

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL-04-14-T
TRIAL CHAMBER

THE PROSECUTOR
OF THE SPECIAL COURT
v.
SAM HINGA NORMAN
MOININA FONANA
ALLIEU KONDEWA

TUESDAY, 7 SEPTEMBER 2004
10.12 A.M.
TRIAL

Before the Judges:

Benjamin Mutanga Itoe, Presiding
Bankole Thompson
Pierre Boutet

For the Registry:

Ms Maureen Edmonds
Mr Geoff Walker

For the Prosecution:

Mr James Johnson
Mr Mohamed Bangura
Mr Kevin Tavener
Ms Leslie Murray (intern)

For the Principal Defender:

Ms Simone Monasebian
Mr Ibrahim Yillah

For the accused Sam Hinga Norman:

Mr John Wesley Hall
Ms Quincy Whitaker

For the accused Moinina Fofana:

Mr Arrow Bockarie
Mr Michel Pestman

For the Accused Allieu Kondewa:

Mr Yada Williams
Mr Ansu Lansana
Mr Neerav Kingsland (intern)

1 [Tuesday, 7 September 2004]

2 [Open Session]

3 [The accused entered]

4 [Upon commencing at 10.12 a.m.]

5 MR WALKER: This is Tuesday, 7th September 2004 before His
6 Honour Judge Pierre Boutet, case SCSL-2004-14-T. The
7 Prosecutor against Sam Hinga Norman, Moinina Fofana,
8 Allieu Kondewa, which is listed as a status conference.

9 PRESIDING JUDGE: Well, good morning. I would like to start
10 first with the Prosecution to ask for representation this
11 morning.

12 MR JOHNSON: Thank you, Your Honour. Myself, James Johnson,
13 Kevin Tavener and Mohammed Bangura for the Prosecution.

14 PRESIDING JUDGE: For the Defence for Mr Norman.

15 MS WHITAKER: Your Honour, John Wesley Hall and myself, Quincy
16 Whitaker.

17 PRESIDING JUDGE: Thank you. For the second accused.

18 MR PESTMAN: For Mr Fofana, Arrow Bockarie, Phoebe Knowles and
19 myself, Michel Pestman.

20 PRESIDING JUDGE: Thank you. And for the third accused.

21 MR WILLIAMS: My Lord, Yada Williams, Ansu Lansana and Neerav
22 Kingsland for the third accused.

23 PRESIDING JUDGE: Thank you. So we are here this morning to
24 proceed with a status conference and I don't know if you
25 have or not received any copy of the agenda or at least
26 the headlines for the agenda. May I ask the Prosecution
27 if you have?

28 MR JOHNSON: Yes, Your Honour, just a few moments ago.

29 PRESIDING JUDGE: And Defence?

1 MS WHITAKER: Yes, thank you, Your Honour, just now.

2 PRESIDING JUDGE: So I would like to start first with the
3 issue of the health of the accused and I would like to
4 ask Mr Norman first. Mr Norman, can I ask you if you
5 have --

6 THE ACCUSED NORMAN: The microphones are not working.

7 PRESIDING JUDGE: Yes, check -- it may be because of the
8 channel on your -- is it working now? Is the system
9 working? Is it the ones for Mr Norman only or everybody
10 else's system is also failing? The Defence is okay, yes?
11 Is it working now? Mr Registrar, is that working? Can
12 we have a technician to check the system to make sure
13 that at least Mr Norman can hear what is going on in
14 court this morning? Anybody from the support services?
15 It's okay now. Okay, that's fine. So, Mr Norman, you
16 can hear me now?

17 THE ACCUSED NORMAN: Yes, My Lord.

18 PRESIDING JUDGE: Thank you. Mr Norman, I was starting by
19 asking you and the other co-accused about your health and
20 my question to you is: how is your health and do you
21 have any issue to raise with the Court this morning about
22 your health?

23 THE ACCUSED NORMAN: I have no issue to raise about my health,
24 My Lord.

25 PRESIDING JUDGE: Can you open your mic, please. That is
26 okay.

27 THE ACCUSED NORMAN: I am sorry, Your Lordship. I was saying
28 that I have no issue to raise about my health. Other
29 matters, yes, but when they come up.

1 PRESIDING JUDGE: Thank you, Mr Norman. The second accused,
2 do you have anything to raise about your health this
3 morning?

4 MR PESTMAN: I don't think there is, but I haven't been able
5 to visit my client yet today after my arrival, so I have
6 to reserve my answer.

7 PRESIDING JUDGE: Very well.

8 MR PESTMAN: I will come back to it if necessary later.

9 PRESIDING JUDGE: Well, sometime during the morning we will
10 pause and we will give you time to at least consult and
11 talk with your client if required.

12 The third Accused, do you wish to raise any issue about
13 your health this morning?

14 MR WILLIAMS: My Lord, on behalf of the third accused we have
15 no issues to raise, My Lord.

16 PRESIDING JUDGE: Thank you. The next issue on the agenda are
17 detention issues. We will start with Mr Norman again.
18 Mr Norman, do you wish to raise or do you have anything
19 to raise about detention and the detention conditions or
20 any matter related to detention?

21 THE ACCUSED NORMAN: Yes, My Lord. To start with there is no
22 facility for exercise as required in the detention
23 procedures. That since my arrest and detention I have
24 not even walked half a mile, not even a quarter of a
25 mile. If I have to do that, I will do it in the corridor
26 or in the little space that is allowed outside. And
27 there are no other exercise materials. I have requested
28 for a stationary bicycle or a mobile bicycle which I
29 still have not got. I have made arrangement for that to

1 be bought for me outside and that is yet to be decided by
2 the detention officers whether I should have that and
3 that is for exercise.

4 For the sanitary condition of the -- of our
5 detention area, it is extremely poor. We use plastic
6 buckets in our cells to use from 10.00 p.m. to 7.00 a.m.;
7 the stench of it is unimaginable. And we also have the
8 same ones that wash our dishes and we clean our floors,
9 we clean our toilet areas, all other areas. There is no
10 cleaning facility from outside except it is done by us.
11 And then the other condition is the food. We start with
12 the provision of fruits, vegetables. We live in a
13 cholera prone city. Now all the fruits we get mostly are
14 coming from the street. They buy them in the street,
15 some in a very filthy condition. We have complained over
16 and over again and nothing is done about that.

17 Then we come now to the food. I have brought with
18 me an example to show you, My Lord, this morning. If you
19 bear with me. These are three pieces of meat, three
20 pieces of meat which we get. This is the size of the
21 meat. I am sorry, if I may pass it over for Your Lord
22 and the Bench to look at. That is the meat that we get
23 at either lunch hour, three pieces of these tiny things
24 they call meat they give to us, and at supper it's the
25 same three pieces. When it comes to chicken, this is
26 what we get. I took my time and I told them that I would
27 be bringing this to show you. This is what we get for
28 lunch and that is the same size we get for supper. And
29 for the content of the food, the only thing we cannot

1 complain about is fish which is of a size that is
2 acceptable by us.

3 The quality of food we have stopped complaining that
4 we now have pepper and salt and we have a microwave that
5 we can prepare and improve the quality by ourselves.

6 Otherwise the quality is just not acceptable, but we do
7 not want to raise that. We want to raise it as a point
8 just for you to note that that is the quality we have,
9 but we improved the quality for ourselves.

10 PRESIDING JUDGE: You do have a microwave?

11 THE ACCUSED NORMAN: We have a microwave where we add salt and
12 pepper and we boil and we cook our food. Now, when we
13 require things that are traditional, like ground peas,
14 like corn, like other things for our people to buy send
15 to us, that is blocked. We do understand that it is for
16 protective reason from poisoning or something like that,
17 we do realise that, but when we request that the raw
18 material be sent to the kitchen of the detention facility
19 so that they can prepare for us, even that is rejected.

20 And the other things that are necessary for health
21 living, like fruit juice, like soft drink, like milk,
22 these are very scanty issues. They are very strange to
23 us unless and when they are bought and sent by our
24 relatives and friends.

25 That is what the little I can tell Your Lordship and
26 this Court about our condition of treatment in detention.

27 PRESIDING JUDGE: Thank you, Mr Norman, the Court has noted
28 your comments and ask the Registrar's office to look into
29 these matters.

1 You had some pieces of meat with you that you --

2 THE ACCUSED NORMAN: I can hand them over to Mr Walker.

3 PRESIDING JUDGE: I don't need to see the chicken: I saw.

4 It's big enough, but the other one --

5 THE ACCUSED NORMAN: That's big enough, what you say, but when
6 you have drumstick of chicken for lunch and you know it
7 is not big enough.

8 PRESIDING JUDGE: So, Mr Norman, again these pieces of meat,
9 as you have them, three pieces, are you saying that this
10 is what you get on a regular basis? In other words, this
11 is the size of what one would get?

12 THE ACCUSED NORMAN: My understanding is that we have to
13 consume some quantity of meat per day and chicken per
14 day. Is that the quantity that the contributors to this
15 Court are paying for? That is what I want -- I want the
16 contributors to see that what they are contributing for
17 our feeding, that is what is being given to us. The
18 Court is an expensive one. Your Lordship, and the rest
19 of the other court officials are paid, because we are
20 indictees that have caused all this implement to be made
21 affordable to people. We are not grudging what the
22 salary or facilities you are having, but we are saying
23 that we should also have a share that is respectable as
24 detainees.

25 PRESIDING JUDGE: Thank you, Mr Norman, your comments have
26 been noted.

27 THE ACCUSED NORMAN: Thank you.

28 PRESIDING JUDGE: Second accused, do you have any comments
29 about detention and detention issues?

1 MR PESTMAN: Like on the other issue, I would like to reserve
2 my response, but you can safely assume that he supports
3 Mr Norman's position on this issue. Maybe there is
4 something else to add which I will do later.

5 PRESIDING JUDGE: Okay. Mr Bockarie, do you need to raise any
6 issue as a result of your discussion with the accused?

7 MR BOCKARIE: Yes, Your Honour. He just beckoned to me, then
8 I have to see him then so that we can elaborate more on
9 the issues raised.

10 PRESIDING JUDGE: Okay. What about the third accused?

11 MR WILLIAMS: My Lord, we would wish to concur with the issues
12 raised by Mr Norman and to add a couple of others, My
13 Lord.

14 My Lord, firstly, My Lord, that my learned friend
15 Mr Lansana will address this issue.

16 PRESIDING JUDGE: Very well.

17 MR LANSANA: If it please Your Lordship, I had a discussion
18 with my client, with our client, yesterday and he raised
19 several issues. The first among them is the fact that he
20 was very reluctant to comment on any of the issues
21 regarding detention facilities for the simple reason,
22 according to him, that the status has not changed, the
23 state of affairs has not changed since the last pre-trial
24 conference in April, and also the status conference in
25 June this year When similar questions were asked. He is
26 saying that it would be a waste of time to comment on
27 them. But out of deference to this Court I would state
28 exactly what are his concerns.

