



Case No. SCSL-2004-15-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
ISSA SESAY
MORRIS KALLON
AUGUSTINE GBAO

TUESDAY, 20 MARCH 2007
10.20 A.M
PRE-DEFENCE CONFERENCE

TRIAL CHAMBER I

Before the Judges:	Bankole Thompson, Presiding Pierre Boutet Benjamin Mutanga Itoe
For Chambers:	Mr Matteo Crippa Ms Erica Bussey
For the Registry:	Ms Advera Kamuzora Ms Elaine Bola-Clarkson
For the Prosecution:	Mr Peter Harrison Mr Charles Hardaway Mr Vincent Wagona Ms Penelope Mamattah
For the accused Issa Sesay:	Ms Sareta Ashraph Mr Jared Kneitel Ms Jamie Liew (legal assistant)
For the accused Morris Kallon:	Mr Melron Nicol-Wilson Ms Sabrina Mahtani Mr Alpha Sesay (legal assistant)
For the accused Augustine Gbao:	Mr Andreas O'Shea Ms Lee Kulinowski (legal assistant)
For the Principal Defender:	Ms Haddijatou Kah-Jallow
For Detention:	Mr Alex Moore Dr Andrew Harding

1 [RUF20MAR07 - MC]
2 Tuesday, 20 March 2007
3 [Pre-Defence Conference]
4 [Open session]
5 [The accused Sesay and Kallon present]
6 [The accused Gbao not present]
7 [Upon commencing at 10.15 a.m.]

8 PRESIDING JUDGE: Good morning, counsel. Today's business
9 is the pre-Defence conference for the RUF trial. For this
10:14:17 10 purpose, may I have representations please? For the Prosecution?

11 MR HARRISON: My name is Harrison, initials PH. Also
12 present is Mr Charles Hardaway, Ms Penelope-Ann Mamattah. For
13 the record, that is M-A-M-A-T-T-A-H. And also Mr Vincent Wagona,
14 W-A-G-O-N-A.

10:14:48 15 PRESIDING JUDGE: Thank you. For the first accused?

16 MS ASHRAPH: Your Honour, first accused, may I introduce
17 our new legal assistant, Jamie Liew, L-I-E-W, who sits behind.
18 Your Honours will be acquainted with Mr Jared Kneitel and myself,
19 Sareta Ashraph.

10:15:04 20 PRESIDING JUDGE: Thank you. For the second accused?

21 MR NICOL-WILSON: Your Honours, for the second accused, may
22 I also first of all introduce our new legal assistant, Mr Alpha
23 Sesay, on my extreme right, and together with me is Miss Sabrina
24 Mahtani, and myself, Melron Nicol-Wilson.

10:15:23 25 PRESIDING JUDGE: Thank you. For the third accused?

26 MR O'SHEA: May it please Your Honours, I am Andreas O'Shea
27 and I appear as court-appointed counsel for Mr Augustine Gbao,
28 who is not here, and I appear with Miss Lee Kulinowski, who is
29 from France.

1 PRESIDING JUDGE: Thank you.

2 JUDGE ITOE: Just a minute. Can Miss Kulinowski appear
3 before us the way she is dressed? If she is ready to appear, is
4 she ready to substitute you at any time during this proceeding,
10:16:00 5 the way she is dressed?

6 MR O'SHEA: I apologise. I should have indicated that she
7 is a legal assistant, so in accordance with Your Honours'
8 directive, she is not robed.

9 JUDGE ITOE: That is why I didn't even recognise her.

10:16:12 10 PRESIDING JUDGE: This pre-Defence conference is being held
11 in pursuance of Rule 73ter by Rules of Procedure and Evidence and
12 I will read the relevant sections of the Rule 73ter provides as
13 follows:

14 "(A) The Trial Chamber or a Judge designated from among its
10:16:53 15 members may hold a conference prior to the commencement by the
16 Defence of its case. (B) Prior to that conference, the Trial
17 Chamber or a Judge designated from among its members may order
18 that the Defence, before the commencement of its case but after
19 the close of the case for the Prosecution, file the following:

10:17:18 20 (i) admissions by the parties and a statement of other matters
21 which are not in dispute; (ii) a statement of contested matters
22 of fact and law; (iii) a list of the witnesses the Defence
23 intends to call with; (a) the name or pseudonym of each witness;
24 (b) a summary of the facts on which each witness will testify;
10:17:47 25 (c) the points in the indictment as to which each witness will
26 testify; and (d) the estimated length of time required for each
27 witness; (iv) a list of exhibits the Defence intends to offer in
28 its case, stating where possible whether or not the Prosecutor
29 has any objection as to authenticity. The Trial Chamber or the

1 said Judge may order the Defence to provide the Trial Chamber and
2 the Prosecutor with copies of written statements of each witness
3 whom the Defence intends to call to testify. (C) The Trial
4 Chamber or a Judge designated from among its members may order
10:18:37 5 the Defence to shorten the estimated length of the
6 examination-in-chief of some witnesses; (D) The Trial Chamber or
7 a Judge designated from among its members may order the Defence
8 to reduce the number of witnesses, if it considers that an
9 excessive number of witnesses are being called to prove the same
10:19:03 10 facts; (E) After the commencement of the Defence case, the
11 Defence may, if it considers it to be in the interests of
12 justice, move the Trial Chamber for leave to reinstate the list
13 of witnesses or to vary its decision as to which witnesses are to
14 be called. "

10:19:28 15 On 30 October 2006, this Trial Chamber issued a scheduling
16 order concerning the preparation and the commencement of the
17 Defence case for the following purposes: (A) to consider the
18 compliance of the Defence with the Chamber's order on filing of
19 Defence materials; (B) to review the Defence witness list and to
10:19:59 20 set the number of witnesses each Defence team will be entitled to
21 call; (C) to determine the time which will be available to each
22 Defence team to present their case; (D) to ascertain whether the
23 first and third accused still intend to exercise their right to
24 make an opening statement on Rule 84 of the Rules; (E) to remind
10:20:29 25 the parties of the procedure for the presentation of evidence;
26 (F) to deal with any other matters that the Chamber considers
27 appropriate for the purposes of facilitating the presentation of
28 each Defence case. Our agenda items this morning, counsel, are as
29 follows: After inquiring about the state of health of each

1 accused person we will go through the following items: (A)
2 review of Defence filings; materials filed by Defence for Sesay;
3 materials filed by Defence for Kallon; materials filed by Defence
4 for Gbao; and then we'll also look at the number of Defence
10:21:26 5 witnesses and the length of the Defence case, with particular
6 references to Rule 92bis witnesses and also character witnesses.

7 We will then discuss opening statements by first and third
8 accused, then move on to procedure for the presentation of the
9 evidence, concluding with any other matter that counsel may wish
10:21:57 10 to bring to the attention of the Chamber.

11 Let us begin with some inquiry into the state of health of
12 the accused persons. The first accused.

13 MR O'SHEA: Your Honour, before we --

14 PRESIDING JUDGE: Did you want to come out of turn?

10:22:14 15 MR O'SHEA: Yes, Your Honour. I just want to indicate -- I
16 think I have indicated, but I just wanted to make it clear -- Mr
17 Gbao is not here. I am grateful for the opportunity to go and
18 see him. I ran down to the detention centre and it would appear
19 that the reason he is not here is because he's upset with me, but
10:22:36 20 it is also clear that he consents not to be here today.

21 PRESIDING JUDGE: Right. We certainly are proceeding
22 without the presence of Mr Gbao. This is a pre-Defence
23 conference.

24 JUDGE BOUTET: May I comment on this? I will have
10:22:54 25 appreciated, Mr O'Shea, that you had met your client earlier,
26 even though you may be in a state of affairs that may be
27 difficult with your client. I don't understand or do I see why
28 this Court was delayed by 15 minutes just to allow you to try to
29 talk to your client. If you needed time, you could have done

1 that earlier this morning without delaying the process of this
2 Court today.

3 MR O'SHEA: I entirely agree, Your Honour, and I apologise
4 for that, but it was from circumstances beyond my control. I was
10:23:25 5 not picked up by the Court transport last night. I had no means
6 of communicating with the Court transport, and this morning I was
7 not picked up by the Court transport. I only managed to
8 communicate with them at about 8.00 in the morning and I was only
9 picked up at ten to nine, but I did do everything within my power
10:23:47 10 to get here.

11 PRESIDING JUDGE: Thank you. First accused. Do you have
12 any information to give to the Court on the state of the health
13 of the first accused?

14 MS ASHRAPH: Yes, Your Honour, just a brief update. As
10:24:05 15 Your Honours will know, Mr Sesay was in Senegal for an operation.
16 That operation was successful and he is recovering well. He
17 still experiences some minor pain, as I imagine would be expected
18 after such a significant operation, but he is in good health and
19 he is recovering well.

10:24:21 20 In particular, the Sesay team would like to thank the
21 Registry, most especially Mr Von Hebel, who is now Acting
22 Registrar, and Nikolaus Toufar, who is the legal adviser, for
23 communicating with the team and assisting us while Mr Sesay was
24 in Senegal.

10:24:37 25 PRESIDING JUDGE: Thank you. Second accused?

26 MR NICOL-WILSON: Your Honours, the second accused is in
27 good health.

28 PRESIDING JUDGE: Thank you. Counsel will recall that this
29 trial commenced on 5 July 2004 and the Prosecution closed its

1 case on 2 August 2006 after 182 days of trial. In total, 86
2 witnesses were heard during the Prosecution's case.

3 On 25 October 2006, this Trial Chamber delivered its oral
4 decision on Defence motions for judgment of acquittal, pursuant
10:25:32 5 to Rule 98 of the Rules. Each of the Defence motions was
6 dismissed. However, the Trial Chamber found that no evidence was
7 adduced by the Prosecution in relation to several geographical
8 locations pleaded in various counts of the indictment.

9 Consequently, each accused has been put to his election to call
10:25:59 10 evidence, if he so desires, and, undoubtedly, this pre-Defence
11 conference is a logical emanation of the decision in the Rule 98
12 motion.

13 We will now proceed to the first important item in terms of
14 the state of the filings and that is review of Defence filings.
10:26:34 15 Here the records show that, in a scheduling order of 30 October
16 2006, we ordered that the Defence teams for each accused file
17 certain materials concerning the preparation and presentation of
18 their case.

19 Previously, on 27 October 2006, a first status conference
10:27:03 20 was held for the purposes of considering the implementing
21 modalities for the preparation and presentation of the Defence
22 case, and submissions in this regard were made by the Defence
23 teams.

24 Mr Jordash, for the first accused, also appeared on behalf
10:27:25 25 of the third accused, in the absence of Court-appointed counsel.
26 In particular, in our scheduling order, we ordered that each of
27 the Defence teams should individually file the following
28 materials:

29 (A) A core and back-up witness list of all the witnesses

1 that each Defence team intends to call, including, (i) the name
2 and relevant identifying data subject to any protective measures
3 that might have been ordered by the Chamber, the pseudonym of
4 each witness; (ii) A detailed summary of each witness's
10:28:16 5 testimony. The summary should, subject to any protective
6 measures that might have been ordered by the Chamber, be
7 sufficiently descriptive to allow the Prosecution and the Chamber
8 to appreciate and understand the nature and content of the
9 proposed testimony; (iii) The points of the indictment to which
10:28:43 10 each witness will testify, including the exact
11 paragraph/paragraphs and the specific count/counts; (iv) The
12 estimated length of time for each witness to testify and the
13 language in which the testimony is expected to be given; (v) An
14 indication of whether the witness will testify in person or
10:29:13 15 pursuant to Rule 92bis of the Rules. Should the Defence seek to
16 add any witness or to modify this list, it may be permitted to do
17 so, only upon good cause being demonstrated;

18 (B) An indication of whether the accused will testify at
19 trial pursuant to Rule 85(C) of the Rules;

10:29:41 20 (C) A list of the expert witnesses, whose names must appear
21 on the list of witnesses referred to above, with a brief
22 description of the nature of their evidence and an indication of
23 when their reports will be ready and made available to all the
24 parties, and in accordance with Rule 94bis of the Rules;

10:30:06 25 (D) An indication of common witnesses, if any, who will be
26 called by the Defence teams;

27 (E) A list of exhibits the Defence intends to offer in its
28 case, containing a brief description of their respective nature
29 and contents and stating, where possible, whether or not the

1 Prosecution has any objection as to their authenticity. Should
2 the Defence seek to add any exhibit to this list after
3 16 February 2007, it may be permitted to do so only upon good
4 cause being shown;

10:30:52

5 (F) A chart which indicates for each paragraph in the
6 current indictment the testimonial evidence and documentary
7 evidence upon which the Defence will rely to defend the accused
8 against the allegations contained therein.

10:31:14

9 In addition, the Chamber also ordered that the Prosecution
10 and each of the Defence teams submit a joint statement of agreed
11 facts and matters, which are not in dispute, as well as a joint
12 statement of contested matters of fact and law, hereinafter
13 referred to as joint statement of agreed facts.

10:31:42

14 On 7 February this year, the Chamber granted two distinct
15 applications filed by the Defence for the first accused and the
16 second accused for the postponement until 5 March 2007 of the
17 deadline for the filings of these materials. The Chamber also
18 ordered that the Defence for the third accused was to file its
19 materials on the same date.

10:32:06

20 Accordingly, on 5 March 2007, various materials were filed
21 by each of the Defence teams. For the purposes of this pre-trial
22 conference, the materials filed by each of the Defence teams will
23 now be viewed in order to ascertain their formal and substantive
24 compliance with the orders of this Court. More specific issues,
25 such as the overall number of the Defence witnesses and the
26 projected length of the Defence case, will be addressed at a
27 different stage of this pre-Defence conference.

10:32:36

28 Let us now begin with the materials filed by Defence for
29 the first accused. We'll now go the witness list and witness

1 summaries. Let me, just before counsel responds, indicate that
2 the records show that the Defence for the first accused filed a
3 core witness list containing a total of 175 witnesses, of which
4 50 witnesses are Rule 92*bis* witnesses and a back-up witness list
10:33:30 5 containing a total of 146 back-up witnesses. The Chamber notes
6 that at the status conference held on 27 October last year, the
7 Defence for Sesay preliminarily estimated a total of 100 core
8 witnesses, 200 back-up witnesses and, in addition, 30 Rule 92*bis*
9 witnesses. We would say also that the records show that Defence
10:34:07 10 have also filed summaries of all of its witnesses' intended
11 testimonies.

12 I will now invite comments from the parties beginning with
13 you, learned counsel for the first accused.

14 MS ASHRAPH: Yes, Your Honour. Your numbers are correct.
10:34:26 15 There are 175 core witnesses of which we have designated 50 as
16 witnesses under Rule 92*bis*. I'm aware of the estimates that were
17 given previously by the Sesay team. I know we are not dealing
18 with the number of witnesses at this stage, but if I may allay
19 some concerns, that the Sesay team is obviously making all
10:34:49 20 efforts to call only the number of witnesses which will serve
21 Mr Sesay's best interests, and we'll obviously keep the Court
22 regularly informed of any changes in our witness list and,
23 obviously, by changes, I mean reductions in the number of core
24 witnesses.

