

Case No. SCSL-2003-01-PT

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 7 MAY 2007
9.45 A.M.
PRE-TRIAL CONFERENCE

TRIAL CHAMBER II

Before the Judges: Julia Sebutinde, presiding
 Richard Lussick
 Teresa Doherty

For Chambers: Mr Simon Meisenberg

For the Registry: Michael Adenuga
 Elaine Bola-Clarkson
 Rosette Muzigo-Morrison
 Rachel Irura

For the Prosecution: Mr Stephen Rapp

Ms Brenda Hollis
Ms Leigh Lawrie

For the accused Charles Ghankay Mr Karima Khan
Taylor: Mr Avinder Singh
Ms Caroline Buisman
Ms Rachel Browning (intern)

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1 [TAY07MAY07_MD]

2 Monday, 7 May 2007

3 [The accused entered court]

4 [Open session]

5 [Pre-trial conference]

6 Whereupon commencing at 9.45 a.m.

7 PRESIDING JUDGE: Please call the case.

8 MS IRURA: The Special Court for Sierra Leone is sitting in

9 open session for a pre-trial conference pursuant to Rule 73bis in

10 the case of the Prosecutor versus Dankpannah Charles Ghankay

11 Taylor, case no. SCSL-03-01-PT. Justice Julia Sebutinde

12 presiding.

13 PRESIDING JUDGE: I hope this microphone is working; yes?

14 Thanks.

15 I would like to welcome everyone to this pre-trial

16 conference held pursuant to Rule 73bis of our Rules of Procedure

17 and Evidence in preparation for the Charles Taylor trial

18 scheduled to begin on 4 June 2007. I also wish to apologise for
19 a late start of about 15 minutes. This was due to a technical
20 problem in the booths, I believe. That is why we started late.

21 The first thing we will do, before we get into the agenda,
22 is I understand we need to swear some interpreters. I understand
23 some of them have not taken this oath, but I think it would be
24 good if all of them would because, for this trial, this trial,
25 this is a new trial and the interpreters have not taken an oath
26 for this trial. So could I request the interpreters.

27 MR KHAN: Your Honour, whilst that is being done, I wonder
28 if I could ask the leave of the Court for my client to be given
29 leave to wear some sunglasses. As is apparent, he is suffering

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1 from an eye infection. With this light he is in quite some
2 discomfort. I wonder if for today he could be granted leave to
3 wear sunglasses so he is not in discomfort.

4 PRESIDING JUDGE: Mr Taylor, I am sorry to hear you are not
5 feeling well, but I think that would be fine.

6 [Interpreters: Edward Foday, Abdul Gassama, Joseph Bundor,
7 Sylvester Wright sworn]

8 PRESIDING JUDGE: For the record, we will take the
9 appearances please. Starting with the Prosecution.

10 MR RAPP: Madam President, Your Honours, appearing today
11 for the Prosecution is the Prosecutor, Steven Rapp. With me is
12 the senior trial attorney, the leader on the case, Brenda J
13 Hollis, and also Leigh Lawrie, who is an associate legal officer
14 with the team. Thank you very much.

15 PRESIDING JUDGE: Thank you, Mr Rapp. Could we take
16 appearances from the Defence please.

17 MR KHAN: Your Honour, Karim Khan, for Mr Charles Ghankay

18 Taylor, assisted today by my learned friends Mr Avi Singh, Ms
19 Carolyn Buisman, who sits on the table behind. Along with us is
20 also an intern who is leaving today, Ms Rachel Browning.

21 Your Honour, those are the appearances for today.

22 PRESIDING JUDGE: Thank you, Mr Khan.

23 MR JALLOH: Your Honour, Charles Jalloh for the office of
24 the Principal Defender. With leave of this Court, I should like
25 to note for the record that the Principal Defender regrets he
26 cannot be here at this pre-trial conference. As Your Honours
27 would be aware, he would typically attend such meetings in
28 respect of the various accused before the Special Court
29 consistent with this mandate under Rule 45.

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1 In addition, I wish to note that Mr Taylor had requested
2 recently to have meetings with Mr Nmehielle, the Principal
3 Defender. Because of confidentiality and privilege in respect of
4 Mr Taylor, I am not at liberty to elaborate on the various
5 reasons why, but I wish to note that for reasons well beyond the
6 control of the Principal Defender, and over his strongest
7 possible objection, the Principal Defender's trip was cancelled.
8 Thank you.

9 PRESIDING JUDGE: I probably wish to recognise also the
10 presence of our legal officer, Mr Simon Meisenberg, and also the
11 presence of our Chief of Court Management, Ms Elaine
12 Bola-Clarkson, then Mr Michael Adenuga, from the Registry, the
13 Hague office, and Ms Rosette Muzigo-Morrison, also from Court
14 Management, and Rachel Irura, who is part of the Registry, I
15 think. Yes? Okay.

16 Now, the first thing we will do is to adopt the agenda;
17 that is the published agenda, the agenda that we published on 26

18 April, plus the additional items that were filed pursuant to the
19 Prosecution submission of additional agenda, agenda items on 2
20 May, and the joint filing of additional items, also on 2 May.

21 Now, if I may probably ask, before we adopt this agenda,
22 and I am looking at the document entitled "Prosecution submission
23 of additional agenda items," that is document 231, there are some
24 agenda items that we really do not understand the way they are
25 framed and I will probably ask the Prosecution to elaborate.
26 Item number 2 says: "Matters relating to the indictment," and
27 you have certain matters there that we do not understand if they
28 are really properly pre-trial matters or matters that should be
29 the subject of a formal application. That is one.

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1 The other is item number 3, use of video link during the
2 proceedings.

3 We know that some decisions have been made with regard to a
4 prior application on this subject matter and we are just
5 wondering what could possibly be the point of this agenda item in
6 this conference. So if you could please throw some light on item
7 number 2 and item number 3 before we include them on the agenda.

8 MS HOLLIS: Thank you, Madam President. As to item number
9 2, the first part of that item is simply to put the Court and the
10 Defence on notice that as to the language in count 5, which
11 indicates "any other form of sexual violence," in order to avoid
12 any issues of duplicity, the Prosecution will not be going
13 forward with any evidence regarding that language. Rather, it is
14 the position of the Prosecution that any evidence which would be
15 relevant to that language, "any other form of sexual violence"
16 will also be relevant to count 6, "outrages upon personal
17 dignity," which has been pled in the alternative or in addition

18 to the other charges.

19 JUDGE SEBUTINDE: Ms Hollis, are you saying that the
20 Prosecution intends to file an amendment to the indictment?

21 MS HOLLIS: Your Honour, certainly we are able to do that.
22 It is the Prosecution's position that, having given notice that
23 we will not go forward on that language, would not necessarily
24 require an amendment to the indictment.

25 PRESIDING JUDGE: And the use of the video link, could you
26 throw light on that item?

27 MS HOLLIS: Yes, Your Honour. This is simply again a
28 matter of notice regarding the possibility that there will be a
29 time during this trial, either with the Prosecution or perhaps

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1 with the Defence, where an individualised request for video link
2 may well be made. And in light of the Registry's submission that
3 it would take six months to be prepared to provide video link
4 testimony, we felt it appropriate to raise this notice, if you
5 will, so that the Registry would be aware that they should, in
6 fact, put in place the preliminary planning and procedures to
7 enable this to occur in a timely fashion, should it be requested.

8 We have also, Your Honour, sent a letter to the Registry
9 indicating the same possibility, so that they are on notice that
10 this may be required during the trial, so that they can take
11 whatever preliminary steps are necessary to prepare themselves
12 for this eventuality.

13 JUDGE SEBUTINDE: Ms Hollis, maybe at this stage I will not
14 say this but I will just leave the items on the agenda, and when
15 we get to the various items we will then make our comments
16 accordingly. I have to give the Defence an opportunity to
17 address on each of these as well.

18 So for now, we will adopt the agenda as originally
19 published, plus the additional items that were submitted by both
20 parties.

21 I also want to draw to your attention one preliminary
22 housekeeping issue; that is the sitting hours for today. We were
23 supposed to start at 9.30 and we shall go on until 11.00. This
24 is the proposed schedule and I will hear any objections, if you
25 have any.

26 We propose to sit from 9.30 to 11.00. Then we will have a
27 30 minute break, from 11.00 to 11.30. We will reconvene at 11.30
28 and meet through until 1.00. We will have a lunch break of
29 one-and-a-half hours, from 1.00 to 2.30 or 1430 hours, and we

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1 will have -- sorry, what did I say? Yes, a lunch break from 1.00
2 until 2.30. We will reconvene at 2.30 and close at 4.00. That
3 is 1600 hours. That is what we propose to do.

4 Now, in the event that we do not cover all the items of the
5 agenda today, we hope to continue tomorrow. I understand this
6 Court hall has been booked tomorrow with the same time schedules
7 as today and we hope that we shall be through by tomorrow
8 morning, at least. So if there are any questions or
9 clarifications regarding the schedule, I would like to see those
10 or hear those. None. So it is acceptable. That is how the
11 timetable will be.

12 Now, the first item on the agenda, and we have asked this
13 question many times but I will give you an opportunity; really,
14 we are inquiring, first of all, whether the Prosecution team is
15 fully formed and who the members of your team will be.

16 MR RAPP: Madam President, Your Honours, yes, the
17 Prosecution team is fully formed and I have provided the list of

18 the members to the Registry, but let me just read it out. The
19 members are: Brenda J Hollis in the position of senior trial
20 attorney, an attorney from the Bar of Colorado, USA; Wendy van
21 Tongeren in the position of trial attorney, from the Bar of
22 Ontario, Canada; Mohamed A Bangura, a trial attorney from the Bar
23 of Sierra Leone; Nicholas Koumjian, who is joining the Special
24 Court tomorrow or Wednesday, from the Bar of the State of
25 California, USA, trial attorney; Ann Sutherland in the position
26 of trial attorney from the Bar of South Australia, Australia;
27 Shyamala Alagendra in the position of trial attorney, from the
28 Bar of Malaysia; Alain Werner in the position of trial attorney,
29 from the Bar of Geneva, Switzerland; Leigh Lawrie, a solicitor

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1 from the Bars of Scotland, England and Wales, a legal officer;
2 and Maja Dimitrova in the position of case manager. Thank you,
3 Your Honours.

4 PRESIDING JUDGE: Thank you, Mr Rapp. Mr Khan, do you have
5 a full team yet for the Defence?

6 MR KHAN: Your Honour, we are working towards it. In fact,
7 one of the matters, to go back to the comments of my friend
8 Mr Jalloh, was that my client had wished to speak to the
9 Principal Defender because he had concerns about the level of
10 support and assistance that was given to him by the Registry.

11 Your Honour, I will be very brief. The client's view, and
12 if one compares this case in scale and in nature to that of
13 Slobodan Milosevic, he had been granted by the ICTY a Queens
14 Counsel of the English Bar, Steven Kay; a very senior lawyer from
15 Belgrade, Branislav Tapuskovic; a Professor Michael Wladomiroff
16 of the Dutch Bar, a very eminent lawyer; a Professor Timothy
17 McCormack; as well as a co-counsel, Gillian Higgins. That was

18 for an accused who did not have a legal team that did not have to
19 take instructions from their client and did not have to support
20 or supervise investigations.

21 Compared to that, the concerns of my client is that he is
22 being short-changed and has simply a legal team of two counsel
23 that have rights of audience.

24 Your Honour, unfortunately, because the travel request of
25 the Principal Defender was not approved, Mr Taylor has not had
26 the opportunity of seeking clarification about the level of
27 support given by the Court.