29 Regarding food, I would re-echo what the first

1 accused said and I would only add that for the third
2 accused the quantity is not sufficient; it is grossly
3 inadequate for him. He thinks that the food is a half
4 ration as far as what he has been used to eating is
5 concerned. So he wants that to be noticed.

6 With regards accommodation, he has no complaints
7 except that there is always the exchange of bed linens
8 when they go to the laundry. He prefers his particular
9 bed linen to be returned to him after laundry, but what
10 happens or what he's noticed is the fact that when the
11 linens are taken to the laundry and they come back, he
12 finds that it is separate -- it's different from the one
13 that he had given in to the laundry. That is a concern
14 for him. Some of us might not understand that, but it's
15 a very traditional concern that he has got.

16 With regards to routine, first of all I will talk
17 about the visits. He has a bitter complaint about a
18 situation in which a son of his called Allieu came from
19 the provinces to visit him and he was told that he
20 couldn't visit his father because they didn't know him.
21 And he's saying, in fact, he had given this son's name
22 when they were asked whether they had any relatives that
23 would visit them eventually. And he gave that name,
24 Allieu, as his son. That son came from the provinces and
25 left -- returned to the provinces without meeting with
26 him. He is bitter about that.

27 With regards to exercise, he is saying that the
28 exercise facility has not been improved since the first
29 status conference I mentioned a moment ago. He requests

1 that provision be given for him to roam about within
2 bounds -- within confines of security, he has no
3 intention of running away because he wants to stand his
4 trial, but that he wants enough room within the detention
5 facility within bounds of security to exercise, to roam
6 fully around and these are his concerns.

7 For now, that is all I wish to say.

8 PRESIDING JUDGE: Thank you. Counsel for second accused, we
9 will come back to you after the break this morning and
10 see if you have any other issue to reserve of this
11 nature.

12 I would like to move now into what is described as
13 trial preparation and logistics. Trial logistics and
14 schedule, the Trial Chamber issued an order on 26 May
15 2004 detailing the judicial calender for the CDF trial.
16 This order provided that the second session of CDF Trial
17 would run from 8 September, that is tomorrow, to 1
18 October 2004. The second order of the Trial Chamber
19 detailed a judicial calender of the CDF was issued on 23
20 July 2004 and orders that the hours of court operation
21 will be Monday, Tuesday, Thursday and Friday from 10.00
22 a.m. to 5.30 p.m. with a break for lunch at one, that is,
23 from 1.00 p.m. to 3.00 p.m. On Wednesdays, the hours of
24 court operation will be from 10.00 a.m. to 1.00 p.m.
25 This order further provides that a third trial session of
26 this case, that is the CDF, will run from 1 November 2004
27 to 7 December 2004. So we have decided to go on and
28 include the first week of December given the fact that
29 the first session of the CDF was shortened by about a

1 week. So we are going to come to about the same full
2 month at that time. So the second session, again I
3 repeat, will be from 1 November to 7 December.

4 Tendering of exhibits is another matter in the
5 logistics. The Trial Chamber request that before parties
6 submit documentation in court, they should ensure that
7 copies are available for all parties that are
8 represented. In addition to a copy for each member of
9 the Bench, a copy for Court Management and a copy for the
10 Court Legal Officer. Should a party seek to tender the
11 document as an exhibit, Court Management will receive a
12 copy of the original for the court records and number the
13 exhibit accordingly.

14 I would like to note here that on day ten of the
15 trial, that is on 22 June 2004, a prior witness statement
16 for witness TF2-012 was marked and the marked portion of
17 this statement were tendered into evidence. This was
18 never formally marked as an exhibit and the Trial Chamber
19 would wish to mark this statement as an exhibit and make
20 sure that we adopt this procedure in the future. So that
21 was a statement that was discussed at the time. The
22 portions in question were read from the transcript, but
23 we would prefer to have, in addition, to have that
24 segment of the statement read for the transcript, we
25 would like to have that marked as an exhibit. So we will
26 mark that tomorrow when we come back in court as an
27 exhibit. And in the future, whenever we have a situation
28 of that nature, if you wish to have the statement read,
29 you can do that, but we will mark that statement as well

1 as an exhibit for the court record so it is easier to
2 track back if we need to refer to it in the future.

3 Case presentation and order for cross-examinations.
4 The Trial Chamber is of the view that an excessive amount
5 of time has been spent during cross-examination of
6 witnesses on matters that are not relevant. In response
7 to this, the Trial Chamber will impose limits on the
8 Defence for cross-examination of witnesses should it
9 happen and we feel that it's being abused in that
10 respect. And when I say abused, it's dealing with
11 matters that are not relevant to the issues. We have
12 decided at this time not to impose any specific time
13 limitation. We will see how things work and how matters
14 unfold and, if need be, we will seek to impose
15 limitations should the interests of justice so justify.
16 But we have decided at this time that we will just
17 caution both Prosecution and Defence on these matters as
18 such and we are concerned that cross-examination has been
19 too long, or certainly when we compare what has happened
20 during that first month of trial with what is being done
21 in other international tribunals, there is very, very
22 large amount of time spent on cross-examination. It is
23 not cross-examination per se. Again, I would like to
24 underline, it's the fact of cross-examination on matters
25 that appear not to be relevant to the issues.
26 I would like to move now to witness issues. The first
27 matter is the Trial Chamber has delivered a decision on
28 29 July 2004 granting leave to the Prosecution to add
29 three additional witnesses to the witness list. These

1 witnesses include: Witness TF2-221, Witness TF2-222 and
2 Witness TF2-223. The Prosecution have not sought further
3 protective measures for these witnesses; the Trial
4 Chamber notes that there are currently no decisions on
5 protective measures applying to these witnesses. The
6 Prosecution should clarify if any protective measures are
7 requested for these witnesses. If no such measures are
8 sought, to use a pseudonym for these witnesses will be
9 withdrawn.

10 MR JOHNSON: Well, Your Honour, I can certainly say at this
11 time that we would request that these witnesses be
12 included within the minimum protections of providing
13 pseudonym and non-disclosure of their identities to the
14 public. I need to review to the extent that we may be
15 looking at these witnesses on to additional protective
16 measures during which time they will testify. Included
17 in that we would ask that they, of course, testify behind
18 the screen. If there are any additional measures beyond
19 that I will need to get back to you, Your Honour.

20 PRESIDING JUDGE: But what is clear at this time is that there
21 is absolutely nothing on record seeking any protective
22 measure for these witnesses.

23 MR JOHNSON: I will rectify that as soon as I can, Your
24 Honour. Thank you.

25 PRESIDING JUDGE: Thank you. The order of witnesses the
26 Prosecution has filed. The order of witnesses to be
27 called in the second trial session and that was done on
28 26 July 2004. This filing provides the order of the next
29 ten witnesses to be called in this second trial session.

1 The Trial Chamber notes that Witness TF2-140 is a
2 Category B witness requiring the use of closed circuit
3 television. Witness TF2-082 is a Category C witness and
4 requires voice distortion.

5 The Trial Chamber further notes that it will be
6 useful in future when the Prosecution files a further
7 chart of the order of the witnesses to call, to provide a
8 column to this chart that identify the particular
9 protective measures to be applied to these witnesses. It
10 will certainly simplify our work and our understanding as
11 to what is or what is not required for the witnesses as
12 they are coming along. According to this list of
13 witnesses, the Trial Chamber is still waiting to receive
14 a copy of a prior statement for Witness TF2-032, dated 11
15 June 2004, and three statements for Witness TF2-039,
16 dated 21 November 2003, 10 January 2003, and 19 November
17 2002. The Trial Chamber issued an order for calling of
18 witnesses and filing of witness statements on 29 July
19 2004. This order provides that for the second and third
20 session of the CDF Trial the Prosecution should provide
21 the Defence teams and the Trial Chamber with a list of
22 the witnesses it intends to call to testify 14 days in
23 advance of their testimony. The Prosecution is also
24 ordered to provide the Trial Chamber with a confidential
25 copy of the unredacted witness statements one week prior
26 to their testimony. I would like to know if you have
27 complied at least with that portion that these were
28 witnesses to be called this week.

29 MR JOHNSON: Yes, Your Honour, and regarding the statements

1 that you mentioned specifically, the statements that you
2 mentioned from witnesses 032 and 039, I believe that
3 those statements were filed with the Court on the
4 6 September, so I believe that we have complied with
5 that.

6 PRESIDING JUDGE: I was just notified by counsel that indeed
7 they were filed on 6 September. Thank you.

8 MR JOHNSON: In addition to that we have, of course, filed the
9 notice of appearance for the first ten witnesses that we
10 plan to call at this session, and yesterday we filed the
11 notice for the next seven. So at this point in time we
12 filed a notice order calling the first 17 witnesses at
13 this session starting tomorrow.

14 PRESIDING JUDGE: But this last filing was yesterday.

15 MR JOHNSON: Yesterday, yes, Your Honour.

16 I do take note of your requirement to -- when we file
17 witnesses to include in that filing the protecting
18 measures that we would be seeking when they testify,
19 specifically regarding whether those initial protective
20 measures such as voice distortion would still apply to
21 the witnesses at this point in time. But I would also
22 like to raise another issue too and possibly as much for
23 procedure as anything. In our motion for additional
24 protective measures, one of the things we addressed, and
25 you noted that we addressed it in your opinion, was that
26 in a case-by-case basis we may be seeking some of the
27 insider witnesses to testify in closed session as opposed
28 to voice distortion. And that is going to be the case in
29 this up-coming session to where we do have at least one

1 insider and we are reviewing two others to see if they
2 would need to be -- we would need to request that they
3 testify in closed session again instead of the need for
4 voice distortion which would be open session voice
5 distortion. My question at this time is on procedurally
6 making that application, is this an application that we
7 can make orally within court or is this an application
8 that you would want us to put in writing?

9 PRESIDING JUDGE: To answer your last question, it should be
10 done in writing.

11 MR JOHNSON: Yes, Your Honour, we will do that by tomorrow for
12 one of our witnesses because the witness that that
13 applies to is witness number five on our witness list and
14 so we will do that very quickly, Your Honour, thank you.