10:35:01 25 PRESIDING JUDGE: So there is a possibility of
26 de-escalation of the list?

27 MS ASHRAPH: There is, indeed, a significant possibility of
28 de-escalation of the list.

29 PRESIDING JUDGE: Before we --

1 JUDGE BOUTET: When are we to be informed of this change,
2 bearing in mind the first accused is the first one to call these
3 witnesses? In fairness to all the parties they should all be
4 informed in due time with sufficient notification as to what is
10:35:26 5 happening with the Defence of your client.

6 MS ASHRAPH: I agree, Your Honour. What I will say is
7 this: We have a projected estimate for length of time we'll need
8 for our Defence case. That, I think, is a reasonable estimate
9 which we'll come to in the agenda. That estimate in no way would
10:35:46 10 allow us to call 175 witness, even with 50 witnesses put under
11 Rule 92bis. We'll be reviewing it constantly. At this stage, I
12 can't honestly say; we are still in the process of interviewing
13 and re-interviewing witnesses. To give Your Honours a final view
14 of what our witness would be -- what I can say is we are
10:36:06 15 obviously in regular contact. We'll be in regular contact with
16 our co-accused and with the Prosecution, obviously with the Trial
17 Chamber, as to the number of witnesses. We have set an estimated
18 length of our Defence case, which we hope will not change and, if
19 anything, will decrease. That length of time does not
10:36:23 20 accommodate 175 witnesses. I don't know if that assists. At
21 this stage I can't be more specific because obviously those
22 decisions haven't yet been made.

23 JUDGE ITOE: Ms Ashraph, we would like you to be more
24 specific and within a very short period of time, because the
10:36:40 25 Prosecution needs to concentrate and to know in advance the
26 number of witnesses you are going to call, and even the Defence
27 team. They need to know in advance. I'm not saying that it is
28 very easy for you to arrive at this decision at this point in
29 time. You need to interview witnesses. You need to analyse what

1 will best serve, as you yourself have indicated, the interests of
2 your client. But I think the sooner you come to this decision, I
3 mean, from the parties, the better, because they need to know
4 that they have to deal with ten witnesses definitely, 50 or a
10:37:22 5 hundred, so they can concentrate their study and their
6 cross-examination input in relation to what you would have
7 communicated to them as your definitive list of the witnesses.

8 MS ASHRAPH: I am grateful, Your Honour. May I just say,
9 the Sesay team in no way disputes that. I'm hoping that
10:37:40 10 generally through the modalities of the trial session, when we
11 release our trial session list of witnesses that will be called
12 and the order, that would obviously narrow the field. If Your
13 Honours would want to give the Sesay team a date for further
14 narrowing to assist the other parties to these proceedings, then
10:37:58 15 certainly we'll comply with that.

16 As I said, we'll obviously forward the first session of
17 Mr Sesay's Defence. We obviously will have to release a list of
18 the witnesses that would be called and a disclosure of their
19 identities. Now at that stage, obviously the issues and the
10:38:14 20 number of witnesses will be narrowed significantly. If Your
21 Honours prefer that we gave a narrower list before then, we'll
22 comply with any order of the Court. We are actively seeking to
23 reduce our list now.

24 JUDGE BOUTET: Whatever effort you can make in that
10:38:31 25 direction -- you will appreciate that, sitting on this side, when
26 you see these huge numbers coming in, 175 and so on, this is only
27 for your client, as such, and given we are hoping to finish this
28 trial as expeditiously as possible, and when we total up these
29 witnesses, we might be here for the next five years, which I'm

1 not prepared to do, I should tell you. So this is really some of
2 the concerns. I mean, I am certainly quite pleased to hear that
3 you intend to reduce significantly, and I do know this is not
4 always an easy choice, because you have to make a determination
10:39:13 5 between witness X and witness B, as to who is best, but I hope
6 you are making that elimination. Because if we need not to hear
7 X and B, we should hear only the best of the two.

8 MS ASHRAPH: Yes. Indeed, obviously the best of the two
9 will serve Mr Sesay's interests. Indeed, the Sesay team itself
10:39:30 10 has no intention of being here in five years' time.

11 JUDGE BOUTET: Thank you.

12 PRESIDING JUDGE: Let me shift gears a bit and move on to
13 the summaries. The Chamber's opinion is that generally various
14 witness summaries that were filed for your side are sufficiently
10:39:47 15 detailed and then, for example, referred to DIS-101, DIS-163 but
16 we are also of the view that, exceptionally, some of the witness
17 summaries do lack sufficient specificity and we don't -- I'm
18 avoiding giving examples, but if you can embark upon some kind of
19 solving of these summaries and see which, in fact, do lack some
10:40:26 20 of the particularisation which is necessary. But you can be in
21 touch with the legal officers of our Chamber. They may be able
22 to produce some examples for you.

23 What about the position of your client testifying on his
24 own behalf? Let me tell you what the position we -- which we
10:40:57 25 record as representing the status quo. At a status conference
26 held on 27 October last year, you preliminarily indicated that
27 your client will probably testify at the trial, pursuant to
28 Rule 85(C), and you have now stated in the materials that it is
29 likely that the accused will testify but that the matter is still

1 under review as you assess the totality of the evidence. Would
2 you like to update us on that or give us something more
3 definitive, or would we be pushing you too hard if we require at
4 this point in time a definitive position?

10:41:53

5 MS ASHRAPH: At the moment, Your Honours, I wouldn't want
6 to put a different position on the record. However, I will say,
7 in all likelihood, Mr Sesay will be testifying on his own behalf
8 and that should be the assumption that the Trial Chamber and the
9 parties should operate under.

10:42:09

10 PRESIDING JUDGE: Then the probabilities are high?

11 MS ASHRAPH: Yes, they're very high. Yes, Your Honour.

12 JUDGE BOUTET: If I may, when will that probability be
13 converted into certainty, one way or the other, if I can ask?

10:42:35

14 Again, it has to do with proper preparation, both by us and by
15 the parties, as you appreciate. Because if he is to testify, he
16 is to be the first witness.

17 MS ASHRAPH: Indeed.

10:42:48

18 JUDGE BOUTET: Presumably, his evidence would be quite
19 comprehensive, at least in the space of time; I am not talking
20 about details. For preparation by any of the parties for
21 cross-examination, they need some information beforehand as to --
22 I mean, if he is not to testify then the preparation need not to
23 be done at least to the same extent. That is, in that
24 perspective. We are moving even closer to this time, because May
25 is just around the corner. So this is really what I am pushing
26 you about. So I don't need an answer today. We accept what
27 you're saying for now, but when is the question.

10:43:08

28 PRESIDING JUDGE: We probably would definitely like to
29 exhort you as strongly as we can to expedite the process. Given

1 what my learned brother has said, it's certainly important that
2 the other side be apprised of this position.

3 MS ASHRAPH: Yes, Your Honour. And as I said, if Your
4 Honours wish to give us a date, we'll obviously comply by a
10:43:46 5 certain date. Obviously when we release our first witness list,
6 it is our hope Mr Sesay's name will be on it. As I said
7 previously, the Sesay team would ask all parties to the
8 proceedings to work on the assumption that Mr Sesay will be
9 giving evidence in his own Defence.

10:44:02 10 JUDGE ITOE: You see, we are very hesitant to put you under
11 any form of pressure to certain date limits as to when he should
12 take certain decisions. We want to leave it to you to be able to
13 make that determination. All we wanted you to understand is what
14 preoccupies us as a Chamber, and that certain things have to be
10:44:24 15 done with expedition, so as to put all the parties on the proper
16 track to be able to start the proceedings, you know, as far as
17 you are client is concerned.

18 MS ASHRAPH: I am grateful for that, Your Honour. What I
19 will say is that I will obviously communicate that to counsel,
10:44:41 20 and we'll inform the Court and other parties in a very timely
21 manner. What we do not want is any applications, obviously, for
22 an adjournment. We would like the trial to proceed on 2 May and
23 for all parties to be prepared. So we are working towards that
24 goal.

10:44:56 25 PRESIDING JUDGE: Thank you. Insofar as expert witnesses
26 are concerned, you indicated that your side intends to call one
27 expert witness, namely witness DIS-250 to testify about the
28 conflict in Sierra Leone and the anthropology of the RUF
29 movement. You indicated that the relevant expert report will be

1 ready by April 2007. Do you want to confirm that or is there any
2 comment that you want to make in response to that?

3 MS ASHRAPH: I can simply confirm that Your Honour, yes.
4 Your Honour will note there are a list of witnesses that we are
10:45:48 5 hoping to call.

6 PRESIDING JUDGE: Yes.

7 MS ASHRAPH: Just for the record, we are not having any
8 problems locating expert witnesses who can examine the issues and
9 give evidence consistent with our Defence case. There are some
10:46:03 10 issues in relation to the finding of those experts, as Your
11 Honours know, and I will not canvass those with you here. Those
12 have now moved to another stage and we hope there will be some
13 resolution of those. I obviously can't give further details in
14 relation to those reports, but in relation to the report of
10:46:20 15 DIS-250, we are hoping by the end of April, or as soon as
16 possible, we'll serve that on the other parties to these
17 proceedings.

18 PRESIDING JUDGE: Does the Prosecution have anything to say
19 on that? Any comments in terms of this report from the expert
10:46:34 20 witness, who'll be testifying about the conflict in Sierra Leone
21 and the anthropology of the RUF movement.

22 MR HARRISON: The only thing I can raise with the Court is
23 the fact that a pseudonym was given to an expert.

24 PRESIDING JUDGE: I see.

10:46:51 25 MR HARRISON: And the scheduling order refers to a list of
26 expert witnesses whose names must appear on the list of
27 witnesses.

28 PRESIDING JUDGE: Quite right.

29 MR HARRISON: The Prosecution is asking if a protective

1 measures motion is going to be brought, that it ought to be
2 brought. But if one is not going to be brought --

3 PRESIDING JUDGE: We uncover this cloak.

4 MR HARRISON: Yes.

10:47:17 5 PRESIDING JUDGE: What is your response? Maybe that was
6 inadvertent, was it?

7 MS ASHRAPH: Your Honour, there is a protective measures
8 motion for witnesses residing outside of Sierra Leone. Sorry, I
9 am just trying to find the agenda at the moment. This witness
10:47:30 10 would fall under that. Clearly, if Your Honours order us to
11 reveal it, we will do so, the expert's name. At the moment we
12 are awaiting a decision.

13 PRESIDING JUDGE: All right. Well, we'll just look at that
14 again and check that. Yes, go ahead.

10:47:56 15 MR HARRISON: Sorry to interrupt. Was there an intent to
16 include the expert witness in the motion that was filed regarding
17 persons residing outside of West Africa? Because there was no
18 mention whatsoever within that motion that it was intended to --
19 is there a second motion is what I am asking?

10:48:21 20 PRESIDING JUDGE: Let us clarify this first.

21 MS ASHRAPH: Your Honour, I don't have actually a copy of
22 the motions with me. What I will say is this: I would need to
23 review the motion that was filed on 5 March and see whether
24 DIS-250 was meant to be included in that. I was obviously
10:48:36 25 working on the February filings at the time and was not primarily
26 concerned with that motion. If not, then obviously the Defence
27 team will make that name available for the Prosecution.

28 PRESIDING JUDGE: Very well. Is that all right,
29 Mr Harrison?

1 MR HARRISON: Yes, of course.

2 PRESIDING JUDGE: You indicated -- you virtually alluded to
3 the question of your inability to secure other expert witnesses
4 because of funding --

10:49:08 5 MS ASHRAPH: Yes, Your Honour.

6 PRESIDING JUDGE: -- constraints, and you indicated that
7 you are intending to instruct three more expert witnesses;
8 namely, a military expert, a child psychologist statistician, and
9 also a diamond mining expert. If you had been able to secure
10:49:34 10 them, the reports, you said, would have been ready within a
11 period of three months. Are you abandoning that effort now, as
12 you said, because of funding constraints?

13 MS ASHRAPH: We are not abandoning that effort, no, Your
14 Honours. We are hoping that funding will be made available and
10:49:52 15 we can fund the experts that we have located. Obviously we'll
16 need to do so in a speedy manner and get those reports completed.

17 PRESIDING JUDGE: Yes, I was going to say that you would
18 need to intensify your efforts in that direction.

19 MS ASHRAPH: Your Honour, in terms of locating the experts
10:50:09 20 that has predominantly been done. It is really more of an
21 administrative sorting out of contracts and trying to ensure that
22 we can properly fund the experts that we have located. The team
23 has been working very hard and has been dealing, obviously, with
24 the Office of the Principal Defender and the Registry in relation
10:50:27 25 to those matters.

26 PRESIDING JUDGE: Time is of the essence, otherwise we'll
27 have to come with an order from the Chamber for compliance.

28 MS ASHRAPH: Indeed, Your Honour. As I said, in terms of
29 the underlying desire of the Sesay team, it is obviously to have

1 the trial move forward as quickly as possible.

2 JUDGE BOUTET: Can I ask you if you have discussed these
3 matters with the other parties? I am concerned about what
4 appears to be a high number of expert witnesses that are to be
10:50:56 5 called by the Defence. If you are calling four, and other
6 parties are doing the same, as such, it will become a battle of
7 experts. I'm not sure we are really interested in a battle of
8 experts. We are really concerned to try to find out what
9 happened and what is the best evidence you can produce. As you
10:51:12 10 know, it doesn't go by number; it goes by more quality than
11 numbers.

12 Having said that, for example -- I am using your
13 description -- an expert, whether he is needed or not, is not my
14 comment indeed this morning, but one, a diamond mining expert. I
10:51:31 15 would imagine that not every single accused needs to call such an
16 expert, as such. One for the whole Defence team would be
17 sufficient. So that is why my question to you is: Have you had
18 any discussion, preliminary discussion, with other parties as to
19 these witnesses? I am using the diamond expert as an example.

10:51:52 20 MS ASHRAPH: If you'll excuse me, Your Honour? Your
21 Honour, I, myself, had a meeting with lead counsel on the Kallon
22 team some months ago. I can't remember the date. It was a very
23 brief meeting. It was canvassed again -- it was not a long
24 enough meeting, really, to go into the depth of it. I understand
10:52:24 25 that Mr Jordash has had conversations with Mr O'Shea about
26 experts. Clearly, further discussion will have to be had between
27 the teams. We obviously do not want a duplication of experts
28 where experts can bring evidence which will assist all
29 defendants, so we will obviously be in more communications.

