



Case No. SCSL-2003-01-PT

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

Friday, 26 January 2007
2:00 p.m.
STATUS CONFERENCE

TRIAL CHAMBER II

Before the Judge:

Teresa Doherty

For Chambers:

Mr. Tilman Blumenstock

For the Registry:

Mr. Lovemore G. Munlo

For the Prosecution:

Mr. Stephen Rapp
Ms. Wendy van Tongeren

For the accused Charles Ghankay
Taylor:

Mr. Karim Khan
Mr. Roger Sahota
Mr. James Supuwood
Mr. Avi Singh
Ms. Caroline Buisman

1 [The accused not present in court]

2 JUDGE DOHERTY: Madam Court Attendant, please call
3 the matter.

13:58:12

4 THE USHER: The Special Court for Sierra Leone is
5 sitting in open session for a Status Conference in the
6 case of the Prosecutor against Charles Taylor, case
7 number SCSL-2003-01.

8 I'm most obliged, Your Honour.

9 JUDGE DOHERTY: Thank you.

13:58:32

10 I'll take appearances, Your Honour.

11 MR. RAPP: Madam President, Your Honour, members
12 of the Defence. Appearing today for the Prosecutor is
13 the Prosecutor, Stephen Rapp, and Trial Attorney Wendy
14 van Tongeren. Thank you.

13:58:47

15 JUDGE DOHERTY: Thank you, Mr. Rapp, and welcome
16 to Trial Chamber II. Thank you.

17 For the Defence.

13:59:00

18 MR. KHAN: If it please Your Honour, Karim Khan,
19 appearing on behalf of Mr. Charles Taylor, assisted
20 today by Mr. Roger Sahota, Mr. James Supuwood, Mr. Avi
21 Singh, and Ms. Caroline Buisman.

22 JUDGE DOHERTY: You went a little quickly towards
23 the end there for me, Mr. Khan.

13:59:25

24 MR. KHAN: Your Honour, James Supuwood is our West
25 Africa/Liberia legal advisor. Next to him is Mr. Avi
26 Singh, and seated next to him, last but not least,
27 Ms. Caroline Buisman.

28 Your Honour --

29 JUDGE DOHERTY: And?

1 MR. NMEHIELLE: Vincent Nmehielle, Principal
2 Defender.

3 JUDGE DOHERTY: Thank you, Mr. Defender.

4 I note the accused is not present in court.

13:59:46 5 MR. KHAN: Indeed, Your Honour. I should make it
6 clear, and I did alert the Senior Legal Officer and
7 Mr. Registrar to this fact, that Mr. Taylor was
8 complaining yesterday of some discomfort to his back.
9 He had rather restricted mobility. He was seen today,
14:00:02 10 and given the transit requirements, he is not attending
11 today. I am authorised to waive his right to attend,
12 and there's no bar, with Your Honour's leave, to
13 today's proceeding continuing as normal.

14 JUDGE DOHERTY: Thank you for that indication,
14:00:19 15 Mr. Khan. I will rule, then, that he's waived his
16 rights, pursuant to Rule 60, and the matter will
17 proceed in his absence.

18 MR. KHAN: Indeed, I'm grateful.

19 JUDGE DOHERTY: There is one preliminary matter,
14:00:28 20 counsel.

21 Very late this afternoon we received a request
22 from the Press and Public Affairs Office of the Special
23 Court -- Mr. Khan, if you wish to be seated --

24 MR. KHAN: I'm grateful.

14:00:42 25 JUDGE DOHERTY: -- as I'm addressing both sides.

26 Incidentally, I neglected to welcome Mr. Supuwood
27 to the Special Court, and I'll deal with another matter
28 relating to counsel in a moment.

29 The preliminary matter, it relates to a request by

1 the Press and Public Affairs Office of the Special
2 Court to allow a Reuters photographer to enter the
3 court. The Court has decided, pursuant to Rule 81(D)
4 of the Rules of Procedure and Evidence, to permit the
14:01:16 5 Reuters reporter to be in the court for one minute
6 after the court is seated and to take photographs on
7 the condition that he ensures that the dignity of the
8 proceedings are preserved and that he will be the only
9 photographer with access to the courtroom. And he has
14:01:33 10 agreed to make available photographs taken -- to be
11 made available to the press in Sierra Leone and to the
12 Press and Public Affairs Office of the Special Court
13 for any photographs for internal use. So he's come and
14 gone, as I read that out.

14:01:57 15 Counsel, there is an agenda for today's hearing.
16 There was time given for counsel to put any proposed
17 additional items on the agenda. It is my understanding
18 that no additional items have been put forward, and
19 accordingly I will assume that the agenda is as issued
14:02:20 20 on the 20th of November. I will, of course, entertain
21 any other matters that may arise.

22 The first matter on the agenda is a matter of
23 disclosure obligations under Rules 66, 67, and 68.
24 Since that was drafted, yesterday I understand,
14:02:44 25 Mr. Khan, two motions were filed in relation to the
26 provisions of Rule 66 and Rule 68. That is correct?

27 MR. KHAN: Your Honour, that is correct. They are
28 not new matters. They will not be a surprise to
29 anybody in this court. Your Honour, they were raised

1 orally at the last Status Conference. There was
2 disagreement between the parties. Agreement could not
3 be reached by way of any out-of-court discussions, and
4 therefore, simply to give effect and to obtain judicial
14:03:17 5 relief, a motion has been filed.

6 JUDGE DOHERTY: I'm aware of what was said at the
7 previous two conferences.

8 MR. KHAN: Right.

9 JUDGE DOHERTY: However, since these matters are
14:03:25 10 now before the Trial Chamber, my initial view is that
11 the Trial Chamber is seized of them and we cannot deal
12 with those issues unless, by consent, some resolution
13 is entered, by consent, today. That's my initial view,
14 and I will ask both counsel what their view is on this
14:03:50 15 agenda item.

16 MR. KHAN: Well, Your Honour, I'm most grateful
17 for that. I think it's an eminently sensible way of
18 proceeding. I don't think there will be any
19 controversy. Once again, it's not my intention to
14:04:04 20 raise anything related to those matters that Your
21 Honours, in due course, after consideration and
22 receiving the Prosecution's written response, will
23 adjudicate on, so they are not matters that are going
24 to be raised by me today.

14:04:12 25 JUDGE DOHERTY: Mr. Rapp, have you any reply or
26 observation to make on this?

27 MR. RAPP: Madam President, we really deal here
28 with two types of disclosure. One is the disclosure of
29 documents, and I think the motion for inspection of

1 documents puts in issue the whole question of how
2 documents are inspected and labeled. Under those
3 circumstances, I suspect we will have some dispute, and
4 it's not really appropriate to get into that.

14:04:39 5 With regard to disclosure of witnesses, we can
6 make a report of the situation in terms of the witness
7 disclosure. Now, I believe there may soon be a motion
8 in regard to varying protective measures, but I think
9 it's possible to deal with the 66(A)(i) or (A)(ii)
14:04:59 10 issues here today and to have a report on that.

11 In that regard, I should say, Your Honour, that as
12 far as we've noted, all of the witnesses' - both on our
13 core list and on our backup list - statements in
14 redacted form, pursuant to the protective order, have
14:05:17 15 been disclosed. There are a few witnesses that waive
16 protection, and on those the statements have been
17 disclosed in an unredacted manner, except for four
18 witnesses, one of whom it's been decided not to use,
19 Witness TF-1-341, though that statement has been
14:05:35 20 disclosed to the Defence for Rule 68 purposes; and
21 there are three other witnesses, TF-1-042, TF-1-044,
22 and TF-1-272, individuals that have not yet given their
23 consent to disclosure of their statements because of
24 the concern of their protection. Obviously we couldn't
14:05:57 25 use those individuals as witnesses unless we make that
26 disclosure. But we're endeavouring as soon as possible
27 to obtain that consent and to make the disclosure in
28 redacted form, and certainly well in advance of the
29 66(A)(i) requirement of disclosure 60 days prior to the

1 trial date.

2 Thank you, Madam President.

3 JUDGE DOHERTY: One matter I did note that I think
4 I could raise is that in the previous hearings,
14:06:28 5 Mr. Khan, you had asked for maps. I notice one of the
6 annexures to one of your motions refers to maps. Have
7 you had whatever maps you've needed?

8 MR. KHAN: Your Honour, we haven't had the maps
9 we've needed. I have just received in court today some
14:06:43 10 disclosure. In fact, it's a letter from -- well,
11 addressed to the Prosecutor, and I'm very grateful to
12 Mr. Rapp for providing it. I think matters are afoot,
13 and I hope maps would be served soon.

