thank you. Just to remove
16 any doubt at all as regards to the Defence intentions, we've
17 mentioned that it's been agreed that the final trial briefs will
18 be 200 pages maximum for each accused. Now, we want to make it
19 clear that our understanding of that, Mr Graham, is that it's up
09:49:26 20 to the Defence as to how those 200 pages each, total maximum 600
21 pages, is divided, as long as whatever the legal arguments and
22 factual arguments are, that are presented in those final trial
23 briefs, is confined to that total of 200 pages each; have we got
24 that correct?

09:49:52 25 MR GRAHAM Yes, Your Honour, that was the consensus as of
26 yesterday. That is the case.

27 PRESIDING JUDGE: All right. There will be no extra pages
28 allowed for any other purpose, whether it's for extra legal
29 argument or extra factual presentation.

1 MR GRAHAM: That is our understanding, Your Honour.

2 PRESIDING JUDGE: All right. Thank you.

3 JUDGE DOHERTY: Mr Manly-Spain, there is a matter I wish to
4 clarify, arising from the expert report on child soldiers by Mr
09:50:30 5 Gbla, which the time may permit you to clarify. The first aspect
6 is on page 23 of the report, paragraph 51. On my copy there is a
7 reference to a footnote 43 and I have no footnote 43.

8 MR MANLY-SPAIN: Yes, that is indeed the case. We will
9 file a corrigendum to that to correct it.

09:51:13 10 JUDGE DOHERTY: And my second point, Mr Manly-Spain, is a
11 factual point arising out of paragraph 32. And in it the expert
12 witness says: "The government of Sierra Leone signed and
13 ratified the UN convention on the rights of the child of 1989 in
14 2000." I had understood that Sierra Leone had signed the
09:51:41 15 convention on the rights of the child in 1989. In fact, it was
16 one of the first ten countries to sign it. So the protocol of
17 2000 is a different issue and I would be grateful if you could
18 clarify that.

19 MR MANLY-SPAIN: Yes, Your Honour. We will look at that.
09:52:02 20 I am not sure from my recollection is that after the signing
21 there needs to be process in parliament to ratify it.

22 JUDGE DOHERTY: That's correct. That is why I just used
23 the word -- I limit my word to "signing."

24 MR MANLY-SPAIN: Yes.

09:52:15 25 JUDGE DOHERTY: Because I'm aware it hasn't been adopted
26 into domestic law.

27 MR MANLY-SPAIN: We will clarify that, Your Honour.

28 JUDGE DOHERTY: Thank you.

29 MR MANLY-SPAIN: We have noted it. Thank you, Your Honour.

1 PRESIDING JUDGE: All right. Well, look, I think that we
2 are going to adjourn now but I think we've covered all the
3 matters fixed in the agenda for today. Is there any other matter
4 that we should have considered before we adjourn?

09:52:42 5 MR GRAHAM: Certainly not from the Defence.

6 PRESIDING JUDGE: All right. Thank you, Mr Graham.

7 MR AGHA: Only just to clarify, Your Honour, if you would
8 like to hear from someone from the Prosecution, it wouldn't
9 necessarily mean that someone there who was a witness at the time
09:52:55 10 but someone who knows the background and details under which the
11 transcript was taken because it was back in 2003. Or,
12 alternatively, we can provide an affidavit to the Court or a
13 declaration, whichever is preferable, in terms of its
14 reliability.

09:53:10 15 PRESIDING JUDGE: Well, it's probably better if you can
16 produce some person. We are only looking at a witness to assist
17 us under our consideration of Rule 92bis(B) but it's probably
18 better if you present viva voce evidence because the Defence
19 might wish to ask a few questions as well.

09:53:29 20 MR AGHA: Certainly, Your Honour. I will try and find
21 someone who has knowledge of this and then he can come and speak
22 about the office of the Prosecution and that interview.

23 PRESIDING JUDGE: All right. Hopefully that will prove
24 possible. If not we will consider other form of evidence such as
09:53:45 25 a declaration.

26 MR AGHA: I shall look into this and let the Court
27 attendant know as soon as possible, Chamber's assistant, sorry.

28 PRESIDING JUDGE: All right. Thank you. Well,
29 half-an-hour is what you are asking for, Mr Agha; is that

1 correct?

2 MR AGHA: Yes. If we could perhaps adjourn until half past
3 ten, that should give me sufficient time to see if I can find
4 someone who has more detail about this matter because obviously
09:54:51 5 they weren't expecting this issue to arise today in the Court.