1 As I've said, at the moment, the Sesay team is
2 concentrating on the funding of the experts, predominantly,
3 because we can't really make offers to potential experts until we
4 can give them some idea of what their contracts might look like.
10:52:59 5 So we are at an impasse in terms of that at the moment. But
6 we'll obviously communicate with our co-accused.

7 JUDGE BOUTET: Because if the impasse has to do with funds,
8 if they are common witnesses, it may support, in more stronger
9 terms, your position from a financial perspective. If it is an
10:53:18 10 expert that can speak on behalf of the three accused,
11 therefore -- on whatever issue, I'm not pushing you in any one
12 direction, but I certainly invite you to consult positively with
13 your colleagues to see if there is any room for common experts
14 somewhere in there.

10:53:37 15 MS ASHRAPH: Indeed, that would be, obviously, the most
16 sensible approach and we will do so. What Mr Jordash has
17 started, I will obviously continue while I'm in the country.

18 PRESIDING JUDGE: In respect of common witnesses then, of
19 course, I reckon the position -- the response you may give me now
10:53:55 20 may have to be revised in the light of the possibility of having
21 common expert witnesses, because on 27 October last year, the
22 indication was that you will not be calling any common witnesses,
23 since you didn't have a common Defence strategy. This seems to
24 be the theme that runs throughout all the Defence materials. But
10:54:23 25 I reckon that now, in answer to Honourable Justice Boutet, you
26 might consider the advisability of having common expert
27 witnesses.

28 MS ASHRAPH: Definitely in relation to expert witnesses,
29 yes. That will continue to be discussed.

1 PRESIDING JUDGE: Yes, but not non-expert witnesses; the
2 position remains the same.

3 MS ASHRAPH: The Sesay team is carefully considering this.
4 At this stage, we are not convinced of the merit of any common
10:54:50 5 non-expert witnesses. Obviously we are open to discussions with
6 the other Defence teams and amongst ourselves, and we will
7 obviously have to have those and will keep the Court updated, but
8 the position of the Sesay team --

9 PRESIDING JUDGE: But this is not something that you need
10:55:01 10 to leave hanging in the air because, I mean, if you have taken a
11 definitive position, there is not likely to be a common Defence
12 strategy.

13 MS ASHRAPH: No.

14 PRESIDING JUDGE: It would seem to follow, as a matter of
10:55:13 15 logic, that you don't intend to call common witnesses, so we
16 don't need to have such a decision in abeyance. Otherwise it
17 will compound the issue of the equation of expedition.

18 MS ASHRAPH: Indeed, Your Honour. As I've said, the Sesay
19 team has had a look at this very carefully and had a look at
10:55:35 20 where interests of the defendants lie, the districts that perhaps
21 particular defendants are most concerned with, and really where
22 there are areas of overlap in the Defence cases. It is our
23 position at the moment that there is not sufficient overlap to
24 make the common witnesses be something that would be naturally
10:55:51 25 advantageous.

26 PRESIDING JUDGE: Right.

27 MS ASHRAPH: That may not be the position of other Defence
28 teams and obviously we are open to discussions on that. We --

29 PRESIDING JUDGE: But is there dialogue ongoing on that?

1 MS ASHRAPH: Well, at the moment, yes. We have
2 preliminaries of dialogue, yes. There have been several
3 communications and we have said --

4 PRESIDING JUDGE: The Bench would like to urge you to
10:56:14 5 expedite this and conclude it.

6 MS ASHRAPH: I'm grateful, Your Honour. We'll do so.

7 PRESIDING JUDGE: Thank you. Exhibit list. The Defence
8 for Sesay filed an exhibit list containing a total of 395
9 exhibits. Excuse me. However, the materials do not indicate
10:56:35 10 whether the Prosecution has any objection as to their
11 authenticity. Perhaps I should give the Prosecution a chance on
12 this one.

13 MR HARRISON: The reality is we were hoping to ask the
14 Court for an order that the exhibits be produced so that an
10:56:53 15 attempt could be made to review the exhibits and then provide the
16 Court with any guidance as to those to which authenticity would
17 be agreed to?

18 PRESIDING JUDGE: Very well. Ms Ashraph?

19 JUDGE ITOE: What if it were a mutual agreement between the
10:57:12 20 parties instead of bringing the Court into the picture?

21 MR HARRISON: Yes, of course.

22 JUDGE ITOE: I mean, that would sort matters much more
23 easily.

24 MR HARRISON: Of course.

10:57:21 25 JUDGE ITOE: And that would make them less contentious than
26 they would if they came before us. And probably also, I may add,
27 more authentic as well, because it would have been at the level
28 of the two contesting parties. We are just arbiters, that's all.
29 Thank you.

1 MS ASHRAPH: Yes, Your Honour. I was going to say that I
2 would resist an order being made. I think this could be resolved
3 between the parties and I can contact Mr Harrison and Mr Hardaway
4 today to start that process.

10:57:49 5 PRESIDING JUDGE: Again, we would probably emphasise that
6 time is of the essence. Right. The evidentiary chart. You
7 filed an evidentiary chart --

8 MS ASHRAPH: Yes, Your Honour.

9 PRESIDING JUDGE: -- indicating for each party of the
10:58:06 10 current indictment the testimonial and documentary evidence which
11 you intend to rely on. Our comment is that the evidentiary
12 chart, from a preliminary examination, is generally accurate and
13 that there are only a few discrepancies between the witness list
14 and the evidentiary chart, for example, DIS-011. But you can be
10:58:36 15 in contact with our legal officers as to further and better
16 particulars in respect of alleged deficiencies.

17 MS ASHRAPH: We will do so, Your Honour.

18 PRESIDING JUDGE: Right. As far as the joint statement of
19 agreed facts is concerned, on 20 February this year, we granted
10:58:57 20 an application on behalf of your client for the postponement of
21 the deadline for the filing of the joint statement of agreed
22 facts due to the then temporary absence from the jurisdiction of
23 your client. On 9 March 2007, you filed a list of two proposed
24 facts, which it proposed to the Prosecution for agreement. To
10:59:36 25 date, the Chamber has no record of any response from the
26 Prosecution on these proposed facts. Perhaps we should hear from
27 Mr Harrison.

28 MR HARRISON: Yes. The response will be filed before the
29 end of this week.

1 PRESIDING JUDGE: Thank you. That takes care of that, for
2 the time being. That will obviate the possibility of a Chamber
3 order.

4 We'll now deal with the materials. We'll come back to you
11:00:07 5 at some appropriate point, except if there is anything so
6 peremptory that you want to call the attention of the Chamber to.

7 MS ASHRAPH: Only that Mr Sesay would like to leave the
8 room for a minute.

9 PRESIDING JUDGE: Leave is granted.

11:00:23 10 MS ASHRAPH: I'm grateful.

11 PRESIDING JUDGE: Materials filed by counsel for the second
12 accused. Witness list and summary list. The Defence filed a
13 core witness list containing a total of 96 witnesses, three of
14 which are Rule 92(B) witnesses and a back-up witness list
11:00:46 15 containing a total of 61 back-up witnesses.

16 The Chamber notes that at the status conference held here
17 on 27 October last year, you preliminarily estimated a total of
18 150 witnesses, 75 of which would be called as core witnesses and
19 you also filed summaries of all your witnesses's intended
11:01:17 20 testimonies. Could you respond to that state of the record?

21 MR NICOL-WILSON: Yes, Your Honour. The details you have
22 just mentioned are correct. We have a list of 96 core witnesses
23 and 61 back-up witnesses.

24 PRESIDING JUDGE: Yes.

11:01:33 25 MR NICOL-WILSON: But this is a list that we intend to
26 review.

27 PRESIDING JUDGE: With a purpose of reduction, no doubt,
28 not for --

29 JUDGE ITOE: Not to increase?

1 PRESIDING JUDGE: Because the figure, as it stands, looks
2 astronomical, relatively speaking.

3 MR NICOL-WILSON: Your Honour, there is a possibility of
4 de-escalation of this list, in terms of review.

11:01:54 5 PRESIDING JUDGE: Very well.

6 MR NICOL-WILSON: But there is also a slight possibility of
7 an escalation.

8 PRESIDING JUDGE: Well, where would be the compensating
9 dimension now, if you escalate and de-escalate?

11:02:09 10 MR NICOL-WILSON: Well, at the moment, the investigations
11 are still ongoing, and then there is a likelihood of
12 de-escalation in view of the lack of accessibility to some of
13 these witnesses.

14 PRESIDING JUDGE: Yes.

11:02:22 15 MR NICOL-WILSON: But in the situation where we are able to
16 access all of these witnesses, and our ongoing investigation we
17 are able to secure more witnesses, there would be a slight
18 increase.

19 PRESIDING JUDGE: Well, of course, all we need to do, the
11:02:35 20 Bench needs to remind you that we have the authority, in the
21 extreme case, of being proactive Judges, indicating that we think
22 you should reduce, particularly having regard to the adage that
23 quality of the evidence is what is really important, not
24 quantity.

11:03:01 25 MR NICOL-WILSON: I will agree with Your Honour. The
26 chances of the list being reduced is greater than that of the
27 list being increased.

28 PRESIDING JUDGE: Very well.

29 JUDGE BOUTET: To speak on my own behalf, I can tell you

1 that I will not view with any positive response any request to
2 increase your list of witnesses. That is my own position at this
3 time.

4 I am still quite puzzled by the number of witnesses when
11:03:23 5 you compare the relative comparison between witnesses called by
6 the Defence and those called by the Prosecution. I thought this
7 is a case where the Prosecution has to prove that these accused
8 are guilty and the presumption of innocence still applies in
9 these trials. So that is why I say I am quite puzzled by the
11:03:44 10 sheer number of witnesses that is being called. I mean, this
11 comment is not addressed exclusively to you; it is addressed to
12 all Defence counsel.

13 So that is why I say I may be convinced otherwise, but my
14 first reaction would be any request for an escalation and
11:03:57 15 increasing of witnesses would not be seen in a very positive
16 light, I can tell you that.

17 MR NICOL-WILSON: Your Honours, as you know, we will call
18 our witnesses after the Sesay Defence team have called their
19 witnesses, and based on the outcome of that process, we might
11:04:12 20 reduce our list substantially.

21 PRESIDING JUDGE: We can characterise the Bench's response
22 as one of judicial skepticism, almost probably crystallising in
23 judicial disfavour for the reasons that my learned colleague has
24 given. We certainly belong to the school of the thought as
11:04:37 25 Judges that the purpose of Defence witnesses is really to poke
26 holes in the Prosecution's case, not to multiply issues.

27 In any event, your promise to reduce the number is welcome
28 and we hope that you will continue to advise yourself along those
29 lines.

1 MR NICOL-WILSON: Certainly, Your Honour.

2 PRESIDING JUDGE: In the context of the witness summaries,

3 I think we are of the view from the preliminary examination of

4 the witness summaries, that your summaries are generally

11:05:17 5 sufficiently detailed because there are few of them which are, in

6 a way, lacking in specificity and particularisation.

7 Again, the legal officers of the Chamber will give you some

8 examples but I could just say DMK-037, DMK-124. So we ask you to

9 review your summaries so that you can remedy those deficiencies.

11:05:52 10 MR NICOL-WILSON: Your Honour, the reason why those

11 summaries would seem not to be sufficient is because those

12 witnesses were not re-interviewed before the filing of the

13 Defence materials and we are going to re-interview those

14 witnesses and liaise with the Chamber's legal officers.

11:06:08 15 PRESIDING JUDGE: Yes. And if you need some guidance as to

16 what is required in terms of sufficiency and more

17 particularisation, you might refer to our order in the CDF case,

18 which was issued on 2 March 2006 entitled, "Order to the first

19 accused to refile summaries of witness testimonies." In

11:06:35 20 particular, order number two thereof may provide useful help.

21 MR NICOL-WILSON: I'm grateful, Your Honour.

22 PRESIDING JUDGE: On the issue of your client appearing as

23 a witness, testifying on his own behalf, pursuant to Rule 85(C),

24 what is the definitive position now?

11:06:55 25 MR NICOL-WILSON: Your Honour, at the moment, it is still

26 at the stage of a likelihood.

27 PRESIDING JUDGE: How? How? Is it a high probability?

28 MR NICOL-WILSON: There is a high probability that he will

29 testify.

1 PRESIDING JUDGE: Because there was an indication that he
2 will testify.

3 MR NICOL-WILSON: Yes, Your Honour. But we'll only be able
4 to advise the Court after the first three witnesses for Mr Sesay
11:07:27 5 will have testified. This is a matter which has to do with our
6 Defence strategy, and I really do not intend to give more details
7 at this stage, but there is a likelihood he will testify. But
8 we'll inform the Court well ahead of time. As Your Honours will
9 rightly know, we'll only call the witnesses upon the completion
11:07:45 10 of witnesses for the Sesay Defence team, but we'll notify the
11 Court in due course.

12 PRESIDING JUDGE: Well in due course is not satisfactory
13 because, again, we say that time is of the essence. The
14 Prosecution ought to be able to examine any summary that you
11:08:06 15 provide in respect of your client, if he is to testify, and it is
16 also important that we expedite that aspect of it. What we have
17 said in respect of the first accused would apply also to you. So
18 I hope you bear that in mind.

19 MR NICOL-WILSON: Yes.

11:08:36 20 PRESIDING JUDGE: Yes, it is important. They either want
21 to testify on their behalf or they don't want to. I agree that
22 there are so many variables to factor into this kind of process,
23 but the Court can't just wait indefinitely for such a very
24 important decision.

11:08:57 25 MR NICOL-WILSON: Your Honours, I'm sure we'll be able to
26 advise the Court before the start of the Defence case on the
27 6th --

28 JUDGE BOUTET: Does that mean you have changed your
29 position? I thought in your filing you had indicated that the

1 accused will testify in compliance? I mean this is what is
2 written on the document you filed with the Court.

3 MR NICOL-WILSON: Yes, Your Honour.

4 JUDGE BOUTET: So we assumed from there that that decision
11:09:20 5 had already been made, and that he would testify.

6 MR NICOL-WILSON: At that stage, that decision was made
7 that he will testify, but in terms of judicial economy, looking
8 at the number of witnesses we intend to call, we might review
9 that position. That is exactly what I am saying.

10 PRESIDING JUDGE: In other words, are you saying that
11:09:35 11 somebody might speak on his behalf?

12 MR NICOL-WILSON: Well, Your Honour, he might decide not to
13 testify.

14 PRESIDING JUDGE: Because somebody would have done it on
11:09:45 15 his behalf?

16 MR NICOL-WILSON: Exactly.

17 PRESIDING JUDGE: Sounds like a kind of, what, is it a
18 gamble or something?

19 MR NICOL-WILSON: No. No, Your Honour. What I will say
11:09:54 20 for certain, Your Honour, is that there is a huge likelihood that
21 he will testify.