14 One moment, Your Honour.

14:07:06 15 [Defence counsel confer]

16 MR. KHAN: Your Honour, this relates to maps for
17 Liberia. So I think a request has been made from the
18 Prosecution to the relevant body, and a relevant map
19 detailing the contours of Liberia and the boundaries
14:07:19 20 hopefully will be served in due course.

21 JUDGE DOHERTY: Will those also be made available
22 to the Court, Mr. Rapp?

23 MR. RAPP: Yes, they will. And the particular
24 issue there was there was a map that was produced and
14:07:31 25 in the possession of the United Nations Mission in
26 Liberia, and we had to have the permission of the
27 Secretary-General's Special Representative - and I
28 requested that upon my arrival in Freetown - and I'm
29 pleased that yesterday we received his letter

1 indicating that we may use that map, though they do not
2 warrant or guarantee that it's the best product they
3 were able to produce. And so we are -- we will obtain
4 it and disclose it and also provide it to the Chamber.

14:08:02 5 JUDGE DOHERTY: That was the only matter that I
6 felt was non-controversial that could be raised outside
7 those motions.

8 Unless counsel has any matter that they think
9 could be safely raised under either Rule 66 or 68 or
14:08:15 10 67, I would be glad to entertain it.

11 MR. KHAN: Your Honour, with your leave, there are
12 a number of issues that I would wish to raise. I'll
13 try to be very brief. I've alerted my learned friends
14 to the areas I intend to raise with Your Honour for
14:08:37 15 adjudication.

16 Your Honour, in relation to the witnesses that
17 have been disclosed, so far the Prosecution have
18 indicated that they intend to call between 14 to 19
19 expert witnesses. Your Honour, that's in their list of
14:09:01 20 core witnesses that they provided some time ago.

21 Your Honour, my learned friend agrees that we have
22 had but a few, perhaps one or two, but the vast
23 majority of these have not been provided to us. Your
24 Honour, whatever the Prosecution may respond - and
14:09:27 25 there may be difficulties in instructing experts for
26 them and in obtaining an expert report - given the
27 tentative trial date now set for June, it's my
28 submission --

29 JUDGE DOHERTY: I beg you're pardon? Did I hear

1 you use an adjective? I thought there was a trial date
2 set.

3 MR. KHAN: Your Honour, given the date set for
4 June, perhaps even more so if that's -- if it's Your
14:09:55 5 Honour's intention for that to be a firm trial date,
6 given the trial date set for June, the Defence must
7 have disclosure of the statements that the Prosecution
8 intend to rely upon as expert witnesses.

9 Your Honour, it is trite to say that the Defence
14:10:13 10 require time, not just to read those expert reports but
11 to locate and instruct their own experts in order to
12 prepare for cross-examination.

13 Your Honour, the tentative trial date of June is
14 only a few months away, and I would ask that you today
14:10:33 15 order the Prosecution, who said previously they were
16 ready for trial in April, to serve by the end of
17 February all expert witnesses that they intend to rely
18 upon. That would give the Defence time, hopefully,
19 however tight, to instruct experts to read the report
14:10:56 20 and see what our experts have to say. Your Honour,
21 that deals with expert witnesses.

22 JUDGE DOHERTY: Just to make sure, you're asking
23 for names and reports or just names and the subject
24 matter?

14:11:12 25 MR. KHAN: Your Honour, the reports that the
26 experts are relying upon. This is a right under the
27 rules.

28 Your Honour, in addition, there is a matter
29 dealing with the mode of disclosure that's being

14:11:44 1 undertaken. Your Honour, the Defence have tried to
2 reach some agreement with the Prosecution, and by way
3 of a letter in fact on the 24th of January, the
4 Prosecution have confirmed that we remain in
5 disagreement.

14:12:03 6 Your Honour, the area of dispute is this: That
7 when, on the 17th of May, the Prosecution served the
8 first tranche of disclosure to the Defence, they served
9 paper copies; but in addition, they were kind enough to
10 provide electronic copies of the first tranche of
11 disclosure.

14:12:21 12 Your Honour, they were not immediately happy to do
13 that, but they were kind enough to do so on the
14 undertaking by me that I would not give that electronic
15 disclosure to my client. Your Honour, that disclosure
16 has not been given electronically to my client.
17 Instead, we printed out and copied again, with the
18 assistance of the Defence office and numerous interns
19 working long hours, the entire tranche of the
14:12:42 20 Prosecution disclosure.

14:13:00 21 Your Honour, the difficulty is this: We have
22 offices in Freetown; we have members -- one member at
23 the moment in Liberia, hopefully an investigator to
24 start soon, as well as team members in The Hague. Your
25 Honour, the Prosecution are opposed to me giving this
26 electronic disclosure to members of my African team,
27 people in Liberia and in Sierra Leone. They are
28 opposed to that. They are not opposed to me giving it
29 to an international investigator, but they are opposed

1 to me giving it, for example, to Mr. Supuwood or to my
2 Freetown investigator.

3 Your Honour, those members of the team have been
4 if not approved by the Prosecution, their names have
14:13:26 5 been cleared by the Prosecution in the sense that no
6 objection has been taken to them from information in
7 the Prosecution's possession.

8 Your Honour, in my submission, a court,
9 particularly funded by voluntary contributions, must be
14:13:43 10 especially careful with its resources. The work has
11 been done. It's available for me to give to my team
12 members. If the Prosecution maintain their position,
13 Your Honour, I have no option but to get all that
14 material photocopied again, at significant expense, or
14:14:02 15 get it all scanned through again, duplicating costs,
16 and giving the bill to Mr. Registrar.

17 JUDGE DOHERTY: What are you seeking from me,
18 Mr. Khan?

19 MR. KHAN: Your Honour, I would seek an order that
14:14:14 20 the Prosecutor be ordered to follow the best practice,
21 which has been adopted by the ICTY and the ICTR, in
22 which there is an EDS system. In that EDS system --

23 JUDGE DOHERTY: What does "EDS" stand for?

24 MR. KHAN: Electronic data -- electronic
14:14:32 25 disclosure system. Your Honour, in that members of the
26 Defence are trusted, and it's viewed to have leveled
27 the playing field somewhat, that Balkan lawyers,
28 lawyers dealing with the former Yugoslavia, lawyers
29 dealing with the ICTR, are allowed to download

1 electronically the Prosecution disclosure. They can go
2 through it. It's a very efficient system that, in
3 conjunction with hard copies, makes life easier. In my
4 submission, it is all the more useful where we are
14:15:01 5 geographically divorced between Monrovia, Sierra Leone,
6 and The Hague.

7 In my submission, the Prosecution objection, with
8 the very greatest of respect, is without logical
9 coherence and is devoid of merit.

14:15:16 10 Your Honour, I do ask that you order the
11 Prosecution to follow the best practice of the
12 ICTY/ICTR and allow us to give what they have already
13 given to me, allow me to give it to my investigators.
14 Otherwise, as I've mentioned, the work will be done,
14:15:32 15 but a bill will be given to the Registry.

16 JUDGE DOHERTY: Is there any relevant rule in the
17 ICTY or ICTR?

18 MR. KHAN: Your Honour, it's the practice, I said,
19 the best practice. It comes under the same rules of
14:15:43 20 Rule 66 and 68. It's the same rule, almost verbatim
21 taken. As you know, when the Special Court was
22 adopted, the ICTR rules applied mutatis mutandis, as
23 Your Honours know. So it's over time, with the
24 experience of the Rwandan tribunal and the Yugoslav
14:16:01 25 tribunal, it's a practice that's been adopted as
26 serving the interests of justice.

27 JUDGE DOHERTY: I understand.

28 MR. KHAN: Your Honour, that's my submission in
29 relation to electronic disclosure.

1 Your Honour, the only other remark I have, it
2 deals with the pre-trial brief. I don't know if you
3 wish me to address Your Honour now or later.

14:16:25 4 JUDGE DOHERTY: I would like to deal with those in
5 the list on the agenda, so I'll invite reply from the
6 Prosecution.

7 MR. KHAN: I'm grateful.

14:16:37 8 JUDGE DOHERTY: Mr. Rapp, you've heard counsel for
9 the Defence. There are two issues, the expert reports,
10 and perhaps you could refer me also if there are any
11 provisions under Rule 94 bis on this electronic
12 disclosure system which counsel for the Defence is
13 seeking. If you'd reply to those, please.

14 MR. RAPP: Thank you, Your Honour.

14:16:50 15 First of all, as soon as the Prosecutor has
16 reports of experts, it will provide those reports to
17 the Defence. The point is we do not have those reports
18 at this time. The business of dealing with experts
19 involves finding their time to write the reports and to
14:17:09 20 prepare them, to contract with them, if they require a
21 contract, and that's a process that's ongoing. And as
22 soon as we have the reports, we'll provide them.