28 There has been discussions between myself and the Registry.
29 The Principal Defender has been kept fully informed and there has

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1 been quite sisyphian efforts on our part to get a Queens Counsel
2 on board. I have approached 12 or 13 senior members of the
3 English Bar. I have approached members of the Canadian Bar.
4 This case, in my view, does merit the most senior member of the
5 Bar and one, of course, welcomes my esteemed colleagues on the
6 Prosecution and they have a properly sized team. I don't say
7 it's inappropriate, a properly sized team for a case of this
8 complexity.

9 But, Your Honour, because of these difficulties, I still do
10 not have a full team. A decision has been made because, of
11 course, we are preparing for trial, to appoint a co-counsel. I
12 have alerted my learned friends for the Prosecution and your
13 legal officer of that person's name. I can't announce it today
14 because this individual is a member of the English Bar. He has
15 previously been instructed in another matter before the Special
16 Court and it's only a matter of courtesy to Trial Chamber I who
17 have to endorse a decision of the Principal Defender that there

18 is no conflict, and I need that waiver and that consent of Trial
19 Chamber I before his name can be formally announced. But, Your
20 Honours, attempts are being made to get the team fully on board.
21 At the moment I do have two legal assistants with me in court.
22 We have a pro bono legal assistant who working without funds,
23 totally free of charge, in Liberia. That is the extent of our
24 team. There is currently a co-counsel, Roger Sahota. He is not
25 going to be continuing once trial starts. He has another matter
26 in the ICTY. He will either work as pro bono lawyer or he will
27 leave the team, but, Your Honour, this will not be an issue, so
28 far as I am concerned, that affects the start date of trial, but
29 it's a matter that I bring to the attention of the Court, both to

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1 ventilate the concerns we have about the level of resources
2 vis-a-vis the Prosecution and, of course, to reinforce the
3 comments of my friend Mr Jalloh about the concerns of my client
4 that he has not been able to speak to the Principal Defender who
5 may have been able to clarify matters about the level of support
6 that the Court has given.

7 PRESIDING JUDGE: Yes, I appreciate that, Mr Khan. Thank
8 you very much.

9 MR KHAN: Grateful.

10 PRESIDING JUDGE: So for now, do I understand it is
11 yourself?

12 MR KHAN: Indeed.

13 PRESIDING JUDGE: And you are awaiting a decision to
14 appoint a co-counsel?

15 MR KHAN: Indeed.

16 PRESIDING JUDGE: And then you have two legal officers
17 assisting you? And that is your team?

18 MR KHAN: Yes. And a pro bono legal assistant as well who
19 is working without remuneration in Liberia.

20 PRESIDING JUDGE: Okay. Thank you. Mr Khan, I have been
21 asked to request you to speak a little slowly next time because I
22 think the interpreters are trying hard to catch up with you.

23 MR KHAN: Your Honour, I will do that. I was just
24 extremely sensitive to the fact I perhaps spoke too much when I
25 was last before Your Honour and I didn't want to outstay my
26 welcome on this occasion.

27 PRESIDING JUDGE: Let us just be mindful of the
28 interpreters because they have to get a proper record for the
29 Sierra Leone audience in Freetown.

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1 Thank you.

2 Mr Khan, on this issue of your team, or team for the
3 accused person, and the inability of the Principal Defender to
4 attend this, this is a matter that you have spoken for the
5 record, but there is really nothing that the Chamber can do
6 because this is a matter between yourselves, the Principal
7 Defender and probably the administration in the Special Court
8 but, nonetheless, we have noted this and we hope that at the
9 earliest opportunity, you can iron out this difficulty. Thank
10 you.

11 The next item on the agenda has to do with the disclosure
12 obligations at this stage of the parties. We just want to
13 inquire whether the Prosecution has actually complied or
14 completed its disclosure obligation. This is now, we are looking
15 at 60 days before the trial start date, which fell due on 4 April
16 2007 and we just want assurances that this has been complied with
17 pursuant to Rule 66(A)(ii).

18 MS HOLLIS: Your Honour, it is the Prosecution's position
19 that we have complied with Rule 66 requirements, as well as Rule
20 68 requirements and, in addition, we have complied with the
21 requirement under Rule 93(B). It has to do with disclosure of
22 evidence relating to similar pattern of conduct.

23 PRESIDING JUDGE: Thank you, Ms Hollis. Does the Defence
24 have any comment on this?

25 MR KHAN: Your Honour, in relation to Rule 66(A)(ii), I
26 accept that generally the Prosecution is in compliance. As a
27 matter of record, the last batch of disclosure of witnesses, that
28 the Prosecution seeks to rely upon, was sent out on 3 April but
29 it was actually received, and we have a receipt here, on 5 April.

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1 Your Honour, it's a day late but I am not making any point at all
2 about that.

3 Your Honour, we do have concerns about the experts but
4 perhaps I can deal with that a bit later.

5 PRESIDING JUDGE: That is okay. We have an item on experts
6 later.

7 Now, we are actually going to look at the pre-trial
8 conference filings, the Rule 73bis filings by the parties, and to
9 hear from the parties whether there are any procedural issues,
10 and I am not alluding to substance, but procedural issues arising
11 out of the pre-trial brief.

12 First of all, I would like to hear from the Defence, if you
13 have any procedural issues arising out of the Prosecution
14 pre-trial brief?

15 MR KHAN: Your Honour, I do apologise. In relation to
16 point 3 of the agenda, of course the disclosure that Your Honours
17 wish to be clarified were 66 A2, 68 and 94bis and, of course,

18 94bis deals with the experts. I wondered if Your Honours wished
19 me to deal with that now or perhaps hold off until a bit later.

20 PRESIDING JUDGE: No, I think this is 94bis. Sorry, I had
21 rather skipped that.

22 MR KHAN: Not at all.

23 PRESIDING JUDGE: It is to do with experts reports. And
24 the disclosure. Of course Rule 94bis does not give an actual
25 timeframe for disclosure but merely encourages the Prosecution to
26 file these reports as early as possible, I think those are the
27 words used, as early as possible after obtaining the reports.

28 MR KHAN: Indeed.

29 PRESIDING JUDGE: So with that in mind I would hear the

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1 Defence.

2 MR KHAN: I am grateful. Your Honour of course is quite
3 correct about the scope of the rule. It does state that
4 consistent with the presumption of early disclosure, and a cards
5 on the table approach, which is expected of the Prosecution,
6 experts' reports are disclosed to the other side; namely the
7 Defence, as soon as possible.

8 My learned friend Ms Hollis has been exceptionally kind and
9 as a courtesy has provided me with a provisional list of the
10 order of witnesses in this case.

11 Your Honour, out of the first ten witnesses, six purport to
12 be experts. Your Honour, it's in relation to those experts that
13 the Defence say that we have been prejudiced and that the
14 Prosecution disclosure leaves something to be desired. Beth
15 Vann, who is provisionally, tentatively the eighth witness that
16 the Prosecution may seek to call, is an expert regarding whom the
17 Defence have not got a report at all. What we do have, of

18 course, are reports, an article dated January 2002 and a report
19 in another matter dated January 2000, but, Your Honour, if the
20 Prosecution is seeking to rely upon an expert in relation to the
21 case against my client, it's only right and proper, in my
22 respectful submission, that that report be obtained and given to
23 us now. It seems rather regrettable that with trial so imminent,
24 so many of these witnesses have been disclosed so late in the
25 day. Your learned sister, Judge Doherty, on the last occasion,
26 did direct the Prosecution to disclose witness statements as soon
27 as possible; the experts' reports as soon as possible.

28 In relation to Ian Smilie and Corrine Dufka, again, we only
29 got the reports in April 2007. Steven Ellis, who is the first

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1 witness at the moment that the Prosecution wish to call, prepared
2 a report purportedly dated 5 December. It was received by us on
3 12 February 2007. It doesn't appear, from what I have seen,
4 despite the Christmas gap, the few day holiday period, why the
5 two-month delay between 5 December and 12 February can be
6 justified; why was this not disclosed to the Defence as soon as
7 possible, in accordance with the rule?

8 Your Honour, there are three witnesses, TFI-150, TFI-326
9 and TFI-358 as detailed in the pre-trial brief of the
10 Prosecution, that, rather curiously, the Prosecution seek to put
11 forward as confidential experts and withhold their identity.

12 Now, the statements, in fact, that we have are redacted.

13 Two of these three witnesses are in the first ten that the
14 Prosecution seeks to call; one is the second witness and one is
15 the seventh or eighth witness. It seems to be, if not churlish,
16 rather unfair.

17 PRESIDING JUDGE: Sorry, Mr Khan, are we still speaking

18 about expert witnesses?

19 MR KHAN: Indeed, Your Honour. In the pre-trial brief
20 there are three witnesses TFI-150, 326 and 358 that the
21 Prosecution purport are not fact witness; they seek to put them
22 forward as confidential expert witnesses, protected witnesses.

23 Now, in relation to these witnesses, these experts,
24 purported experts, we have redacted statements, not a report, and
25 it seems to be a commonsense view, in my respectful submission,
26 would compel to the conclusion that the Defence cannot instruct
27 an expert when we don't know the identity of the person the
28 Prosecution is putting forward on the other side -- not as a fact
29 witness where the normal 42-day rule would apply, but as a

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1 purported expert.

2 These are matters, Your Honour, that the Defence have
3 concerns about and that we put forward to your attention at the
4 moment in relation to 94bis.

5 PRESIDING JUDGE: Thank you, Mr Khan. I really would
6 invite comments from the Prosecution in answer or reply.

7 MS HOLLIS: Thank you, Madam President. In terms of the
8 disclosure of expert reports, in general, the first expert that
9 the Prosecution will call, that complete report has been
10 disclosed to the Defence. In terms of Ms Dufka, there was a
11 report that was disclosed to the Defence. There may be some
12 updates to that report. We are working with Ms Dufka, given her
13 schedule, to ensure we get those updates in a timely fashion and
14 those will be provided as soon as we get those reports.

15 In terms of the delay with Mr Ellis's report, the report
16 was received at about the time of the Christmas break. The
17 Prosecution team, as I understand it, required time to review the

18 report to determine if additional areas are needed to be covered
19 and, as a result of that review, the report was not disclosed
20 until in February.

21 Of course, the last possible date for disclosure of an
22 expert report is 21 days before they testify. We are, though,
23 endeavouring to provide those as soon as we have them.

24 In terms of Ms Van, the two reports that she co-authored,
25 and which will be a basis for her testimony, were disclosed to
26 the Defence; one of them was disclosed last year, one of them was
27 disclosed very recently this year.

28 We do anticipate with Ms Van that there will be a further
29 clarification, or report. We are awaiting that. We are again

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1 working with her and her schedule to get that as soon as possible
2 and as soon as we have it, we will provide it.

3 In terms of the experts who have been given TF numbers,
4 these are experts who, for one of the experts, a condition of his
5 testimony is that it will be in closed session with the use of a
6 TF number.

7 As for the other two, until very recently, their position
8 has been that they would testify using a pseudonym in closed
9 session. They have recently indicated to us that they are
10 prepared to testify using their names in open session. That
11 requires a motion to Your Honours to rescind protective measures
12 that are in place and that protective measures motion, the
13 rescission, has been prepared to be submitted to Your Honours.

14 PRESIDING JUDGE: This is different from the motion pending
15 before the Chamber?

16 MS HOLLIS: Yes, it is.

17 PRESIDING JUDGE: It's an additional motion?

18 MS HOLLIS: Yes, it is.

19 PRESIDING JUDGE: Thank you, Ms Hollis. All I need to
20 probably say at this stage, after hearing from the Prosecution,
21 is they appear to be doing their best, as far as these expert
22 reports are concerned, and it's correct that the legal
23 requirement under the rules is for 21 -- the disclosure is
24 required 21 days prior to the witness appearing in Court.