22 PRESIDING JUDGE: Well, yes. Yes, I see. My learned
23 colleague did push you to that position because you had moved
24 from certainty at one stage and that's what we are saying: What
11:10:12 25 has necessitated this gravitational move away from certainty to a
26 huge probability? It is a very important decision whether an
27 accused person needs to testify on his own behalf or not in the
28 judicial process. And the presumption here is that when the
29 decision was taken, all the important factors were taken into

1 consideration. So what, really, necessitated this slight shift?
2 That is why I say I hope it is not a game of gamble that, oh
3 well, if we have more witnesses and somebody comes and says
4 something on his behalf which is very helpful, and which he may
11:11:01 5 have said himself -- but I'm a little -- I find it difficult to
6 process that intellectually as part of the way you want to
7 approach it.

8 MR NICOL-WILSON: Your Honours, as you know, the accused is
9 entitled to change his mind.

11:11:16 10 PRESIDING JUDGE: Oh, certainly he is. But in the context
11 of effective trial management, we are entitled to have some
12 certainty as to how we organise our procedure.

13 MR NICOL-WILSON: Well, Your Honour, I do not want to make
14 a statement which will not be completely accurate at this stage.

11:11:36 15 PRESIDING JUDGE: Well, we advise you to expedite this
16 process and come up with something definitive.

17 MR NICOL-WILSON: We will, Your Honour.

18 PRESIDING JUDGE: Pretty soon. Otherwise you leave the
19 Court with no option but to issue an order.

11:11:50 20 JUDGE BOUTET: Again, you see, you don't want to make a
21 statement that would be inaccurate at this particular moment. On
22 5 March 2007, it's only a few weeks ago, you filed a statement
23 saying, "The Kallon Defence provide notice that the accused
24 Morris Kallon will testify."

11:12:06 25 I mean there is no equivocation there, no ambiguity. So I
26 understand that the accused may change his mind, but I would have
27 assumed if there were any doubts in the accused's mind or
28 yours -- at that time you say, well, he's likely to testify, now
29 you are moving in the other direction.

1 Again, it is, as the Presiding Judge has said, proper
2 management, and the preparation, both by the Chambers and the
3 other parties, as such. Obviously, if I'm another party and I
4 know that your client will testify, I may look and see the issue
11:12:36 5 differently. This is the whole purpose of all this at this
6 particular time. So if you change your mind and say, well, now
7 we are not sure, well, how are we to manage this issue properly?

8 MR NICOL-WILSON: Your Honour, I think the Court will
9 suffer no disadvantage, in terms of time, if the accused decides
11:12:55 10 not to testify, at the end of the day.

11 PRESIDING JUDGE: But the Court also has to be treated with
12 utmost candor on matters of this nature which are so important.
13 It's a very important decision, whether an accused person decides
14 to testify or not to testify, and you know the constitutional
11:13:11 15 protections surrounding such a decision. We are not certainly
16 going to move one way or the other in terms of how we look at any
17 decision one way or the other, but it is important that the Court
18 be treated with candor and to know: Will he go into the witness
19 stand or will he not, so that we effectively organise how we
11:13:36 20 intend to hear the evidence.

21 JUDGE ITOE: I hope that, before long, before it is too
22 long, you would be able to inform the Chamber as to what your
23 position is.

24 MR NICOL-WILSON: Yes, Your Honour. In fact we'll have
11:13:52 25 further consultations with the client and then we'll inform the
26 Bench.

27 JUDGE ITOE: Right. Thank you.

28 PRESIDING JUDGE: Thank you. On expert witnesses: You
29 filed an expert witness list, indicating that you intend to call

1 an expert in disarmament, demobilisation and rehabilitation
2 programmes, as well as age verification procedures and a military
3 expert. You indicated that the report by the first expert is
4 expected by 16 July this year, while the report from the second
11:14:32 5 expert is expected by 13 August this year. We note that at the
6 status conference, held on 27 October last year, you indicated
7 that expert reports for these witnesses will be ready by the end
8 of January this year. Would you explain this shift of position?

9 MR NICOL-WILSON: Yes, Your Honour.

11:15:03 10 PRESIDING JUDGE: First of all, is this a correct narration
11 of the situation in terms of the record?

12 MR NICOL-WILSON: Yes, Your Honour.

13 PRESIDING JUDGE: That you have these experts --

14 MR NICOL-WILSON: Yes, Your Honour.

11:15:14 15 PRESIDING JUDGE: -- DDR and age verification procedures --

16 MR NICOL-WILSON: Yes, Your Honour.

17 PRESIDING JUDGE: -- and military expert.

18 MR NICOL-WILSON: Two experts, Your Honour.

19 PRESIDING JUDGE: Two experts, sorry.

11:15:24 20 MR NICOL-WILSON: Yes, Your Honour. Your Honour, the
21 reason for the delay in time is due to the process of recruiting
22 these experts and getting their contracts processed by the Court.
23 The expert on age verification, his contract has only recently
24 been established. With the military expert, we are yet to get
11:15:43 25 his formal contract signed and, as a result of these logistical
26 delays, that is why the reports will not be available now, as
27 promised before.

28 PRESIDING JUDGE: There are no funding problems; you have
29 got over that one?

1 MR NICOL-WILSON: No, no funding problems. It's just the
2 process of --

3 PRESIDING JUDGE: Logistics.

4 MR NICOL-WILSON: -- selecting the experts and getting
11:16:04 5 contracts prepared and signed and getting the work done.

6 PRESIDING JUDGE: How soon will this be accomplished? Do
7 you want to put a timeframe on it?

8 MR NICOL-WILSON: Yes. In terms of the expert on age
9 verification, his report will be available by 16 July.

11:16:23 10 PRESIDING JUDGE: July?

11 MR NICOL-WILSON: Yes. And the military expert, his report
12 will be available by 13 August.

13 PRESIDING JUDGE: Why so late?

14 MR NICOL-WILSON: Because with the military expert, Your
11:16:37 15 Honour, he has not actually -- he has not started compiling his
16 report yet; he has only given us an indication about what his
17 report will cover. This is because he has not been given a
18 formal contract, as I speak to Your Honours, and we intend to
19 expedite this process this week.

11:16:56 20 PRESIDING JUDGE: When will a formal contract be concluded?

21 MR NICOL-WILSON: This week, Your Honour.

22 [RUF20MAR07B-SM]

23 PRESIDING JUDGE: And so the formal contract is concluded
24 this week. This is March; March to July is quite some time. Is
11:17:17 25 there a way of prompting him, if that's what is the catalyst to
26 producing the report, the contract? Is there any way of
27 prompting him

28 MR NICOL-WILSON: I think we will definitely do that, Your
29 Honour. I will prompt him to get the report.

1 PRESIDING JUDGE: Much earlier.

2 MR NICOL-WILSON: Yes, Your Honour.

3 PRESIDING JUDGE: And the same applying for the one on --

4 MR NICOL-WILSON: The age verification.

11:17:38 5 JUDGE THOMPSON: -- the age verification.

6 MR NICOL-WILSON: Yes, Your Honour. We will prompt them to
7 get the report earlier than the anticipated dates.

8 JUDGE THOMPSON: Because you are not really sure whether
9 these reports are even ready.

11:17:53 10 MR NICOL-WILSON: At the moment, they are not ready.

11 PRESIDING JUDGE: How are you so certain? Yes, excuse me.
12 Did you want to intervene?

13 MS KAH-JALLOW: Your Honour, if I may, I would like to
14 comment on this issue.

11:18:03 15 PRESIDING JUDGE: For the Principal Defender's office?

16 MS KAH-JALLOW: Yes, Your Honour. I am Haddijatou
17 Kah-Jallow. I am the duty counsel for the RUF.

18 PRESIDING JUDGE: Very well.

19 MS KAH-JALLOW: I would like to comment on the issue of
11:18:13 20 contracts, because this does fall within our purview. As for the
21 age verification witness, I wish to inform the Court that the
22 contract has been prepared for him to commence on 5 March, and
23 with the military expert, we are waiting for Defence counsel to
24 give us instructions as to when they wish his contract to
11:18:38 25 commence.

26 The motivation that is necessitated in order to draft a
27 contract has already been done. We are awaiting the Defence
28 counsel to give us instructions. So I just wish to inform the
29 Court, for them to say that the blame lies on the issue of

1 contract is not entirely true.

2 PRESIDING JUDGE: Right. Well, let's hear your response to
3 that. That sounds like favourable information.

4 MR NICOL-WILSON: Your Honours, she has not said anything
11:19:11 5 different from what I informed the Court about.

6 PRESIDING JUDGE: Would you like to expand on that?

7 MR NICOL-WILSON: Yes, Your Honour. I informed the Court
8 earlier on that, with the age verification expert, he has a
9 contract already and we are waiting for the report. With the
11:19:27 10 military expert, his contract has not been prepared, as I speak
11 to Your Honours. Basically, that is what she is saying.

12 The issue of blame does not follow, at this stage, because
13 we are not blaming the Defence office for the contract -- for the
14 contract not to have been prepared at this stage. We are not
11:19:41 15 apportioning blame to anybody.

16 PRESIDING JUDGE: Well, preparation of contract or
17 conclusion of contract?

18 MR NICOL-WILSON: Well both, Your Honours.

19 PRESIDING JUDGE: What does preparation involve?

11:19:55 20 MR NICOL-WILSON: Preparation has to be done by the Defence
21 office. It is the Defence office that prepares the contract.
22 Then that contract is signed by the Defence office, on the one
23 hand, and the expert on the other. Since we are making the
24 request, we have to give an indication as to when we want this
11:20:13 25 contract to commence. I'm sure the Defence office knows that we
26 want this contract to commence as soon as possible. It is not a
27 matter of informing them as to when this contract should
28 commence. We want the contract to commence, even today.

29 PRESIDING JUDGE: Well, I'm intrigued. But let her clarify

1 that.

2 MS KAH-JALLOW: Your Honour, in respect to the military
3 expert, the contract has already been prepared, and he was
4 scheduled to start on the 15th.

11:20:37 5 PRESIDING JUDGE: On 15 March?

6 MS KAH-JALLOW: Yes, Your Honour. So I really don't
7 understand --

8 PRESIDING JUDGE: So the contract is ready?

9 MS KAH-JALLOW: The contract is ready, yes, Your Honour.

11:20:44 10 PRESIDING JUDGE: What's the formality now that has to be
11 complied with?

12 MS KAH-JALLOW: I really don't know. Perhaps Defence
13 counsel would be in a better position to answer that. I do know
14 that the contract is ready for the military expert.

11:21:01 15 PRESIDING JUDGE: Yes, okay. Justice Boutet.

16 JUDGE BOUTET: Mr Nicol-Wilson, it would appear that there
17 are fairly important discrepancies, but my question is not really
18 on that. You are calling a military expert. Obviously a
19 contract has not been signed yet. I asked counsel for the first
11:21:18 20 accused if there were discussions, and apparently there has been
21 very limited discussion on experts being called. They are
22 calling a military expert, you are calling a military expert.
23 Why does the Court need to have two military experts? We are
24 dealing with the same overall picture here, and this is why we
11:21:35 25 have a joint trial.

26 I understand that the accused have a right to be
27 represented, and if they are to be dealt with in our findings,
28 they have to be dealt with individually. But I would think that,
29 as far as a military expert is concerned, we would need not to

1 have three or four of those experts. After a while it serves no
2 useful purpose. So if you are calling a military expert, you
3 intend to call a military expert, can I urge upon you to discuss
4 and consult with counsel for the first accused, if only because
11:22:05 5 there are limited funds for experts and maybe these funds could
6 be better spent elsewhere.

7 I am not the counsel for Kallon, and I don't know what his
8 defence is, but I would think that if you are a military expert,
9 there is a military expert. He talks about military activities
11:22:21 10 and the restructure and so on. I don't see how your client is
11 different than others, from a military expert perspective, as
12 such. So that's my main concern.

13 Again, we are talking of expeditiousness, and why we need
14 two experts or three experts on one issue when the matter can be
11:22:41 15 dealt with one expert. That's my first question.

16 My other question on experts: You are abandoning the
17 question of DDR experts, I take it?

18 MR NICOL-WILSON: No, Your Honour. This expert on age
19 verification will be talking about the DDR as well, so it's one
11:22:55 20 expert.

21 JUDGE BOUTET: So it's an expert having expertise in two
22 domains; one, age verification, and the other one on DDR?

23 MR NICOL-WILSON: Your Honours, he is not an expert on DDR,
24 though his expert report will cover the DDR process as well. He
11:23:19 25 is an expert on age verification.

26 JUDGE BOUTET: Very well.

27 MR NICOL-WILSON: Then, on your first question, Your
28 Honour, speaking for Mr Kallon, the military expert will be
29 talking about command and control in a guerilla movement, as

1 opposed to a regular army, with specific reference to the
2 Revolutionary United Front of Sierra Leone.

3 JUDGE BOUTET: How is this different from the first
4 accused?

11:23:41 5 MR NICOL-WILSON: Well, Your Honour, I think the first
6 accused will have to speak for himself, or his counsel will have
7 to speak --

8 JUDGE BOUTET: I know, but you may not have heard what I am
9 saying. I need to be convinced that we need to have two or three
11:23:51 10 reports from military experts. This is a joint trial, as such.
11 That the RUF was or was not a guerilla movement with a common
12 structure in a particular way or not, we need not to hear that
13 from two or three different experts. I think one expert would be
14 sufficient.

11:24:05 15 This is really my concern. And my question to you: Why
16 don't you discuss with the first accused to see if there is some
17 common ground between what you are looking for from this expert
18 with them so we don't have to deal with two military experts.

19 MR NICOL-WILSON: Well, I think, Your Honour, the two
11:24:25 20 experts will not be dealing with the same issues, because there
21 was a meeting earlier on between my lead counsel and, I think,
22 Sareta Ashraph on behalf of Mr Sesay. And we realise that the
23 parameters the two experts will be dealing with are different.

24 JUDGE BOUTET: Well, this is not what I have heard. She
11:24:39 25 has mentioned, counsel for the first accused, that they had, very
26 plainly, a discussion with you, but she has not indicated to the
27 Court that there was no common grounds in between the two. In
28 fact, she has undertaken to have further discussion with you on
29 these matters.

1 MR NICOL-WILSON: Yes, Your Honour. I think we will have
2 further discussions. At the moment, I think these are two
3 separate issues that will be dealt with by these two expert
4 witnesses. Also, Your Honours, our expert witness will be
11:25:09 5 speaking on behalf of Mr Kallon and not generally on behalf of
6 the RUF.