15 PRESIDING JUDGE: So witness number five is an insider, what
16 is described as an insider witness?

17 MR JOHNSON: Yes, Your Honour.

18 PRESIDING JUDGE: Is it the first insider witness to be called
19 at this session?

20 MR JOHNSON: Yes, Your Honour.

21 PRESIDING JUDGE: Okay, thank you. So that is witness
22 TF2-082.

23 MR JOHNSON: Yes, Your Honour.

24 PRESIDING JUDGE: Okay, thank you.

25 The next issues is expert witnesses. The Prosecution has
26 filed an expert report on 14 July 2004. Conditional
27 responses were filed by the Defence on 26 July and 28
28 July 2004 outlining an intention to cross-examine this
29 witness should the Trial Chamber add this witness to the

1 witness list. The Trial Chamber subsequently ordered the
2 Prosecution to comply with Rule 66(A)(ii) and Rule
3 67(A)(i) and show good cause for the expert witness to be
4 added to the witness list. The Prosecution accordingly
5 filed a request for leave to call the additional expert
6 witness on 28 July 2004. On 30 July, the Trial Chamber
7 ordered the Prosecution to supplement its request and
8 provide copies of the curriculum vitae of the expert
9 witness to the Trial Chamber and the Defence teams. That
10 CV was filed on 3 August 2004, a joint response by the
11 second and third Accused to the Prosecution's request to
12 add to that additional witness was filed on 30 August
13 2004 and the remaining Defence response to the
14 Prosecution request is due by 4.00 p.m. on Monday, 13
15 September 2004. So that is the picture for the time
16 being on that motion.

17 The Trial Chamber notes that in the Prosecution
18 request for leave to call an additional expert witness
19 filed on 28 July, it stated its intention to call two
20 additional expert witnesses to testify in the CDF trial.
21 The Prosecution states that upon receipt of these expert
22 reports it will follow the procedure ordered by the Trial
23 Chamber in its order for compliance of Prosecution Rule
24 94 bis and seek leave to add the additional witnesses
25 under the essential group causes to disclose their full
26 statements outside the time limits prescribed in Rule
27 66(A)(ii).

28 How many expert witnesses the Prosecution intends to
29 call and when does the Prosecution seek to call these

1 witnesses?

2 MR JOHNSON: Your Honour, I can state at this time that we do
3 intend to call at least one additional expert witness.
4 The name and particulars of that expert witness were
5 provided to the Defence in June. We do not have a
6 report, a final report, from that expert witness. I have
7 received a preliminary report on some of the issues that
8 witness is looking at, but I do not have a final report.
9 I am very hopeful that I will have a final report from
10 that witness by the end of September. I am optimistic
11 that I will have by the end of September.

12 We also notified the Defence in June of our
13 intention to file -- to call a yet unnamed expert witness
14 regarding children and child soldiers and those issues.
15 We have had some trouble with putting -- getting
16 approvals for that person that we were negotiating with
17 have not been forthcoming yet and I don't have an update
18 since the recess. The person working on that issue is
19 due back today and so I hope to have an update on if that
20 witness is still a possibility or if there is a
21 possibility that that witness cannot testify that we
22 could replace that witness with another expert. So
23 again, I am looking at one, possibly two, Your Honour,
24 and that is my timetable.

25 PRESIDING JUDGE: But when you are talking of one or two, are
26 you talking of one or two in addition to the --

27 MR JOHNSON: Yes, Your Honour.

28 PRESIDING JUDGE: So we are talking here of five expert
29 witnesses in total?

1 MR JOHNSON: Oh no, no, no.

2 PRESIDING JUDGE: Because I have mentioned that there is an
3 application at this time to add one expert witness and
4 then you had indicated at the time the Prosecution
5 intended to call two additional expert witnesses. So
6 these are the two you are talking about?

7 MR JOHNSON: Yes, in addition to the one, three.

8 PRESIDING JUDGE: In addition to the one?

9 MR JOHNSON: Yes, Your Honour.

10 PRESIDING JUDGE: So we are talking here of a maximum of three
11 expert witnesses in total?

12 MR JOHNSON: Yes, Your Honour.

13 PRESIDING JUDGE: Okay, which could end up being two rather
14 than three.

15 MR JOHNSON: Yes, Your Honour.

16 PRESIDING JUDGE: Okay. On the issue of expert witnesses
17 again, I remember that I think it was a pre-trial
18 conference when I raised the issue about protective
19 measures for -- sorry, not that. When we were discussing
20 protective measures I was informed by the Prosecution
21 that expert witnesses were also on the list of protective
22 measures at that time. I expressed some concern that all
23 and every single witness the Prosecution intended to
24 call, including experts, needed the protective measures.
25 Now, I would like to know what is the exact position of
26 the Prosecution in this respect, bearing in mind that
27 certainly the Trial Chamber has not been informed of any
28 requirement for protective measures for the first expert
29 witness that you intend to call. Is it because this is

1 something we can expect, and I am not saying this because
2 I am indicating that you should in fact, I still have
3 concerns that experts need to have applicable to them
4 protective measures.

5 MR JOHNSON: If you can bear with me for just one moment, Your
6 Honour.

7 PRESIDING JUDGE: Yes.

8 MR JOHNSON: For the two -- one that we, of course, have
9 sought leave to add and the other named expert witness,
10 there is no need for protective measures and we are not
11 requesting any. For the third unnamed expert witness
12 that we are still negotiating with, of course, I don't
13 have a name yet and so if we would need protective
14 measures for that witness at the point that witness would
15 be identified we would seek them.

16 PRESIDING JUDGE: Thank you.

17 MS MONASEBIAN: Your Honour, if I may.

18 PRESIDING JUDGE: Yes.

19 MS MONASEBIAN: Just one last issue, being that the Defence
20 have already come to my office to start asking for expert
21 witnesses to A, enable them to assist in the preparation
22 of their cross-examination of these expert witnesses and
23 B, to start their own expert reports for witnesses they
24 want to call to rebut the experts or to put on their own
25 defence case, it becomes very important that I know who
26 these expert witnesses' names are and that the Defence
27 knows as well in order to prepare. And I am just
28 concerned about one thing that my learned friend said
29 about this last witness, he said, "We don't have a name

1 yet." If he is negotiating with somebody I don't
2 understand what the prejudice to the Defence and the
3 Defence Office would be for us to know the name of this
4 person so that we can also start preparing getting
5 witnesses to re butt this person. Of course, if this
6 person is protected, Defence counsel would, of course,
7 keep this name under seal until such time as the name
8 would not be under seal, if that were to happen. But it
9 seems to me that, if I understand correctly - and I will
10 be corrected if I am wrong - that there is a name of this
11 person, there is just not a confirmation that this person
12 will testify or agree to testifying and so I would just
13 ask the Court and ask the Prosecution to let the Defence
14 know the names of this witness, as is the case in the
15 other tribunals, regardless of whether they have agreed
16 or have not. Thank you.

17 PRESIDING JUDGE: Thank you. Mr Prosecutor.

18 MR JOHNSON: Well, I would only ask that you possibly give me
19 a day on that one, Your Honour. As I said, the person
20 who has been -- it may be a moot point because we may not
21 have achieved the approvals and I just don't know yet,
22 the person who has been working that issue is due back
23 today and we can find out and let us discuss this and
24 possibly get back within the next couple of days.

25 PRESIDING JUDGE: I don't think there is any problem to give
26 you one day or two, I mean, the issue is whether or not
27 once you have ascertained exactly the remarks on what you
28 want to do, what the Defence is asking is that you keep
29 them in the picture obviously, and I see, unless you

1 convince me otherwise, no objection as to what has been
2 raised as to you letting the Defence know who it is you
3 have in mind as such, so at least some steps can be taken
4 to advance the investigation in this respect. But if you
5 are not calling that witness that will end the matter.

6 MR JOHNSON: How about if -- Your Honour, how about if we do
7 this: by Thursday notify Defence of the name of that
8 person or come back to you with reasons why we should
9 not?

10 PRESIDING JUDGE: Or notify the Defence and the Court that you
11 do not intend to call the expert witness. If that is the
12 case, then that ends the matter.

13 MR JOHNSON: I understand, Your Honour.

14 PRESIDING JUDGE: Yes, thank you. So that satisfies you?
15 Thank you.

16 On the issue of witnesses, again the last issue is
17 the disclosure of witness identities by the Prosecution
18 to the Defence. Have witness identities and statements
19 been disclosed in full accordance with the orders in
20 force for disclosure, that is 21 days before these
21 witnesses are to testify?

22 MR JOHNSON: Yes, Your Honour.

23 PRESIDING JUDGE: So, I am talking here obviously witnesses:
24 TF2-162, TF2-159, TF-032, TF2-140, TF2-082, TF2-042,
25 TF2-033, TF2-040, TF2-151 and TF2-039.

26 MR JOHNSON: Yes, yes, Your Honour.

27 PRESIDING JUDGE: So they have been disclosed more than 21
28 days ago now, or at least 21 days ago?

29 MR JOHNSON: Yes, Your Honour, there's -- of the witnesses we

1 expect there were a few statements that are on our list
2 of 17 towards the end of that list that were disclosed to
3 Defence last week, but we believe that certainly it will
4 be 21 days before that witness will testify. So all the
5 statements of the witnesses on our list to list, lists of
6 ten and seven, have been disclosed to the Defence.

7 PRESIDING JUDGE: Witness number, order number three, that is
8 Witness TF2-032, is also shaded in grey with 11 June
9 2004. Has that statement now been disclosed?

10 MR JOHNSON: That statement was disclosed to Defence some time
11 ago, Your Honour. It was just recently disclosed to the
12 Chamber last week.

13 PRESIDING JUDGE: Okay.

14 MR JOHNSON: Yes.

15 PRESIDING JUDGE: Thank you. Now, looking at outstanding
16 motions. On 7 June 2004 the Defence for the second and
17 third accused filed a request to appeal the decision on a
18 motion for judicial notice. The Prosecution submitted a
19 response on 16 June 2004 and the Defence reply was filed
20 on 22 June 2004. A decision by the Trial Chamber has not
21 been issued yet and it should be issued fairly shortly
22 and I would say within a week or two and that is a
23 Defence motion by second and third accused on judicial
24 notice.

25 The other outstanding motion is the motion on expert
26 witness. I have already dealt with that one. That is
27 the application by the Prosecution showing good cause as
28 to why this witness, that expert witness, should be added
29 to the list.

1 There is also a motion by Mr Norman, Fofana and
2 Kondewa on detention issue that was filed on 6 August
3 2004 and there is a Defence motion against the
4 Registrar's decision not to allow conjugal visits. I
5 have just been informed of these motions this morning and
6 nobody has been assigned yet to deal with these matters,
7 but it will shortly and that is certainly this week and
8 we will look into these matters.

9 MR JOHNSON: Your Honour, if I could, please.

10 PRESIDING JUDGE: Yes.

11 MR JOHNSON: The motion filed on 6 August regarding detention
12 issues, that motion has never been served on the
13 Prosecution. I don't know if that's appropriate in the
14 case, I don't know the content of the motion.

15 MS MONASEBIAN: I am happy to respond, Your Honour.

16 PRESIDING JUDGE: Yes.

17 MS MONASEBIAN: Yes, may I begin by saying it was a motion
18 filed under seal to make the record clear about that.
19 Secondly --

20 PRESIDING JUDGE: It was filed with your office, is it?

21 MS MONASEBIAN: From our office on behalf of all nine defence
22 counsel, yes, Your Honour, and signed by all nine. And
23 it was filed under seal to begin with and so maybe we can
24 later on redact it from this hearing.