25 So this has to be a balance between as soon as possible,
26 and the 21 days; somewhere in between the Prosecution is supposed
27 to disclose these reports.

28 We appreciate the difficulty, or the practicalities of
29 acquiring these reports. It's not reports that already exist but

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1 they are probably being worked upon as we speak and at this
2 stage, all I can say to the Prosecution is to try and really
3 observe the requirements of Rule 94bis, which is as soon or as
4 early as possible. That's all I can really encourage the
5 Prosecution to do.

6 MR KHAN: Your Honour, I'm most grateful. I think I should
7 say for the record, my reading of 94bis is different. The 21
8 days does not refer to the disclosure; it refers to filing before
9 the Trial Chamber. That is relevant because that is the trigger
10 point for the Defence to object to those experts or to agree
11 those experts.

12 The controlling rule consistent with the cards-on-the-table
13 approach, the disclosure as soon as possible, is earlier. They
14 must disclose to the Defence, the opposing party as early as
15 possible.

16 Your Honour, the practical difficulty in my submission is
17 this: As a matter of procedure law, it's my respectful

18 submission that the Defence is entitled to have an expert sitting
19 alongside me when I cross-examine an opposing party's expert. It
20 is not possible to instruct an expert, number one, until I know
21 the identity, and I got that in April with the pre-trial brief
22 for the vast majority of witnesses and secondly, until I got a
23 report, because there is nothing to prepare, no expert worth his
24 salt is simply going to waltz into The Hague and seek to advise
25 me on areas to impugn a Prosecution expert or to agree a
26 Prosecution expert.

27 So, that is the reason why, in my submission, the as soon,
28 as early as possible is such an important restriction on the
29 Prosecution because it must be viewed in context with the right

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1 of the Defence to instruct an opposing expert so that we can
2 properly decide well in advance of the 21 days if, in fact, an
3 expert is in dispute.

4 I can't form that view; I can't put my finger up in the
5 wind and decide am I agreeing with this expert or am I
6 disagreeing with him. I am not an expert on diamonds and in
7 these areas.

8 So that is the compelling reason, in my respectful
9 submission, why the Prosecution should disclose reports as soon
10 as possible and in the event -- we only have the reports now. In
11 due course, these experts should be put back until the Defence
12 have had a chance to instruct opposing experts and be able to
13 make an informed decision as to whether or not these reports are
14 in dispute or not. Your Honour, that is all I have to say on the
15 matter, with your leave.

16 PRESIDING JUDGE: Thank you, Mr Khan. I entirely agree
17 with everything that you have said. I am sure the Prosecution

18 has also heard and will ensure that before they call a witness
19 their report has been disclosed as early as possible. It will
20 help these proceedings to run smoothly, if we respect these
21 disclosure obligations, really, and avoid as much trial by ambush
22 much possible.

23 Ms Hollis.

24 MS HOLLIS: Just one comment on that, Your Honour. We, of
25 course, are aware that we need to provide these as soon as we can
26 so the Defence will be prepared. However, we cannot put the
27 cards on table until we have the cards ourselves. As I indicated
28 earlier, we are endeavouring to get those reports. Indeed, for
29 the first session witnesses, the Defence already have some for of

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1 report, even though additional reports may be provided.

2 Thank you, Your Honour.

3 PRESIDING JUDGE: Okay. We have to move on to the next
4 item on the agenda, which is number 4. Which was matters arising
5 first of all, from the Prosecution pre-trial brief; is there any
6 comment on that? From the Defence?

7 MR KHAN: Your Honour, no. It was read with interest. I
8 am grateful for the efforts my learned friend has put into it.

9 PRESIDING JUDGE: Thank you. The joint filing by the
10 Prosecution and Defence on admitted facts and law, actually, the
11 title is "Joint filing by Prosecution on admitted facts and law,"
12 but actually I think it is admitted facts. The content is
13 admitted facts alone. But, in any event, are there any comments
14 that either party would like to make, or we take these as we find
15 them?

16 Ms Hollis?

17 MS HOLLIS: Just one comment, Your Honour. There is one

18 matter of law that the Defence and I and the Prosecution agreed
19 upon. That is, as to the definition of "civilian." The others
20 are considered by us to be facts but that one is considered by us
21 to be a point of law.

22 PRESIDING JUDGE: Thank you, Ms Hollis.

23 MR KHAN: Your Honour, I agree and there is nothing extra
24 to add at this time.

25 PRESIDING JUDGE: Okay. Since we are doing pre-trial
26 briefs, I want some comments on the Defence pre-trial brief. I
27 want to invite Justice Doherty to make a comment on the Defence
28 pre-trial brief.

29 JUDGE DOHERTY: Actually, Mr Khan, it is a point of clarify

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1 only; it is not pertinent really to comment. I would clarify
2 paragraph 17 of your pre-trial brief, the last sentence in that
3 paragraph in which it says, "The Trial Chamber had determined
4 that the introduction of prior criminal acts of Mr Taylor would
5 be inadmissible," et cetera. There is a citation there, that
6 refers back to paragraph 14, but I cannot find that citation. I
7 would be grateful if you would clarify that one.

8 MR KHAN: Your Honour, not to delay matters, perhaps if you
9 are in agreement, I can send a letter out to the Prosecution and
10 to the Trial Chamber in due course with the exact footnote
11 reference.

12 JUDGE DOHERTY: Thank you, Mr Khan. Could I also remark
13 that the annexure of the International Tribunal for the former
14 Yugoslavia, annexure C is extremely difficult to read. The foot
15 notes and the paragraphs are mixed up together. I am referring
16 to annexure C.

17 MR KHAN: Right.

18 JUDGE DOHERTY: You, of course, are entitled to cite it. I
19 am not questioning that. I am just remarking that the way it is
20 printed is extremely difficult to read because the footnotes and
21 the paragraphs are mixed up together and you hop from one thing
22 to the other.

23 Perhaps I could refer you to the practice direction of this
24 Court on the filing of authorities, Article 7.d for future use.

25 MR KHAN: Your Honour, I am much obliged. I'm grateful.

26 JUDGE DOHERTY: Thank you.

27 PRESIDING JUDGE: Does the Prosecution have any comments on
28 the Defence pre-trial brief?

29 MS HOLLIS: No, Madam President, we do not.

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1 PRESIDING JUDGE: Thank you, Ms Hollis. There was an item
2 that we requested the Prosecution to file, and that was a
3 statement of contested matters of fact and law. This has not
4 come by way of a definite or distinct filing. If you look at
5 the -- Ms Hollis, if you remember in the scheduling order we
6 had -- one of the documents the Chamber had instructed the
7 Prosecution to file was a statement of contested matters of fact
8 and law, and this arose out of Rule 73bis.

9 However, we note in your pre-trial brief, the Prosecution
10 brief, you say that everything, other than the admitted facts, is
11 in issue. And so we will take that that is the position. We
12 will take it that that is the position; yes?

13 MS HOLLIS: That's correct, Your Honour. I apologise for
14 not having a separate filing on that but indeed everything,
15 except for the agreed facts and the one matter of agreed law, is
16 in dispute in this case.

17 PRESIDING JUDGE: Is there any comment from either party on

18 the witness list filed by the Prosecution?

19 MS HOLLIS: We have no comment, Your Honour.

20 PRESIDING JUDGE: Mr Khan?

21 MR KHAN: Your Honour, no, but in relation to the last

22 item, it's correct to say the Defence have put the Prosecution on

23 notice that there are, other than the matters agreed, they are

24 put to strict proof, although of course from the pre-trial brief,

25 if one looks, for example, at the forms of participation,

26 superior responsibility in many areas we have accepted the legal

27 standard. For example, with some areas we have given some

28 caveats or clarifications but, of course, Your Honours will be

29 aware of the Defence position on the law but it is properly

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1 detailed in the Defence pre-trial brief.

2 PRESIDING JUDGE: This brings us to the Prosecution Exhibit

3 list. I think we have already heard comments, I would imagine,

4 on this. The Exhibit list. No, no, that was the expert reports.

5 The Exhibit list, could we hear comments on that, if any?

6 MS HOLLIS: Madam President, the Prosecution has no

7 comments on the list.

8 MR KHAN: Your Honour, nothing from the Defence at this

9 moment in time.

10 PRESIDING JUDGE: Thank you. This brings me to the issue

11 of motions pending, or anticipated, as we look forward to the

12 trial. Presently, I think there may be two motions, if I am not

13 mistaken; one from the Defence and one from the Prosecution, that

14 are pending.

15 I am wondering there are, for instance, motions that would

16 pertain to Rule 92bis, that's for documentary evidence in lieu of

17 oral testimony. We've got one pertaining to protective measures

18 and I think we are expecting another, according to Ms Hollis, and
19 then there is the Rule 94 motions for judicial notice, et cetera.

20 Could we hear, particularly from the Prosecution, what
21 plans you have, if any, for motions like this; when do you intend
22 to file motions like this?

23 MS HOLLIS: Thank you, Your Honour. Your Honour, earlier I
24 did misspeak. The protective measures motion that is before you
25 now does pertain to the two expert witnesses as well as other
26 witnesses, but those two are included in that motion.

27 In addition to that, the Prosecution does intend to file a
28 motion seeking judicial notice and to file a motion seeking
29 admission of documentary evidence and we hope to file those

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1 motions on Friday, the 11th.

2 PRESIDING JUDGE: Thank you, Ms Hollis.

3 Mr Khan, does the Defence envisage any motions at this
4 stage, before the trial, that is?

5 MR KHAN: Your Honours, yes, there will be some motions in
6 due course, one definitely, taking issue with the Prosecution
7 experts. Of course that will be done once the Prosecution file
8 those experts before the Court.

9 Your Honour, in addition, I alerted, just before Court sat,
10 my learned friends that there will be an additional motion for
11 Your Honour's consideration to allow the accused to give an
12 unsworn statement from the dock. As Your Honours are aware, in
13 the ICTY there is Rule 84bis which states that after a Defence
14 opening, if any, an accused may give an unsworn statement from
15 the dock.

16 Your Honour, of course, the Special Court Rules were
17 adopted initially mutatis mutandis and then a subsequent

18 amendment from the ICTR Rules. There is no equivalent provision
19 in the ICTR. It is a matter, in my view, within your sovereign
20 discretion as controllers of this case and Rule 54. I will be
21 filing a motion on that that in due course.

22 The other motion I will be filing and, in fact, it's going
23 to be with the Principal Defender but it may come in some shape
24 or form to Your Honours' consideration is that under the Rules of
25 the Court, that advocates with standing must have five years'
26 call. I am going to be putting an application to the Principal
27 Defender to allow, at least at the moment, my learned friend
28 Mr Singh, who is a member of the Californian Bar as well as the
29 Indian Bar, to have limited rights of audience on the condition

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1 that either me or my co-counsel is present. It would help to
2 take some of the burden off our shoulders and use our limited
3 resources as effectively as possible. Your Honours, that is a
4 matter for the Principal Defender. Your Honours may be consulted
5 and it may come before Your Honours in due course.

6 Your Honours, those are the only matters at this stage.

7 Your Honour, I do apologise. There is one additional
8 matter which is quite important. The Defence also, and I am not
9 sure of the timing, affidavits are being obtained at the moment
10 and will be filing a motion for protective measures for Defence
11 witnesses. Your Honour, my learned friend Mr Rapp, in fact, in
12 his various press conferences recently, has stated that the
13 Prosecution is anticipating relocating most of its witnesses,
14 which is fine. It's a matter of course for the Defence and their
15 resources. The Defence finds itself practically in an extremely
16 perilous position on the ground. One of the principal reasons
17 are that the only sanctions left in Liberia are no longer timber,

18 they are no longer diamonds, they are linked to people that have
19 what is rather nebulously termed an association with Charles
20 Ghankay Taylor. His Excellency Kofi Annan, of course, has talked
21 very briefly, and now there has been silence, about the fact that
22 due process of the UN requires any pernicious and Draconian
23 decision to be reviewed in the court of law.