7 PRESIDING JUDGE: Is there something Ms Ashraph wants to
8 tell us?

9 MS ASHRAPH: Only briefly, Your Honour. As I said, we will
11:25:23 10 continue to have discussions. At the time I spoke with
11 Mr Touray, obviously we hadn't had in depth discussions on each
12 expert at that point in time. But simply to add that, obviously,
13 although we are in a joint trial, they are separate, and because
14 of the different positions, people occupying command structures
11:25:39 15 in different areas the defendants may be at, there may be
16 difficulties in having one expert, even if there are two military
17 experts. Obviously we will continue to review that. We are
18 going to have a discussion and see whether one expert is
19 possible. But, the fact is that --

11:25:55 20 JUDGE BOUTET: As I say, I still need to be convinced that
21 you need two experts to tell me about this. I mean, this is the
22 same movement, the same structure. Obviously, and I agree and I
23 can see that they are different accused and they have the right
24 to be calling their own witnesses, as such, because they have to
11:26:11 25 be dealt with differently, and I can see this. But, having said
26 that, I have difficulties -- you have to convince me that when
27 you are talking from a military structure perspective, the
28 perspective from your client and the perspective of the second
29 accused are different, even though they are in the same movement.

1 Maybe that's the case. If that is the case, then I will just
2 listen and observe what happens.

3 MS ASHRAPH: Indeed, Your Honour. If I may just add,
4 obviously it's a question of whether, in fact, there are
11:26:40 5 different Defence strategies, different Defence philosophies.
6 The second is that obviously an expert may find material that may
7 assist one defendant more than it might assist another defendant.
8 That may have a bearing on whether there is going to be common
9 expert witness. Obviously we now deeper into discussions on
11:26:56 10 those experts and, as I've said previously, we will continue to
11 have discussions.

12 PRESIDING JUDGE: I urge you to expedite these constructive
13 discussions on both sides.

14 MS ASHRAPH: Yes, Your Honour.

11:27:08 15 PRESIDING JUDGE: The exhibit list, according to the
16 record, is 83 that you filed, and --

17 MR HARRISON: I'm sorry. I apologise for interrupting.

18 PRESIDING JUDGE: I do apologise. Go ahead.

19 MR HARRISON: The Prosecution just wanted to make a comment
11:27:27 20 with respect to the dates, which are forecast for the
21 availability and production of the two expert reports that have
22 been put in place, or are being put in place by the second
23 accused.

24 The Prosecution wanted to advise the Court that it foresees
11:27:50 25 the Defence case proceeding at a pace hopefully similar to that
26 in the CDF case and the AFRC case, where often four or five
27 witnesses would be heard in one day. If that is a reasonable
28 forecast, then the Prosecution hopes that the second accused's
29 case is ongoing sometime in July.

1 PRESIDING JUDGE: Mr Nicol-Wilson, what would be your
2 response to that?

3 MR NICOL-WILSON: Your Honours, it depends on how long the
4 case of Mr Sesay will be. I don't think the first accused --
11:28:39 5 this is the case of the second accused -- will be ongoing in
6 July. I envisage it will start in September.

7 JUDGE ITOE: In what? September?

8 MR NICOL-WILSON: Yes, Your Honour.

9 JUDGE ITOE: Why in September, Mr Nicol-Wilson?

11:28:55 10 MR NICOL-WILSON: Because there is an indication from the
11 first accused that their case will go on for about three months.

12 JUDGE ITOE: We are not there. We are not to be taken
13 hostage to that indication. You followed Ms Ashraph, and she
14 said she was going to reduce -- they were going reduce, very
11:29:13 15 drastically, the number of witnesses. We understand this might
16 affect the time it will take for them to close their Defence.

17 So let us work on this hypothesis rather than placing the
18 commencement of your case speculatively in the month of
19 September. That worries me. Like my colleague said, I don't
11:29:42 20 think you are interested either that we stay here for another
21 five years.

22 PRESIDING JUDGE: Mr Nicol-Wilson, clearly I indicated that
23 the question of reports coming in August, July, is certainly
24 unrealistic. We have heard from Ms Jallow that the contracts are
11:30:02 25 ready, and I think you need to put the pressure on your
26 witnesses. The Court has a duty to expedite these proceedings,
27 and we cannot wait for, shall I say, long periods of time before
28 we get a report in respect of the trial that we are having now.
29 I think you need to put that pressure.

1 As I said, I express my own little skepticism; I'm not even
2 sure whether those reports are not even ready. But the question
3 of whether the contract, the signing of the contract, is not what
4 triggers off the production of the report. I think you need to
11:30:47 5 do that; it's important. You don't need an order from the Court
6 to force your experts to write their report. I am sure you can
7 be as persuasive as you can. But definitely July and August is
8 unrealistic. Definitely unrealistic.

9 MR NICOL-WILSON: Yes, Your Honour. In fact, I have just
11:31:06 10 been informed by my assistants that what is still not available
11 is the expert's P11 form, and once that is filled, then the
12 contract can be signed.

13 PRESIDING JUDGE: Yes.

14 MR NICOL-WILSON: So we are going to put pressure --

11:31:20 15 PRESIDING JUDGE: Well, we urge you to do that. Otherwise,
16 you might appear to be frustrating the process.

17 JUDGE ITOE: So we now understand that the ball is more in
18 your court than it is in the court of the Defence Office.

19 MR NICOL-WILSON: Well, Your Honour, I think it's partly in
11:31:34 20 the court of the Defence office.

21 JUDGE ITOE: Because if your expert -- if you haven't
22 gotten your expert to fill the P - what do you call it - the P11?

23 MR NICOL-WILSON: But this has to be done by the Defence
24 Office, not --

11:31:44 25 JUDGE ITOE: But you have to urge him. He is your witness,
26 you have to bring him. It's not for the Defence office to urge
27 him to come. He is your witness, principally, and it's for you
28 to bring all the pressure for him to come and accelerate the
29 process.

1 MR NICOL-WILSON: Yes, Your Honour.

2 JUDGE ITOE: I think if it came to it, we would place the
3 ball more in your court to --

4 MR NICOL-WILSON: Yes, Your Honour.

11:32:01 5 JUDGE ITOE: -- ensure that he signs this form as quickly
6 as he could.

7 MR NICOL-WILSON: Yes, Your Honour. But on matters of the
8 contract for the expert witness, this has to be dealt with by the
9 Defence office, not --

11:32:13 10 JUDGE ITOE: But the Defence office says the contract is
11 ready.

12 MR NICOL-WILSON: But the P11 is not available.

13 JUDGE ITOE: But you have to get your witness to come and
14 sign the P11, or to fill it.

11:32:21 15 MR NICOL-WILSON: Yes, Your Honour.

16 JUDGE ITOE: Get him on board, please.

17 MR NICOL-WILSON: Yes, Your Honour.

18 PRESIDING JUDGE: Ms Jalloh, you want to --

19 MS KAH-JALLOW: Your Honours, thank you very much for
11:32:34 20 granting me audience. I don't want to waste the Court's time,
21 but a P11 has to be filled by the witness, I mean by the expert
22 witness. We, in the Defence office, don't have the personal
23 history information of their experts. They fill it and --

24 PRESIDING JUDGE: Well, let's urge you to cooperate.

11:32:49 25 MS KAH-JALLOW: That is our --

26 PRESIDING JUDGE: Mr Nicol-Wilson --

27 MS KAH-JALLOW: That's the procedure. Thank you.

28 PRESIDING JUDGE: -- please take advantage of this offer
29 coming from Ms Jalloh.

1 MR NICOL-WILSON: Yes, Your Honour.

2 PRESIDING JUDGE: Exhibit list, 83. No indication of
3 whether the Prosecution has any objection to the authenticity.
4 Is that the same position you have that you have not seen the
11:33:14 5 exhibits?

6 MR HARRISON: Yes, it's the same position. This list is
7 obviously much shorter as is that of the third accused. And if
8 the second accused has no concern as to providing all of the
9 documents referred to, I believe that most of them are, in fact,
11:33:30 10 documents produced by the Prosecution; some are not. But if they
11 would be forwarded to us, then we can make an indication, perhaps
12 as early as by the end of this week.

13 PRESIDING JUDGE: Thank you. Did you hear that?

14 MR NICOL-WILSON: Yes, Your Honours. Just are a minor
11:33:46 15 correction. The exhibit list is 18, not 83. That's annex F,
16 which is 26709. Eighteen, 1-8.

17 PRESIDING JUDGE: That's refreshing. The evidentiary chart
18 filed on behalf of your client was found to be generally accurate
19 and there are only a few discrepancies between the witness list
11:34:15 20 and the evidentiary chart in respect of witnesses DMK-131,
21 DMK-048, DMK-058 and DMK-115. So we hope you can rectify
22 whatever deficiencies exist.

23 MR NICOL-WILSON: Yes, Your Honour. We will.

24 PRESIDING JUDGE: Joint statements of agreed facts. You
11:34:42 25 filed, together with the Prosecution, a joint statement of agreed
26 facts containing 14 agreed facts. The statement does not
27 indicate any contested matters of fact and law. Any comments?

28 MR NICOL-WILSON: Your Honours, anything outside these 14
29 is contested.

1 PRESIDING JUDGE: Right. Is that so, Mr Harrison?

2 MR HARRISON: Yes, that's certainly my understanding.

3 PRESIDING JUDGE: Very well. Materials filed by -- thank
4 you.

11:35:12 5 MR NICOL-WILSON: Your Honours --

6 PRESIDING JUDGE: Is there anything else you want to add?

7 MR NICOL-WILSON: There is just one issue which is not in
8 the agenda item on behalf of the second accused, and that is
9 common witnesses.

11:35:21 10 PRESIDING JUDGE: Yes. What's your position?

11 MR NICOL-WILSON: I've been instructed by my lead counsel,
12 Mr Shekou, to seek direction from Your Honours as to the issue of
13 common witnesses between the different accused persons.

14 Firstly, we think that we shall have a joint Defence
11:35:46 15 meeting in which we shall agree on these common witnesses, you
16 know. But in the event that we do not have an agreement in these
17 common witnesses, we want to know whether we can still have the
18 right to call some of these witnesses after they have been called
19 by, say, for instance, the first accused.

11:36:07 20 PRESIDING JUDGE: In other words, whether you have a right
21 to circumvent the process?

22 MR NICOL-WILSON: Well --

23 PRESIDING JUDGE: My learned brother, Justice Boutet, would
24 like to comment on this.

11:36:44 25 JUDGE BOUTET: I am not sure I fully understand your
26 question. On the one end, I can assert to what I perceive your
27 question to be. We have dealt with these issues, as you know, in
28 the CDF trial. The common witnesses have been called, and they
29 have been dealt with.

1 If it is you calling the witness that is common to the
2 others, as such, you and other parties are examining-in-chief
3 that particular witness. Then it moves to the Prosecution to
4 cross-examine and then you have a right of re-examination, so
11:37:19 5 this is the standard procedure like any other witness.

6 If it is common, it's common and therefore this witness,
7 once he's called, cannot be recalled again, unless you convince
8 the Court that this witness is now essential for other reasons,
9 as such. The mere fact that the witness has not given evidence
11:37:36 10 that was not to your satisfaction will not allow you to recall
11 the witness. A witness that has been called will not essentially
12 be recalled.

13 MR NICOL-WILSON: Your Honours, the direction I am seeking
14 is just in a situation wherein a witness is called, let's say,
11:37:51 15 for instance, by the first accused, and that witness testifies
16 but limits his testimony only to that of the first accused. But
17 we still have an interest in this witness.

18 JUDGE BOUTET: Are you talking of a common witness here or
19 a non-common witness?

11:38:00 20 MR NICOL-WILSON: Well, we will say that particular witness
21 is a common witness, because this is a witness for whom we have a
22 witness statement from, and for whom other Defence teams might
23 have witness statements as well. But then the witness might be
24 examined in such a manner that the witness limits his testimony
11:38:20 25 to only that of the party calling him.

26 JUDGE BOUTET: That's what I've just explained. After the
27 first accused has dealt with this particular witness, as such,
28 you then examine that witness. And you can put to that witness
29 whatever it is you want to put to that witness as if it were your

1 witness. I mean, it's not only because the witness is called
2 first accused that you have no right to question that witness.
3 He's common or he's not common. It's not the first accused who
4 will ask all the questions on behalf of your client.

11:38:52 5 MR NICOL-WILSON: Your Honours, the disadvantage we really
6 envisage we're going to suffer is the fact that we have a number
7 of witnesses who we would like to call, you know, for the first
8 time by the Kallon Defence team. These witnesses already are
9 also witnesses for the Sesay Defence team and there is a
11:39:10 10 likelihood they will be called by the Sesay Defence team. Then
11 we wanted to elicit evidence from them, you know, through
12 examination-in-chief rather than through cross-examination, which
13 would be favourable to our case. So that is the kind of
14 problem --

11:39:23 15 JUDGE BOUTET: I'm not saying you should go by
16 cross-examination. I told you you do examination-in-chief. I'm
17 not saying that you should do cross-examination. If it's a
18 common witness and you question this witness, you question this
19 witness in chief not as in cross-examination.

11:39:38 20 MR NICOL-WILSON: So, Your Honours, who will determine --

21 JUDGE ITOE: No. You must -- I'm afraid you must agree and
22 you must agree beforehand that they are common witnesses. That
23 is the basis on which you can examine-in-chief, and he, too, can
24 examine-in-chief.

11:39:54 25 JUDGE BOUTET: This is the procedure we followed in the
26 CDF.

27 PRESIDING JUDGE: That's what I understand it to be. I
28 don't know why you want to go the other way. That's why I hinted
29 that, perhaps, you are seeking some directions as to how to

1 circumvent what is, in fact, a laid-down procedure. What is the
2 difficulty of designating ahead of time that these are common
3 witnesses?

4 MR NICOL-WILSON: Well, Your Honours, in the absence of
11:40:20 5 such an agreement, Your Honours will have to decide --

6 JUDGE ITOE: No, No. We don't want to get into that.

7 PRESIDING JUDGE: We are not --

8 JUDGE ITOE: We don't want to impose common witnesses on
9 the parties. This is a decision for the parties. I think if you
11:40:31 10 do not arrive at that determination, I don't see why you
11 shouldn't, anyway, because you're all conducting a defence
12 virtually on the same side, even though you have different
13 clients. I don't see why there should be any real difficulty in
14 arriving at the commonality of facts which characterise your
11:40:53 15 respected Defence teams. I fail to see that.

16 PRESIDING JUDGE: Your invitation sounds like asking the
17 judges to descend into the arena.

18 MR NICOL-WILSON: Not at this stage, Your Honour. Not at
19 this stage.

11:41:09 20 JUDGE BOUTET: No, not at this stage, but we are not
21 prepared to descend into the arena at any stage. So the process,
22 as I put it to you, has been the process we followed in the CDF.
23 If you are not content with that, you may decide this witness may
24 be more favourable to you because you want to cross-examine him.
11:41:28 25 That's your call. This is exactly what you have to assess.

26 We're not there to do the work for you. But, certainly, if a
27 witness has been called by the first accused, as such, and then
28 when you come to your case you want to call the very same
29 witness, as we have given it to you, it is highly unlikely that

1 it will be received with positive favour.