25 Secondly, I just note it is right for the
26 Prosecution to ask about that, but because it was filed
27 under seal and it just deals with the Registrar's
28 determination on a particular issue that does not affect
29 the outcome of the trial or the Prosecution's position in

1 any way; it is an ex parte motion in that respect. And I
2 am sure if the Registrar thought it touched and concerned
3 upon the Prosecution, he would notify them and it does
4 not in our view. Thank you.

5 PRESIDING JUDGE: Thank you. Yes, indeed, I should have noted
6 that this has been filed on behalf of the nine accused,
7 not only on the CDF accused. That answer your questions
8 for now?

9 Another outstanding motion is with the Appeals
10 Chamber, it's an application for leave by Mr Fofana,
11 leave about the bail decision and that was filed, I
12 guess, on 30 August 2004.

13 Another Appeals Chamber issue, Prosecution appeal
14 against the Trial Chamber's decision of 2 August 2004
15 refusing leave to file an interlocutory appeal. So these
16 are the outstanding motions that we have regarding the
17 CDF at this particular moment.

18 Looking now at the other item on the agenda, "Agreed
19 facts". On 26 May 2004, the Trial Chamber delivered the
20 decision on cooperation between the parties ordering
21 that: 1. The parties submit a joint statement signed by
22 both Prosecution and Defence teams no later than 1 June
23 2004 stating all the agreed points of fact in law reached
24 by them. 2. The parties intensify their efforts to
25 identify further points of agreement and to submit a
26 report on the progress made every 15 days from the date
27 of this decision until further notice by the Trial
28 Chamber.

29 The Trial Chamber has received to date six status

1 reports. The fifth report was received on 26 July 2004
2 and stated that there was continuing dialogue between the
3 Prosecution and Defence teams and that the next status
4 report would report on this progress. However, in the
5 sixth report, filed on 1 September, the parties stated
6 that they were unable to meet because of the judicial
7 recess. This status conference might be a good
8 opportunity to remind the parties that the order to
9 submit regular progress reports was intended to urge real
10 attempts to agree facts and appropriate discussions. The
11 Trial Chamber would certainly consider it appropriate to
12 require the parties by the time they report to indicate
13 what they have in fact -- when they have, in fact, met
14 and what they have agreed upon. So we were very
15 optimistic given this fifth report that there was good
16 progress, but since then it appears that nothing has
17 really moved ahead. I would urge both sides, Prosecution
18 and Defence, not only to meet, but to meet and try to
19 agree on some of these issues.

20 Yes, Mr Pestman.

21 MR PESTMAN: I have been saving my comments. We have been
22 rushing through the agenda, I have several comments on
23 earlier issues.

24 PRESIDING JUDGE: Well, don't worry, we'll come back at the
25 end.

26 MR PESTMAN: I would like to come back to these issues --

27 PRESIDING JUDGE: Yes, but if you want to raise that one now,
28 that's fine. Yes.

29 MR PESTMAN: [Inaudible]

1 PRESIDING JUDGE: Yes, that's fine. Yes.

2 MS WHITAKER: And similarly, Your Honour, I have various
3 points I would like to raise with you.

4 PRESIDING JUDGE: On this issue of agreed facts or some other
5 matters?

6 MS WHITAKER: On this issue and other matters.

7 PRESIDING JUDGE: Yes, that's fine, okay. Anybody --

8 Prosecution, do you wish to comment on this matter?

9 MR JOHNSON: Not at this time, Your Honour, I will wait until
10 the Defence raises the issue.

11 PRESIDING JUDGE: Very well. I have no other specific issues
12 on the agenda, I was going at this stage to ask counsel
13 for the Prosecution, do you wish to raise any other
14 matter and then I will turn to the Defence and ask you on
15 the Defence side if you wish to raise any other matters
16 and then we will get to your issues. Prosecution.

17 MR JOHNSON: No, not at this time, Your Honour.

18 PRESIDING JUDGE: Thank you. Defence team for Mr Norman.

19 MS WHITAKER: I think they are all covered within Your
20 Honour's agenda, the matters we wish to raise. Thank
21 you.

22 PRESIDING JUDGE: Thank you. Mr Pestman.

23 MR PESTMAN: Yes, there are two small issues I would like to
24 raise. I could do it now or shall we do it -- I will
25 just mention them now and then I can elaborate on them
26 later.

27 I would like to mention the glass partition I have
28 noticed which was not there before. I would like to say
29 something later about that as well and I have a question

1 about the use of laptops by the Defence teams in court.

2 I understand that there was some confusion about whether
3 we were allowed to or not.

4 PRESIDING JUDGE: I can certainly answer that question right
5 away. Yes, you are allowed to, the only issue is the
6 question of security about this, not the content of your
7 laptop, but whether or not this is a real laptop. And I
8 should reassure you that they do the same with my own
9 laptop so it's --

10 MR PESTMAN: It is best to check whether it is a laptop or
11 not, security will be able to [overlapping microphones]

12 PRESIDING JUDGE: Yes, that is all it is, but the use of
13 laptops in court is [inaudible].

14 MR PESTMAN: If I could just -- about the glass partition, I
15 was wondering why that was raised. All I know is it
16 seriously hampers the Defence, we are not able to consult
17 our client any more during the trial. It prejudices the
18 rights of the Defence and I was wondering whether it
19 could be taken away if they don't serve any purpose,
20 apart from any decorative purpose, they might be taken
21 away.

22 PRESIDING JUDGE: I am taking note on your comments on that, I
23 cannot answer that one because that's the first time I
24 have seen that this morning as well. So it is new to me.
25 So I will enquire about that. [Overlapping microphones].

26 MR PESTMAN: I appreciate some efforts or at least a decision
27 on this issue by the Trial Chamber.

28 PRESIDING JUDGE: Yes, thank you.

29 MR PESTMAN: And I would like to come back to the other issues

1 later.

2 PRESIDING JUDGE: Yes.

3 MS MONASEBIAN: Your Honour, if I may, just one quick point
4 about the glass partition. I just note from having
5 practised in the ICTR and visiting other international
6 criminal tribunals, they do not have these glass
7 partitions in the ICTR and my recollection is they don't
8 at the other tribunals. I would only say this, Your
9 Honour, that in international humanitarian law there is
10 even a stronger standard of presumption of innocence at a
11 fair trial and the mere presence of this glass on one
12 side and not on other side suggests that there is some
13 menace to these accused. So, in addition to it hampering
14 the ability to communicate with the accused, I think it
15 also looks menacing and can prejudice the right to a fair
16 trial and if it is not in the ICTR, I don't see why, when
17 we adopted most of the ICTR rules of procedure, we would
18 want that here.

19 The only other thing I would just point out, Your
20 Honour, is there are times when counsel has to speak to
21 these accused, whether or not the glass partition is
22 here, their ability to move back and forth is very
23 hampered. At the ICTY and the ICTR lawyers can easily
24 move back and forth and I note that there is more guards
25 here than there are at the ICTR and the ICTY in a case
26 where there's three accused in the ICTR they have only
27 two guards. We have four guards here, inability to move
28 and the glass, it seems like it is a little bit of
29 overkill. Thank you, Your Honour.

1 PRESIDING JUDGE: Thank you. So, as I am through with my own
2 agenda, but to allow you to consult with you clients, at
3 this moment we will break for 15 minutes. Would that be
4 sufficient for you.

5 MR PESTMAN: Yes.

6 PRESIDING JUDGE: And then we will come back to hear what
7 comments, if any, you may have.

8 Mr Norman, you have raised your hand, I was not
9 trying to ignore you.

10 THE ACCUSED NORMAN: I did, Your Lordship, and I was sitting
11 quietly by, but I thought I was being pushed aside.

12 PRESIDING JUDGE: No, no.

13 THE ACCUSED NORMAN: I wanted to also ask -- request for a
14 laptop that I would also like to use since I have the
15 opportunity of using a computer. And also at this time
16 to raise the question of extreme limitation to the
17 self-defence that you have granted me, Your Lordship,
18 that the computer has been restricted from Internet, web
19 and the other sorts. So, if I am going to request for a
20 laptop, that that facility be considered be also added.

21 PRESIDING JUDGE: Thank you. So, we'll adjourn for 15
22 minutes and we will be back after that. Thank you.

23 [Recess taken at 11.09 a.m.]

24 [Pages 1 to 29 by Susan G. Humphries]

25 [On resuming at 11.25 a.m.]

26 PRESIDING JUDGE: During this short recess, I have been
27 informed of - given additional information to clarify
28 some of the issues that have been raised as to the laptop
29 computer that you've raised. What I have said still

1 stands. However, what I have been informed of is you
2 have all been - it's possible for you to be connected to
3 the system, so you could now, from now on - because all
4 places have been connected to the IT system, and you can
11:32:40 5 access documents and what have you and to facilitate your
6 life in the future in this respect.

7 However, to do that, you need to check with the IT
8 people, so they want to make sure that, if you are using
9 a laptop, it doesn't` bring any viruses and so on and
11:32:58 10 that kind of thing. So it is on the technical side. You
11 need to check with them and they will issue you some
12 certificate of a sort. It is not the use of the laptops;
13 it is just to make sure that your use of them will not
14 contaminate the system in any way. That is what it is.
11:33:14 15 So there is no, per se, prohibition on the use; it is
16 just to make sure that it's compatible with the internal
17 system.

18 The glasses, I am told -- we will look into the
19 matter. However, what I have been informed of is that
11:33:32 20 this was part of the original plan -- that was part of
21 the design, so they have just completed the design. It's
22 not been done for any other purposes or any other goal in
23 mind. It is just that that was the plan and it was the
24 blueprint and I'm told that that blueprint has been
11:33:50 25 approved by the Defence Office as well. So as it were
26 then, but if it is causing any concern, apparently
27 security has no problem with that. So we will look into
28 the matter and see how we can accommodate the needs of
29 everybody on this matter. It was not made for any other

1 purposes. I know you were not in the Principal
2 Defender's Office at the time. So this is all it is
3 about that. It has no other significance than that. So
4 I think that -- Mr Pestman, you had some issues, or you
11:34:24 5 still have some issues. Yes, please?

6 MS WHITAKER: May I start, Your Honour? I`m grateful, thank
7 you. Could I first address your Honour on the issue of
8 the trial schedule?

9 PRESIDING JUDGE: Yes.

11:34:34 10 MS WHITAKER: We would invite the Prosecution and the Court to
11 give the best estimate they can as to when they envisage
12 this trial will conclude, the original estimate of July
13 2005, possibly no longer being realistic, and we would
14 ask that the best estimate is given.