24 Now, the difficulty for the Defence is numerous
25 individuals, and affidavits are being obtained by my friends, are
26 unwilling to speak to the Defence and their stated reason is that
27 they are petrified of having travel bans imposed upon them and
28 having their assets frozen by the Security Council because they
29 are associated to the defence of Charles Taylor. What makes that

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1 more Draconian is there is no mechanism in the international
2 legal order at the moment in play to review for those individuals
3 to go before a judicial body, or even an administrative body, to
4 review whether or not those travel bans are appropriate and
5 justified. There are individuals who have been on travel bans
6 for years and years, and they protest that these are totally
7 uncalled for, but the short of it and the nub of it is that this
8 Security Council intervention, which is non-reviewable in a court
9 of law, is having a very severe impact, and has had a very severe
10 impact, on the ability of the Defence to get witnesses in order
11 to investigate this case in the manner required.

12 Your Honour, it's a difficult issue because it impacts on
13 the Security Council, but Your Honour will be seized of a motion
14 in due course that in relation at least to witnesses that are
15 named Your Honours will be requested in due course to grant some
16 form of relief so that those individuals should not be targeted
17 by the Security Council, or the powers that be, in due course

18 because that, in my respectful submission, would amount to
19 witness intimidation, whether it comes from a group or a party or
20 even as august a body in the international legal order as the
21 Security Council of the United Nations. Your Honour, that is an
22 additional matter that will be before Your Honours at some point.

23 PRESIDING JUDGE: Thank you, Mr Khan. I am sure we will
24 deal with that when we have a tangible motion before us.

25 I now want us to look at the trial schedule that is
26 scheduled to begin on 4 June and, in principle, once the trial
27 begins, the Trial Chamber will sit for five days a week, except
28 of course on official court holidays and during the court recess,
29 when the Court will not sit.

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1 Now, for practical purposes, and in order to accommodate
2 the ICC staff working for the Special Court during the trial,
3 Trial Chamber II will adopt the ICC calendar, Court calendar, and
4 observe the ICC official holidays and the ICC Court recess,
5 instead of those normally applicable to the Special Court in
6 Freetown. The official holidays and the recesses are published
7 on the ICC Court website and can easily be found there.

8 Just a minute. I think if you look in your folders, under
9 tab 4, there has been provided --

10 MR KHAN: Except to the Defence, Your Honour.

11 PRESIDING JUDGE: I beg your pardon. I beg your pardon.

12 MR KHAN: Your Honour, not at all. Your Honour, I am
13 grateful. I have it to hand now.

14 PRESIDING JUDGE: At least for the year 2007, we have all
15 the public holidays outlined there, throughout the year up to
16 Christmas and beyond; then we have the public holidays and I
17 think the official court recess is somewhere in there. It's

18 starting from the fourth page. We have the spring, summer and
19 winter recesses and we plan to observe these dates here at the
20 ICC for this trial. Plus of course the official holidays and
21 maybe the public holidays as well, as they fall due.

22 Now, more importantly, are the sitting hours, that we
23 observe. Now, I note that in the joint filing by both parties,
24 the parties were suggesting certain sitting hours. The
25 mathematics of it didn't seem quite right. If I can just find my
26 documents.

27 Now, in the joint filing there is a proposition that you
28 make under number 2 or A2, court sessions, but these work out to
29 be 27 hours per week. I don't know who sat down and did this

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1 mathematics but it appears to us that they work out to be 27
2 hours.

3 MR KHAN: Your Honour, mathematics was never our strong
4 suit; it wasn't the Prosecution.

5 PRESIDING JUDGE: Who is the culprit for this mathematical
6 error; might it be the Defence?

7 MR KHAN: Your Honour, I take responsibility for it. It is
8 from the Defence.

9 PRESIDING JUDGE: More importantly though, we wish to draw
10 to your attention, sometime in the past, if you look under tab 4,
11 we consulted on the possible sitting hours at the ICC. As you
12 know, we hire this courtroom and much of our schedule is dictated
13 by the schedule of the ICC and the ICC staff that work for us.
14 So we were given two options; the options that appear under tab
15 4, the first option and the second option, and we had chosen the
16 second option.

17 Incidentally, the person who wrote this e-mail, or someone

18 then from Court Management, doesn't have mathematics as their
19 strong point either, because they worked out a schedule of 22
20 hours a week but actually they work out to be 24; 24 hours a
21 week. 24, 26.

22 MR RAPP: Madam President, Your Honour, as I see the first
23 schedule anticipates a five-day week, does it not, and four
24 one-and-a-half hour sessions per day which looks like six hours a
25 day and a total of 30 hours a week, which would be a good amount
26 of work. We would be happy to do 30 hours a week and make
27 progress in the case.

28 From the Prosecution point of view, I should note that our
29 concern is we would like to be able and we believe that in order

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1 to meet the 18 month guideline in terms of the presentation of
2 this case, and looking at the hours, that we would like to have
3 25 hours of sitting time, and if we were to go with option two,
4 rather than to close at 4.00 each day, if we were to extend that
5 until 4.30, but then there not to be an afternoon break, in other
6 words, the afternoon were to be a two-hour session, the morning
7 would be two one-and-a-half hour sessions, we would be able to do
8 25 hours a week and would not have difficulty with the schedule
9 here at the ICC.

10 PRESIDING JUDGE: Are you suggesting, Mr Rapp, if you are
11 looking at option two, which is actually what the Chamber had
12 adopted, or have adopted tentatively, your afternoon would start
13 at 2.30, and go through until 4.30 without a break?

14 MR RAPP: That's correct; in order to obtain 25 hours and
15 also to close the day by 4.30 which we understand is the
16 preference of the ICC that they didn't want us sitting beyond
17 4.30 in the day, otherwise they may have overtime needs.

18 PRESIDING JUDGE: Mr Khan, you are on your feet; you want
19 to comment on the sitting hours of the day?

20 MR KHAN: Your Honour, I don't have an objection to option
21 two, if Your Honours were minded to adopt it. My comment is in
22 relation to the second paragraph, after the timings, about
23 Defence lawyers not having the opportunity to consult with the
24 accused after court as security are not available. Your Honour,
25 it is my understanding that when we sit in court, the ICC
26 detention unit would allow us, on court sitting days, to meet
27 with the accused at Scheveningen until 8.00 p.m. With that caveat
28 I wouldn't object to that but we would require consultation with
29 the client, either here or at the detention unit, after court

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1 whenever needed.

2 PRESIDING JUDGE: Are you saying, Mr Khan, that you have no
3 objection to sitting until 4.30 every day?

4 MR KHAN: Your Honour, in frankness, my preference in these
5 circumstances would be 4 p.m. The preference for the longer
6 sitting was based upon the presumption that it would give Friday
7 as a day to do legal research preparation. If we are sitting
8 five days a week, from our perspective, it would be more
9 conducive given that many of us don't live in Voorburg and have
10 to get back to the office, and in order to prepare for the next
11 day's sitting to finish at 4. And so that by the time one has
12 taken dinner and got home or to the office, in the end, we will
13 have two or three hours probably minimum work, probably much
14 longer than that, but I would ask in those circumstances for the
15 second option to be the preferred option from the Defence point
16 of view.

17 PRESIDING JUDGE: What was the parties' suggestion with

18 regard to a Friday, or one day, to do in-house research et cetera
19 et cetera? That is non-sitting time. How do you propose we make
20 up for that day, in sitting hours?

21 MR KHAN: Your Honour, the first proposal of course is
22 predicated upon every day longer sittings, with Friday off as a
23 day in which the parties of course could do preparation. Do, if
24 there is further late disclosure, or if there are other witnesses
25 that need to be prepared by both sides, Friday, Saturday, Sunday
26 could be a long weekend for preparation. In addition we
27 anticipated that if there were legal motions that arose during
28 the course of proceedings Your Honours, at Your Honours'
29 discretion, could schedule a particular Friday as a Friday for

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1 legal arguments, but it one that the Prosecution would not have
2 to worry about in relation to scheduling witness's attendance and
3 flights and the rest of it. That was my understanding. I don't
4 know if that's helpful or not.

5 PRESIDING JUDGE: You see, with the mathematical errors
6 contained in the parties' proposal it is difficult for us to
7 envisage, if we were persuaded to grant Friday for in-house work,
8 we just want to understand how many hours a week we would be
9 actually sitting.

10 MR KHAN: Yes.

11 PRESIDING JUDGE: If we want to be persuaded to depart from
12 the arrangement in option two, that is on the file, and rather
13 consider the option by the parties, we need to understand how
14 many hours you think we are going to work.

15 MR KHAN: Yes. Well, Your Honour, in fact, the proposal
16 before Your Honours doesn't disadvantage the court, in my
17 submission; in fact, it's more generous. Under this proposal of

18 a four-day week, the Prosecution requested 25 hours every week in
19 order to call evidence. The proposal before Your Honours by the
20 parties details 27 hours so, in fact, it would be two hours less
21 than the hours detailed therein and as a matter of Your Honours'
22 discretion you decide to cut any time necessary the proposal that
23 is before Your Honours. It's not a proposal requiring additional
24 hours to be put in; it's a proposal requiring hours to be taken
25 out.

26 PRESIDING JUDGE: Hours to be taken out of sitting time and
27 being put into the in-house research et cetera et cetera; is that
28 what you mean? Mr Khan? Microphone, please.

29 MR KHAN: Your Honour, perhaps I am missing the plot here

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1 but I think that proposal, with the Fridays, was just
2 reallocating the hours -- I think it's paragraph 4 -- a total of
3 22 hours. Your Honour, perhaps if you give me a moment. Let me
4 just consult on this issue.

5 PRESIDING JUDGE: Mr Rapp?

6 MR RAPP: Your Honours, I did consult with the Defence in
7 regard to this. I understand that this alternative proposed by
8 the Defence, and that we have suggested, and admittedly I think
9 we came along with an extra quarter hour per day, certainly could
10 be modified to provide basically from 9.00 until 10.45 morning
11 session with a 15-minute break. 11 to 1300 hours and then an
12 hour-and-a-half break for lunch, beginning at 1430 and continuing
13 to 1600 and having a 15-minute break and then 16.15 until 17.30.
14 Basically that would provide for six-and-a-half hour day. We are
15 picking up an extra hour-and-a-half basically by starting a half
16 hour earlier than any of the options that are suggested on say
17 option 2 as proposed, as the Trial Chamber was suggesting. We

18 are cutting the breaks from a half hour to 15 minutes and then we
19 are sitting longer at the end of the day. So that is how we pick
20 up the time that allows us to still sit 26 hours but to have
21 Fridays available for work or, if necessary, for sessions of
22 witnesses, if we haven't been able to sit the 25 or 26 hours or
23 for arguments on motions if the Chamber invites such. So that is
24 basically it. It does, however, require very long schedules on
25 those four days. There may be some difficulty with this
26 institution sitting after 14.30 but I think it would be useful
27 for us, in terms of that having Fridays, and certainly time for
28 the Defence to consult with their client and for other matters to
29 be taken up.

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1 PRESIDING JUDGE: In other words [Microphone not
2 activated].

3 MR RAPP: Understanding that there will be times, because
4 there will be difficulties with witnesses or other things that
5 happen in the schedule, we will need some of that Friday but the
6 important thing for the Prosecution, the critical thing is that
7 we have 25 hours a week to hear evidence and if we can do that in
8 four days and then have that flexible Friday to hear evidence if
9 we haven't had 25 hours, or to meet the Defence with their
10 client, or to hear argument, then I think we can have a more
11 productive use of our time.