6 PRESIDING JUDGE: I see. Okay. All right. We will
7 adjourn the Court then until 10.30.

8 [Break taken at 9.55 a.m.]

9 [AFRC27OCT06B - MD]

10:33:03 10 [Upon resuming at 10.35 a.m.]

11 PRESIDING JUDGE: Yes, Mr Agha.

12 MR AGHA: Yes, Your Honour. Under short notice I was able
13 to find a gentleman who does have knowledge around the
14 circumstances of these interviews. Now, I brought -- he is here
10:36:18 15 sitting in the courtroom. Now, depending on how Your Honour
16 chooses to proceed, he can take the witness box and be sworn and
17 you may question him or you may feel that I should lead him on
18 these issues and be subject to cross-examination but I leave that
19 in your hands how you choose to proceed.

10:36:36 20 PRESIDING JUDGE: Well, I think the best way to proceed is
21 we will have him give sworn evidence and you can lead him on
22 wherever areas that you wish, but, bearing in mind that he was
23 called to give evidence to assist us, in ascertaining whether the
24 proposed evidence under Rule 92bis is susceptible of
10:37:02 25 confirmation, that is the reason you are bringing him here. So,
26 with that qualification, that's the best way to proceed, Mr Agha.

27 MR AGHA: Yes, I would agree, and I would certainly limit
28 my questions to the transcript and hope that the
29 cross-examination could also be limited rather than take many

1 many hours.

2 PRESIDING JUDGE: Yes.

3 JUDGE SEBUTINDE: Mr Agha, just to remind you, I am sure
4 you are obviously aware of this but there is a fine line between
10:37:31 5 arguments pertaining to susceptibility of confirmation and to
6 reliability. We were just hoping that you won't cross that line.

7 MR AGHA: I will try not to, Your Honour, and I am sure you
8 will pull me up should I do so.

9 JUDGE DOHERTY: Mr Agha, you appear to have another member
10:37:48 10 with you and we have no appearance.

11 MR AGHA: I apologise for the omission. It's Ms Leigh
12 Lawrie and she will be joining us to assist us on this one
13 confined issue.

14 PRESIDING JUDGE: I see. All right. Thank you. For the
10:38:04 15 record, the witness to give evidence now is being called in
16 connection with an application by the Defence to tender a
17 document under Rule 92bis. The purpose of hearing the evidence
18 of this witness is to assist the Trial Chamber to assess pursuant
19 to Rule 92bis(B) whether the document, and the information
10:38:38 20 contained therein, has a reliability which is susceptible of
21 confirmation. Go ahead, Mr Agha, and call your witness.

22 MR AGHA: Yes. The Prosecution would call Mr Gilbert
23 Morissette and if he could be sworn.

24 WITNESS: GILBERT MORISSETTE [Sworn]

10:40:29 25 EXAMINED BY MR AGHA:

26 Q. So, witness, I'm going to ask you a few questions this
27 morning --

28 PRESIDING JUDGE: Just for the record, his name and his
29 position.

1 MR AGHA:

2 Q. I will start with some basic details. So just for the
3 record, what is your name?

4 A. My name is Gilbert Morissette.

10:40:47 5 Q. What is your current position?

6 A. I am the chief of investigation for the Office of the
7 Prosecutor.

8 Q. And roughly when did you start working for the
9 investigations department?

10:40:57 10 A. I started the OTP in October of 2002.

11 Q. And you were working in the investigations division; is
12 that right? At that time?

13 A. At that time I was working in the investigation division as
14 the deputy chief of investigation.

10:41:16 15 Q. And are you aware of a witness who is referred to, and
16 please don't name him, as TF1-511?

17 A. Yes, I am

18 Q. Now, are you aware that this witness was interviewed by
19 members of the investigation section of the office of the

10:41:40 20 Prosecution in January and February 2003?

21 A. Yes, I am

22 Q. Do you know who conducted these interviews?

23 A. It was conducted by the then chief of investigation,
24 Dr Alan White.

10:41:58 25 Q. And did you come to learn that there were any difficulties
26 regarding the way these interviews were transcribed or otherwise
27 taken?