23 Your Honour has wisely pointed -- invited me to
24 look at the rules, 98 bis -- not 98 bis, 94 bis (A)
14:17:31 25 which does provide that the report of an expert witness
26 shall be served not later than 21 days before the
27 witness is to testify. That rule also takes the expert
28 witness disclosure out of the Rule 66 provision --
29 excuse me, the Rule 73 bis provision in terms of

1 disclosing the subject matter and the summary of the
2 witness's respective testimony.

3 So the regime basically provides that fact
4 witnesses, we have to disclose those 60 days before
14:18:09 5 trial under 66(A)(i) or (A)(ii), their statements; they
6 will be disclosed in unredacted form 42 days before
7 they testify. But the rules provide that with expert
8 witnesses, one has until 21 days before their
9 testimony, which is usually relatively late in the
14:18:24 10 trial. And that allows the maximum time period for
11 them to prepare the report. And to a substantial
12 extent, the witnesses are also going to be called upon
13 to give opinion based on facts in the record in the
14 form of a hypothetical question.

14:18:39 15 So under the circumstances, the rules do not call
16 for this kind of early disclosure of expert reports as
17 a mandatory matter, and we think it would be
18 inappropriate in the context of this Status Conference
19 to attempt to vary the rule.

14:18:56 20 JUDGE DOHERTY: Doesn't Rule 94 bis say they will
21 be disclosed as early as possible?

22 MR. RAPP: And, indeed, that's our position. As
23 soon as we have the reports of the experts, we will
24 disclose them.

14:19:09 25 JUDGE DOHERTY: Yours is purely a practical rather
26 than -- a practical position. You don't have them at
27 the moment.

28 MR. RAPP: Exactly.

29 JUDGE DOHERTY: Very well. Thank you.

1 MR. RAPP: And we can't be compelled to create
2 them. And as long as we get them 21 days before they
3 testify, that's sufficient under the rule.

4 Now, in regard to this mode of disclosure
14:19:34 5 business. First of all, in regard to the reference to
6 the electronic disclosure system, obviously the Chamber
7 is aware of my former experience in the ICTR and
8 specifically with EDS. I don't intend to testify here
9 about it, but I would note simply that there is a
14:19:55 10 different rule. Rule 68 has been divided into
11 subparts, and I believe there's a 68(A)(ii) that
12 provides for the provision of disclosure through
13 electronic means, if practical. And that has occurred
14 at both tribunals.

14:20:13 15 We do not have such a rule here. It hasn't been
16 adopted. And to be frank, the systems upon which the
17 evidence is organised and digitised at both tribunals
18 make it much easier to make that accessible to the
19 Defence. Our Office of the Prosecutor records at the
14:20:37 20 Special Court for Sierra Leone, those documents that
21 have not been created in electronic form but that are
22 simply scanned into the system as images are not
23 searchable electronically. We don't have the so-called
24 ZyFind system that's used at the ICTY and ICTR, which,
14:20:54 25 frankly, I think, is sometimes quite useful.

26 So applying the sort of EDS system to the Special
27 Court for Sierra Leone would not be as effective as it
28 has been in the other institutions, but that's a
29 broader policy question.

1 What the Defence today is asking is, I think,
2 something narrower than that, and that goes to the
3 disclosure that we're providing under Rule 66, whether
4 those are witness statements or documents under
14:21:22 5 66(A)(iii) that we provide in lieu of Defence
6 inspection under 66(A)(iii) or Rule 68 material,
7 information that's possibly exculpatory or goes to the
8 credibility of Prosecution evidence. In that
9 situation, we have been providing hard-copy disclosure
14:21:42 10 of what we have.

11 An agreement had been reached going beyond what
12 was required of us that electronic disclosure or
13 electronic copies of those documents - and they're
14 often simply scanned documents that aren't really
14:21:58 15 searchable - would be provided to Mr. Khan himself if
16 they were to stay on his laptop. Later on in his
17 request, it was extended to the investigator or the
18 international investigator. And we don't want to
19 particularly draw distinctions within the team, but
14:22:16 20 obviously we get into the situation of making, what we
21 view, a generous offer and then each time an additional
22 demand is made and we're accused of being stingy
23 because our initial generous offer wasn't generous
24 enough.

14:22:35 25 Our concern, to be frank, Your Honour, is the
26 possibility of redisclosure of this material through
27 electronic means outside of the Defence team. And I
28 know from experience that Defence -- that documents
29 provided to the Defence and then on to an accused

1 person, that that accused person then delivered,
2 through gaol visits, a floppy disk or a memory stick,
3 et cetera, that those documents have ended up in
4 international circulation. I've had a 400-page
14:23:01 5 statement of a witness disclosed two days after
6 disclosure. On the --

7 MR. KHAN: I do apologise. I must object if my
8 learned friend is seeking to extrapolate bad practice
9 in other courts and seek to ascribe it to Mr. Taylor.
14:23:17 10 That's unacceptable.

11 JUDGE DOHERTY: Mr. Khan, I will deal with that
12 point in due course.

13 MR. KHAN: I'm grateful.

14 MR. RAPP: And I only mean to illustrate and not
14:23:25 15 to suggest that that would happen here. But these are
16 the concerns that we have. We have witnesses --

17 JUDGE DOHERTY: I was going to ask you, Mr. Rapp.
18 You may have read Mr. Khan's instructions to his
19 teams - it was filed with the Court some months ago -
14:23:37 20 to try and put in place a comprehensive system to
21 ensure there wasn't inadvertent or deliberate
22 disclosure. I'm sure you've seen that.

23 MR. RAPP: Yes, I have. And he discussed also
24 providing a copy of a protocol to us as well, which I
14:23:55 25 don't think I have seen yet.

26 JUDGE DOHERTY: I think it's been given to the
27 Trial Chamber.

28 MR. KHAN: Your Honour, that was filed ex parte,
29 confidentially.

1 JUDGE DOHERTY: Very well. I won't deal with it
2 any further, other than to say I understand there are
3 provisions in place.

4 But what occurs to me, as you address me,
14:24:17 5 Mr. Rapp, is this electronic system that Mr. Khan
6 refers to in the ICTY and the ICTR is, in turn,
7 dependent on two things: The rules of those two
8 tribunals and an electronic system that we don't have
9 in Freetown. Am I correct?

14:24:39 10 MR. RAPP: That's correct, Your Honour.

11 JUDGE DOHERTY: And this, then, begs the question
12 whether I can give a directive if, A, I don't have a
13 rule that I can follow and, B, it can't be implemented
14 anyway.

14:24:56 15 MR. RAPP: Well, in deference to my colleague, I
16 think he was going beyond his initial demand to talk
17 about an EDS system. I think his narrower demand was
18 the question of whether we would make available
19 disclosure electronically to all members of the trial
14:25:15 20 team and to the accused, and what I mean is in
21 electronic form; in other words, we'd burn it on a
22 CD-ROM and physically hand it to them as opposed to
23 hand them the papers.

24 Our concern is not the members of the trial team;
14:25:34 25 our concern is that material being handed to
26 non-members of the trial team, to the accused, who
27 would presumably have a right to review it, and then
28 potentially being copied or through some transfer of
29 magnetic medium to a non-lawyer visitor to get out in

1 the world, and that has happened at the other
2 tribunals.

3 JUDGE DOHERTY: Mr. Rapp, I have in mind the
4 definition of "Defence" in our rules, which it defines
14:26:02 5 the Defence as the accused and/or the accused's
6 counsel. It is my view that the protective measures in
7 place which bind the Defence will also bind the
8 accused, and therefore he is equally bound not to
9 reveal or disclose any materials. And I would like to
14:26:29 10 think that anyone bound by a court order will obey the
11 court order until I have evidence to the contrary.

12 But that observation does not overcome the
13 reservations I've already pointed out, that it seems to
14 be both a practical and a rule question.

14:26:50 15 Unless there's some other matter you wish to put
16 before me, I will ask Mr. Khan to reply just on that
17 one point.

18 Mr. Khan.

19 MR. KHAN: Your Honour, I'm much obliged.

14:27:01 20 Your Honour, for the sake of clarity, I'm not
21 asking -- I know resources are scarce and they're
22 different courts and I'm not simply seeking to copy the
23 administrative or resource capacities of different
24 courts and transplant them in the Sierra Leone court
14:27:21 25 context.

26 Your Honour, I'm not asking for an EDS system.
27 All I'm asking, Your Honour, is that what the
28 Prosecution have they share with us in the sense of
29 electronic disclosure. Your Honour, they've given,

1 they've provided, electronic CDs. For the life of me,
2 Your Honour, I cannot see any prejudice in me giving my
3 electronic CDs to Mr. Supuwood, who is a Liberian, or
4 to a Sierra Leoneans. There's a prohibition for that.