12 PRESIDING JUDGE: Thank you, Mr Khan. It is 11.00 now and
13 I think it is time for a break and during this break here we will
14 consult on this issue and after the break we will make a ruling
15 on the exact time we will sit on. So we will now adjourn for
16 half-an-hour. Thank you.

17 [Break taken at 11.10 a.m.]

18 [Upon resuming at 11.32 a.m.]

19 PRESIDING JUDGE: We have been debating the sitting hours
20 again, and since then we have established a number of facts.

21 The earliest court can begin to sit is 9.00, that's a fact,
22 and the latest that the court is allowed to sit, by the ICC
23 administration, is 4.30 in the afternoon. We cannot sit beyond
24 4.30, so we had to work within that schedule to then try and
25 accommodate the needs of the parties and to put in all the
26 various comfort breaks. And also, of course, to optimise the
27 sitting hours per week that we are required to sit.

28 Now, we have come up with a schedule that looks like this:

29 We want to meet the parties somewhat halfway to be able to give

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1 you not a full day off, in view of the fact that we cannot sit
2 beyond 4.30 but rather to give you a half day off. This will be
3 in keeping with the practice we have had in Freetown, where we
4 would take a Wednesday afternoon. It is not really off but it is
5 for doing in-house work so I don't wish to be misunderstood, we
6 are not giving you a holiday. Please redact the record; it is
7 not a day off. It is a half day in-house, research, motions, all
8 the things that one does outside of the courtroom. We were
9 thinking of doing this on a Friday afternoon. The Chamber would
10 appreciate it, the parties would appreciate it, and at the same
11 time we want to maintain a 26-hour working day, at least, 26
12 hours. Sorry, 26 hour working week.

13 Now, the schedule would look something like this: We would
14 sit from 9 in the morning until 10.45, that is
15 one-and-three-quarters hour. We would then take a 15 minute
16 midmorning break up until 11, sorry, from 10.45 until 11. We
17 would re-sit at 11.00 until 1.00; that is two hours. We would

18 take a lunch break from 13.00 to 14.30, which is
19 one-and-a-half-hour lunch break. We would resume at 2.30 and sit
20 through until 4.30 without a break. That is two hours exactly.
21 So that would give us a total of five hours and three quarters a
22 day, times four -- right. We will sit four days a week like that
23 and on Friday we would sit from 9.00 until 13.00. That is 1.00
24 with the usual 15 minute break, so that would give us a total of
25 26 and three quarters hour a week. You would then be able to use
26 Friday, from 13.00 until the close of the day, for in-house, and
27 this is what we propose. I would ask Mr Rapp to say if that's
28 acceptable?
29 MR RAPP: Madam President, Your Honours, that is very

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1 acceptable to the Prosecution, thank you.

2 PRESIDING JUDGE: Mr Khan?

3 MR KHAN: Your Honours, it is indeed, the only very small

4 comment is that of course the longer the day is of course it's

5 somewhat difficult for the Defence given the more limited

6 resources to rotate but, Your Honour, it's fine.

7 PRESIDING JUDGE: Well, the Judges don't have an option to

8 rotate. We sit here and we do appreciate that we, too, do rather

9 have a long day but we are required to work a minimum number of

10 hours a week.

11 MR KHAN: Your Honour, it was just in reference to the

12 Prosecution's request to have 25 hours and, of course, Your

13 Honours have exceeded it. That, of course, with the limited

14 resource of the Defence puts more burden on the Defence because

15 we have less people to do the same job.

16 PRESIDING JUDGE: With these hours, would you have an

17 option that you want to suggest?

18 MR KHAN: Your Honour, I would prefer, in fact, in these
19 circumstances, a shorter day.

20 PRESIDING JUDGE: That ends when? How would your day look?

21 MR KHAN: Well, Your Honour, I will be totally flexible.

22 The main requirement would be to cut an hour and --

23 one-and-three-quarters hour from the end period of the day. It's

24 the end period that concerns me not the intervening breaks. I am

25 not so concerned about the intervening breaks. It would be at

26 the end of the day, when we have to go to the detention unit and

27 see the client, that I would be more concerned about.

28 PRESIDING JUDGE: When would you like the court to end at

29 the end of the day?

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1 MR KHAN: Your Honour, half-an-hour before, so instead of
2 4.30, 4.00 p.m.

3 PRESIDING JUDGE: You realise that that would bring the
4 sitting week to 24-and-three-quarters hours, and not 26, if we
5 did that, and still kept our Friday afternoon, because the
6 initial schedule was to keep a five-day working week according to
7 the hours that you suggested. That was the option that the
8 Judges suggested.

9 MR KHAN: But, Your Honour, the figure of 26 seems to be
10 unrequired, as it were. The Prosecution have asked for a minimum
11 of 25 hours so I don't see why --

12 PRESIDING JUDGE: I don't think it is up to the Prosecution
13 either. There is an established minimum number of hours that
14 this Court is supposed to sit; that would be 26 hours.

15 MR KHAN: Well, Your Honour, I go back to my earlier
16 remarks. If that is how the Court is minded to schedule its
17 sittings then of course we will comply with it but Your Honours

18 did ask for my preference and my preference was for a shorter
19 day, 4.00 instead of 4.30, but I have no additional comments,
20 Your Honour.

21 PRESIDING JUDGE: Mr Rapp, would you object to ending at
22 4.00 and still keeping our Friday afternoon reserved for
23 in-house?

24 MR RAPP: In the view of the Prosecution it's important to
25 have the maximum time possible for presentation of the evidence.
26 This institution is available here to us until 4.30 hours. That
27 is relatively early in the day to adjourn and we prefer to stay
28 in session until 4.30. I think often it will happen even with
29 the 26-and-three-quarter hour period that with difficulties in

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1 scheduling and breaks and everything, it may be difficult to
2 reach 26-and-three-quarters hour during the week. We think that
3 the schedule that the Judges have proposed is one that makes the
4 maximum use of this institution but also gives people the Friday
5 afternoon off, so we would object to any change in the schedule.

6 PRESIDING JUDGE: Okay. I think we will, to wrap this up,
7 we will keep the schedule that I have read out which begins at 9
8 and ends at 4.30 every day except for Friday when we begin at 9
9 and end at 1.00 with the breaks that I have named and we will see
10 how it goes. If we think there is need to review we have that
11 flexibility. We can review the sitting hours later, if we think
12 there is a need to do that. Thank you.

13 MR KHAN: Your Honour, I am most grateful. Your Honour,
14 perhaps I can read into the record as well, the clarification to
15 Her Honour Judge Doherty's inquiry arising out of footnote 22 of
16 the Defence pre-trial brief at page 7.

17 Your Honour, the footnote, in fact, is broadly correct. It

18 says: ibid paragraph 14. And the footnote it is referring to is
19 the footnote cited in paragraph 14, namely, the Prosecutor v
20 Bagosora, 18 September 2003. Your Honour, the same applies, in
21 fact, to footnote 22. It also applies to the footnote set out in
22 paragraph 14, namely, the Bagosora case. I hope that helps, Your
23 Honour.

24 PRESIDING JUDGE: Sorry, could you repeat the dates of the
25 Bagosora case?

26 MR KHAN: Your Honour, it's footnote 18 of the Defence
27 brief, page 6.

28 JUDGE DOHERTY: Mr Khan, my problem was the prior criminal
29 acts of Mr Taylor; what prior criminal acts of Mr Taylor?

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1 MR KHAN: Your Honour, I do apologise. I thought Your
2 Honour was referred to ibid paragraph 14, but it was the
3 footnote.

4 JUDGE DOHERTY: I was. That is why I was trying to find
5 out what prior criminal acts of Mr Taylor were in issue?

6 MR KHAN: Your Honour, no. The footnote refers to general
7 propensity or disposition. I take Your Honour's point but the
8 footnote, of course, is perhaps not so eloquently, elegantly
9 drafted, but it refers to the holding regarding general
10 propensity and disposition but Your Honour's point of course is
11 well made.

12 PRESIDING JUDGE: Now, the start date, the trial start date
13 remains, until now, Monday, 4 June at 9.00. It will now be 9.00,
14 it will not be 9.30 any more. At 9.00. And this is, of course,
15 subject to our decision on the pending Defence motion requesting
16 the reconsideration of our joint decision on their earlier motion
17 on adequate times and facilities, adequate facilities and

18 adequate time for preparation.

19 MR KHAN: Your Honour, it's not a motion of course for
20 reconsideration, it's an application for certification for leave
21 to appeal.

22 PRESIDING JUDGE: I do beg your pardon, Mr Khan.
23 Definitely, I have got my notes wrong. The time set for the
24 start trial date was contained in our decision on the Defence
25 motion requesting reconsideration of joint decision on Defence
26 motion, on adequate facilities and adequate time, dated 23
27 January. That is when we set the date. There is a pending
28 motion by the Defence applying for leave to appeal against that
29 decision, and the trial start date will be subject to the outcome

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1 of that application but, otherwise, it remains, until and
2 otherwise and until it has been varied, it remains 4 June at
3 9.00.

4 The witness sequence, no, no. On that day, of course, we
5 have decided, or whichever date the trial begins, that we will
6 start with opening statements; an opening statement by the
7 Prosecution.

8 Now, we note from the Prosecution submission of added
9 agenda items, you talk of Defence statement but this obviously
10 does not arise, and I think Rule 84, each party may make an
11 opening statement before the opening of their own case. We don't
12 expect the Defence, under that rule, to make a statement as at
13 the beginning of the opening of the Prosecution. You understand
14 what I'm saying? The rule, although the Prosecution included
15 that on their item of agenda, seeking clarification as to the
16 length of the statement, this will not arise in the case of the
17 Defence. Ms Hollis?

18 MS HOLLIS: Yes, Your Honour. We raised that matter simply
19 because it is the practice in some jurisdictions that should the
20 Defence wish to make an opening statement following the
21 Prosecution opening statement the Trial Chamber has the
22 discretion to allow that. So we simply raise that to determine
23 if indeed that would happen.

24 PRESIDING JUDGE: This has not been the practice and, under
25 our Rules, which I think are very clear, each party makes an
26 opening statement when their turn comes, at the beginning of
27 their case. And that is the practice that we have had in the
28 past. That is the practice under the Rules and that is the
29 practice we wish to observe.

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1 As to the length of the opening statement, could maybe the
2 Prosecution, could you give an indication at this stage? Are you
3 able to indicate how long the opening statement would be?

4 MR RAPP: We would anticipate an opening statement of about
5 four hours, divided between myself and Ms Hollis.

6 PRESIDING JUDGE: I think that would be good because we
7 could then, because of the tapes that run for two hours, we could
8 divide this statement into two sessions, if you like, with a
9 break in between; an earlier session and a latter session, so
10 that would be fine. Four hours, then.

11 MR RAPP: I would note, Your Honours, that the time
12 division between us may not be exactly 50/50 but certainly it
13 would be possible to break the tape at some other point.

14 PRESIDING JUDGE: That is okay. As long as we don't exceed
15 two hours per session, that is what we were requested not to do.

16 MR RAPP: Thank you very much.

17 PRESIDING JUDGE: The other matter, maybe, is when the

18 trial next resumes for actual witnesses, when the Prosecution
19 eventually decides to call their first witnesses. The practice
20 in the past before this Trial Chamber has been, and the practice
21 we found very helpful, is for the Prosecution to keep indicating
22 their witnesses in batches and to give -- to circulate these
23 lists of witnesses that they intend to call in groups of 10 or
24 more, 10 or 15, and the order in which they intend to call the
25 witnesses. This, I think, would be very helpful to the Chamber
26 that is managing the case but also to the Defence, and to make
27 sure that these -- the witness sequence, or the witness order,
28 call order, is circulated in very good time; well in advance.
29 Now, the parties really have to agree on this and I want

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1 to call on Mr Khan to indicate what you would consider good time
2 for these witness lists, call orders, to come in.