11:34:52 15 We would also ask that the Court give consideration
16 to giving a fixed calendar for the entire year so that we
17 might be able to plan our professional lives as best we
18 can, including the understanding that the Court sits for
19 a particular month, and that it won't therefore -- for
11:35:12 20 instance, the November session wouldn't go into December.
21 We could guarantee that we were sitting, say, February,
22 May, July, as it is, but for the entire year so that we
23 are able to make our own professional arrangements, that
24 would greatly assist us.

11:35:26 25 Chief Hinga Norman is also extremely concerned
26 about his right to a speedy trial and to the extent that
27 this right will be fulfilled during these proceedings and
28 we ask that the Court give consideration to perhaps
29 sitting for the whole of Wednesday and indeed Friday to

1 hear evidence if there are no legal motions, and perhaps
2 to a shorter lunch adjournment, if that was possible, so
3 that more evidence may be completed in each session.

4 PRESIDING JUDGE: I can address these issues right away.

11:36:04 5 I can assure you that these concerns are shared. At this
6 stage, the break at lunchtime is because there are no
7 real facilities now, but as soon as the cafeteria is
8 ready within the compound -- I don't know the status of
9 it now, but when it is, and I have been told it should

11:36:28 10 have been completed by the 1st of September, but I have
11 not checked this morning, but as soon as this is done, it
12 will be possible for all concerned to have access to that
13 and, therefore, we should be able to save some time
14 rather than have two hours -- it might be an hour and a

11:36:40 15 half break for lunch, but we are concerned about that,
16 and I can assure you, Chief Norman, that we are as
17 concerned about that as certainly everybody else, so if
18 we can finish this trial within the time frame, we would
19 very much like to try to achieve that.

11:37:00 20 The Wednesday afternoon might be more difficult. On
21 Fridays, although we have said we would not sit if there
22 are no motions, because Friday is motions whenever we
23 have sat in the past, and certainly we will look into
24 that. So I am not saying we will never sit, but this is

11:37:16 25 not my sole decision, so I need to consult with my
26 colleagues on this, but certainly we are concerned and we
27 are determined to try to speed up the process as much as
28 we can and within the boundaries that are acceptable. So
29 we would like to be able to achieve that. But I will

1 certainly ask the Prosecution, after we finish
2 discussing, to see whether they can give us an estimate
3 about the completion of the trial and we will hear from
4 them first and see what it is.

11:37:52 5 Looking at what has happened up to now, I would
6 think that it would be very difficult to say that things
7 will be concluded by July 2005. All we have to do is
8 look at the first session we have had and, if we try to
9 project that into the future, I doubt very much. So
11:38:12 10 unless that does change drastically, but we will see --
11 but we are concerned about that and we are committed to
12 try to make it happen as quickly as we can, but within
13 the limits that are imposed by the legal process and due
14 process but --

11:38:32 15 MS WHITAKER: Because the July 2005 estimate, of course, did
16 not envisage, I think, alternate months; it envisaged
17 possibly a trial session running continuously.

18 PRESIDING JUDGE: That's right.

19 MS WHITAKER: And in the light of the Trial Chamber's decision
11:38:42 20 that we should sit alternate months, then it may be that
21 some additional court sitting is required, for instance,
22 a five-day week.

23 PRESIDING JUDGE: To answer your other question about the
24 fixed calendar, I think it is possible and feasible to do
11:38:56 25 that, with one caveat; that is, if for any reason, for
26 example, the other RUF would not be able to proceed on a
27 given month, or the CDF for that matter -- for whatever
28 reason counsel is unable to attend, counsel is sick or
29 what have you, we will try to move the other trial; in

1 other words, let's say the next session for CDF that is
2 already scheduled and we are unable to proceed, for
3 whatever technical reason, we might wish to move ahead
4 and do two months of RUF trial and the same with CDF.

11:39:28 5 But, subject to that, I don't see any problem.

6 MS WHITAKER: Your Honour will appreciate such a decision, for
7 instance, to proceed with the CDF in the RUF's allocated
8 months causes extraordinary professional difficulties for
9 us who must already be committed to doing trials within
11:39:48 10 the other month.

11 PRESIDING JUDGE: Yes, I know.

12 MS WHITAKER: Your Honour referred to potentially there had
13 been unnecessary cross-examination in terms of the length
14 of the trial. And we would simply like to say in
11:40:00 15 relation to that, Your Honour may remember that witnesses
16 tended to take an inordinate amount of time to answer any
17 Defence questions as opposed to Prosecution questions
18 which they seemed to be able to answer quite rapidly, and
19 perhaps the Trial Chamber could ensure that delay was not
11:40:14 20 occurring at that juncture as well.

21 Your Honour, under the heading of "Trial
22 Preparation", if I could raise Chief Norman's facilities
23 that he has been accorded in order to represent himself,
24 there is an issue regarding access to the internet and
11:40:36 25 e-mail. I think there was a misunderstanding at the
26 initial application. The Registrar, I think, had
27 understood that the Chief was not requesting those
28 facilities, whereas my clear recollection and my note of
29 the hearing was that he did request access to the

1 internet and e-mail facilities as well. We would ask
2 that he be provided with internet access, e-mail access
3 and a phone, which he can phone anywhere, at any time,
4 and receive incoming calls.

11:41:04 5 He understands these may be subject to security
6 monitoring and he accepts that, whatever security
7 measures are required, but these are absolutely necessary
8 facilities for him to prepare his own defence,
9 particularly contacting witnesses who may be abroad where
11:41:20 10 the time zone makes it impossible, even if he were able
11 to facilitate it during the day, and a phone that allows
12 him to receive incoming calls from his lawyers.

13 Presently he has a telephone with fixed numbers to his
14 lawyers which he is allowed to use to phone out, but
11:41:36 15 we're not allowed to phone directly to him. We have to
16 phone to the detention centre, so we are limited in our
17 time scale.

18 PRESIDING JUDGE: So what he is asking is that you be
19 authorised to have direct access to him whenever required
11:41:50 20 rather than going through the --

21 MS WHITAKER: He would like a phone that has unlimited access
22 where he can phone out and also receive incoming calls.
23 He understands that this may be monitored and internet
24 and e-mail access on the computer that he's been provided
11:42:04 25 with.

26 PRESIDING JUDGE: That, I have. Thank you.

27 MS WHITAKER: Your Honour, if I could then turn to witness
28 issues. There is an issue of witness payments. Your
29 Honour will remember the issue arising at a previous

1 trial session.

2 PRESIDING JUDGE: Yes.

3 MS WHITAKER: Since that session, the directive on allowances
4 for witnesses has come into force, and it appears to
11:42:26 5 indicate that from the period of this directive all
6 payments must be made through the Victims Support;
7 therefore, the Defence can't make any payments directly.
8 This is completely contrary to what the Prosecution were
9 able to do; they were able to make payments to witnesses
11:42:46 10 and Victim Support did. We would like clarification, if
11 that is the effect of the directive, in which case we
12 would submit there is a gross inequality of arms
13 occurring under this issue.

14 In any event, the Prosecution were entitled to pay
11:43:04 15 witnesses for being interviewed and take them out for
16 meals and such like, and under this directive all
17 payments are limited to testifying to Court. So, again,
18 there is another inequality of arms issue and the
19 Prosecution are benefiting from their investigations
11:43:22 20 taking place before the directive came into force,
21 whereas by the nature of the defence investigations, they
22 were only commencing once the directive was in force, and
23 we submit that that is unfair.

24 I would also ask, through your Honour, that the
11:43:36 25 Prosecution provide details of all other inducements
26 beyond financial inducements; for instance, offers of
27 relocation in countries such as Canada, as we understand,
28 have been offered to some witnesses, clearly highly
29 material. Your Honour, if it be the case -- I see your

1 Honour shaking his head --

2 PRESIDING JUDGE: I shake my head because I have read some
3 newspapers, but I denied it back in my country, so it is
4 true that such was reported, but it is not true that that
11:44:08 5 has happened.

6 MS WHITAKER: If the Prosecution would give us a statement
7 that there are no inducements, no offers --

8 PRESIDING JUDGE: I am not talking about other countries; I'm
9 just talking about the one that you referred to.

11:44:18 10 MS WHITAKER: If the Prosecution say that none of this has
11 occurred, we would accept that, but we would like
12 confirmation that no inducements or offers of relocation,
13 other than the financial payments that we've got notice
14 of, have occurred.

11:44:30 15 PRESIDING JUDGE: Okay.

16 MS WHITAKER: A further equality of arms issue which has
17 become a serious issue in terms of investigations is that
18 we have no access to transport for our investigators; we
19 have no budget provided for it. Your Honour may be aware
11:44:46 20 that hiring a four-wheel drive vehicle costs in the
21 region of \$250 a day. Our investigators, I think, are
22 given a budget of \$500 a month. The Prosecution, on the
23 other hand, have unlimited, as far as we can see, access
24 to four-wheel drive vehicles and, indeed, other methods
11:45:04 25 of transport to travel across the country. We don't have
26 any access to the Court's transport facilities to go
27 outside Freetown, and we would ask the Court to consider
28 how best the equality of arms in this issue could be
29 achieved probably by according us or the Court's

1 transport facilities, and there is also the whole access
2 to information in terms of transport that we are being
3 denied. At the moment our investigators are reduced to
4 travelling on public transport, which of course severely
11:45:36 5 hampers the investigations which we can conduct.

6 Your Honour, in relation to the expert witness that
7 was discussed, if I could just flag up that my
8 understanding of the report was that they had three
9 forensic pathologists working for a month. If this
11:45:56 10 evidence is admitted, clearly, we will be requesting
11 similar facilities to meet it.

12 I note that my learned friend refers to a potential
13 application for a closed session in relation to insider
14 witnesses. We would require sufficient notice to be able
11:46:16 15 to respond in detail to what we consider to be an
16 extraordinary application, being as it is (inaudible)
17 into the principles of a public trial. So if that
18 requires the insider witness to give testimony later in
19 the day so that this matter can be fully responded to by
11:46:32 20 the Defence, then we would say that that must happen.

21 Your Honour, if I may echo Mr Pestman's concerns
22 about the glass partition, we share the concerns that it
23 hampers our access to our client and the prejudicial
24 effect. If it is purely cosmetic, there can be no
11:46:54 25 balancing exercise being conducted.

26 Finally, we note the Prosecution's outstanding
27 application to the Appeal Chamber to amend the indictment
28 and we simply say that, if that application is allowed,
29 then we may well apply to the Trial Chamber to recommence

1 the entire trial, re-questioning all the witnesses that
2 have appeared, because facing a different indictment
3 means that we may well have additional questions to ask.
4 We simply alert the Trial Chamber to that possible
11:47:24 5 consequence of the Appeal Chamber's decision.

6 Would your Honour bear with me one moment? Your Honour,
7 I'm grateful; I don't think there are any other matters
8 that we wish to raise at this stage.