14:27:53 5 But I can give it to Ms. Buisman from Holland. Your
6 Honour, that's --

7 JUDGE DOHERTY: I didn't get that prohibition from
8 Mr. Rapp. Mr. Rapp presents me with a rule that you
9 referred to in another court and it's not referred to
14:28:08 10 here, and a purely practical problem of disseminating
11 this information. The way you're presenting it, it
12 seems to me that it's on a -- I wouldn't say a racial
13 basis because of two different nationalities, but for
14 some other reason other than a practical problem.

14:28:26 15 MR. KHAN: Well, Your Honour, I was quite frank.
16 Your Honour, I said that the position of the
17 Prosecution, with respect, is without logical coherence
18 or rational support. Your Honour, it can't make sense
19 that they allow me to give electronic disclosure to
14:28:46 20 Ms. Buisman and prohibit me from giving it to
21 Mr. Supuwood. I don't see, for the life of me, how
22 that can be sustained. Your Honour --

23 JUDGE DOHERTY: Mr. Rapp, is that the situation?
24 Because that is not what I'm getting from you. I'm
14:28:55 25 getting a different impression from you altogether.

26 MR. RAPP: Well, understand, we get into this
27 distinction with the accused, which, you point out, may
28 be unsupported by the rule.

29 Our original arrangement was that we would provide

1 this material in an electronic form, though obviously
2 by hand-delivery, to counsel alone. We wanted to
3 restrain, to the extent that we could, its wide
4 dissemination because of the fear that the wider that
14:29:26 5 it's distributed, there's a chance that positively
6 everything could go up electronically and it couldn't
7 be captured once that was done. That was our concern.

8 Frankly, within the trial team, we don't have any
9 problems with providing this material that we've
14:29:42 10 disclosed so far in electronic form. But I think when
11 we get to unredacted disclosure - because we're now
12 being faced with a situation where we said that
13 Mr. Khan could have it and then dealt with people one
14 by one - I think when we get to unredacted disclosure,
14:30:02 15 we won't make any electronic disclosure available to
16 Mr. Khan or to anyone else. We'll provide it in hard
17 copy. We simply do not want to run the risk that by
18 the simple act of pushing a button in the online world,
19 that material could end up out there.

14:30:15 20 And if we can't draw a distinction between the
21 trial team and the accused, who cannot be effectively
22 sanctioned - he's already facing the most serious
23 possible penalty provided under international law; a
24 contempt sanction is meaningless - we will not provide
14:30:29 25 electronic at that point. At the moment, as long as
26 it's redacted, we don't have as great a concern.

27 JUDGE DOHERTY: Thank you, Mr. Rapp.

28 Thank you, Mr. Khan. I've reached a decision on
29 these two points.

1 There are two matters, then, raised by Defence.
2 One is to do with expert reports. I remind the parties
3 of the provisions of Rule 94 bis (A) which imposes a
4 mandatory provision that an "expert witness called by a
14:31:02 5 party shall be disclosed to the opposing party as early
6 as possible," and I direct that the Prosecution
7 disclose as early as possible. I accept the submission
8 of counsel that they don't have the expert report and
9 therefore I cannot order something that doesn't exist.
14:31:21 10 But I remind counsel of that obligation.

11 On the second point concerning the mode of
12 disclosure, the provisions of Rule 66(A)(i) oblige the
13 Prosecutor to disclose to the Defence copies of
14 statements of all witnesses, et cetera. That is the
14:31:43 15 rule that this Court can enforce, and I do not consider
16 that -- I can't go beyond that to tell the Prosecutor
17 how to run his office. He's obliged to disclose and I
18 order him to do so.

19 MR. KHAN: Your Honour, a couple of matters, with
14:32:01 20 your leave, because in fact I hadn't finished my
21 response prior to the floor being given to my learned
22 friend. Perhaps it's useful to have recourse through
23 65 bis, just in relation to the difference of the rules
24 in your powers.

14:32:14 25 Of course, one of the general purposes of today's
26 hearing is to organise an exchange between the parties
27 so as to ensure expeditious trial proceedings.

28 Your Honour, in my submission, that gives Your
29 Honour, with her experience, substantial discretion in

1 deciding both by way of direct order as well as by way
2 of advice, non-binding order, to the parties how they
3 can liaise or coordinate so that matters can be
4 properly and fairly put in the interests of a fair and
14:32:45 5 expeditious trial. So, Your Honour, that's the first
6 point I have to make.

7 In relation to the ICTR practice, I didn't address
8 you. Of course, the ICTY and ICTR rules evolved
9 significantly since their inception. But what is
14:33:01 10 important when one is looking at the Yugoslav and
11 Rwandan rules is the overriding provision that the
12 rules were flexible, geared towards a fair and
13 expeditious trial.

14 Now, the EDS system came under -- it was a species
14:33:16 15 that arose out of the same Rule 66. Your Honour --

16 JUDGE DOHERTY: Mr. Khan, are you trying to go
17 behind the directive I've just given?

18 MR. KHAN: Your Honour, I was seeking to clarify
19 in relation to the issue with disclosure. But, Your
14:33:36 20 Honour, in light of your order regarding expert
21 reports, what I would ask is a supplemental order that
22 the Prosecution, within a time period Your Honour feels
23 appropriate - perhaps two weeks - provide to the Trial
24 Chamber and to the Defence a time line of both the
14:33:55 25 identities, if known, of the putative experts and,
26 secondly, when they expect to have reports.

27 Your Honour, in addition to that, I would ask for
28 an order - and it's a practice that's followed at least
29 in the Yugoslav tribunal - that prior to the finalised

1 report being available, a summary be served upon the
2 Defence as soon as possible; so as soon as possible,
3 even if it's not the final expert report, a general
4 outline of the areas covered by the expert be served
14:34:28 5 upon the Defence.

6 Your Honour, in my submission, it's far too
7 relaxed on the Prosecution to say, "Well, whenever we
8 have it, we have it and we'll give it to you." A bit
9 of pressure would be useful to focus their minds in
14:34:42 10 this issue, given the June start date.

11 I would ask that orders be given that within two
12 weeks, Your Honours and the Defence be notified as to
13 the identity of the putative experts and the time line
14 within which these different reports are going to be
14:34:58 15 served upon us. I don't see any reason why that cannot
16 be provided to us.

17 That's my supplemental position, Your Honour.

18 JUDGE DOHERTY: I can see as a purely practical
19 thing, having seen expert reports over the years, how
14:35:13 20 slow experts can be in getting their reports done, and
21 therefore I'm wary of stipulating a time for a report
22 if the counsel on the other -- who the order is
23 directed to cannot necessarily fulfil it. However, I
24 can certainly -- I'll invite Mr. Rapp's reply, but that
14:35:38 25 is an observation I make myself with reservation.

26 Mr. Rapp, you've been asked to make known the --
27 presumably the names and the fields of expertise, and
28 then we'll come to the summaries. Have you determined
29 your fields and the names, and are you ready to

1 disclose those?

2 MR. RAPP: Well, Your Honour, we have a list of --
3 internally, of 13 prospective experts and then nine
4 sort of other context witnesses, more journalistic type
14:36:17 5 of individuals. But in terms of selecting between
6 them, we have not done that, and we want to make sure
7 that we present the expert that's the best and the most
8 complete and the most authoritative in each area.

9 There are rules, and those rules create very tough
14:36:35 10 standards on the Prosecution to have its case ready.
11 What 66 -- what Rule 73 bis says is that at the time
12 that the pre-trial brief is filed, we're required to
13 list all our witnesses, including our expert witnesses;
14 but then it relieves us from the requirement under
14:36:53 15 73(B)(iv)(b) to provide a summary of facts upon which
16 that witness will testify.

17 Now, that's the rule, and our position is that we
18 will comply with the rule. But we also recognise that
19 the spirit of the rules is that as soon as one has the
14:37:19 20 information, one doesn't wait until that deadline to
21 provide it. And so we will move on this as
22 expeditiously as possible and get that information.

23 Now, I've just queried Ms. van Tongeren about the
24 actual expert witness situation, and I'm pleased to
14:37:37 25 report that we just have received one report that is
26 complete and another one that we have a draft of that's
27 going to -- that's in revision. So I believe very
28 shortly we'll be able -- well, certainly immediately
29 we'll be able to provide the one and very shortly the

1 second one. And it's obviously in our interest to get
2 these witnesses selected as quickly as possible. But I
3 think it's inappropriate to compel us to provide things
4 contrary to the rules.