2 PRESIDING JUDGE: Well, brainstorm yourselves when you get
3 into your constructive discussions and see what creative
4 solutions you come out with. You're always capable of some
11:42:02 5 creative solutions, and you can come for some endorsement, if we
6 consider it appropriate and in line with our stipulated
7 procedure.

8 MR NICOL-WILSON: Yes, Your Honour.

9 PRESIDING JUDGE: Let's move on to the third accused.

11:42:18 10 Materials filed by counsel for the third accused: witness list
11 and witness summaries. The records show that the Defence for the
12 third accused filed a core witness list containing a total of 66
13 core witnesses and a back-up witness list containing a total of
14 13, one of which is a Rule 92*bis* witness.

11:42:44 15 The Chamber notes that, at the status conference held on 27
16 October last year, Mr Jordash, on behalf of Mr O'Shea, indicated
17 that the Defence preliminarily estimated a total of 50 core
18 witnesses, but that this figure might increase. I see
19 Professor O'Shea shaking his head. You'll probably disagree with
11:43:09 20 these statistics. Please guide us.

21 MR O'SHEA: No, Your Honour. It's just the comment about
22 what happened at the status conference. It's my understanding,
23 and I may be wrong about this, what Mr Jordash had indicated is
24 that we, at that point in time, had 50 witnesses. If that's not
11:43:28 25 what he said --

26 PRESIDING JUDGE: Not core witnesses, okay.

27 MR O'SHEA: -- then that's not what I meant when I spoke to
28 Mr Jordash. What I'd said to Mr Jordash was that we had 50
29 witnesses at the time of the status conference.

1 PRESIDING JUDGE: Fifty, meaning inclusive of core and
2 back-up?

3 MR O' SHEA: We hadn't made any decisions about that at that
4 time.

11:43:48 5 PRESIDING JUDGE: Categorisation. Right.

6 MR O' SHEA: Yes.

7 PRESIDING JUDGE: Would you enlighten us on that at this
8 stage?

9 MR O' SHEA: The position of the third accused is that we
11:43:56 10 still have substantial investigations to go. With regard to the
11 witnesses that we have identified, there are a number of
12 witnesses that have not yet been evaluated by counsel. All the
13 witnesses have been seen by the investigator, but there are a
14 group of witnesses who have not yet been evaluated by counsel. I
11:44:25 15 suspect that what's going to happen is that some of the witnesses
16 that we have identified, we will, having evaluated them as
17 counsel, decide that they are not appropriate.

18 So, among the 66, I think that there may be some that we
19 will later decide we should not call, but there are also -- as
11:44:46 20 Your Honours know, our investigations started quite late in the
21 day, and we've also had difficulties with certain categories of
22 witnesses. So our investigations are far from complete. That's
23 the difficulty I'm in, with regard to giving exactitude to the
24 Court on a number of witnesses.

11:45:08 25 PRESIDING JUDGE: So, roughly speaking, you're not in a
26 position to tell us whether you are likely to come up with a
27 figure higher than 66, or less than that? In other words, we are
28 in a sort of limbo situation; is that what you are saying?

29 MR O' SHEA: Unfortunately, yes, Your Honour, because it's

1 very difficult --

2 PRESIDING JUDGE: And regrettably, too.

3 MR O' SHEA: Regrettably. If I'm going to be candid with
4 the Court, it's very difficult for me to make any definitive
11:45:46 5 statement on numbers, at this stage.

6 What I can say, it is my intention and it is the intention
7 of Mr Cammegh, and we operate like this, as counsel, in previous
8 cases we have been operating, in that, you know, we are not there
9 to waste the Court's time. We realise that witnesses can cause
11:46:04 10 prejudice to the accused, as well as benefit, and we will do
11 everything in our power to ensure that we only call those
12 witnesses who are there to benefit the accused. With that in
13 mind, I can make a prediction that perhaps our position, at the
14 end of the day, will be more optimistic than envisaged.

11:46:29 15 PRESIDING JUDGE: Optimistic meaning?

16 MR O' SHEA: A low number of witnesses.

17 PRESIDING JUDGE: Low number of witnesses.

18 MR O' SHEA: I mean, I can say that that's been the position
19 in previous cases I have been involved in, is that --

11:46:35 20 PRESIDING JUDGE: And one tends to go by that precedent; is
21 that what you are saying?

22 MR O' SHEA: Yes. But, that having been said, the
23 indictment that Mr Gbao is facing is very wide-ranging. In terms
24 of the actual evidence against Gbao, I appreciate that there are
11:46:56 25 certain areas which we have to concentrate on, but the allegation
26 against us, because of the forms of liability employed, have been
27 quite wide-ranging. There are areas of the indictment that we
28 have not yet managed to get witnesses for, either because the
29 witnesses have not yet agreed to speak to us or because we have

1 not located them yet.

2 JUDGE BOUTET: Mr O'Shea, I am a bit surprised by some of
3 your comments when you are saying you have not yet evaluated --
4 counsel, either yourself or Mr Cammegh, have been able to
11:47:30 5 evaluate the witnesses that you intend to call. I mean, we are
6 in March. The trial -- the Prosecution's case was closed quite a
7 long, long time ago, and you're talking of 50 witnesses since the
8 time the Prosecution has closed their case. And, now, you
9 haven't had the time to evaluate these witnesses and you are
11:47:50 10 coming here today to tell us that? I mean, if we had proceeded
11 as it was planned, at the outset, in January, as such, we would
12 be in very, very serious trouble, I guess.

13 MR O'SHEA: Well, Your Honour will appreciate that counsel
14 are not resident here in Sierra Leone.

11:48:05 15 JUDGE BOUTET: Well, I mean, how you manage your case is
16 your own call.

17 MR O'SHEA: Yes.

18 JUDGE BOUTET: I mean, we are not here to tell you what you
19 may do, or may not do. We are just asking you, how is it that,
11:48:15 20 at this late stage, you have not yet -- I mean, it would appear
21 from your comments that you have not made any assessment of these
22 witnesses, as such. I am a bit surprised to see this. As I say,
23 whether you are calling 50 or 60 or 75 witnesses, and if you were
24 making this assessment and, as you have said, it may be that
11:48:31 25 today that you would tell us you are calling only 20 witnesses,
26 but you are in no position to say that because you haven't met
27 these witnesses. You have not made your assessment, and we are
28 in March.

29 MR O'SHEA: Well, let me modify, to some extent, what I

1 said if it's led to the impression that we haven't evaluated any
2 of our witnesses. We've evaluated a lot of our witnesses
3 personally, but there are a group of witnesses that we have not
4 evaluated. Most of those witnesses we have not evaluated. The
11:49:04 5 statements were only obtained shortly before the filing.

6 The last time I was in Sierra Leone was about a month ago.
7 I went to one area of Sierra Leone, and I spent a few days there,
8 and I was seeing witnesses back-to-back. We are making the
9 efforts that we can to ensure that we evaluate our witnesses as
11:49:31 10 quickly as possible. But we also are third on the indictment.
11 That's not to say that these matters are not urgent, but, from
12 counsel's point of view, perhaps not from the Chamber's point of
13 view, but from counsel's point of view, we still have a little
14 bit of time so far as counsel's evaluation of the witnesses are
11:49:52 15 concerned.

16 That's not to say that we are delaying matters
17 deliberately. Every time counsel is coming to Sierra Leone we
18 are seeing witnesses, as much as we can, but a lot of these
19 witnesses, their statements only came to us very recently.

11:50:10 20 PRESIDING JUDGE: Are you taking that as a kind of window
21 of opportunity, the fact that you are third in the indictment?

22 MR O'SHEA: Well, the position is that, had we been first
23 on the indictment, we would be in real difficulties.

24 PRESIDING JUDGE: Yes, fine.

11:50:31 25 MR O'SHEA: It's just fortunate, in the circumstances, that
26 we are third on the indictment.

27 PRESIDING JUDGE: And you want to exploit that to the
28 maximum advantage, as it were?

29 MR O'SHEA: Well, we want to ensure that the accused is in

1 no way prejudiced by us not having found all the evidence
2 available.

3 JUDGE BOUTET: But I'm still concerned by your lateness in
4 doing so, more so that you have advanced the argument that you
11:50:52 5 were quite late for the investigation because, and because is
6 because of the situation that had existed, that existed between
7 yourself and the third accused.

8 MR O' SHEA: Yes.

9 JUDGE BOUTET: And this is a known fact. But if that may
11:51:06 10 have caused some difficulties, it would appear that you should be
11 making up for that lost opportunity at the time now. You're
12 saying that, in spite of all that, you don't have the time to
13 fully explore and meet with all the witnesses you intend to call.

14 That's my concern at this time. And, if I can add, you say
11:51:22 15 you produced statements just at the last moment. In fact, many
16 of the statements, the summary that you have, are very
17 inadequate, so, which is -- the fact that you are third to be
18 called still requires of you to file certain documents by a
19 certain date, as such. There is no exception because you are
11:51:37 20 third in line by your position to the others. That's my concern,
21 as to how you are complying with the request that you have to
22 provide the Court with.

23 PRESIDING JUDGE: Yes. And I would add to that by saying:
24 How effective, if I can ask you for a candid assessment, are your
11:52:00 25 operational strategies in trying to accomplish these goals of
26 interviewing witnesses and making the final determination as to
27 what the number would be? Because I am trying to put myself in
28 your position where one would want to work out the modalities for
29 the process that you engaged in, and how effective are they, and

1 how productive, because you seem to be using that as one of the
2 reasons why you are not able to comply with the order of the
3 Court.

4 MR O' SHEA: Well, is it the position that we have not
11:52:44 5 complied with the order of the Court?

6 PRESIDING JUDGE: Well, I mean, in the sense that, as
7 regards the summaries, I was coming to the verdict of the Court
8 that, generally, most of them were found to be inadequate. It
9 may require that you will have to go back and rectify some of the
11:53:13 10 disclosed deficiencies. But there is a timeframe within which
11 these filings should be done, and if -- what I mean by
12 non-compliance, is that if you have filings that turn out not to
13 be in strict compliance with the Court's order, then there is a
14 way of saying that there has been non-compliance.

11:53:42 15 MR O' SHEA: Well, the summaries that we provided --

16 PRESIDING JUDGE: Generally, they were found to be vague
17 and insufficient and did not measure up to the standard that this
18 Chamber has laid down in terms of specificity and particularity.
19 Again, the legal office will help you identify --

11:54:08 20 MR O' SHEA: Well, it may be that that comes down to the
21 statements taken from the witnesses.

22 PRESIDING JUDGE: Yes, quite.

23 MR O' SHEA: Because the summaries were taken from the
24 statements that we obtained.

11:54:17 25 PRESIDING JUDGE: Yes.

26 MR O' SHEA: In the case of some witnesses, we don't yet
27 have statements.

28 PRESIDING JUDGE: And that's why I pose the question of how
29 effective are your operational strategies in performing this

1 task, because I am looking at the productivity, the output of the
2 effort. Maybe you need to rethink some of your strategies.

3 MR O'SHEA: Well, my understanding of the summaries, Your
4 Honour, with respect, is that we should be putting the
11:54:49 5 Prosecution on notice as to what the witnesses are going to deal
6 with. If it's envisaged that these summaries are supposed to be
7 of a detailed analysis of what the witnesses are going to say, I
8 have some difficulty with that from a point of view of a Defence
9 strategy.

11:55:16 10 I mean, the Prosecution's summaries that were provided to
11 us gave us notice of what the witnesses were going to deal with,
12 but I am not sure to what extent they were more detailed than the
13 summaries we have provided.

14 JUDGE BOUTET: Well, with one major difference: You were
11:55:34 15 given statements of these witnesses and you are not being asked
16 to provide any statement to the Prosecution. This is quite a
17 substantial difference. A witness that you call are giving you a
18 summary, as such. It's over and above the fact that they had the
19 obligation to disclose to you any documents they had in their
11:55:48 20 possession, including statements made by those witnesses, which
21 you don't have to do. All you have, what you were requested to
22 do, is give a detailed summary of what the evidence will be.

23 And, again, as to what your position may or may not be, we
24 have stated in the CDF, and we have referred to that -- the
11:56:05 25 Presiding Judge has referred to it when we were talking to the
26 counsel for the second accused -- as to what is expected to be
27 contained in those statements, as such. This is not something
28 new. This is the policy and the direction that we followed in
29 the previous trial, as such. Because the options are quite

1 simple: You either provide sufficient information or you will be
2 ordered to disclose statements.

3 So we said, repeatedly, that we were not to put the Defence
4 under the obligation to disclose to the Prosecution witness
11:56:30 5 statement. But they had to provide sufficient information, so
6 that's the direction that we have issued, and this is what we are
7 still proceeding with, Mr O'Shea.

8 MR O'SHEA: Well, I hope, to some extent --

9 PRESIDING JUDGE: Well, it's not a difficult situation.

11:57:07 10 All you need to do is to look up our decision in the CDF case
11 where the order we issued on 2 March last year, entitled "Order
12 to the First Accused to Refile Summaries of Witness Testimonies,"
13 and, in particular, order 2 thereof. It will help you to see
14 exactly what the Chamber expects in terms of compliance as to
11:57:35 15 specificity and particularity.

16 MR O'SHEA: Your Honour, may I just suggest that possibly
17 we are not too far away from each other in terms of
18 understanding, in the sense that I appreciate that some of the
19 summaries are inadequate. Some of the summaries are inadequate.
11:57:56 20 It is not my understanding that most of them are.

21 PRESIDING JUDGE: Well, I would not, in fact, debate you on
22 that issue.

23 MR O'SHEA: Yes.

24 PRESIDING JUDGE: I think, though, it would be fair
11:58:09 25 representation to say some are and some are not. Yes. All
26 right.

27 MR O'SHEA: And the reason why I raise that is because the
28 ones that I believe are adequate, I am concerned if we are going
29 to be forced to provide more detail, there are a number of

1 summaries where we have basically covered all the areas that the
2 witness is going to talk about. We haven't, basically, verbatim
3 repeated the statement. Some of the witness statements are only
4 two or three pages long. But a summary which is, say, ten lines
11:58:48 5 long, in my submission, in terms of what we provided to the
6 Court, fairly represents what the witness is going to say
7 according to the information that we have from our statements.

8 PRESIDING JUDGE: Provided they relate to essentials.

9 MR O' SHEA: Yes.

11:59:05 10 PRESIDING JUDGE: Quite. I mean, if you take a three-page
11 statement, and extract from that three-page statement three
12 paragraphs that have nothing to do with matters of a core nature,
13 but matters for peripheral or tangential nature, it cannot be
14 objectively said that you have faithfully reproduced that
11:59:28 15 statement in summary form

16 MR O' SHEA: Well, I hope we haven't done that.

17 PRESIDING JUDGE: No. I am just giving a hypothetical
18 situation.

19 MR O' SHEA: Yes. I do know that there are some summaries
11:59:42 20 which are four or five lines long, which would appear to be
21 inadequate, and I am referring to a specific document. In those
22 cases, it is because we did not have witness statements from the
23 witnesses, and we were working from the notes of the
24 investigator. That's the reason for that. It's not that we have
12:00:06 25 information that we are hiding.