28 A. Yes.

29 Q. And can you please tell the Court?

1 A. During the first interview, in January, the quality of the
2 transcription of the tape themselves was extremely, extremely
3 bad, to the point that after several weeks of the, our typist and
4 court reporters and stenographer trying to transcribe those
10:42:36 5 tapes, that we, Dr White decided to send the tape to the FBI
6 laboratory, in the State, in order to have to try to have the
7 quality of the tape enhanced. It came back same thing. They
8 were unable to do anything with it. So the quality was so bad
9 that I would say, I don't know roughly, I think probably 80 per
10:43:00 10 cent or 90 per cent of it was not -- was never transcribed and
11 whatever was transcribed was mostly guesswork done on our part so
12 that we put everything aside.

13 Q. So, after that, was this witness again re-interviewed to
14 see if you could get a better interview?

10:43:22 15 A. Yes, we did. Again, it was conducted by Dr Alan White and
16 at this time he brought with him a court reporter so that the
17 transcript could be made live as the interview was being
18 conducted. But again, the quality of the, not the quality of the
19 recording at this time, but of the accent or the speaking of the
10:43:57 20 witness was so bad that even the court reporter, after coming
21 back and after re-listening to the tape and trying and trying for
22 weeks and, you know, almost committed, you know, breakdown on
23 trying to get these transcripts done, that finally, you know, we
24 did what we could and everything was put aside.

10:44:18 25 Q. Now you were not personally present at these interviews,
26 were you?

27 A. No.

28 Q. Now, did Mr White speak to you about his interviews with
29 witness TF1- 511?

1 A. Yes, he did.

2 Q. And what did he tell you about his impressions of witness
3 TF1-511?

10:44:44 4 A. Basically that the witness was totally unreliable. That
5 the witness was --

6 PRESIDING JUDGE: Just a moment please, Mr Witness. There
7 is an objection.

8 MR MANLY- SPAIN: We respectfully object to this question
9 because I don't believe that is what we are here for. We have to
10:44:56 10 see whether the tapes or the recordings of the transcripts were
11 authentic, not whether the statement -- gave true statements or
12 true facts in the statement. We are not going to the statements
13 themselves.

14 PRESIDING JUDGE: Yes, reliability is not a pre-condition
10:45:13 15 of admission under Rule 92bis, Mr Agha. So I will let you reply
16 to that objection if you like before we rule on it.

17 MR AGHA: Well, Your Honour, a reading of 92bis is if it's
18 relevant and its reliability is susceptible for confirmation. So
19 in that respect I agree with my learned friend and I will just
10:45:38 20 stick to the substance.

21 Q. Now, did you read any part of these transcripts?

22 A. A little bit. Very limited, though.

23 Q. And how did you regard them?

24 A. That the witness was -- basically the witness was just
10:45:58 25 lying and looking after his own interest.

26 MR AGHA: It's okay. If we can just scratch that.

27 Q. I am not really asking the fact that he is lying or looking
28 after his own interest. I mean, how did you find them in terms
29 of their readability?

1 A. Well, the part that we could read we could read but then
2 most of it was just could not be really read or could not be --
3 could not make any sense.

4 Q. Okay. I have no further questions of this witness.

10:46:31 5 PRESIDING JUDGE: Thank you. Yes, Mr Manly-Spain.

6 MR MANLY-SPAIN: Just a few questions.

7 CROSS-EXAMINED BY MR MANLY-SPAIN:

8 Q. Mr Witness, are you conversant with the rules of the Court,
9 this Court, regarding the investigation and the taking of
10:46:48 10 statements from witnesses?

11 A. Yes, I am

12 Q. Are you aware whether those rules were followed by
13 Mr White?

14 A. To my knowledge, I wasn't there but, to my knowledge, yes.

10:47:01 15 MR MANLY-SPAIN: No more questions.

16 PRESIDING JUDGE: Anything arising from that?

17 MR AGHA: No, Your Honour.

18 QUESTIONED BY THE COURT:

19 PRESIDING JUDGE:

10:47:13 20 Q. Mr Witness, one thing I don't understand is that when
21 Mr White arranged for this witness to be interviewed, in the
22 presence of a court reporter, what exactly was the problem then
23 of getting down on paper what the witness said?

24 A. The way the witness was speaking, Your Honour.

10:47:40 25 Q. And what way was that?

26 A. Very, very bad accent and very bad pronunciation. Almost
27 impossible to make out what the witness was saying.

28 Q. Do you know what language the witness was interviewed in?

29 A. In English, Your Honour.

1 Q. And is that the mother tongue of this witness?

2 A. No, Your Honour.

3 Q. Did they take along an interpreter?

4 A. No, Your Honour.

10:48:10 5 Q. Do you know why that was?