14:38:04 5 Now, in a moment we'll get to the issue of when
6 the 73 bis pre-trial report and list is due, and that
7 will be an important issue, but it has to be, I think,
8 dealt with in that context, Your Honour.

9 JUDGE DOHERTY: I see no reason to amend or
14:38:23 10 deviate from the directive I've already given, and the
11 directive stands.

12 I move on now to the second item, which is the
13 indication from the parties on any points of agreement,
14 including admissions or statements not in dispute and
14:38:47 15 agreed issues. This was discussed at some length at
16 the previous Status Conference.

17 I understand from correspondence that a list of
18 agreed facts of both fact and law were served on you,
19 Mr. Khan, on the 31st of October. Was that correct?
14:39:08 20 How is that coming on?

21 MR. KHAN: The position is as stated in the letter
22 from the Prosecution to Your Honours, and it's in
23 accord with my previous submissions: That I will turn
24 my mind to agreeing facts once I've read the evidence.
14:39:27 25 Your Honour, I have not read all the evidence in the
26 case or am in a position at the moment to agree facts.
27 I have given the Prosecution my assurance that as far
28 -- as soon as possible before trial, I will turn my
29 mind to the areas where we can focus. But at the

1 moment it's simply not sensible to start agreeing
2 matters without understanding either the contours of
3 the Prosecution case or particularly the full gamut of
4 evidence.

14:39:59 5 Your Honour, this goes back, of course, to the
6 motion that I had previously filed and which has been
7 adjudicated on regarding adequate time.

8 JUDGE DOHERTY: At the last Status Conference,
9 Mr. Khan, I note you said you could at least agree some
14:40:17 10 basic facts, and you gave an example. In fact, you
11 gave two examples.

12 MR. KHAN: Yes.

13 JUDGE DOHERTY: Have you moved any further on from
14 that?

14:40:25 15 MR. KHAN: Your Honour, I've told the Prosecution
16 in candour, as I told Your Honour on the last
17 occasion -- your colleague on the last occasion, that
18 areas, for example, like geographical boundaries will
19 not be disputed. But, Your Honour, what I intend to do
14:40:39 20 is to deal with matters once I'm in a position to do
21 so.

22 Your Honour, to start going through evidence and
23 agreeing facts without reading the Prosecution
24 evidence, I'm not prepared to do it. I need some more
14:40:50 25 time, and when I'm ready I will agree certain facts.

26 Your Honour, I've told the Prosecution at this
27 moment in time everything is in issue. Once I'm in a
28 position to do so, consistent with my professional
29 responsibilities, I will go and start agreeing areas

1 that we're able to, for example, crime base evidence.

2 Your Honour, the Prosecution know there's going to
3 be no dispute, for example, that my client was
4 President of Liberia between the relevant period, and
14:41:18 5 the rest of it. But simply, I haven't had time at the
6 moment to deal with those matters given the huge number
7 of other matters that the Defence have to cope with and
8 the other surrounding circumstances that Your Honours
9 are well aware of.

14:41:33 10 JUDGE DOHERTY: I'm a little concerned that it
11 appears that in the three months since there was --
12 these facts were served or disclosed upon you, to you,
13 that we appear not to have moved on. Am I right in
14 that observation, that we appear not to have moved on?

14:41:54 15 MR. KHAN: In relation to agreed facts?

16 JUDGE DOHERTY: Yes.

17 MR. KHAN: Your Honour, we've agreed -- moved on
18 in relation to the case.

19 JUDGE DOHERTY: I'm talking about --

14:42:02 20 MR. KHAN: Your Honour, there's no obligation on
21 the Prosecution -- on the Defence to agree a jot. Your
22 Honour, there's no obligation on the Defence to agree
23 to anything. The Prosecution bring this case and they
24 must prove this case beyond reasonable doubt.

14:42:14 25 Now, Your Honour, I've told the Prosecution and
26 I've informed Your Honours that in good faith, at the
27 relevant time, I'm going to endeavour to focus this
28 trial, from the Defence perspective, on matters that
29 are relevant. But, Your Honour, I'm not willing to

1 accommodate the Prosecution, bend over backwards, when
2 it's not in the interests of my client. My time at the
3 moment is most efficaciously spent in case preparation
4 and reading the evidence.

14:42:41 5 Now, Your Honour, I gave the statistics; five
6 minutes a page, how long it will take. We haven't gone
7 through the evidence, and I'm not going to start
8 agreeing facts until I've done that. I think that's
9 professionally incompetent and I'm not willing to do
14:42:53 10 that.

11 JUDGE DOHERTY: I am not for one moment, Mr. Khan,
12 suggesting that the burden ever shifts from the
13 Prosecution to the Defence, and it would be regrettable
14 if you've formed that impression. I certainly do not
14:43:08 15 intend that impression to be given. That onus never
16 moves. And that is why, for example, the Defence are
17 under no obligation to make statements. I throw that
18 out as an example at random.

19 However, the rules do provide that the Trial
14:43:28 20 Chamber can direct the Defence to file a list of agreed
21 facts. I'm referring here to subrule (F) of 73 bis.

22 MR. KHAN: Your Honours, quite right. At the
23 moment, there will be no agreed facts by the Defence.
24 When I'm ready to do so, I will. I've said so in good
14:43:50 25 faith. Your Honour, the proof of the pudding is in the
26 eating. When I'm ready to do so, in advance of trial,
27 facts will be agreed by the Defence with the
28 Prosecution and areas will be, hopefully, narrowed.

29 But, Your Honour, at the moment, given the amount

1 we've had to do and the limited resources we've had and
2 all the other difficulties, working without an office,
3 I'm sorry, Your Honour, I haven't thought agreeing
4 facts with the Prosecution is a priority for my client
14:44:16 5 given that I have to learn what the allegations are,
6 first of all.

7 JUDGE DOHERTY: What about -- I note the last
8 Status Conference didn't refer to agreed points of law,
9 but I note from the notice served on you, there was a
14:44:29 10 reference to agreed points of law. My observations on
11 the evidence equally applies to points of law. But is
12 it likely that there will be any agreed points of law?

13 MR. KHAN: Yes, Your Honour.

14 JUDGE DOHERTY: Mr. Rapp, you've heard counsel for
14:44:49 15 the Defence on this thorny issue.

16 MR. RAPP: Madam President, we're frankly
17 disappointed. The trial team did spend a great deal of
18 time going through public records and, in the end,
19 putting together hundreds of statements of facts from
14:45:06 20 the public record that we did not believe, with rare
21 exception, would be in substantial dispute, and would
22 provide the Chamber with a foundation of historic fact
23 from which they could then proceed, without prejudice
24 to the accused, to determine the real facts in this
14:45:24 25 case, the facts that I think are legitimately in
26 dispute.

27 As Your Honour just invited Defence counsel's
28 attention, this Rule 73 bis (F) talks about this
29 occurring prior to the pre-trial conference, and that

1 is very important for us because we have to select
2 witnesses.

3 I mean, if you look at the statement of fact, we
4 have statements like -- you could look at 155:

14:45:56 5 "ECOMOG, acting on behalf of the deposed
6 government of President Kabbah, ousted the AFRC Junta
7 from power on or about the 14th of February, 1998."

8 No real dispute, I don't think, on that fact, but
9 they're unwilling to stipulate to it so we're going to
10 have to make sure a witness says that to the extent we
11 need to show what role the AFRC, which we allege later
12 will have some tie to the accused, had in power.

13 And so this puts us into a situation as we sit
14 down and select our witnesses and -- as someone might
14:46:27 15 complain, Why 133 core witnesses, and why are you
16 talking about 92 bis witnesses on background
17 information? Because we don't have these stipulations
18 of fact, we have to prepare to call people to prove
19 this up. Maybe it won't be that difficult.

14:46:46 20 The key thing here, which I think we'll get to in
21 a moment, is when we have to have this pre-trial list
22 done, and ideally we should have this information
23 before that. And I think what Mr. Khan is telling us
24 is that there is no way that we're going to have it
14:47:03 25 before that, and that would be unfortunate and it will
26 require a larger case, at least on the front end. And
27 I think it would be efficient and in the interests of
28 justice.

29 JUDGE DOHERTY: In the light of Defence's

1 submissions, I am loathe to make an order under 73 bis
2 (F) at this particular moment. However, I am concerned
3 to hear that even the basic facts which counsel,
4 Mr. Khan, indicated back in September and, if I recall
14:48:15 5 correctly, in July that could be agreed, and the
6 examples you've repeated here present today, that even
7 those have not been agreed and thereby are partly
8 putting the Prosecution on notice that they will have
9 to be proved.