9 PRESIDING JUDGE: Mr Norman raised his hand. Do you still
11:47:54 10 wish to address some issues?

11 THE ACCUSED NORMAN: Not to make any additional -- only an
12 emphasis on the expeditiousness of the trial. We have
13 been too long in detention and we need to go home and so
14 we do not mind even sitting at night, if only we get this
11:48:12 15 trial through. That is the emphasis I would like to
16 make.

17 PRESIDING JUDGE: Thank you, Mr Norman. Counsel for the
18 second accused?

19 MR PESTMAN: I discussed some of the issues with my colleague.
11:48:28 20 I will try to avoid repetitions, so I underline
21 everything that has just been said for Mr Norman is also
22 valid for my client. I have some remarks about the food
23 and health issues. First of all, my client would like to
24 stress the problem in relation to the food is not a
11:48:52 25 matter of quantity; it is a matter of quality. There is
26 enough food, but it is the quality which is not
27 sufficient.

28 In regard to his health, my client has had, for the
29 past two weeks, sharp pains in his chest and he is a bit

1 worried about that, logically, and he has had a
2 persistent headache for the past two months. He has
3 visited the doctor yesterday - not for the first time -
4 with his complaints and, to his disappointment, the
11:49:24 5 doctor did not prescribe anything. And he is worried
6 that the doctor is not taking his concerns seriously -
7 not as seriously as he should take them. That is in
8 relation to the health and the food.

9 With regard to the trial preparation and logistics -
11:49:44 10 that is point 4 on the agenda - my client is seriously
11 worried that this trial will never finish. If we
12 continue at the same rate, I calculated that it will take
13 12 years - more than 12 years - for the Prosecution to
14 present their case, if they stick to the 154 witnesses
11:50:10 15 they are intending to call. I am a bit worried that that
16 might be too long to see the end of this trial,
17 so I urge the Court to do anything possible to speed up
18 the procedure and I also -- if possible, I would strongly
19 suggest and support suggestion to sit on Fridays and
11:50:34 20 Wednesday afternoon as well and, as far as I'm concerned,
21 Saturday would also be fine to hear witnesses.

22 With regard to the witness issues, I understand that
23 you would like the Prosecution to file a written motion
24 to hear one particular witness in a closed session, if I
11:51:02 25 understand correctly. I would suggest that the
26 Prosecution do that orally so that we can decide, as soon
27 as possible, on this particular issue, because if they
28 file a written motion, we will have to respond in
29 writing, then they will reply in writing, and then we

1 will be in October and we will not be able to hear this
2 witness at all.

3 PRESIDING JUDGE: But we can shorten the time frame for
4 response and reply as well, even in writing.

11:51:32 5 MR PESTMAN: Yes, but we have to write as well. We need some
6 time -- it takes more time to write than to argue in
7 Court, which we could do, for example, on Friday. If I
8 understand the schedule correctly, that will be in
9 time -- you can give the decision in the afternoon - that
11:51:44 10 would be in time to hear that particular witness. By the
11 way, I strongly oppose any closed session. I think
12 there's more than enough protective measures in place
13 already and I don't see what this would add to the
14 protective measures already in existence.

11:52:08 15 The travel issues, counsel for Fofana already
16 mentioned them. I can give an example - I can file that
17 this afternoon in writing - of the difficulties
18 encountered by my legal assistant and investigator when
19 travelling to Bonthe to visit the relatives of my client
11:52:26 20 and to talk to witnesses, just to give you an idea of how
21 difficult it is to investigate in difficult conditions in
22 the rainy season and how dangerous it also is. And I'm
23 extremely worried that my legal assistant and my
24 investigator -- I'm not sure about the investigator but
11:52:42 25 I'm sure about my legal assistant -- is not insured for
26 anything that happens during that trip. I will file her
27 report on that trip this afternoon so that you can look
28 at it and see how incredibly difficult it is to carry out
29 an investigation, certainly if you compare our facilities

1 to the facilities of the Prosecution.

2 There is a separate issue which I would like to
3 raise, and I've raised that before, and I would like to
4 have a decision of this Court on this issue and that is
11:53:18 5 the issue of the interviewing of Prosecution witnesses.
6 I think I raised that issue a year ago for the first
7 time, and I did it later again in a written motion in
8 response to the motion for protective measures - the
9 second one of the Prosecution. It is unclear what the
11:53:36 10 procedure is at this moment.

11 I have discussed this issue with the Prosecution and
12 I've talked to the Victims and Witness Units. I'm not
13 sure if there is a procedure and, if there is one, what
14 and when the witnesses -- the Prosecution witnesses are
11:53:56 15 asked whether they wanted to talk to us or not. All
16 I know is that so far we have not been able to interview
17 any of the witnesses, and I don't know whether we will be
18 allowed to interview any of the witnesses which are going
19 to be heard this trial session. So I would like to hear
11:54:12 20 from the Prosecution what they will do to assist us.
21 I would also like the Court to make a decision on the
22 procedure to be followed and the questions to be asked of
23 the witnesses. The question should, in our view, be
24 whether they are willing to talk to the Defence, and
11:54:32 25 I think part of the question should also be that the
26 Court has ruled that the Defence has the right to do so.
27 I hope I have made myself clear.

28 PRESIDING JUDGE: I was going to ask you a question on that.
29 You said you raised the issue in the past. I'm not

1 saying you have not. I have no recollection of it but --

2 MR PESTMAN: I wrote a letter to Prosecution. I have
3 submitted that letter. It was filed maybe before the
4 pre-trial conference, otherwise before one of the status
11:55:04 5 conferences. I have raised it in my response to the
6 second motion for protective measures and I'm still
7 waiting for a decision and some clarification. I would
8 really like to have a decision soon.

9 PRESIDING JUDGE: Have you or your assistants tried to talk to
11:55:20 10 Prosecution witnesses and you have had no response at
11 all?

12 MR PESTMAN: We expressed a desire before the last hearing,
13 and first we were told by Prosecution - correct me if my
14 recollection is not correct - that nobody wants to talk
11:55:40 15 to us, which was a bit of a surprise to us, because one
16 of the witnesses had already talked to us and expressed
17 his willingness to do so again, and later the head of the
18 Victims and Witness Unit told us that he had asked the
19 same question and the answer had been the same.

11:55:58 20 I would like to know what the responsibilities are of the
21 various organs of the Court and I would also like to know
22 exactly what their obligations are and what they have to
23 ask. Maybe the Prosecution wants to answer that.

24 PRESIDING JUDGE: We will let you finish with your comments,
11:56:16 25 and I will get to them.

26 MR PESTMAN: It was also mentioned by counsel for Mr Norman
27 that there is this strange outstanding appeal against
28 your decision -- the decision of the Trial Chamber not to
29 grant leave to appeal the decision to amend the

1 indictment. I think that that seriously undermines the
2 continuity of this procedure, and I also want to
3 stress -- which I don't expect, by the way, but if that
4 is allowed, we reserve the right to re-cross-examine all
11:57:04 5 Prosecution witnesses again on the new issues or new
6 charges added to the indictment. I think that the
7 Prosecution should simply respect the decision of this
8 Trial Chamber and not try to go to the Appeals Chamber
9 after having tried to get the appeal from the Trial
11:57:28 10 Chamber.

11 With regard to the decision on the cooperation
12 between the parties, I am not sure that my answer is
13 going to be the answer that you would want to hear, but
14 it will solve the issue. We have nothing else to agree
11:57:40 15 upon. We have discussed these issues - facts and points
16 of law - with the Prosecution several times and we have
17 now reached a point that we cannot agree on anything else
18 any more.

19 As a general point, with regard to the points of
11:58:04 20 facts -- with regard to the facts, I would like to remark
21 that it would be a violation of the right to a fair trial
22 and the presumption of innocence if this Court forced my
23 client to admit to facts which are up to the Prosecution
24 to prove. That is a general point with regard to the
11:58:26 25 facts.

26 With regard to the law, I would like to note that it
27 is not relevant what the parties agree to; it is always
28 up to the Court to establish what the law is - whatever
29 we agree upon, the Court has to establish what the law

1 is, and it might be something completely different. So
2 I would like to request the Trial Chamber to relieve us
3 of our duty to talk to each other and to agree on points
4 we cannot agree upon, and also relieve us of the duty to
11:58:58 5 present two-weekly reports, as the production of these
6 reports is going to be fruitless from now on. I think
7 I have mentioned almost everything - let me just check.
8 Yes, that is it for the moment.

9 PRESIDING JUDGE: Before you sit down, I must say that I am
11:59:26 10 concerned about your last comments about the -- what you
11 are asking the Court to relieve you of your duty to
12 produce reports, because it is impossible to achieve any
13 agreement any more. In fact, on the one hand, you are
14 asking this Court to do the utmost to speed up the
11:59:46 15 process as such, and one way of speeding up the process
16 is to try to see if there is common ground somewhere
17 somehow between Defence and Prosecution on matters which
18 need not be established by calling witnesses on whatever
19 it is as such and certainly one way -- I'm not saying
12:00:04 20 this is the only way but this is part of the instruments
21 that are available at this time to speed up the process,
22 as you know, so if by making an admission -- I'm using
23 that as an example -- you cut off 10 witnesses while we
24 have achieved quite a huge step ahead. Again, I can only
12:00:22 25 urge cooperation, but I hear what you are saying and we
26 will look into this matter.

27 We are not prepared to make orders that we know will
28 not achieve any results, but we would like to see results
29 if at all possible and feasible. At this stage, we are

1 not prepared to issue an order that would impose on you
2 agreements that you disagree with. It is an obligation
3 imposed on the Prosecution to so establish, so we are not
4 moving in that direction. All we are trying to do is
12:00:52 5 urge upon you -- and I say "you", both Prosecution and
6 the Defence -- to see what common grounds there might
7 exist and where it is. And on the law, I agree that the
8 final arbiter on the law is the Court and we will make
9 those decisions as we are asked to, but if there's
12:01:10 10 agreement on some of these matters as such, it will make
11 our life easier as such and that will speed up the
12 process. If there are no disputes then -- but I have
13 noted your comments in this respect.

14 THE ACCUSED NORMAN: My Lord, before the Prosecution responds,
12:01:34 15 I'm asking your permission to just make two points here.
16 One is the witnesses. It is my understanding that most
17 of the Prosecution's witnesses have testified at the TRC
18 and those same witnesses are coming here and asking for
19 non-disclosure. I believe it is unfair. Once they have
12:01:58 20 been exposed to the public at the TRC, they should not
21 now find cover here.

22 The next is admission of facts and this is the
23 reason why I am resolving my action on this issue that if
24 there are any facts for me or for the accused Sam Hinga
12:02:26 25 Norman to admit, those facts should be placed before him
26 in the form of charges read to him and responded to
27 before Your Lordship. Those are the comments that
28 I would like to make.