26 PRESIDING JUDGE: Yes.

27 MR O' SHEA: But with regard to the other summaries which
28 are longer, ten, 12, 15 lines long, we have tried to faithfully
29 indicate those exact areas that the witness is going to deal

1 with. And, as I say, it's my understanding that that's our duty.
2 It's not my understanding that we are supposed to tell the
3 Prosecution exactly what the witness is going to state.

4 JUDGE ITOE: In fact, I was going step in here at this
12:00:37 5 point to say that what we are saying is a smaller debate. As a
6 matter of fact, I think you have the larger debate, you know,
7 with the Prosecution. Will the Prosecution be satisfied with the
8 summaries you provided to them? That is when the real debate,
9 you know, will start, in which we'll involve ourselves to
10 determine whether the summaries, you know, are adequate or not.

11 We are only putting you on guard at this point in time to
12 say that some of your summaries have not lived up to the order
13 that we've made. But when it comes to that, it will be the
14 option of the Prosecution to make as to whether these summaries
12:01:19 15 which are provided are adequate, or whether they will insist that
16 we order you, which is what the Rules authorise us to do, to
17 produce the real statements instead of the summary.

18 So, really, the Prosecution is very much involved in this
19 debate. But we are just putting you on guard as to what we have
12:01:41 20 seen about the summaries which are produced. If the Prosecution
21 is satisfied that the summary which is done in just three lines
22 or four lines is adequate, well, that is not our business. I
23 mean, we get along. It is for us to know what the stand, you
24 know, of the Prosecution is on the summary that you have produced
12:02:00 25 and to strike the balance and make our position very clear,
26 depending on the application that the Prosecution will make at
27 that point in time.

28 MR O'SHEA: I appreciate that Your Honour's comment is
29 meant to be helpful. What I will do is I will go through the

1 summaries that we have provided, and I can see that there are
2 some which, as I say, are three or four lines long, which clearly
3 give the impression that we haven't made a sufficient effort. As
4 I say, the reason for that is because we don't have statements in
12:02:31 5 relation to those particular witnesses. I will try and address
6 that issue by going back to those witnesses.

7 PRESIDING JUDGE: Right. Well, let's get to the rubric of
8 your client appearing as a witness. At the status conference
9 held on 27 October last year, you stated that he has indicated an
12:02:49 10 intention to testify at the trial.

11 Now, I think, you have indicated that he will testify
12 pursuant to 85(C) of the Rules, although he is seeking to reserve
13 the right to change his position. Why are we in this rather
14 equivocal position? And, again, there has been a significant
12:03:21 15 gravitational shift from definitiveness to a penumbra of
16 uncertainty.

17 MR O'SHEA: The status conference that Your Honour is
18 referring to, is that the one where Mr Jordash spoke on my
19 behalf?

12:03:39 20 PRESIDING JUDGE: I recall, yes. Quite right. You take
21 issue with that?

22 MR O'SHEA: Well, I -- we are in a difficult position
23 because I'm very grateful to Mr Jordash.

24 PRESIDING JUDGE: He said he was your accredited delegate.

12:03:51 25 MR O'SHEA: Yes. Yes, and he was and I'm very grateful
26 for --

27 JUSTICE ITOE: But he was not very -- if I remember, he was
28 not very definitive on this issue as to whether your client was
29 going to testify or not. I remember very well.

1 MR O'SHEA: I am glad to hear that because I thought for a
2 moment he had been. But I have never been, as far as I can
3 recall, definitive on this issue, up until now. I would urge the
4 Chamber to exercise particular patience on this issue with
12:04:30 5 Mr Gbao.

6 As a matter of --

7 JUDGE ITOE: Why do you underscore the word "particularly"?
8 What is special about that? It's different from other cases.

9 MR O'SHEA: Well, all I can indicate to the Court is that I
12:04:45 10 am not ready, as counsel, to make this decision because there are
11 issues that I need to resolve with the client. I know what the
12 intentions of Mr Gbao are, but I am not ready to make a statement
13 to the Court about Mr Gbao. [Microphones not activated] I don't
14 know how you did that, Your Honour, but it was very clever.

12:05:11 15 Because I understand in the ICTY there is actually a button that
16 the Judges can press to switch off counsel's microphone.

17 PRESIDING JUDGE: I didn't want to do that.

18 JUDGE ITOE: We have one, too, here. We hardly ever use
19 it. You see how generous we have been to you.

12:05:29 20 MR O'SHEA: Yes. I would urge the Court not to pressure me
21 to make a decision on whether Mr Gbao testifies at this
22 particular point in time. I will make every effort to reach a
23 definitive decision on that as soon as I can, but I am just not
24 ready to make that decision.

12:05:52 25 JUDGE BOUTET: When is "as soon as you can" to be?
26 Tomorrow or next week? Because, again, I know your client may be
27 difficult. We can observe that he has attended at times and a
28 lot of those times he has not. But, the Court is not to be
29 paying the price for the attitude of your client, as such.

1 I mean, I understand you may be in a difficult position,
2 but we need to know and we need to be able to move ahead. And
3 that applies not only to you but to all parties concerned. I
4 know and I appreciate Mr O'Shea that you are in a difficult
12:06:30 5 predicament at times, but you will appreciate that we have to see
6 and understand what is going on as well. So that's why I say we
7 will not impose upon you that you give an answer today. We
8 appreciate what you are saying, but we will not delay this for a
9 very, very long period of time.

12:06:48 10 MR O'SHEA: Yes.

11 JUDGE BOUTET: As I say, the fact that Mr Gbao -- that's
12 why you've been appointed as Court-appointed counsel for this
13 client because of the way -- his attitude in Court.

14 MR O'SHEA: Well, Your Honour will appreciate that the
12:07:05 15 decision as to whether an accused should testify or not can, in
16 certain cases, be a very difficult one to make.

17 JUDGE BOUTET: I appreciate that. But what I am saying, Mr
18 O'Shea, is if your client, for his own personal reason, is not
19 giving you information, and so on and whatever it is, that's what
12:07:21 20 I mean. We cannot be in a position where we have to say, well,
21 it's very unfortunate, but Mr O'Shea doesn't have instructions,
22 therefore, we have to do it. You understand what I am saying?

23 MR O'SHEA: Well, it's not an issue of instructions; I can
24 tell the Court that. It's not an issue of him not providing
12:07:39 25 instructions, but I have to be very, very careful as counsel not
26 to put my foot in it, as it were, for the accused.

27 PRESIDING JUDGE: Yes. Well, it is a judgment call. It's
28 a professional judgment call, whether you -- decide whether you
29 approve of your client going into the witness stand or not. And

1 I am pretty sure that you have all the various variables before
2 you and, of course, some of the variables will evolve, in terms
3 of other testimonies. But, clearly, this is something that the
4 Court can't even venture to want to dictate. It's just that we
12:08:22 5 will expect a decision one way or the other within a reasonable
6 time. But, we are not in any way playing down the gravity of the
7 professional commitment and difficulty in terms of how this
8 particular decision is reached.

9 But, for our purposes, and to preserve the integrity of the
12:08:48 10 judicial process, at some point in time, and to be fair to the
11 Prosecution, we certainly need to know whether he intends to
12 testify on his own behalf or not. It does affect the sequence of
13 the presentation of evidence.

14 MR O'SHEA: Well, Your Honour did indicate earlier, and
12:09:08 15 this was something I hadn't appreciated, that the Bench may be
16 expecting the accused to provide a summary of what they are going
17 to say.

18 PRESIDING JUDGE: That's important for us, yes, for
19 purposes -- since this is an adversarial process and not an
12:09:28 20 inquisitorial process, the other side would need to know.
21 Because, remember, it's going to be testimony under oath and the
22 other side will be entitled to cross-examine the witness and
23 that's the difficulty.

24 JUDGE ITOE: And, if I may add, he is a witness; nothing
12:09:52 25 less and nothing more. He is a witness. And if it is expected
26 that summaries of the testimony are provided to the other side,
27 to the Prosecution, he should not be considered as an exception.
28 He's testifying as a witness and he's coming there in that
29 capacity. So they need to know what is coming in advance, I

1 would say; what he's coming to say before he takes the witness
2 stand.

3 MR O' SHEA: He is a special witness, though.

4 PRESIDING JUDGE: Yes. And the situation would be less
12:10:26 5 complicated in the context of the municipal law system, in
6 certain systems where an accused person can, in fact, make a
7 statement, unsworn statement, from the dock, you know, at the end
8 of his case. And nobody -- you are not required to cross-examine
9 on an unsworn statement, but that is not the situation here.

12:10:55 10 MR O' SHEA: Yes. Yes, I have a deep discomfort with the
11 idea of providing a summary of what the accused is going to say,
12 but obviously we will comply with any orders the Court makes.

13 PRESIDING JUDGE: But, of course, your discomfort has to be
14 factored into the Defence avowed position that we function in the
12:11:21 15 context of the doctrine of equality of arms, and I would have
16 thought that you should not really feel that discomfort, since
17 they are entitled to know ahead of time, if your client is going
18 to be a witness, what he has to say.

19 MR O' SHEA: Yes. Well, Your Honour, the doctrine of
12:11:41 20 equality of arms, all well and be it, but this is the trial of
21 the accused. So, with respect, we have to be careful about the
22 application of that doctrine when it comes to the accused.

23 PRESIDING JUDGE: Well, you're hoisted by your own
24 [indiscernible]. Sometimes you invoke it with such vigor and
12:12:00 25 strong articulation.

26 MR O' SHEA: That is true.

27 PRESIDING JUDGE: But that's just a point.

28 JUDGE BOUTET: And the Prosecution has to have sufficient
29 time to be able to investigate whatever your client may be

1 saying, as such, which is no different from your perspective.
2 When the Prosecution was calling witnesses you insisted, at times
3 very strongly, that information be disclosed to you and, in many
4 cases, when information was disclosed too late or witnesses came
12:12:28 5 to testify and testified about matters you were unaware of, as
6 such, you asked for a judgment, you asked for further
7 information. So why is it different because it's coming from
8 your side?

9 MR O' SHEA: Because it's his trial.

12:12:44 10 JUDGE BOUTET: Well, it's his trial but these are the
11 Rules. I mean, what can I say?

12 MR O' SHEA: Yes.

13 PRESIDING JUDGE: And what about expert witness for your
14 side? There was an indication that you have not identified any
12:12:58 15 suitable expert witness.

16 MR O' SHEA: Yes.

17 PRESIDING JUDGE: We are also particularly concerned not to
18 duplicate or undermine expert testimony to be presented by the
19 other two accused persons. I mean, you're the only one who has
12:13:13 20 come out to sort of, probably in favour of economising expert
21 testimony, or not multiplying expert testimony. But there was
22 some indication, also, that you intend to instruct an expert on
23 the nature of guerrilla movements with particular reference to
24 the RUF.

12:13:34 25 MR O' SHEA: Yes.

26 PRESIDING JUDGE: Can you update us on that?

27 MR O' SHEA: Yes, Your Honours. I was very reluctant to
28 take definitive steps in relation to the question of experts
29 until I had a clearer idea of what the other two accused were

1 going to do. The early consultations that I've had meant that I
2 was not in a position to know which experts were going to be
3 called by the other two accused or what the contents of their
4 reports would be. I subscribe very much to the concern of His
12:14:23 5 Honour Judge Boutet. I am concerned about a battle of experts.

6 That having been said, we have been placed in a position
7 whereby we are between a rock and a hard place, in that we cannot
8 wait for that information and we have to proceed ahead.

9 The one expert that I think we are actively looking for at
12:14:54 10 the moment is, as Your Honour has indicated, an expert on the
11 nature of guerrilla movements, because we do think it's important
12 for our case.

13 If Mr Sesay's expert fits the bill, it is not my intention
14 to call another expert. But, at this particular point in time,
12:15:16 15 we don't have an expert for the Court, but if we feel it's in the
16 interests of our client to call one, we will seek leave to do so.
17 And we are actively looking for an expert on guerrilla movements.

18 PRESIDING JUDGE: Very well. The exhibit list, according
19 to our records, that you have filed, contains a total of 12
12:15:45 20 exhibits; is that correct?

21 MR O'SHEA: That's correct, Your Honour.

22 PRESIDING JUDGE: And there is no indication from the
23 Prosecution as to whether there is any objection as to their
24 authenticity.

12:15:58 25 MR HARRISON: No, and I apologise. We should have attended
26 to this matter earlier. Seven of those documents are, in fact,
27 ones - I think it's seven - are ones that were in fact produced
28 by the Prosecution and disclosed. The other five are, I think,
29 in large part, photographs. This is a matter which the

1 Prosecution anticipates being able to resolve before the end of
2 this week and to provide the Court with a written document
3 confirming.

4 PRESIDING JUDGE: All right. Thank you.

12:16:23 5 MR O'SHEA: Well, the photographs that are referred to are
6 photographs we've taken, so probably authenticity won't be an
7 issue. There may be other issues of admissibility, I don't know.

8 PRESIDING JUDGE: All right. Evidentiary charts. You
9 filed one, indicating for each paragraph of the indictment the
10 testimonial and documentary evidence you intend to rely on.

11 The Chamber is of the view that the evidentiary chart does
12 contain some inaccuracies and discrepancies and, perhaps, you may
13 want to work closely with our legal officers to identify some of
14 those problems. For example, you want to look at the witnesses
12:17:15 15 B-43, B-11, et cetera. But I suggest you establish a link with
16 the legal officer on that so that you can correct the
17 discrepancies.

18 MR O'SHEA: I would be grateful for that, Your Honour.

19 PRESIDING JUDGE: And joint statements of agreed facts on
12:17:38 20 5 March this year. We denied an application by you for a
21 postponement, I think, of the deadline for filing of the joint
22 statement of agreed facts. Despite this denial, you subsequently
23 filed, on the same day, a document entitled "Gbao Joint Statement
24 of Agreed Facts and Matters and Joint Statement of Contested
12:18:03 25 Matters of Facts and Law" in which you stated that you have not
26 been able to finalise with the Prosecution a limited number of
27 facts you feel can be agreed upon, and that you will endeavour to
28 do so as soon as possible.

29 On 8 March, the Prosecution indicated that it has not

1 agreed to each of the five facts proposed by the Defence,
2 although discussions with the Defence will continue. The Chamber
3 notes, from the same Defence document, that you contest all the
4 facts contained in the indictment, and also that you have not
12:18:46 5 reached, at this stage, any agreement with the Prosecution on
6 matters of law. Is that a correct reflection of the state of
7 your filing?