3 MR KHAN: Your Honour, I'd ask that the Prosecution do it
4 in two stage, if Your Honours were so minded.

5 The first that on a session-by-session approach they give
6 to the Defence, and perhaps Your Honours as well, a provisional
7 list of the witnesses that they intend to call in that session.

8 Of course, that will be subject to logistics and other
9 unanticipated matters that may be relevant to particular

10 witnesses, but that would be supplemented with a final list two
11 weeks before the testimony of a witness. So at least two weeks
12 in advance would be the very minimum that I would request.

13 Longer of course is better, but a very minimum of two weeks
14 before the witnesses are called would be my request. I hope that
15 would be a reasonable position to take.

16 PRESIDING JUDGE: The Prosecution?

17 MS HOLLIS: Your Honour, we have, in fact, already provided

18 the Defence with a provisional list for the first session, and we
19 certainly would be able to do that. We also would be able to
20 provide a final list in most instances within two weeks subject,
21 of course, to logistical issues that we are not aware of that
22 could change that list. But we should be able to comply with the
23 Defence request in that regard.

24 PRESIDING JUDGE: I appreciate that, Ms Hollis. So then
25 every two weeks prior to the witnesses that are called we would
26 expect a firm witness call order to go out for the witnesses to
27 be called in a week, maybe. I don't know, in two weeks.
28 Depending on how far you are able to project.

29 What we have been doing in the past is we would provide a

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1 list say from Monday till Friday, these are the witnesses we
2 intend to call from Monday through to Friday and you would
3 produce the witness list and call order two weeks prior to the
4 week in which you are going to call them for the entire week.
5 That is how I understand the parties have agreed.

6 MS HOLLIS: And we can certainly comply with that, Your
7 Honour.

8 MR KHAN: Perhaps a very small clarification; in the event
9 that logistical changes are forced upon the Prosecution, any
10 supplementary witnesses come from the witnesses included in that
11 session. It just makes life easier. I don't think that would be
12 a problem.

13 MS HOLLIS: In fact, that could be a problem since we don't
14 know what logistical issues might come up. Witnesses who are
15 ill, we do have some order in which we wish to present our
16 evidence, so those may be factors that would indicate we could
17 not always bring them within that session. However, I anticipate

18 that most of the time we should be able to do that because that
19 would be our planning anyway.

20 PRESIDING JUDGE: I think the important issue that Mr Khan
21 is raising here is that in the event that the scheduled witnesses
22 cannot, for one reason or another, attend there always are
23 reserve witnesses, or should be reserve witnesses, and he is
24 saying that these reserve witnesses ought to be the witnesses on
25 your list anyway, that you've already circulated, because it is
26 only fair to the Defence that they have adequate notice of these
27 other witnesses that may step in. If they do not have adequate
28 notice we are still going to run into problems with a request to
29 adjourn. So I think that is what he is trying to say.

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1 MS HOLLIS: Yes, Your Honour, and, as I said, most of the
2 time we should be able to do that. However, we cannot determine
3 exactly what issues may come up that would preclude that, in
4 certain instances, but I think for the most part that would be in
5 keeping with our planning as well.

6 PRESIDING JUDGE: It's okay, Ms Hollis. We also would like
7 to point out the obvious: That is, when examining witnesses,
8 that we expect that it will be one team member from the -- if
9 there is a witness standing, it would be the one team member from
10 the Prosecution, I imagine, that would examine this witness and
11 if --and on the Defence side we would expect cross-examination by
12 the one individual. We would not expect more than one counsel
13 from either side to examine a witness. Do you have any problems
14 with that?

15 MS HOLLIS: No, Your Honour, no problems at all with that.

16 MR KHAN: None.

17 PRESIDING JUDGE: Okay. So that the parties have agreed to

18 that as well. There will be other issues regarding the
19 practicalities of tendering exhibits in court, and I think this
20 will be addressed. I think we will have a session where we are
21 going to deal with trial management itself, in as far as
22 tendering of exhibits, photocopies being circulated because, of
23 course, as you know, this is not -- our proceedings are not on
24 Livenote, at least as far as I know, so we cannot have these
25 exhibits on our screens. We will have to do it in hard copy
26 form, the way we have always done it in our Court and, therefore,
27 that will entail, in order to save time, it may entail
28 photocopying these exhibits in very good time and circulating
29 them also in good time so that everybody is on the same page when

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1 these exhibits are tabled in court. And there, I will need to
2 hear from the parties at an appropriate stage, but let me just
3 look at my agenda again. Maybe this is a good time to actually
4 speak about these issues of trial management. We are envisaging,
5 for instance, issues of tendering of exhibits; issues of
6 interpretation.

7 First of all let me say, when the Prosecution is
8 circulating their lists of witnesses, it will be very helpful if,
9 with each witness, you would indicate the language that the
10 witness will speak because that will help Court Management to
11 arrange the relevant interpreters, and to make sure that on that
12 morning, or that afternoon, the relevant witness, the relevant
13 interpreter is ready.

14 So the name of the witness, the pseudonym, the language,
15 and basically the time, the average time that the witness will be
16 expected to testify, are matters that will be specified in your
17 disclosure to the other side, and to the Chamber. It's very

18 important.

19 The other thing that we need to agree upon is the time
20 required for circulating the intended exhibits, and this will be
21 uniform, whether it's from the Defence or from the Prosecution,
22 we will agree. I just want to hear from the parties, probably
23 from the Prosecution first. No, no, from the Defence, how long
24 do you suppose you would require notice of these exhibits; two
25 days, maybe?

26 MR KHAN: Your Honour, of course we need disclosure of
27 exhibits now, definitely before the commencement of trial. If
28 Your Honour is talking about exhibits being tendered through
29 specific witnesses, again, one would hope that the Prosecution

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1 know what they are using each witness they have included on their
2 pre-trial brief for, so it should be readily anticipated which
3 witnesses on their list are going to tender which exhibits. So
4 given their state of preparedness in this case and that they have
5 been ready for trial for many months, and the evidence and
6 exhibits have been disclosed and the pre-trial brief is before
7 Your Honours, I don't see why that can't be given right now. I
8 would say, for the sake of argument, within the next one week.
9 Your Honour, it doesn't appear to be a matter which requires a
10 great amount of consideration, given that the exhibits have been
11 disclosed already. They know what exhibits they are relying
12 upon. It shouldn't be a great deal of difficulty to know which
13 of their witnesses are going to tender which exhibits. I don't
14 think it's a matter that has to wait until the trial starts.

15 PRESIDING JUDGE: Would it be practical to suggest -- and I
16 am putting this question to the Prosecution -- when you are
17 tendering or submitting your list, disclosing your list of

18 witnesses, your batches of witnesses, during the call order,
19 would it also be practical to require that any exhibits you
20 intend to tender for that week also be photocopied and circulated
21 at the same time; would that be practical?

22 MS HOLLIS: Yes, Your Honour, we should be able to do that.
23 Again it would be subject to the same caution I had before.
24 Issues may arise that may change it but for the most part that
25 certainly should be something we should be able to do, two weeks
26 before that one week period.

27 PRESIDING JUDGE: Okay. That is good then because what
28 would happen is we would each have a little file before us of
29 everything that is going to happen that week, including the

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1 prospective exhibits that we would then just have to refer and
2 admit or otherwise as their circumstances require, so we will
3 expect to see the actual copies of these intended exhibits on our
4 files two weeks prior to the batch, to the witnesses appearing.
5 Thank you.

6 There is an item on the agenda that is very briefly
7 referred to by the parties as Livenote being a preferred mode, I
8 think, of record keeping. There is not much else that is said on
9 the agenda and we don't know -- in the Special Court we haven't
10 used Livenote before and we don't know what facilities are
11 available here, at the ICC, but we could hear either from the
12 Chief of Court Management as to what is possible. Could we hear
13 from the Chief of Court Management of Sierra Leone, please.

14 MR ADENUGA: Madam President, if I may respond instead of
15 the Chief of Court Management.

16 PRESIDING JUDGE: Mr Michael Adenuga, please.

17 MR ADENUGA: Before I talk about Livenote, Your Honours, if

18 you permit me, on the question of filing of exhibits, if I may go
19 back to that issue, when the parties are providing the copies, if
20 they could please supply 15 copies so that we can serve them on
21 the legal officers, the Chambers and all of the parties.

22 Now, concerning the issue of Livenote, although the Court
23 is sitting in The Hague, we remain an integral part of the
24 Special Court in Freetown where Livenote is not possible. At
25 this late stage it's too late to discuss it with the
26 International Criminal Court. The negotiations are far gone and
27 nearing completion. It will be too late to reconfigure Courtroom
28 II to accommodate Livenote. There are logistical difficulties.
29 There are huge financial implications. I understand it will cost

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1 about 150,000 US to install the Livenote.

2 Furthermore, the stenographers recruited by the Special
3 Court for these proceedings are not trained at all for the use of
4 Livenote. It's a very complicated and sophisticated process.
5 Those are all my points.

6 PRESIDING JUDGE: Thank you, Mr Adenuga.

7 Mr Khan, you wanted to say something, because to me this
8 issue is moot now. Livenote. Did I see you wanted to say
9 nothing?

10 MR KHAN: Well, Your Honour, if it's moot, there is no
11 point. If it's not moot, there may be merit in my submissions.

12 PRESIDING JUDGE: I think it's moot from what we have been
13 told.

14 MR KHAN: Then, I have nothing to say.

15 Your Honour, on a related matter it seems, not just for
16 environmental reasons, but 15 copies of all the exhibits seems to
17 not only cause great environmental damage but put an inordinate

18 amount of work on an already difficult situation for both
19 parties. I know in the ICTY the common practice is exhibits that
20 are sought to be tendered by any party are copied, where
21 necessary, for the interpreters and that may not be a huge issue
22 in this case as many documents perhaps -- well, in addition for
23 the interpreters, one for the Registry and one for each of Your
24 Honours.

25 Your Honour, 15 copies given the amount of documents in
26 this case may take one legal assistant a full-time job doing
27 nothing other than staying at the photocopy machine. As an
28 addition to that, I do ask that the Registry of the Special Court
29 seeking to facilitate both parties ensures there is a photocopier

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1 here at the ICC building that both parties can use because, of
2 course, things come up during the course of trial and
3 irrespective of the weather being inclement or clement, we can't
4 be expected to run over to the satellite building, as it is
5 called, or sub-office, to photocopy a piece of paper so I ask
6 that a very good photocopier is made available to both parties
7 here in the ICC building.

8 Your Honour, an additional matter, and I don't put it
9 further at this stage, is that attempts be continued, if they
10 haven't already started, to ensure that in addition, of course,
11 to a room for Your Honours that a room is set aside for both my
12 learned friends for the Prosecution and one for the Defence where
13 we can keep files during the currency of proceedings and hang our
14 robes up at the end of the day and adjourn to have legal
15 conferences as matters arise in the course of trial. That really
16 is a very basic request and one hopes that it will be
17 accommodated.

18 PRESIDING JUDGE: Are you saying right now you are
19 generally in the corridor?

20 MR KHAN: Your Honour, at the moment we use the cafeteria.
21 The coffee is very good but there are no hooks for one's robes.