29 PRESIDING JUDGE: Thank you. Mr Prosecutor?

1 MR JOHNSON: Did you want to hear from the third accused
2 first, your Honour?

3 PRESIDING JUDGE: He may as well, because I had no indication
4 that the third accused wished to make any
12:02:56 5 representations, but if you wish to make any, you are
6 welcome.

7 MR WILLIAMS: My Lord, we agree with almost everything that
8 has been said by both counsel for the first and second
9 accused, but we wish to state, My Lord, that our client
12:03:10 10 is complaining about the quality and quantity as well of
11 the food that is being provided for him. He does not
12 have any choice as to what he is being fed. He would
13 like to have a say as to what and what -- I mean, he is a
14 modest person and he will not make any extravagant
12:03:32 15 request, but he is not used to some of the food or diet
16 that they are now providing to him.

17 He has lived his entire life in the provinces and
18 some of the things that have been served to him have been
19 quite new and he finds them not very tasty or not
12:03:50 20 acceptable.

21 And then Your Lordship did mention that you might
22 consider, or the Bench might consider applying what
23 I would call the guillotine on long-winded
24 cross-examinations in the future. We would also wish to
12:04:14 25 implore you to have similar consideration for
26 examinations-in-chief by the Prosecution, because we have
27 found some of their evidence to be quite irrelevant. We
28 have taken a number of objections which have been
29 overruled, so Your Lordships might as well consider that

1 when you are making a finding as to what is going on by
2 the defence.

3 At an earlier status conference we mentioned that we
4 would like to see a grouping of witnesses, which would be
12:04:54 5 very convenient on our side, especially as some of the
6 members of our team do not reside here. We have spoken
7 with the OTP, but we have not yet received any
8 indication. For example, victims of sexual crimes --
9 offences, we would like to have them taken at one go
12:05:20 10 because we -- in particular our team, we have somebody in
11 our team who will be handling those witnesses. If they
12 are scattered, it means that the person might have to be
13 here all of the time, but we don't have funds -- we do
14 not have resources for that. We have spoken with the
12:05:38 15 Office of the Prosecution. They say they will consider
16 that. They have not come back to us. That is all I wish
17 to say, My Lord.

18 PRESIDING JUDGE: Thank you.

19 MS MONASEBIEN: May I, Your Honour, clarify one thing
12:05:52 20 administratively that may assist the Court on the issue
21 of the transport for the investigators. Just to apprise
22 the Trial Chamber, what each investigator gets is 1.5
23 million Leones a month for transport, which is the
24 equivalent of about \$600. That \$600 has to last for each
12:06:10 25 month for all the transportation that they take during
26 their investigation, and I think that counsel is correct
27 in saying that it costs about \$250 a day for them to rent
28 a car. Although this was only brought up to me last week
29 while I was away, I will endeavour, as I have

1 communicated to the one defence attorney who raised this
2 issue, to work with the Registrar and find additional
3 funds and a process which would allow them to go outside
4 of the \$600 in transport when there is a need to make an
12:06:44 5 investigation that required a car. So we will do
6 whatever we can, myself and the Registrar, to avoid your
7 Honour having to deal with this, and see what is the best
8 we can do for the investigation.

9 PRESIDING JUDGE: Is there any vehicle available to the
12:06:56 10 Defence?

11 MS MONASEBIEN: There is one vehicle in the Defence Office,
12 which is used basically to transport lawyers, because I
13 don't use my own vehicle myself back and forth to the
14 Court, and that one vehicle, if it were to go into the
12:07:16 15 provinces and something happened to it, which was the
16 case once before, there would be no further vehicle left
17 for the Defence Office. We have already stated that one
18 vehicle for the Defence Office is not enough. Whether
19 the remedy will be to get a second vehicle full time
12:07:30 20 assigned to the Defence Office, or to get some provision
21 for additional funding, is something that the Registrar
22 and I will work on and report back to the Trial Chamber
23 and defence counsel in that regard.

24 PRESIDING JUDGE: Thank you very much. I was going to suggest
12:07:44 25 that, once you looked into it, we are concerned about
26 that, too, obviously. Whatever resources need to be made
27 available to the Defence within -- I know the difficult
28 financial restraints that we have. Still, the Defence is
29 entitled to be able to do their work and they have to be

1 provided with the tools to do it, so if they need to go
2 up country, if everybody is saying we need to move
3 expenditures, if they do not have the means to do their
4 own investigation, that is likely to delay the process.
12:08:18 5 It all goes together, but please, look into the matter
6 and report back and from that report we will see what is
7 happening. I hope that we do not need to intervene, but
8 we will see what we need to do.

9 MS MONASEBIEN: Very well, Your Honour, thank you.

12:08:36 10 PRESIDING JUDGE: Mr Prosecutor?

11 MR JOHNSON: Thank you, your Honour. Hopefully, I have got
12 notes of all the issues that I need and want to respond
13 to and I will try -- if I miss any, I'm sure someone will
14 let me know.

12:08:52 15 First, we certainly support the Defence's concerns
16 about proceeding as quickly as we can with this trial.
17 We, too, want to proceed as quickly as we can. We, too,
18 want to get as many witness days as we possibly can and
19 to get this trial over and done with as quickly as we
12:09:14 20 can, and I could not make an estimate today on when
21 I think we would be able to finish the Prosecution case.
22 The reason I say that is we have only really had only six
23 or seven witness days in this trial at this time; we have
24 only had four witnesses. We need to have a bit more
12:09:36 25 trial before I could give you a reasonable estimate as to
26 when I think we could finish the Prosecution case. When
27 we initially said six months some time ago, we were
28 anticipating a continuous trial, not one with breaks in
29 between, but we would need some more time in trial to try

1 and give a good and reasonable estimate as to when we
2 think we could finish with the Prosecution case.

3 I also support the Defence concerns about putting a
4 calendar out as far as we can and identifying the times
12:10:10 5 that we will be in trial. I do appreciate their
6 professional needs to plan travel and plan that, and we
7 also have some similar concerns in anticipating the
8 number of witnesses that we will be able to plan for each
9 trial session and meeting our disclosure obligations in
12:10:28 10 that respect.

11 we analysed what we did the first month, we analysed
12 what went on in the RUF trial. We tried to predict out,
13 to the best that we could, on how many witnesses we would
14 get through in this trial session and that is why we have
12:10:46 15 disclosed -- provided a list of 17 and disclosed
16 statements and brought 17 witnesses and provided for
17 protection, where we felt it was needed, for those 17
18 witnesses. So we, too, support trying to anticipate the
19 calendar out -- the number of trial days out, the best
12:11:04 20 that we possibly can and the best you can, given I
21 understand there are many restraints and many factors
22 that go into that, but we, too, support that.

23 Likewise, if we were to have a trial on Fridays and
24 Wednesdays, we also support that, too. Again, we want
12:11:18 25 this trial to proceed as quickly as possible. Again, we
26 would like to know when these things are going to happen
27 so that we can predict out witnesses the best we can as
28 well.

29 PRESIDING JUDGE: One thing that I would ask you to look into

1 when you are doing your estimate and your projection in
2 the future -- you had indicated that the Prosecution
3 intended to call, if I'm not mistaken, 150 or 160
4 witnesses -- to look seriously as to whether or not all
12:11:44 5 of these witnesses need to be called, and I just want to
6 let you know that we will, if need be, intervene to ask
7 you not to call that many witnesses, but we are not at
8 that stage yet. We'll have to wait and see how things
9 shape up, but you are on notice that, if we feel that you
12:12:02 10 are overdoing it, we will intervene. So bear this in
11 mind when you are making your assessment as to the
12 duration.

13 MR JOHNSON: Thank you, Your Honour. We have been looking at
14 that, and we have been looking at bringing the witnesses
12:12:16 15 down from that number a good amount.

16 I just make one comment regarding Chief Norman's
17 request for internet access, e-mail access and unlimited
18 phone use -- just to say that when this request was
19 originally brought up for a computer and phone access and
12:12:38 20 such, we requested that a security assessment be done on
21 these issues. The Prosecution did not see that security
22 assessment, so we don't know what it said, but again, we
23 just make that comment, that if unlimited phone access is
24 provided, if internet and e-mail access is provided, that
12:12:58 25 the Registrar and the Chamber take into consideration the
26 security issues involved with that.

27 With regard to witness payments, of course we have
28 disclosed to Defence all witness payments made by the
29 Office of the Prosecutor to witnesses on the list. They

1 got the remaining witnesses that we had not provided
2 earlier that was delivered last week. It includes
3 payments made by OTP. It doesn't, of course, include
4 payments made by the Victims and Witness Unit of the
12:13:34 5 Registry. I cannot comment right now -- right now, of
6 course, I know of no promises of relocation to CDF
7 witnesses, but I can only comment on what I know; I can't
8 really comment on her concerns or requests for that
9 information at this time.

12:13:54 10 I do support the efforts to look into seeing that
11 the Defence and defence teams and their investigations
12 are adequately funded, and funded at the right level to
13 conduct the investigations that are appropriate and
14 proper to conduct their case. I know that that is being
12:14:16 15 looked at and reviewed now, so I don't really have any
16 other comment about that, other than to say that I only
17 wish that the Office of the Prosecutor had unlimited
18 funds and unlimited vehicles as defence counsel has
19 suggested. That certainly is not the case. We do as
12:14:32 20 well have some limitations.

21 PRESIDING JUDGE: Before you move to the other issues, on the
22 question of witness payments as such, Defence was raising
23 the issues not only of offers of relocation but they
24 asked to be informed of all payments made to any witness
12:14:56 25 in whatever form; in other words, not only payment for
26 witnesses to come to Court but they have mentioned meals
27 that were offered and these kind of payments.

28 MR JOHNSON: In the information we have disclosed, we have
29 disclosed any payments made directly to the witness or

1 payments made on behalf of the witness.

2 PRESIDING JUDGE: And you were saying that you are not in a
3 position to make any comments about relocation and these
4 type of payments at this stage.

12:15:24 5 MR JOHNSON: I certainly know of no promises to relocate any
6 witnesses in this case. Of course, the witnesses have
7 been, as you know, through the Witness and Victims Unit,
8 relocated at Freetown for the time being and put into
9 protection pending their testimony, and I know one of the

12:15:50 10 things that the Witness and Victims Unit does is to
11 assess the witness's requirements and protection needs
12 after they have testified, and I believe that one of the
13 requirements on the Court and on the Registry is that, if
14 the witness needed some kind of permanent relocation to
12:16:10 15 protect that witness, I believe the Registrar has some
16 obligation towards that end, to see that that happens.
17 But I cannot comment much beyond that at this point
18 without looking at it a little further.