14:48:37 10 I always feel it's not the duty of a judge to tell
11 either party how to run their offices or run their
12 case, but, Mr. Khan, would you be prepared at least to
13 agree those basic matters that you have indicated here
14 to the court you will, to at least shorten this --

14:48:58 15 MR. KHAN: Your Honour, I've put forward a very
16 consistent position, with the greatest of respect. It
17 is my intention -- as I said, the proof of the pudding
18 is in the eating. As soon as possible, I will agree
19 the greatest number of facts as I can. They will
14:49:11 20 include the very obvious matters, for example, borders
21 and who's the president when, where, for what country,
22 for what period.

23 But, Your Honour, we signed a contract in
24 September. There's been numerous problems. And time
14:49:25 25 spent agreeing facts with the Prosecution is time spent
26 away from reading the Prosecution evidence. Your
27 Honour, that basic difficulty has to be understood.

28 Your Honour, if it assists the Prosecution to
29 agree facts which I've said orally are not going to be

1 in dispute, I can try and get something to them, you
2 know, next week, without giving an undertaking, in the
3 next two weeks anyway, about those peripheral matters.
4 But I think that's not going to be of huge assistance,
14:49:52 5 because the devil is going to be in the core witnesses,
6 which I doubt are going to be agreed at all, and crime
7 base witnesses --

8 JUDGE DOHERTY: Mr. Rapp has given us an example
9 of a historical fact that I would have thought may not
14:50:04 10 have been in dispute, given it's been shown historical.

11 MR. KHAN: Your Honour, I don't have time at the
12 moment, and I don't think it's the forum, to go through
13 all of the facts. But some facts are
14 non-controversial. Some historical facts -- well,
14:50:19 15 "historical fact" is almost an oxymoron, in some
16 respects, and it can't be soberly considered without
17 reading all the evidence and taking instructions,
18 because it may be a disputed fact.

19 So those very simple, obvious facts I can agree in
14:50:35 20 the next couple of weeks. I don't give a formal
21 undertaking, but Your Honours, no doubt, will be
22 notified and you'll see when those facts are agreed.
23 But I don't have time, simply, to start agreeing the
24 difficult issues, the core issues, which are going to
14:50:49 25 help the Prosecution when I haven't read -- you know,
26 we haven't had time to take full instructions and read
27 the papers.

28 The Prosecution have had five years; we've had
29 less than five months since the pre-trial conference --

1 since the signing of the contract in September.

2 JUDGE DOHERTY: I thought documents were served on
3 you in May.

14:51:08

4 MR. KHAN: Your Honour, since the -- Your Honour,
5 I was alone.

6 JUDGE DOHERTY: I see.

7 MR. KHAN: Your Honour, I was totally alone. A
8 team was put in place when a legal services contract
9 was signed.

14:51:16

10 JUDGE DOHERTY: Incidentally, that reminds me, at
11 the last trial conference, you said it had been signed
12 but not approved. Has that been finalised?

14:51:33

13 MR. KHAN: Your Honour, Mr. Registrar is in front
14 of you. I haven't had any feedback since I signed the
15 contract and gave it to Mr. Registrar.

16 JUDGE DOHERTY: I see.

17 Mr. Nmehielle, you are on your feet.

14:51:49

18 MR. NMEHIELLE: I don't really know what the
19 meaning of "signed but not approved" is. For all
20 intents and purposes, for the Office of the Principal
21 Defender, we have a contract, of which -- with all the
22 signatures acquired. All we need do is transmit
23 Mr. Khan's copy to him, and there's no particular
24 approval required. Thank you.

14:52:06

25 JUDGE DOHERTY: Perhaps I recalled the word
26 incorrectly, but I know it was mentioned at the last
27 Status Conference. Thank you for that clarification
28 Mr. Nmehielle.

29 MR. KHAN: Your Honour, I'm grateful to my learned

1 friend, Mr. Singh. Your Honour, relevant in this whole
2 context is the piecemeal disclosure. The latest
3 disclosure we got, I understand, was on the 7th of
4 January -- 8th of January. These are all factors that
14:52:31 5 have to be considered sensitively if one wishes to be
6 fair to the Defence.

7 Your Honour, going back to Mr. Rapp's contention,
8 it's not clear at the moment, at this stage of my
9 preparation, that ECOMOG was acting on behalf of
14:52:48 10 President Kabbah. That may be an issue of dispute.

11 The conduct of ECOMOG is not without controversy.

12 JUDGE DOHERTY: Very well. I have indicated that
13 I am loathe to make a 73 bis (F) order at this time. I
14 therefore urge you, Mr. Khan, to review the basic facts
14:53:09 15 which you have already indicated twice in court that
16 you can agree and at least give those to the
17 Prosecution; and to bear in mind the powers of the
18 Court to direct if other matters cannot be done
19 expeditiously and in a timely fashion.

14:53:27 20 MR. KHAN: Your Honour, I will. As far as the
21 other powers -- [microphone not activated].

22 JUDGE DOHERTY: I have not forgotten that either.
23 I'll move on, then, to the preparation for the
24 Pre-trial Conference.

14:53:50 25 Mr. Khan, you've already indicated to the Court
26 that there are no special defences and that you will
27 not be filing a statement, and I will presume that
28 situation stands. So most of what, therefore, comes
29 under 73 will relate to Mr. Rapp's office.

1 Mr. Rapp, how are you progressing on the matters
2 for a Pre-trial Conference? I think we've covered some
3 of them already, actually.

4 MR. RAPP: Well, the most critical thing I think
14:54:24 5 that the Pre-trial Conference is tied to is the
6 pre-trial brief and the so-called final list of
7 witnesses. Our position is that we want time to make
8 sure that the selected list of witnesses that we place
9 into that pre-trial brief are the best witnesses and
14:54:45 10 the ones that, in fact, will be called.

11 We would prefer to have the order for the filing
12 of the pre-trial brief and for the list of witnesses to
13 be fixed 42 days before the trial date, on the same day
14 that unredacted disclosure is due for the first
14:55:08 15 witnesses. Of course, the Trial Chamber can require
16 that it be earlier than that, and that's within the
17 hands of the Trial Chamber. I believe it's then
18 provided that the Pre-trial Conference would then be
19 conducted after that was filed.

14:55:22 20 We would be concerned about having to complete the
21 witness list in the final sense until we've had an
22 opportunity to see each of the witnesses, and
23 particularly to determine which witnesses we may want
24 to offer by written testimony under 92 bis rather than
14:55:46 25 oral testimony.

26 Obviously, whenever the order is made, whenever
27 the Trial Chamber orders us to do this, we will provide
28 the pre-trial brief, lay out our legal theories of the
29 case, state who the witnesses are, provide summaries to

1 the extent they haven't been provided before, and state
2 exactly to what count each of those witnesses will be
3 testifying. But that list may be longer the earlier
4 we're required to do it, because we have to reserve the
14:56:20 5 ability to include sometimes multiple witnesses if we
6 haven't had an opportunity to speak to -- members of
7 the trial team haven't had an opportunity to speak to
8 these witnesses. And they're not quite halfway through
9 meeting with these witnesses at this time.

14:56:34 10 But as I indicate, we'd prefer that that be 42
11 days beforehand, but we will meet the Court's
12 requirements to provide --

13 JUDGE DOHERTY: Forty-two days before the hearing
14 date?

14:56:46 15 MR. RAPP: Forty-two days before the trial date,
16 yes. In other words, I would presume that would be
17 around the 23rd of April.

18 JUDGE DOHERTY: I'm just trying to recall when the
19 court is going into recess. I'm afraid I didn't bring
14:57:03 20 that with me.

21 MR. KHAN: Your Honour, of course, with your
22 leave, I would like to respond to that in due course.

23 JUDGE DOHERTY: Any other matters before I ask
24 Mr. Khan what his response is, Mr. Rapp? You're
14:57:40 25 thinking only of the pre-trial brief. Could you refer
26 me to that 42-day rule? I'm just looking for it here,
27 please.

28 MR. RAPP: We're referring to the 42 days in the
29 protective order. I believe there's a protective order

1 of 5 May 2006, and that's the disclosure of unredacted
2 witness statements prior to testimony.

3 Now, frankly, it would be our intention to
4 disclose in unredacted form on that day all the
14:58:13 5 witnesses likely to appear in the first trial session,
6 so we would also at that time wish to file our
7 pre-trial brief, which of course would include all of
8 our witnesses listed by pseudonym, and certainly at
9 that point some of them would have been -- of course,
14:58:28 10 their identity revealed.

11 But the way I read 73 bis is that the Trial
12 Chamber, prior to the Pre-trial Conference, orders the
13 pre-trial brief, and then at the Pre-trial Conference
14 the pre-trial brief and other matters are then
14:58:44 15 discussed in terms of what needs to be done for the
16 trial. So there's no requirement that the Pre-trial
17 Conference occur on the 24th of April. It could occur
18 several days thereafter.