22 PRESIDING JUDGE: Well, Mr Adenuga, I just want to
23 understand, 15 copies are required for who exactly?

24 MR ADENUGA: Your Honours, I do have the breakdown. It's
25 for the legal officers who will be three in total. There will be
26 a copy for each of the --

27 PRESIDING JUDGE: If you could specify legal officers for
28 what? For who?

29 MR ADENUGA: I have just been corrected, Your Honour.

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1 Initially it was to be three legal officers and now I have been
2 told the copies will now be about eight: One for the legal
3 officer; one for each of the parties.

4 PRESIDING JUDGE: Chamber legal officer or what?

5 MR ADENUGA: Chamber legal officer, Your Honour; one for
6 each of the parties; one for each of the Judges; one for the
7 Court Management section; one for the interpreters; and one for
8 the stenographers.

9 PRESIDING JUDGE: So that works out to be something like
10 nine, nine copies? So then we won't need 15, we will just need
11 nine copies of each documentary Exhibit? Definitely I agree with
12 Mr Khan that there is need for a photocopier and, Mr Adenuga, on
13 behalf of the Registry I hope that this can be provided. We
14 don't want to hear the B word.

15 MR ADENUGA: I will avoid the B word, Madam President. I
16 will use our best endeavours to procure the equipment.

17 PRESIDING JUDGE: Mr Adenuga, again on behalf of the

18 Registry we would urge you to take note of the request made by
19 Mr Khan, and I think probably they also pertain to the
20 Prosecution counsel; really a robing room for counsel is a basic
21 necessity. Whatever your budget may be, it is a basic necessity
22 and really, I don't see how they can be expected to operate
23 sitting in the cafeteria. Do you have any comments for us on
24 this?

25 MR ADENUGA: I share Your Honours' concerns and the
26 concerns of all the parties but the ICC have very limited
27 accommodation as well, but as I speak, we are still working very
28 hard to at least obtain conference facilities or storage
29 facilities for all of the parties.

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1 PRESIDING JUDGE: Did I not understand the agreement
2 between the Special Court and the ICC to include at least one
3 room, one room that counsel could use, whether they are Registry
4 or counsel, at least one room that the ICC was obligated to give
5 us for our usage.

6 MR ADENUGA: Yes, Your Honour. They have not refused to
7 give us the facility and they are working on providing us with
8 rooms for the parties. It's just that they have difficulty with
9 the accommodation at the moment and at the moment they are unable
10 to accommodate us. The minimum they will provide us with is
11 somewhere to at least store our files. For the parties they are
12 working to have accommodation for the Prosecution, the Defence
13 and the Judges.

14 PRESIDING JUDGE: But can we have some kind of guarantee
15 that at the time the trial begins these decisions would have been
16 taken and that these facilities will be available?

17 MR ADENUGA: Your Honour, with respect, I am not in a

18 position to give a guarantee as to what the ICC will provide but
19 I can agree that we will have a decision, a final decision well
20 before the start of the trial.

21 JUDGE LUSSICK: I just have one question for the
22 Prosecution, based on the additional agenda filed by the
23 Prosecution. If you look at paragraph 2(b) of the Prosecution
24 additional agenda, it says that paragraph 30, relating to count
25 11, Masiaka, Bombali District (Masiaka is located in Port Loko
26 District), can I assume that you will merely foreshadowing an
27 amendment to the indictment?

28 MS HOLLIS: That is correct, Your Honour. We simply wish
29 to note this matter here at the pre-trial conference in case

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1 either Your Honours had questions or the Defence had a question
2 about it, but this would be, in our view, a technical amendment
3 which we would proceed with.

4 JUDGE LUSSICK: I understand. Thank you.

5 PRESIDING JUDGE: And, of course, Ms Hollis, your earlier
6 comments on that item number 2, matters relating to the
7 indictment, stand with regard to count 5. You said you were
8 putting us all on notice regarding counts 5 and 6 but that you
9 had no intention of formally amending the indictment to reflect
10 these changes.

11 MS HOLLIS: That is correct, Your Honour. As to the
12 language that is specified from count 5, we simply wish to notify
13 the Court and counsel that we do not intend to put any evidence
14 towards that language so that at the end of our case we will not
15 argue for any finding relating to that language.

16 PRESIDING JUDGE: Thank you, Ms Hollis. I want to
17 recognise Mr Khan and if you could say something.

18 MR KHAN: Your Honour, most grateful. I can say for the
19 record there will not be any objection by the Defence to the
20 proposals put forward by my learned friend, Ms Hollis. However,
21 Your Honour, I would, with respect, echo Your Honour's earlier
22 comments that the correct form would be by way of formal
23 amendment to the indictment. My learned friend has conceded that
24 there is an issue of duplicity or at least potential duplicity in
25 count 5. It behoves a diligent and capable Prosecutor, as my
26 friend is, to not only put us on notice of that but, of course,
27 if that's the case, if it's accepted by the Prosecution that
28 there is potential duplicity in the indictment, formally amend it
29 and I can say for the record there is no objection to the Defence

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1 to that second amended indictment if it's limited to the two
2 aspects detailed in the draft agenda.

3 PRESIDING JUDGE: Ms Hollis, we -- first of all for the
4 record, I don't think Ms Hollis used the word duplicity. I
5 didn't hear that. She used different terminology, but I would
6 have to agree with Mr Khan that the normal way of amending an
7 indictment, if you think you need to make changes in it, is to
8 actually amend the indictment. If you think there is something
9 irregular about it or a count that you wish to drop, the regular
10 way is to actually amend the indictment, to apply to amend the
11 indictment and drop the count rather than to leave the count in
12 its current form in the indictment and somehow agree that no
13 evidence will be called. Why do we want to depart from the
14 regular way of doing things?

15 MS HOLLIS: Your Honour, we would not be dropping a count,
16 because count 5 is sexual slavery and any other form of sexual
17 violence, so we would not drop count 5. We would not proceed on

18 the language that was highlighted. However, we certainly take
19 Your Honour's point and will, as we prepare the amendment
20 regarding Masiaka, will certainly take that point under
21 advisement at the time we file our motion.

22 PRESIDING JUDGE: Thank you, Ms Hollis. Now again, on the
23 additional agenda items for the Prosecution, there is -- you said
24 that you were putting us on notice of the fact that occasionally
25 you may apply for a witness to testify via video link. I suppose
26 you are saying you are putting the Registry on notice because
27 there is nothing that the Trial Chamber can do to facilitate the
28 Court. We ourselves depend on the Registry to support the
29 trials, but it is not our jurisdiction, if you like, to order the

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1 Registry as to what facilities to put in place and so we are
2 still wondering, this item being put on the agenda, we don't
3 quite understand why it is on our agenda for the pre-trial
4 conference.

5 MS HOLLIS: Your Honour, we put it on the agenda simply, if
6 you will, to formalise before Your Honours but primarily, as you
7 say, before the Registry that this type of evidence is a real
8 possibility in this case so that they will be on notice and
9 hopefully will take all advance steps necessary so that should an
10 occasion arise, that a witness needs to be called by video link
11 they will have done all of this preliminary preparation so that
12 we do not have to wait six months in order to be able to have
13 access to this type of evidence which is allowed in the Rules.
14 So it is merely, perhaps, an overabundance of caution on our part
15 that we wish to raise it formally in this pre-trial conference,
16 understanding that we are not asking Your Honours to take any
17 action but to formally put the Registry, the Court on notice that

18 we foresee this as a real possibility so that advance work should
19 be done to allow for this type of evidence at such time as a
20 motion would be filed.

21 PRESIDING JUDGE: I would imagine, though, Ms Hollis, that
22 you have already taken up this issue with the Registrar or
23 Registry, formally requesting for this equipment to be installed.

24 MS HOLLIS: We have provided a letter.

25 PRESIDING JUDGE: Surely you are not depending on this
26 notification to trigger into action the facilities that you
27 require.

28 MS HOLLIS: No, Your Honour, we have provided a letter to
29 the Registry indicating this. I might say that from early last

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1 year we had discussed with the Registry our anticipation that
2 this type of evidence would likely be required in this case so we
3 have filed a letter with them re-emphasising our belief that this
4 may be a modality that will have to be used in this case.

5 PRESIDING JUDGE: Your comments are noted, Ms Hollis.
6 Thank you.

7 The other outstanding matter that I see, on the Prosecution
8 agenda items, comes under item 5 and you refer to the use of
9 demonstrative aids and exhibits during your opening statement;
10 could you address us on this issue?

11 MR RAPP: Madam President, Your Honours. During an opening
12 statement, of course, it's common for the Prosecutor to indicate
13 what the evidence will show in the case. However, of course,
14 whatever is said or shown during the opening statement is not
15 evidence. It would need to be admitted later.

16 Our concern was that although we have not yet made the
17 selection, there may be portions of video broadcast materials,

18 either audio or video that we may wish to present during the
19 course of the opening statement. We wish to avoid dispute during
20 the opening statement. We do not believe that there is really
21 any genuine question of the admissibility of those items at an
22 appropriate point in the proceeding and, indeed, as Ms Hollis
23 indicated we will be filing a motion, probably by this Friday,
24 asking that some documents, including video material, be admitted
25 but, of course, it's not necessary that material be admitted when
26 one is making an opening statement, so we would like to clarify
27 this issue in terms of our ability to use audio or video material
28 in the opening without a prior decision of Your Honours. If it's
29 necessary for us to have a prior decision or to raise this issue

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1 with the Defence beforehand, we will do that. We just wish to
2 make sure that we move forward in a way so that we can avoid
3 disputes or objections during this presentation.

4 PRESIDING JUDGE: Mr Rapp, would the use of these aids
5 somehow impact on the time, the duration that you've indicated of
6 four hours?

7 MR RAPP: Absolutely not. We are talking about maybe one
8 or two minute segments that could be played and shown on the
9 video system. We still have to work out the technical details
10 and I understand that it's possible there will not be any as we
11 review the technical issues of whether we can do that in this
12 courtroom, but it wouldn't add anything to the session and we
13 would be providing the Defence -- they would certainly be items
14 that we had already disclosed but we would also be indicating to
15 the Defence what we would be presenting before we do so.

16 JUDGE LUSSICK: Mr Rapp, just so that I can understand,
17 these exhibits that you are talking about, they would be

18 demonstrative of evidence that you are going to call during the
19 case; they wouldn't be evidence in themselves? Is that correct?

20 MR RAPP: I understand they could be demonstrative in the
21 sense that we could provide a chart or a graph -- I don't
22 anticipate a PowerPoint kind of presentation -- but that kind of
23 thing that would not, in fact, be an Exhibit; it would merely
24 demonstrate or illustrate our argument.

25 But additionally, one could have a video clip, a speech by
26 the accused, for instance, broadcast internationally or a clip
27 from the war, from the taking over of Freetown on 6 January 1999
28 that we could use to illustrate our opening, understanding that
29 later, during the course of the trial, we would be offering that

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1 Exhibit through a witness.

2 Now, I mean I understand that would be the normal route. I
3 would anticipate however, as Ms Hollis indicated, that with these
4 items we will include them in this motion to admit documentary
5 material which is possible Your Honours would rule on before the
6 opening of the trial. If it is viewed as necessary, Your
7 Honours, that that be ruled on before they could actually be
8 displayed, that would be the decision. We obviously wouldn't use
9 them but, as a matter of practice, certainly in the tribunal
10 where I worked beforehand, it was not uncommon to put video and
11 other items before the Court as part of the argument and those
12 were not as yet admitted in the case.

13 So it's a question just of what the practice should be
14 here. Notice sufficient or do we need to have them admitted
15 before displaying them in this opening statement?