6 A. No.

7 JUDGE SEBUTINDE:

8 Q. So, do you reckon that if this witness were to speak in his
9 own language, with the assistance of an interpreter, perhaps a

10:48:28 10 better job could have been done?

11 A. I don't know. I wasn't there.

12 Q. So, in other words, the only problem with these tapes and
13 transcription was because of the witness's accent and the fact
14 that the transcribers cannot understand that accent?

10:48:47 15 A. That's correct.

16 PRESIDING JUDGE: All right. Thank you.

17 MR AGHA: May I just ask, bring to the Bench's attention a
18 follow-up arising from learned Justice Sebutinde's questions? In
19 the transcript of the interview, and I won't obviously give the
10:49:15 20 name, one of the questions is, and this is on page 00020059 is:

21 "Okay, you have mentioned to me that you speak
22 many languages one of which is English; is that
23 correct?

24 "A. I speak English, French, Arabic and I
10:49:35 25 speak Fullah, Wolof, Sush, I believe, the
26 African languages, the language with French and
27 Arabi c. "

28 So the witness himself, and then we go on:

29 "Now, the language that we will use for this

1 interview which I believe you mentioned to you
2 is the language of the Special Court is English
3 and you understand English and can you speak
4 English enough?

10:50:00 5 "A. I can speak English enough. "

6 So, so far as the witness was concerned, he felt
7 comfortable carrying out the interview in the English language.

8 PRESIDING JUDGE: What page is that again? Forget the
9 Court, forget the Registry page.

10:50:17 10 MR AGHA: This page isn't before the Court, Your Honour,
11 because we gave the Rule 68 excerpts of the interview of this
12 witness.

13 PRESIDING JUDGE: All right. But as far as the
14 investigators were concerned, the witness had stated that he
10:50:33 15 speaks English well enough to be interviewed in English.

16 MR AGHA: Yes, and that is what he chose to do. So I
17 suspect that is why an interpreter wasn't called.

18 JUDGE SEBUTINDE: But, Mr Agha, the preference was the
19 interviewer's preference. English was the language that the
10:50:48 20 investigator preferred and according to what you've read the
21 witness just went along with that because there was no
22 interpreter. It's different when the choice is given to the
23 witness and he says "I prefer the interview be conducted in
24 Arabic" and then you have a problem because you have no
10:51:07 25 interpreter. From the excerpt you've read it appears to me that
26 English was not the preferred language but that the witness went
27 along with it and said "Well, I am comfortable. I speak some.
28 If you are going to understand the English I speak fine." It
29 seems to me that's what happened.

1 MR AGHA: Yes, that would be the case, Your Honour.

2 PRESIDING JUDGE: Mr Manly-Spain, anything arising from
3 what the Bench asked the witness?

4 MR MANLY-SPAIN: Mine is not really a question for the
10:51:35 5 witness. It's really a point of observation. That what we have
6 before us, we can read, and the evidence that the witness has
7 given is that this statement is authentic.

8 PRESIDING JUDGE: All right. I think we can let the
9 witness go in any event.

10:51:53 10 MR MANLY-SPAIN: Yes.

11 PRESIDING JUDGE: Mr Witness, thank you for giving
12 evidence. You are free to leave the Court now.

13 THE WITNESS: Thank you.

14 [The witness withdrew]

10:52:14 15 PRESIDING JUDGE: All right. Well, Mr Manly-Spain, we will
16 hear any further submissions you wish to make in regard to the
17 testimony we've just heard.

18 MR MANLY-SPAIN: Your Honour, my submission is brief that
19 from the testimony we have just had, it is clear that the rules
10:52:28 20 were followed in obtaining this statement that has been served on
21 us. Therefore, I submit that the statement is authentic. We
22 have it before us. We can read it. What has not been, what
23 areas have not been redacted I respectfully would submit that
24 this statement has been confirmed as authentic by the witness,
10:53:05 25 and that it's now a matter for the Court to decide, if admitted
26 weight to be given to it, and I respectfully am submitting that
27 it should be admitted because of its relevance and the other
28 points I raised earlier today. That is all, Your Honour.

29 PRESIDING JUDGE: All right. Thank you. Did you want to

1 reply, Mr Agha?

2 MR AGHA: Yes, very briefly. Under the rule it's a
3 question of reliability not authenticity, and it is the view of
4 the Prosecution that these transcripts, reliability is not
10:53:45 5 subject to susceptible to confirmation, as per the requirements
6 of the rule and, furthermore, if in the opinion of Your Honours
7 indeed it is admissible under this rule, because of the nature of
8 the evidence and the fact that there does seem to be a dispute as
9 to its reliability, that the Prosecution be allowed to
10:54:12 10 cross-examine this witness to indeed test its reliability in open
11 Court.