19 You did raise one issue, though, that I did intend
12:16:28 20 to comment on. I, too, am curious about the issue
21 brought on by counsel on Defence payments to witnesses
22 and whether the current directive that has come out
23 prohibits such payments. I had not thought of it in that
24 context and I agreed to look at that, because, of course,
12:16:48 25 the Prosecution does make payments to witnesses in the
26 sense of transportation needed for interviews, they feed
27 witnesses involved in interviews and things like that,
28 and I, too, am curious if the Defence is somehow
29 prohibited from doing that kind of thing.

1 MS MONASEBIEN: Your Honour, if I can address that. According
2 to the money that I have to provide to the Defence, they
3 are prohibited from doing that, because there is no
4 provision in the budget for them to pay that out, unless
12:17:18 5 they pay it out of their own fees that they are given,
6 which are far less than fees in other Tribunals, to begin
7 with. So I would just say that there is absolutely no
8 provision for them to pay for one of the Defence
9 witness's transport, to pay for food, lodging or anything
12:17:36 10 other than a special request being made to myself or the
11 Registrar and then us having to find additional monies
12 which is not in our budget as it is now.

13 PRESIDING JUDGE: Thank you.

14 MR JOHNSON: We certainly support the Defence application or
12:17:58 15 suggestion that we seek an oral application for upcoming
16 witnesses to testify in closed session. I only make the
17 point that there's some precedent for that before the
18 Trial Chamber in the RUF case. Towards the end of the
19 session there was an oral application entertained to let
12:18:18 20 a witness testify in closed session. We, too, would
21 prefer to do it by oral application and Friday would work
22 very well if you decide to allow us to do that.

23 PRESIDING JUDGE: We will let you know tomorrow,

24 MR JOHNSON: Thank you. With regard to interviewing of
12:18:32 25 Prosecution witnesses, I concur with many of the things
26 that were said by learned counsel, in that early on,
27 quite some time ago -- it may have even been the end of
28 last year -- they made a request to interview some of our
29 witnesses, and with all of the witnesses -- the witness

1 management team of the Office of the Prosecutor went out
2 to see, they asked some questions, and all of them
3 declined to be interviewed by the Defence. I think it
4 was in about May, if I get the timing right, or possibly
12:19:06 5 even a little bit before. The concern is, of course,
6 that that question is being asked by the Office of the
7 Prosecutor, so it was agreed that they would work those
8 questions through the Registry Witness and Victims Unit
9 so that we have now a registry entity asking these
12:19:26 10 questions on whether or not the witness is willing to be
11 interviewed by the Defence and an attempt to take the
12 Prosecution out of that equation so there's no appearance
13 that we are somehow influencing an answer that is being
14 given or a witness saying no, they don't want to be
12:19:44 15 interviewed by the Defence.

16 I don't know if some kind of procedures are needed
17 to be put in place by this Chamber. I would certainly
18 prefer that Defence work it out with the unit and not for
19 the need for the Chamber to get involved, but the
12:20:06 20 Prosecution likes it going through the Victims and
21 Witness Unit, because again we are out of the picture and
22 it is an impartial or neutral unit of the Registry
23 dealing with those issues.

24 PRESIDING JUDGE: Do I take it from your comments that you
12:20:24 25 certainly have no objection in principle to that, and may
26 I also take it from your comments that this is also a
27 policy of OTP not to give directions to witnesses called
28 by the Prosecution not to talk to the Defence?

29 MR JOHNSON: Yes, Your Honour, that is not a policy of OTP.

1 We informed witnesses, when we were asking the
2 questions -- and I was not there when the questions were
3 asked, but it was certainly my understanding that, when
4 we were asking the questions, we were advising the
12:20:54 5 witnesses that it is completely their decision on whether
6 or not they want to talk with defence counsel and be
7 interviewed by defence counsel. I would certainly
8 believe that we would never tell a witness - I certainly
9 hope we would never tell a witness, and we have
12:21:10 10 reinforced that -- not to speak with Defence; that it is
11 of the witness's own choosing on whether or not they
12 speak with Defence.

13 PRESIDING JUDGE: I would like to be reassured as well that
14 not only you personally but the Office of the Prosecution
12:21:22 15 has that kind of a policy, because I understand many
16 different people are talking to different witnesses, so
17 I accept what you are saying, but I would like to make
18 sure that this is a common approach by the Prosecution.

19 MR JOHNSON: Yes, Your Honour, we will certainly do that.
12:21:56 20 Several counsel made comments concerning our application
21 to the Appellate Chamber. It is there; we stand by it.
22 I don't know that there's any more I need say on that at
23 this time.

24 I have the same concerns as counsel for the second
12:22:18 25 accused on if there is a need at this time to continue
26 with our efforts to find agreed facts and law. We seem
27 to be at an impasse here on that, at least for the time
28 being, and I, too, think that, if not permanently, at
29 least for the time being, it would be nice to be relieved

1 of that obligation to continue to file reports. I think
2 that covers all of the issues. Thank you, Your Honour.

3 PRESIDING JUDGE: There is one more issue I would like to hear
4 from you about, which is the issue raised by Mr Norman
12:23:00 5 that most witnesses who have been called by the
6 Prosecution have testified at the TRC, and have done so
7 publicly without any protection, and they are now asking
8 for special protective measures when they have already
9 testified publicly.

10 MR JOHNSON: I don't know the answer to that question.
11 Whether or not a witness has testified at the TRC is not
12 a question that we normally ask. I'm trying to recall if
13 I can remember whether it's come out in any of the
14 statements. I don't recall right now seeing in any of
12:23:36 15 our statements that it has come out that the witness has
16 testified at the TRC. That's not to say that some of
17 them have not. It is not a question that we typically
18 ask, and my second comment to that is that, to my
19 knowledge, not all testimony was public before the TRC,
12:24:00 20 so there may as well be some witnesses who did not
21 testify publicly before the TRC, but not to my knowledge.

22 MS WHITAKER: Could I very briefly comment on the last issue
23 that was raised? I would invite the Prosecution to
24 investigate this matter and list any witness for the
12:24:20 25 consideration of the Court who has testified before the
26 TRC, a national court, or any other commission of
27 inquiry, because, as I'm sure my learned friend is aware,
28 the jurisprudence certainly of the other Tribunals is
29 that protective measures cannot be imposed on a witness

1 who has testified publicly, so it goes to the very heart
2 of whether they were entitled to ask for protective
3 measures in the first place.

4 I would ask -- if this question has not been asked,
12:24:46 5 it is one that should be asked, and the Court and
6 obviously the Defence should be notified as soon as
7 possible on this issue. Your Honour, could I also ask
8 through Your Honour that a list of payments made by the
9 victims support to the witnesses are also given to us?
12:25:00 10 Your Honour would be aware that we have received that
11 from the Prosecution, but they have no access to the
12 records of the Victims support, who provide additional
13 funds, and I would ask through Your Honour whether that
14 could be provided to us.

12:25:12 15 PRESIDING JUDGE: Yes, I think it is very fair that you be
16 provided with that information. The same applies to the
17 question of access to witnesses that Mr Pestman has
18 raised that, if it is administered by the Witness
19 Protection Unit, they should provide the information so
12:25:32 20 you know what they have paid, if anything, and to ensure
21 Mr Pestman's question about access to witnesses for the
22 Prosecution -- the same.

23 MS WHITAKER: I'm grateful.

24 PRESIDING JUDGE: Mr Pestman? Yes, Mr Johnson.

12:25:50 25 MR JOHNSON: Your Honour, only a couple of quick comments on
26 the TRC issue again. I am not prepared to fully argue
27 the issue on whether or not we should be required to ask
28 each of our witnesses if they have testified before the
29 TRC and, likewise, I'm not fully familiar with the

1 jurisprudence, as learned counsel has said, that if a
2 witness has testified publicly before they are not
3 entitled to protection. I can only say that I'm not sure
4 of the relevance of that question, and how that
12:26:30 5 affects -- I would disagree that we should be required to
6 ask such a question.

7 As well as the issues -- you've granted witness
8 protection measures - again, I can't speak to the
9 jurisprudence that she has referred to, but you granted
12:26:44 10 witness protection measures. You've granted witness
11 protection measures on the basis that, if the witness's
12 identity is known, the witness may be in danger, and
13 we're talking about future testimony, and so I see
14 whether or not the witness has or has not publicly
12:27:00 15 testified before the TRC would affect that decision, but
16 at any rate, if this is an issue that is indeed going to
17 be raised and going to continue, then I would request
18 more time to prepare a more reasoned argument concerning
19 it. Thank you, Your Honour.

12:27:16 20 PRESIDING JUDGE: I would suggest to you that you (inaudible)
21 in this matter, certainly if witnesses have testified
22 publicly about the same issues. This is not a matter
23 that was before us when these decisions were rendered; it
24 was based on the facts as we knew them. This is not a
12:27:36 25 fact that was taken into consideration at all, I can
26 assure you of that. It had not been raised, so it is now
27 being raised and, therefore, we need to look into this,
28 because it may or may not have an impact on the decision.
29 And even though a decision has been rendered, that

1 decision may be varied accordingly. So I would ask you
2 to look into this issue.

3 I don't know about CDF witnesses. I do recall in
4 the RUF there was at least one witness who testified that
12:28:04 5 he had testified at the TRC, but I don't recall that for
6 CDF. It does not mean it has not happened. I'm just
7 saying I have not heard it in Court, which seems to me to
8 lead me to believe that in some instances some witnesses
9 who are being called by the Prosecution appear to have
12:28:24 10 also testified at the TRC. As I say, at least to my
11 recollection one witness in the RUF has said so in Court,
12 but it may not be the case for CDF. What I'm asking you
13 to do now is to look into this matter as such. If this
14 is to be an issue that is coming up now every time a
12:28:42 15 witness is coming up, we need to know, and that will open
16 a debate every time, so it is not consistent with an
17 expeditious trial.

18 So we need to look at these matters and see how we
19 can resolve these issues, if we can, before we move into
12:28:58 20 these discussions at trial. Mr Pestman, do you have
21 anything else to add?

22 MR PESTMAN: No, your Honour.

23 PRESIDING JUDGE: Thank you. So that seems to conclude the
24 matters on the status conference this morning. I thank
12:29:14 25 you all, and we will adjourn and see you tomorrow in
26 Court at 10.00.

27 [Whereupon the hearing adjourned at 12.32 p.m., to be
28 reconvened on Wednesday, the 8th day of September 2004,
29 at 10.00 a.m.]

1 [Pages 30 to 62 by Momodou Jallow]
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C E R T I F I C A T E

We, Susan G Humphris and Momodou Jallow, Official Court Reporters for the Special Court for Sierra Leone, do hereby certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (machine writer) and thereafter transcribed by computer, that the foregoing pages contain a true and correct transcription of said proceedings to the best of our ability and understanding.

We further certify that we are not of counsel nor related to any of the parties to this cause and that we are in nowise interested in the result of said cause.

SUSAN G HUMPHRIES

MOMODOU JALLOW