16 PRESIDING JUDGE: Mr Khan?

17 MR KHAN: Your Honour, with respect, in my submission it's

18 a very simple issue: It's quite normal for documents to be
19 conditionally admitted or admitted de bene esse. There wouldn't
20 be an objection by the Defence if my friend wished to include
21 video portions in the opening with the proviso that in the event
22 that evidence is not properly admitted by a witness or by order
23 of the Trial Chamber, it is excluded later on, and it's
24 conditionally admitted simply as part of an illustrative guide to
25 assist the Prosecution in their duty to inform you as to the
26 parameters of their case.

27 Your Honour, while I am on my feet, of course, one of the
28 most terrible things to do is to interrupt an advocate
29 particularly on their opening speech and, of course, I don't

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1 anticipate it will be needed at all with the Prosecution team
2 that sits across the room from us. However, it is not, of
3 course, unknown, in the Special Court for Sierra Leone, Your
4 Honours will be well aware with the, if not infamous, the
5 well-known opening speech of my learned friend's predecessor, Mr
6 David Crane, the hounds of hell, dogs of war speech, as it its
7 known and, of course, the Defence counsel in that case did rise
8 and did object and that objection was sustained by His Honour
9 Judge Thompson. So moderate language, of course, lack of staying
10 of one's hands when it comes to overly emotive language, of
11 course, is the order of the day. It's that type of opening that
12 I am sure that my learned friends will put before Your Honours
13 and that type of opening, of course, one would hope and not call
14 for any objection by the Defence. Of course it is the last thing
15 I would want to do. I hope that helps.

16 PRESIDING JUDGE: I think moderate language is what we an
17 are in favour of. That is on both sides, normally. We don't

18 expect emotive language from either side and we hope that from
19 start to finish this will be observed and, of course, including
20 common courtesy from both sides, common courtesy from the Bench
21 to the Bar and across the Bar as well. That is the minimum that
22 we can require.

23 Mr Rapp, you were on your feet?

24 MR RAPP: Well, I thank my learned friend for his comments.
25 Certainly that has been our guide and will be our guide in the
26 presentation of argument, that language that isn't accurate or is
27 exaggerating or overly emotive will be avoided and additionally,
28 in terms of this exhibit issue, I appreciate the suggestion, we
29 will make an offer for certain things to go into evidence

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1 absolutely by motion, but we will also include in that a request,
2 as my learned friend suggests, that certain matters be
3 conditionally admitted as an alternative to permit them to be
4 used in opening statement with an understanding, of course, that
5 if there is a failure of proof as to those items that they would
6 not be considered by Your Honours in your deliberations. Thank
7 you.

8 PRESIDING JUDGE: Are there -- it would appear to me that
9 we've actually come to the end of our agenda items and this is
10 where I ask for any other business. If the parties think that I
11 have overlooked something that is important at this stage to
12 address in preparation for the trial, I would really appreciate
13 an indication. Whether from the Registry, Court Management or
14 even the parties. Mr Khan, please.

15 MR KHAN: Your Honour has ordered or has suggested that the
16 matter is moot but relating to the Livenote issue the reason I
17 was bold enough to stand again on the issue arises out of point 2

18 of the Prosecution agenda.

19 Your Honour, it's irrelevant, really, what the Prosecution
20 said at the moment. It's not at critical issue. My note says
21 that my learned friend Ms Hollis said before the Court that in
22 order to avoid an issue of duplicity, they are not going forward
23 with that language. But, Your Honour, be that as it may, it does
24 perhaps raise the issue of what happens in Court if there is a
25 divergence of opinion of record between the parties. Your
26 Honours, of course, are the ultimate deciders as to what is part
27 of the record and one can always play back the tapes. It's my
28 view, however, that properly considered the argument that
29 facilities are not available in Freetown and therefore should be

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1 withheld here, or cost implication is rather meanly spirited
2 because, of course, we have numerous difficulties here that are
3 not occasioned in Freetown. I don't see why an advantage that is
4 here, which is Livenote, is not extended to the parties. The
5 cost is well worth it. It saves Court time, it helps all the
6 parties, it would help Your Honours to read what is said.
7 Sometimes counsel is speaking too fast. Sometimes a witness's
8 accent is difficult to discern. It's immensely useful, in my
9 respectful submission, to have recourse to a written transcript
10 that appears on the computer screens. My understanding was that
11 the software did not require a separate operator. It was the
12 stenographer, that you simply plugged into the stenographer
13 machine and it relayed it. But, Your Honour, be that as it may,
14 the memorandum of understanding -- and Your Honours, of course,
15 can make any order and direct the Registry, but Article 8 of the
16 memorandum of understanding and I read it to you - I don't know
17 if it's before Your Honours - is entitled "Administrative and

18 Logistical Services" and paragraph 8 states: "That at the
19 request of the Special Court, the ICC shall" - shall - "provide
20 administrative and logistical services to the Special Court
21 including (a) access to ICC information technology facilities
22 subject" - this is the caveat - "subject to compliance with ICC
23 information technology protocols, policies and rules, in
24 particular, with respect to the use of external applications and
25 installation of software. The ICC is hooked up, as I understand
26 it from my discussion with the Registry, to Livenote. It's used
27 in the case of Thomas Labanga. All that is required is some cost
28 for the Special Court to put its hand in its pocket for this
29 worthy cause to give an extra two or three licences, whatever is

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1 required; it may be one license. I don't know the technical side
2 but, in my submission, it would repay dividends; it would save
3 Court time; it would save writer's cramp, avoid that issue; save
4 paper; and I think it's an immensely useful device. I think when
5 both parties are in agreement from their experience that it's
6 useful, I would ask that Your Honours give it the most anxious
7 scrutiny in deciding whether or not you think this resource
8 should be extended here notwithstanding the fact that it's not
9 available in Freetown, particularly given all the other
10 disadvantages we suffer from and the fact it is available in this
11 courtroom. It simply requires some licences, perhaps, to be
12 issued. Your Honour, that is my submission on the issue and I do
13 apologise for speaking again on a matter that was considered moot
14 and I am grateful to Your Honour's indulgence.

15 PRESIDING JUDGE: Mr Adenuga, you are on your feet?

16 MR ADENUGA: Yes, Madam President, if I may clarify
17 briefly. I share my friend's submissions on the immense benefits

18 on the Livenote system. Although my friend has just addressed
19 one point out of the three or four that I mentioned concerning
20 the finances and the logistics, there are other issues there.
21 Madam President, although it's available in this particular
22 courtroom, the courtroom allocated to the Special Court is
23 courtroom number II which is completely configured to Special
24 Court of Sierra Leone requirements and networked to the Special
25 Court network. Livenote is therefore not available in that
26 particular courtroom.

27 PRESIDING JUDGE: Yes, but Mr Adenuga, surely the Special
28 Court, this configuration you are talking about is our choice,
29 isn't it? If we decided for instance, that we would like and we

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1 appreciate Livenote, the reconfiguration could be done, couldn't
2 it?

3 MR ADENUGA: I agree, Madam President, but again there will
4 be huge financial implications and we have already entered into a
5 particular agreement which we will be changing at the last moment
6 since this Court is configured to be ready in about two weeks.

7 PRESIDING JUDGE: I think we would like you, Mr Adenuga, to
8 look into this rather, through you, the Registry to seriously
9 consider Livenote. You say that there are serious budgetary
10 implications but you have not considered the fact that having
11 Livenote would save time and therefore money at the end of the
12 day. Every time we adjourn to go back into the transcript, to
13 find our feet where we are what the witness said yesterday or
14 this morning it's time. It's time taken, and really, I think
15 it's up to the Court and the managers inside the Court to
16 determine whether you are going to save your pounds or your
17 pennies, you see. So could you probably look into this, this

18 issue of Livenote and report to us at the earliest, as to really
19 whether you can't reconsider, reconfiguring the Court to
20 accommodate Livenote.

21 MR ADENUGA: Yes.

22 PRESIDING JUDGE: It's a request the parties have made and
23 the Trial Chamber agrees it's advantageous if it absolutely a
24 cannot be done well, then it cannot be done.

25 MR ADENUGA: We will look into it, Madam President, as you
26 have indicated. I only add one caveat which is that the parties
27 were consulted when the arrangements were being done and this is
28 just a very late request. The Prosecution was consulted; the
29 office of the Principal Defender was consulted. It may be

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1 difficult to accommodate at this late stage but I note your
2 concerns, Your Honour, and we will follow up and review further.

3 PRESIDING JUDGE: I wish the Chamber had been consulted; it
4 wasn't.

5 MR ADENUGA: Your Honour, with respect, this was a matter
6 again taken at The Hague working group in Freetown and there was
7 a representative of Chambers at the meeting.

8 MR KHAN: Your Honour, there is nothing I can usefully add
9 but I will say for clarification, of course, the Defence is not
10 and has never been invited to be part of this working group. I
11 know the Prosecution have; the Defence were excluded. But we
12 were told a long time ago about what we needed, I think it was
13 well before Christmas and one of the first things I asked for was
14 Livenote. So it has been before the Registry for six months but
15 definitely from before Christmas.

16 PRESIDING JUDGE: I think that is all we can -- we can only
17 conclude and request Mr Adenuga to look into it and to put our

18 concerns before the administration, the Registry regarding this
19 issue and then see how it goes but that is without prejudice to
20 the trial taking off as we have scheduled. I don't think there
21 are any other matters.

22 Ms Hollis?

23 MS HOLLIS: Very briefly, Your Honour, if I could just
24 clarify. As to the fourth item on the Prosecution agenda, if I
25 could simply clarify and verify my understanding now as to the
26 second session.

27 My understanding is based on the judicial recesses that you
28 have adopted that we would be back in Court on 13 August and that
29 we would sit until 14 December; is that correct, Your Honours?

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1 PRESIDING JUDGE: Yes, Ms Hollis, that is correct.

2 MS HOLLIS: Thank you, Your Honour.

3 PRESIDING JUDGE: Before we wind up on this pre-trial
4 conference, I just wish to say a few comments regarding the very
5 first item I think that Mr Khan drew our attention to and I am
6 saying this for the benefit again of Mr Adenuga.

7 The Defence have expressed some pretty serious concerns
8 regarding the fair trial rights of Mr Taylor, and that is his
9 right to consult the Defence Office with regard to his
10 representation. Now, we feel helpless as a Trial Chamber, we
11 can't make any orders but we have taken note seriously that there
12 is a bottleneck somewhere.

13 Now, my only concern or our concern is that this bottleneck
14 does not translate into a delay in the trial due to the fact that
15 Mr Taylor's Defence team has not been able to be organised in
16 time, or his co-counsel has not been found due to a delay
17 somewhere, because of someone who has taken certain decisions

18 that have been translated into a denial of Mr Taylor's rights.

19 This I want to emphasise: I do not want to hear afterwards

20 that, as a result of some decision taken somewhere, Mr Taylor is

21 not in a position to start trial. This would be very, very

22 unfortunate, if it did happen, and I would like you to translate

23 this to the people concerned. I do not know all the facts but

24 the people concerned to, at the earliest opportunity, ensure that

25 this blockage is unblocked. This bottleneck is unblocked,

26 overcome and that the Principal Defender is able to communicate

27 with Mr Taylor in order to straighten out his Defence team. You

28 see, that would be my closing statement from the Chamber.

29 MR ADENUGA: Thank you, Your Honours. I will convey your

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1 concerns.

2 PRESIDING JUDGE: There being no other -- just a moment,
3 please. Simon. Okay. I want to thank you very much. I think
4 we have done pretty well. We have finished earlier than we had
5 thought we would and I wish you all well and hope to see again on
6 4 June at 9.00. Proceedings are adjourned until then. Thank
7 you.

8 [Whereupon the hearing adjourned at 12.40 p.m.,
9 to be reconvened on Monday, the 4th day of June
10 2007, at 9.00 a.m.]

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