12 PRESIDING JUDGE: All right. Thank you.

13 JUDGE SEBUTINDE: Mr Agha, I haven't understood. You just
14 said the document isn't susceptible to confirmation but you
10:54:34 15 haven't said how or why; why do you say so?

16 MR AGHA: I say it's not susceptible to confirmation based
17 on reliability and the rule says its reliability is susceptible
18 of confirmation. Now, my submission is that it itself may be
19 susceptible of being of value of any sorts, but its reliability
10:54:56 20 is not susceptible of confirmation due, for example, the
21 difficulties that were taken in transcribing it, the language
22 issues, the fact that it may have been that the witness should
23 have been given the option to speak in his first language and
24 wasn't given the option, rightly or wrongly. The fact that it
10:55:15 25 had to be taken down in a language which he may have been not
26 very familiar with and not very keen to show that he lacked that
27 familiarity. So, in terms of its own reliability, he, in his
28 maybe less than perfect English, may have been saying words or
29 things which he didn't mean to say. So in that regard because of

1 the transcriptional problems and the language problems in the
2 submission of the Prosecution its reliability is not susceptible
3 of confirmation.

4 [The Bench conferred]

10:58:24 5 PRESIDING JUDGE: All right. Well, look, we will consider
6 the submissions. We will adjourn for now. We will resume at 12
7 o'clock. That is one hour from now.

8 [Break taken at 11.00 a.m.]

9 [AFRC27OCT06C - MD]

11:59:56 10 [Upon resuming at 12.15 p.m.]

11 PRESIDING JUDGE: We make the following orders in respect
12 of the agenda items for the status conference. We emphasise that
13 these orders will be confirmed by a formal decision in writing
14 and not only confirmed but possibly expanded upon.

12:17:15 15 Firstly, the orders which follow are by agreement between
16 the parties:

17 A. The length of the final trial brief filed on behalf of
18 each accused shall not exceed 200 pages.

19 B. The final trial brief for the Prosecution shall be
12:17:49 20 filed as one document not exceeding 400 pages.

21 C. The final trial brief shall comply in all other
22 respects -- I will backtrack there -- the final trial briefs, in
23 plural, shall comply in all other respects with the practice
24 direction on filing documents before the Special Court for Sierra
12:18:18 25 Leone.

26 D. The closing arguments for the Prosecution shall not
27 exceed three hours and for each of the accused shall not exceed
28 two hours.

29 In respect of the following orders the Trial Chamber notes

1 the common ground established by the parties but nevertheless
2 orders as follows:

3 1. The final trial briefs for the Prosecution and the
4 Defence shall be filed on or before Friday, the 1st of December
12:19:03 5 2006.

6 2. The closing arguments of the Prosecution and the
7 Defence shall be presented on Thursday, the 7th of December 2006
8 with a possible carry over to Friday, the 8th of December.

9 We turn now to the question of the tender by the Defence of
12:19:45 10 the interview transcript excerpts of witness TF1-511. The
11 following is the majority decision.

12 Rule 92bis of the Rules of Procedure and Evidence provides
13 as follows:

14 A. A Chamber may admit as evidence in whole or in part
12:20:18 15 information in lieu of oral testimony.

16 B. The information submitted may be received in evidence
17 if, in the view of the Trial Chamber, it is relevant to the
18 purpose for which it is submitted and if its reliability is
19 susceptible of confirmation.

12:20:42 20 C. A party wishing to submit information as evidence shall
21 give ten day's notice to the opposing party. Objections, if any,
22 may be submitted within five days.

23 As regards the ten day's notice in Rule 92bis(C) we make
24 the observation that the documents were, in fact, in the
12:21:12 25 possession of the Prosecution since 2003 and was served on the
26 Defence on the 26th of October 2006. Accordingly, pursuant to
27 Rule 54 we dispense with the ten day's notice requirement.

28 With reference to Rule 92bis(B) we are of the view that the
29 information in the said documents is relevant. We must follow

1 the interpretation placed on Rule 92*bis* by the Appeals Chamber in
2 the case of Prosecution v Fofana et al, SCSL-04-14-AR73, decision
3 on appeal against decision on Prosecution's motion for judicial
4 notice and admission of evidence, dated the 16th of May 2005 at
12:22:27 5 paragraph 26. The Appeals Chamber decision gives the following
6 interpretation of Rule 92*bis* and we quote:

7 "SCSL Rule 92*bis* is different to the equivalent
8 Rule in the ICTY and ICTR and deliberately so.