19 JUDGE DOHERTY: Mr. Khan, you wish to say
14:59:02 20 something on that?

21 MR. KHAN: Your Honour, indeed.

22 It does seem, one has to say, that in light of the
23 response relating to experts and then this new rather
24 novel idea that a pre-trial brief be latched, be
14:59:15 25 linked, absent a rule, to service of unredacted
26 statements, the tendency seems to be creeping into the
27 Prosecution of disclosure at the last possible moment
28 rather than disclosure at the earliest opportunity.

29 Your Honour, in international criminal law at the

1 moment, both verified by the International Association
2 of Prosecutors, we're moving much more to a
3 cards-on-the-table approach, with disclosure as soon as
4 possible.

14:59:44 5 Your Honour, there's been no change of
6 circumstance, in my respectful submission, since the
7 last Status Conference before your sister judge, Judge
8 Sebutinde, on the 22nd of September. Your Honour, on
9 that occasion, a tentative trial date existed of April.
15:00:09 10 Judge Sebutinde suggested an order that the Prosecution
11 serve the pre-trial brief by the 30th of November,
12 2006.

13 Now, Your Honour, I did not take up the learned
14 judge's kind invitation on that occasion; I didn't
15:00:24 15 press the Prosecution for service of that pre-trial
16 brief. But that date, from the transcript, seems to
17 have been discussed previously, along with the
18 tentative trial date, by Your Honours in Freetown
19 before arriving in The Hague.

15:00:39 20 Your Honour, four months prior to the trial date
21 is the relevant period. Given the June date which has
22 been set by Your Honours in your latest decision, in my
23 respectful submission, the Prosecution have no reason
24 whatsoever, no good standing, no firm foundation, to
15:01:00 25 oppose an order from Your Honours that disclosure of
26 the pre-trial brief be served on the Defence by the
27 28th of February, which is four months before the trial
28 date.

29 Your Honour, that would accord and be consistent

1 with the ruling Her Honour Judge Sebutinde was minded
2 to make on the last occasion. In my submission, it
3 would allow the Defence proper time to prepare; it
4 would allow the Defence to understand the contours of
15:01:27 5 the Prosecution case. It would have the advantage,
6 with the annexes, of the list of witnesses it intends
7 to call and the list of exhibits that Judge Sebutinde
8 pointed to, the points of the indictment that the
9 witnesses -- each specific witness would speak to,
15:01:42 10 would help the Defence know the purpose for which each
11 witness was being called.

12 Your Honour, many of these statements are not
13 obvious. Some of them have wide temporal periods
14 predating post -- predating the indictment. Several
15:01:57 15 cover different geographical areas out with the
16 indictment, including not only Liberia or Sierra Leone
17 but other states.

18 So the sooner the Defence get the pre-trial brief
19 and know what the Prosecution have in mind, the easier
15:02:09 20 it is going to be to agree further facts.

21 So, Your Honour, I will, with pleasure, agree
22 these basic facts soon; but, in my respectful
23 submission, if the Prosecution really are trial-ready,
24 if they really are willing to be open and confident in
15:02:26 25 their case, confident that they can properly disclose
26 and allow the Defence to know the case against him,
27 they should be ordered to give the pre-trial brief,
28 along with the other requirements, the list of
29 witnesses and the exhibits, by the end of February.

1 They've had long enough. They've had two months extra
2 since the last Status Conference, and in my submission,
3 there's been no change of circumstance since that
4 occasion.

15:02:54 5 Your Honour, for those reasons, it's my respectful
6 submission that Your Honour order that the pre-trial
7 brief and all be served upon the Defence by the 28th of
8 February.

9 Unless I can assist further, Your Honour, those
15:03:08 10 are my submissions on that issue.

11 JUDGE DOHERTY: Thank you, Mr. Khan.

12 Mr. Rapp, have you any reply on counsel's
13 submissions?

14 MR. RAPP: Well, Your Honour, I suspect we're
15:03:59 15 getting into a cart-and-horse kind of argument here.
16 But obviously we don't know what witnesses to call if
17 we don't know what facts we need to prove and which
18 ones are stipulated, and counsel's delay and
19 unwillingness, even though we did spend a great deal of
15:04:15 20 time preparing these things that probably could have
21 been spent more wisely on other things, I think makes
22 it more difficult for us to prepare that pre-trial
23 brief. But we will prepare it whenever Your Honours
24 wish.

15:04:28 25 Our main concern is that we have the time that's
26 available to make our witness list as compact as
27 possible and to make it as precise as possible. If we
28 were to file it now -- you've certainly seen our case
29 summary, you've seen the -- the Defence has seen the

1 witness statements. And it's clear, by the way, if you
2 look at a witness statement, whether this witness is
3 talking about mutilation or pillage, whether he's
4 talking about Kono or talking about Freetown. We don't
15:05:01 5 think that the simple note of what count he's going to
6 testify about is going to be all that elucidating to
7 the Defence. We can do that.

8 But having the benefit of this 4th of June trial
9 date - I think it was Judge Cassese who said that
15:05:18 10 sometimes haste at the front end can mean a longer
11 process at the back end - we want to take advantage of
12 this time in order to make sure that what we file is as
13 precise as possible based upon the fullest possible
14 evaluation of our evidence. And we don't think this
15:05:33 15 harms the Defence, because they have our summary of our
16 case and they have the statements of these witnesses in
17 redacted form, which leaves the allegations of the
18 witnesses that are -- the facts as to the material
19 allegations clearly revealed to them, and so we don't
15:05:50 20 see that they need that material, a pre-trial brief, in
21 order to do other things in their case.

22 We'd suggest the 42 days would work the best.
23 Sometime prior to that we could work with as well. But
24 it would be best if it were done at a reasonable time
15:06:09 25 so that we can complete the best possible work on our
26 witness list.

27 JUDGE DOHERTY: Right --

28 MR. KHAN: Your Honour, I don't wish to be like a
29 jack-in-a-box.

1 JUDGE DOHERTY: I recall you saying that before,
2 Mr. Khan.

3 MR. KHAN: Your Honour, I'm a man, unfortunately,
4 of many words but most of them repeated, so I hope
15:06:40 5 you'll forgive me.

6 JUDGE DOHERTY: Consistency.

7 MR. KHAN: Well, Your Honour is most kind, most
8 gracious.

9 Your Honour, with the greatest of respect, I hear
15:06:51 10 what my learned friend says, but the Prosecutor, of
11 course, is well aware of his responsibilities. In my
12 submission, the pre-trial brief should be focused by
13 the Prosecutor in deciding, irrespective of any
14 assistance from the Defence, what witnesses, what
15:07:07 15 evidence, he requires to prove the case against my
16 client.

17 Your Honour --

18 JUDGE DOHERTY: First of all, Mr. Khan, I don't
19 think you've got a right of reply to a reply. You've
15:07:18 20 had a response, there's been a reply, and I don't think
21 you've got a right of reply to another reply.

22 MR. KHAN: Your Honour, I don't have a right.

23 JUDGE DOHERTY: Secondly -- yes. Secondly, when I
24 look at Rule 73 bis (B) and the matters that have to be
15:07:33 25 considered, they include, at subrule (iii) "a statement
26 of contested matters of fact and law," a list of
27 witnesses is at (iv), "admissions by the parties and a
28 statement of other matters not in dispute."

29 Now, we're not getting anywhere with those, and

1 you've given me reasons why we're not getting anywhere
2 with them, and because of your reasons I haven't made
3 any orders against you in relation to those. I've
4 asked you to work with them. So I'm bearing in mind
15:08:08 5 that you have problems in fulfilling matters on your
6 side that the Prosecution need in order to comply with
7 73 bis (B). Therefore, how can I impose a time that
8 you stipulate on them when they're not -- when they
9 don't have your part of the list that they're going to
15:08:37 10 put in? Okay, true, they can say, all issues are in
11 dispute. There's not seven days in the week; there's
12 not 12 months in the year. Everything is on proof.
13 But that's not going to get us anywhere. Let us be
14 realistic.

15:08:59 15 Their obligations, in turn, are partly dependent
16 on certain matters that you have to fulfil, and I have
17 not made an order against you on those, although I've
18 indicated the powers of the Court. So let us meet --
19 try and strike a balance between the time you need and
15:09:17 20 the time -- in order to inform the Prosecution and the
21 time the Prosecution then will need to compile their
22 pre-trial brief, in the light of what you have said.

23 MR. KHAN: Your Honour, I do -- I think we're all
24 cognizant of the difficulties detailed just now by Your
15:09:39 25 Honour. The question, of course, is how to cut the
26 Gordian Knot, because these difficulties persuaded the
27 Prosecutor to ask for July start date and not oppose a
28 September start date. So this difficulty, Your Honour,
29 is a direct consequence of Your Honour's decision to

1 fix a June start date.