9 The judges of this Court, at one of their first
12:23:11 10 plenary meetings, recognised a need to amend

11 ICTR Rule 92*bis* in order to simplify this

12 provision for a court operating in what was

13 hoped would be a short time-span in the country

14 where the crimes had been committed and where a

12:23:30 15 Truth and Reconciliation Commission and other

16 authoritative bodies were generating testimony

17 and other information about the recently

18 concluded hostilities. The effect of the SCSL

19 Rule is to permit the reception of

12:23:55 20 'information' assertions of fact (but not

21 opinion) made in documents or electronic

22 communications - if such facts are relevant and

23 their reliability is 'susceptible of

24 confirmation.' This phraseology was chosen to

12:24:17 25 make clear that proof of reliability is not a

26 condition of admission: All that is required

27 is that the information should be capable of

28 corroboration in due course. It is for the

29 trial chamber to decide whether the information

1 comes in a form, or is of a kind, that is
2 'susceptible to confirmation'. It follows, of
3 course, from the fact that its reliability is
4 'susceptible of confirmation', that it is also
12:24:55 5 susceptible of being disproved, or so seriously
6 called into question that the court will place
7 no reliance upon it. Rule 92*bis* permits facts
8 which are not beyond dispute to be presented to
9 the court in a written or visual form that will
12:25:21 10 require evaluation in due course. The weight
11 and reliability of such 'information' admitted
12 via Rule 92*bis* will have to be assessed in
13 light of all the evidence in the case."

14 We've already made a finding that in our view the
12:25:45 15 information in the said documents is relevant. We also find that
16 the said information comes in a form or is of a kind that is
17 susceptible to confirmation. Accordingly, we rule that the
18 interview transcripts of witness TF1-511 fall within the stated
19 criteria for admissibility and we therefore admit them into
12:26:12 20 evidence as Exhibit D39.

21 [Exhibit No. D39 was admitted]

22 PRESIDING JUDGE: Also, when we say that the excerpts,
23 interview transcripts, are admitted into evidence as Exhibit D39
24 we are referring to the unredacted transcripts.

12:27:28 25 MR MANLY- SPAIN: Thank you, Your Honour.

26 PRESIDING JUDGE: Now, in relation to those transcripts
27 being admitted into evidence, we note the Prosecution advice that
28 witness TF1-511 is covered by protective measures and, to remove
29 any doubt, we confirm that the protective measures ordered by

1 Justice Itoe, in his decision of the 21st of November 2003,
2 entitled "Decision on the Prosecution motion for immediate
3 protective measures for witnesses and victims" shall be
4 applicable to witness TF1-511 or, rather, shall continue to be
12:28:45 5 applicable to witness TF1-511.

6 Well, I think that concludes this status conference. Any
7 other business we should have addressed?

8 MR AGHA: I just wanted to clarify, Your Honour, has that
9 statement been admitted subject to cross-examination or without
12:29:22 10 cross-examination?

11 PRESIDING JUDGE: No, it's admitted under 92bis as it is
12 without cross-examination.

13 MR AGHA: Thank you, Your Honour.

14 PRESIDING JUDGE: Did you have that unredacted statement
12:29:58 15 here, Mr Agha?

16 MR AGHA: We don't have it with us, Your Honour, but we can
17 certainly produce it.

18 PRESIDING JUDGE: Produce it to Court Management?

19 MR AGHA: Yes.

12:30:08 20 PRESIDING JUDGE: Yes. All right. Thank you.

21 JUDGE SEBUTINDE: And that would be before the close of
22 today, hopefully?

23 MR AGHA: Yes, Your Honour.

24 JUDGE SEBUTINDE: Okay.

12:30:20 25 PRESIDING JUDGE: All right. Well, if there is no other
26 business we will adjourn now until further order of the Court.

27 [Whereupon the hearing adjourned at 12.30 p.m.,
28 to be reconvened on further order of the Court]

29

EXHIBITS:

Exhibit No. D39 30

WITNESSES FOR THE DEFENCE:

WITNESS: GILBERT MORISSETTE 18

EXAMINED BY MR AGHA 18

CROSS-EXAMINED BY MR MANLY-SPAIN 22

QUESTIONED BY THE COURT 22