2 Your Honour, talking about days in the week, there
3 are only seven days in a week, and there's a certain
4 amount the Defence can do. At the moment we are going
15:10:05 5 to start trial in June not being ready, but we will
6 start because that's your order. But I've made it
7 quite clear we will not be ready given the huge welt of
8 material that we face. The position of the Prosecution
9 and the Defence are not the same. They've had years;
15:10:19 10 we've had months.

11 Your Honour, at the moment I have been quite
12 candid, with the greatest of respect, regarding what
13 would be agreed. As far as orders are concerned, I
14 don't see any order that can compel me to agree
15:10:33 15 witnesses. There is simply --

16 JUDGE DOHERTY: I do not for one moment suggest --
17 I have been at pains to point out that I have not lost
18 sight of the obligations --

19 MR. KHAN: Indeed.

15:10:44 20 JUDGE DOHERTY: -- so let us not argue on things
21 that are not in dispute.

22 MR. KHAN: Your Honour, the question is how long
23 does the Prosecution need? My submission was that the
24 burden should be on them to show change in circumstance
15:10:58 25 since the 30th -- since the 22nd of September, when Her
26 Honour Judge Sebutinde was going to order them to
27 disclose the pre-trial brief two months ago, on the
28 30th of November. I didn't force the point on that
29 occasion, Your Honour. In my submission, they've had

1 an extra two months. I'm asking that they be given a
2 further one month from that occasion, so three extra
3 months, and I can't see any change of circumstances
4 that would merit a longer --

15:11:27 5 JUDGE DOHERTY: Can you refer me to the
6 transcript, please?

7 MR. KHAN: Indeed. Your Honour, if you'll pause
8 with me a moment.

9 Your Honour, whilst my learned friend is finding
15:11:49 10 that, in all the different cases that I've been
11 involved in, I've never seen, of course, either a
12 matter of practice or form, the pre-trial brief being
13 dependent upon agreed facts. In fact, many occasions
14 what one does see is that after the pre-trial brief is
15:12:06 15 given, many more facts are agreed because the Defence
16 are in a better position to understand the Prosecution
17 case.

18 Your Honour --

19 JUDGE DOHERTY: I'm not -- please, Mr. Khan, don't
15:12:20 20 get --

21 MR. KHAN: I'm grateful to my learned friend for
22 giving me the reference. It's 15:56:20, so 15 minutes,
23 56 ...

24 JUDGE DOHERTY: That's page 59, I think, of the
15:12:33 25 transcript.

26 MR. KHAN: Of the 22nd of September. Can I read
27 it?

28 JUDGE DOHERTY: I have it before me.

29 MR. KHAN: Your Honour, I'm grateful.

1 Your Honour, perhaps I should read it into the
2 record, with your leave.

3 "JUDGE SEBUTINDE: So there is the pre-trial
4 brief. Mr. Khan, you should be interested in this
5 because this is the one that gives you disclosure of
6 the list of exhibits. And I think the date here is
7 December 2006. I don't think it's a bad proposal, but
8 we could shift it forward to November, 30th November."

9 JUDGE DOHERTY: Yes, I have read it, and I notice
15:13:16 10 Mr. Staker's response to it.

11 MR. KHAN: Your Honour, I was just simply
12 detailing the way that Judge Sebutinde was going and
13 the very clear indication that she was about to give an
14 order.

15:13:37 15 JUDGE DOHERTY: Thank you.

16 In the light of the submissions by the parties,
17 and on taking into account the matters to be dealt with
18 under Rule 73 bis (B), I order that the pre-trial brief
19 be filed by Wednesday, the 4th of April, 2007.

15:14:48 20 Are there any other issues that I have to deal
21 with?

22 MR. KHAN: Your Honour, I don't believe so.

23 JUDGE DOHERTY: Thank you, Mr. Khan.

24 Mr. Rapp.

15:15:24 25 MR. RAPP: Just by way of announcement, and not
26 intending to argue the issue at all because it will be
27 an issue for Your Honours, we'll be filing next week a
28 motion regarding videolink witnesses, and attempting to
29 do that in a general way by categories of witnesses,

1 simply from the practical point of view of determining
2 whether there will be a videolink may take preparations
3 and expenditures and it will necessitate decisions in
4 terms of transport of witnesses as opposed to videolink
15:15:37 5 witnesses. And if we don't bring that matter forward
6 to the Trial Chamber, the system may not be in place to
7 be utilised when we get to the trial date. We're going
8 to attempt to do it in terms of categories of
9 witnesses, understanding that the actual determination
15:15:54 10 about an individual witness could be deferred to a
11 later point.

12 JUDGE DOHERTY: I'm sure you've read the
13 transcript of the conference of His Honour Justice
14 Lussick in July, and I think Mr. Khan made his position
15:16:13 15 very clear in relation to videolink witnesses in
16 that Status Conference. And I think subsequently to
17 that Status Conference there is an appeal tribunal
18 decision of the ICTR on that whole question of
19 videolink witnesses, or evidence being adduced via
15:16:40 20 videolink in the light of objections by the Defence. I
21 don't have the ruling before me. I'm acting purely on
22 memory. But I just refer to it in passing.

23 MR. RAPP: Okay. I don't wish to argue it, but I
24 would invite Your Honours to look at the decision - I
15:17:01 25 was personally involved in it - and it deals with the
26 issue that the judges were present with the witness and
27 the accused was by videolink.

28 JUDGE DOHERTY: That, indeed, was it, yes. They
29 were in two different jurisdictions. But, as I said,

1 I've referred to -- Mr. Khan, I think, has made his
2 position clear, and no doubt when the motion is filed,
3 we will await his response.

15:17:29 4 MR. RAPP: Yes. It will be a matter -- he and I
5 have discussed it today and it will be a matter of
6 contention, but a matter that I think needs to be
7 resolved if we're going to have such a system in place.

15:17:42 8 JUDGE DOHERTY: As you know, juvenile witnesses
9 were dealt with by way of videolink during some of the
10 trials in Freetown. In making that observation, I do
11 not in any way preempt any of the decisions. I have
12 not seen the motion, I have not seen the reply, and it
13 would be improper to make any other comment and I defer
14 from doing so.

15:17:57 15 Incidentally, Mr. Rapp, I do recall at the last
16 Status Conference there was a question as to whether
17 the Defence team was finalised. I've asked Mr. Khan
18 about his so I, in turn, will ask about yours.

15:18:13 19 MR. RAPP: The choice of leadership of the
20 Prosecution team is resolved. Ms. Brenda Hollis,
21 formerly a Senior Trial Attorney at the ICTY and a
22 person who worked as a consultant in the Office of the
23 Prosecutor of the Special Court for Sierra Leone, will
24 join the team as the leader, as the team leader, and
15:18:29 25 will arrive in Freetown, I believe, on the 5th of
26 February.

27 The other members of the team, there is still a
28 trial attorney position where an offer is outstanding
29 and we're working on determining whether that will be

1 accepted or whether we will go to an alternative
2 candidate. But we hope to have that matter resolved
3 within the next week.

4 JUDGE DOHERTY: Thank you, Mr. Rapp.

15:18:54 5 So it would appear that, Mr. Khan, you have your
6 team finalised but the Prosecution hasn't finalised
7 theirs.

8 MR. KHAN: Well, Your Honour, in fact, we don't
9 have the team finalised. We're still awaiting one
15:19:02 10 local investigator, but the Principal Defender is
11 informed and the Prosecutor, in fact, are informed of
12 developments.

13 JUDGE DOHERTY: Thank you.

14 There are no other matters, then, counsel; is that
15:19:11 15 correct?

16 Mr. Khan, could I draw your attention to a
17 practice direction --

18 MR. KHAN: Yes.

19 JUDGE DOHERTY: -- by both Presiding Judges of
15:19:21 20 Trial Chamber I and Trial Chamber II concerning the
21 robing of counsel at the bar table.

22 MR. KHAN: I'm grateful.

23 JUDGE DOHERTY: Yes. I think it's stated around
24 July, or something, of 2005.

15:19:31 25 MR. KHAN: I'm grateful, Your Honour.

26 JUDGE DOHERTY: If there are no other matters,
27 we'll adjourn. Close the court.

28 I will not set a date for another Status
29 Conference or a Pre-trial Conference. I will leave

1 that for a date to be fixed.

2 If there are no other matters, Madam Court
3 Attendant, please close the court.

4 THE USHER: All rise.

15:20:06

5 --- Whereupon the Status Conference adjourned sine
6 die at 3:20 p.m.

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