8 MR O' SHEA: Your Honour, yes. On 5 March we received the
9 decision of Your Honours. We had about three hours to do what we
12:19:08 10 could to comply with Your Honours' decision and put matters that
11 we felt we could put independently. I say independently, because
12 Your Honours will remember that our concern was that we wished to
13 reach agreement with the other accused before we reached
14 agreement with the Prosecution. But Your Honours did not feel
12:19:29 15 that was sufficient justification for a delay, so we put five
16 matters which we felt may be able to put independently without
17 putting us in any conflict with the other accused. As Your
18 Honour has indicated, none of those matters have been agreed to
19 by the Prosecution. We will continue to try to identify factual
12:19:56 20 matters that we can request the Prosecution to agree to.

21 PRESIDING JUDGE: So we now have an impasse between the
22 Prosecution and the Defence?

23 MR O' SHEA: Well, not really an impasse, Your Honour,
24 because it's simply that the Prosecution is not prepared to agree
12:20:23 25 to the propositions of facts that we have placed before them.

26 JUDGE ITOE: Let me say this: I think the solution simple.
27 If you cannot agree, then the Chamber would presume that the
28 matters on which you have not been able to agree upon are
29 contested, and we proceed that way.

1 MR O' SHEA: Yes.

2 JUDGE ITOE: Because we will not actively intervene, at
3 this stage, to say, no, you should agree on this, you should
4 agree on that. No. That's not our business. So if you can't
12:20:53 5 agree, we would presume and assume, of course, that there is
6 total disagreement on at least those issues for which you have
7 not been able to arrive at an agreement. And if it is in respect
8 of all the issues, we take it at that and proceed, and see what
9 the evidence will turn out to be.

12:21:11 10 JUDGE BOUTET: I would like to make a comment, too, as to
11 the fact that you're saying I had only three hours. I should
12 point out to you that, in our decision, we did refer to the
13 procedural history. Since 30 October 2006, you know that these
14 were to be agreed to and these discussions should have taken
12:21:27 15 place. Obviously, if you approach the Prosecution the day before
16 you're supposed to file, you were running out of time. So I
17 reiterate here my previous comments as to the duration of this
18 case in this respect.

19 Certainly, the last day is a bit late to get into
12:21:44 20 discussion to present an agreed statement of facts, and obviously
21 we got into this kind of discussion. And with the statement, in
22 light of this decision, the Defence team for the third accused
23 has approached the Prosecution with a limited number of facts.

24 This is not what we expect, Mr O'Shea. I know you know
12:22:01 25 that, that, as a professional, this is not what we were asking
26 you to do. At the last moment, because of our decision, you have
27 not produced them. In fact, you are stating to Court that you
28 have approached the Prosecution with an agreed statement of facts
29 that should have been done months ago. Months ago. Why is it at

1 the last moment? And now you are trying to say, well, that's all
2 I could do because we only had three hours. I'm really concerned
3 about this particular statement.

4 MR O' SHEA: Well, I --

12:22:24

5 JUDGE BOUTET: I mean, our decision was based on what we
6 considered to be a fair assessment of what had transpired. And
7 discussions that were to take place should have taken place a
8 long time ago with all the other parties and with the
9 Prosecution, to say and to inform the Court properly what could
10 be agreed to or not. You're not new to the case. You know your
11 case. There are certain facts, I'm sure, that you can agree to.
12 But when you do that three hours before the deadline, I
13 understand that you're in a rush. But why you found yourself
14 with this three hours' deadline is really my concern.

12:21:06

15 [RUF20MAR07MD_C]

16 MR O' SHEA: Yes. I apologise. When I refer to three
17 hours, I didn't mean to say that we only had a window of
18 opportunity to discuss matters during those three hours. I was
19 referring to the filing procedures and so forth. I didn't mean
20 to suggest that we have had no time to have discussions with
21 anybody, so I apologise if that is how it came across.

12:21:31

22 JUDGE BOUTET: Thank you.

23 PRESIDING JUDGE: Well, let me, on this particular -- the
24 issue of the number of Defence witnesses and the length of the
25 Defence case, which clearly is an issue of grave concern to the
26 Bench -- let me merely restate, as tersely as I can, some of the
27 interjections on the part of the Bench with respect to earlier
28 explanations on the part and also representations on the part of
29 the first and second accused.

12:21:57

1 I didn't intend you to take the brunt of it but this
2 applies collectively to all of you: That after we have reviewed
3 the various materials filed by the Defence we would like to go on
4 record as expressing grave concern over the total number of
12:23:02 5 witnesses that the Defence intend to call. I think it would not
6 be an exaggeration to describe the total number as astronomical.

7 When we look at the total for the first accused it's 175;
8 the second accused 96; and then the third accused 66. It gives
9 us a grand total of 337 core witnesses. And when you make a
12:23:45 10 comparison with the Prosecution's witnesses, unless our
11 statistics are wrong, it's four times the number of witnesses
12 called by the Prosecution.

13 So, what conclusions do we draw?

14 Well, before we draw any conclusions, we would like to say
12:24:20 15 that the Chamber reiterates its authority in accordance with
16 Rule 73ter(D). That where there is an excess number of witnesses
17 the Chamber may reduce the number of witnesses that are to be
18 called. I quoted the relevant subsection this morning.

19 Also we would probably like to draw counsel's attention to
12:24:52 20 a decision of the ICTY Appeals Chamber in the *Oric* case where
21 that Chamber stated, and I quote:

22 "The Appeals Chamber has long recognised that the principle
23 of equality of arms between the Prosecutor and the accused, in a
24 criminal trial, goes to the heart of the fair trial guarantee.

12:25:22 25 At a minimum, equality of arms obligates a judicial body to
26 ensure that neither party is put at a disadvantage when
27 presenting its case, certainly in terms of procedural equity.
28 This is not to say, however, that an accused is necessarily
29 entitled to precisely the same amount of time or the same number

1 of witnesses as the Prosecution." Emphasis, the same amount of
2 time or the same number of witnesses as the Prosecution.

3 "The Prosecution has the burden of telling an entire story,
4 of putting together a coherent narrative, and proving every
12:26:24 5 necessary element of the crimes charged beyond a reasonable
6 doubt.

7 Defence strategy, by contrast, often focuses on poking
8 specifically targeted holes in the Prosecution's case, an
9 endeavour which may require less time and fewer witnesses.

12:26:51 10 This is sufficient reason to explain why a principle of
11 basic proportionality, rather than a strict principle of
12 mathematical equality, generally governs the relationship between
13 the time and witnesses allocated to the two sides."

14 We can do no better but adopt the language of the Appeals
12:27:22 15 Chamber as to how we feel about a total number of 337 witnesses.
16 But we take to heart the assurances given by the Defence that
17 there is likely to be some deescalation in the number of
18 witnesses.

19 Let us now move on to the question of the evidentiary
12:27:57 20 chart. Again, we conclude that generally there is an excess
21 number of witnesses and, in addition, to the time allocated to
22 Defence in proportion to the Prosecution's case. We don't want
23 to go into any detailed further comparative analysis but if we
24 look at it from a count-by-count basis, the figures really tell a
12:28:28 25 story in terms of the time that would be exhausted.

26 Perhaps I should mention, for again whatever statistical
27 value this may have for both sides, that when we calculate, or
28 work out the calculation, we see that Defence for Sesay has
29 indicated a total of about 800 hours of examination-in-chief for

1 its first -- it's core witnesses excluding the Rule 92bis
2 witnesses, whereas Defence for the second accused has indicated
3 about 245 hours. For Gbao, the indication is 190 hours. Taken
4 together, therefore, these figures represent a total of about
12:29:38 5 1,235 estimated hours of Court time only for the examination of,
6 in chief, of all the Defence witnesses currently listed as core
7 witnesses.

8 So you can see that, really, it's a great consumption of
9 time and may well keep us here for, if we don't do some
12:30:15 10 reduction, significant reduction, as Justice Boutet said, we are
11 probably hoping to double the time we are going to spend on the
12 rest of this case almost to five years, and certainly none of us
13 has the time and resources for that kind of exertion of our
14 judicial and legal energies.

12:30:49 15 As far as 92bis witnesses are concerned, we note that the
16 Defence for the first accused intend to call 50 of its core
17 witnesses pursuant to Rule 92bis. Is that correct, counsel?

18 MS ASHRAPH: That's correct, Your Honour.

19 PRESIDING JUDGE: And the Defence for the second accused in
12:31:15 20 terms of three 92bis witnesses?

21 MR NICOL-WILSON: That is correct, Your Honour.

22 PRESIDING JUDGE: And Professor O'Shea, there is no
23 indication of any, at this stage?

24 MR O'SHEA: I thought there was an indication of one
12:31:31 25 witness, Your Honour.

26 PRESIDING JUDGE: One witness. All right. Yes.

27 MR O'SHEA: Yes.

28 PRESIDING JUDGE: Thank you. That's helpful. Well, again,
29 we need to urge you to see whether the 92, Rule 92bis machinery

1 is not a more expeditious device that would help you to reduce
2 the core witness list.

3 Character witnesses, none of the Defence teams has
4 specifically indicated in their respective materials which of
12:32:06 5 their witnesses will testify specifically about the character of
6 the accused. During the status conference of 27 October last
7 year, the Defence for Sesay estimated a total of 40 character
8 witnesses, ten of which would be viva voce witnesses while the
9 Defence of Kallon estimated a total of about ten to 15 character
12:32:34 10 witnesses. There was no estimate given on behalf of the third
11 accused; is that correct?

12 MR O'SHEA: That's correct, Your Honour. I don't think at
13 the moment we have a witness that only deals with character but
14 there are a number of witnesses who deal with character while
12:32:54 15 dealing with core issues.

16 PRESIDING JUDGE: Yes, that is -- of course. What about
17 you, Mr Nicol-Wilson? Ten to 15; is that correct?

18 MR NICOL-WILSON: Your Honours, at the moment we have none
19 in our core witness list. We have about five in the backup.

12:33:09 20 PRESIDING JUDGE: I see. Yes, okay. And counsel for the
21 first accused?

22 MS ASHRAPH: Yes, Your Honour. I don't think we quite
23 designate -- call it character witnesses in the filing.

24 PRESIDING JUDGE: Yes.

12:33:20 25 MS ASHRAPH: So my mind hasn't quite turned to it. There
26 are a number of witnesses in my understanding in the filing that
27 could be properly characterised as character witnesses.

28 PRESIDING JUDGE: Well, there is this hybrid also of
29 witnesses who may be testifying to certain factual matters and

1 also to character.

2 MS ASHRAPH: Indeed. And there are certainly many of
3 those. What I will say is, obviously, if they are pure character
4 witnesses, we will be seeking to discover whether we can put
12:33:46 5 those in through Rule 92bis and have discussion with the
6 Prosecution about whether there is a requirement to
7 cross-examine.

8 PRESIDING JUDGE: But if it comes to it, that you are able
9 to make this clear distinction between a character witness and a
12:34:01 10 witness that testifies to certain factual matters, and you have
11 character witness in one compartment, wouldn't it be appropriate
12 that you only call one or two character witnesses? Why would it
13 be necessary to call ten character witnesses for one accused
14 person? What would be the advantage of doing that?

12:34:26 15 MS ASHRAPH: Well, there wouldn't, Your Honour. I mean,
16 what we are saying, essentially, most of the witnesses that are
17 character witnesses are also witnesses giving some measure of
18 factual evidence as well.

19 PRESIDING JUDGE: Yes.

12:34:37 20 MS ASHRAPH: If there are pure character witnesses, it may
21 be the best way through about that --

22 PRESIDING JUDGE: Is to reduce them, yes.

23 MS ASHRAPH: Is to reduce them.

24 PRESIDING JUDGE: Quite right.

12:34:45 25 MS ASHRAPH: But because it wasn't required by no order, my
26 mind isn't turned towards the number within the core and backup
27 which are purely character and which are --

28 PRESIDING JUDGE: Yes. At least the Court would -- there
29 would be no advantage if it's just a purely character witness

1 having ten witnesses coming and saying, come to say "He is a good
2 man, he is a good man"; why would we want that kind of evidence?

3 MS ASHRAPH: Well, quite, Your Honour. As I said, my mind
4 hasn't turned to whether the percentage of pure character -- I
12:35:11 5 don't even know if, in fact, we do have pure character witnesses.

6 If we did it would probably best be disposed of with Rule 92bis.

7 PRESIDING JUDGE: Right.

8 MS ASHRAPH: At the moment we have a mix of character and
9 facts, to be sure.

12:35:25 10 PRESIDING JUDGE: Right. Opening statements by first and
11 third accused. Yes.

12 MR O'SHEA: May I just raise an issue which is related to
13 what we have just been talking about?

14 PRESIDING JUDGE: Very well.

12:35:37 15 MR O'SHEA: At the moment, on our witness list, we don't
16 have such witnesses but it is envisaged --

17 PRESIDING JUDGE: You mean character witnesses?

18 MR O'SHEA: No, Your Honour. I am talking about another
19 category of witnesses now which I wish to put to the Bench.

12:35:52 20 PRESIDING JUDGE: Okay. All right. Yes. Very well.

21 MR O'SHEA: Which is a witness which deals purely with an
22 issue which is purely relevant to mitigation of sentence. Now,
23 the reason I raise this issue is because my understanding of the
24 rules at the moment is that when we give our closing submissions
12:36:04 25 we are expected to give submissions on sentence as well; is that
26 not the case?

27 JUDGE BOUTET: No, no. That is not our rules. This is not
28 our statute. You are mixing this Court with the ICTY.

29 PRESIDING JUDGE: ICTY.

1 JUDGE BOUTET: We are different.

2 MR O' SHEA: Yes, I am sorry.

3 PRESIDING JUDGE: There may well have been a proposal at
4 some plenary to that effect which was not accepted.

12:36:24 5 MR O' SHEA: So I am not sure in the minds of the judges --

6 PRESIDING JUDGE: The *lex ferendum*

7 MR O' SHEA: -- whether witnesses which are relevant to
8 mitigation of sentence should be called at this stage of the
9 proceedings.

12:36:38 10 PRESIDING JUDGE: Forthright, no. We are in what we call

11 --

12 JUDGE ITOE: How can we start talking of litigation when
13 the man is still presumed to be innocent; we don't want to get
14 that far.

12:36:50 15 MR O' SHEA: Well, I agree.

16 PRESIDING JUDGE: Let me add that the process we follow
17 here is a bifurcated process. The trial stage, or the trial
18 phase, and then the other phase. And we intend to keep things in
19 the bifurcated manner. We don't want to mix apples and peaches
12:37:10 20 or even apples and oranges.

21 MR O' SHEA: I am very grateful for that indication because,
22 as Your Honours know, things have gone a bit differently in other
23 tribunals.

24 PRESIDING JUDGE: Well, yes, and that is difficult.

12:37:23 25 Sometimes, and I use this in the context of an oxynorm, healthy
26 infection of the jurisprudence of all the tribunals.

27 Opening statements by first and third accused. At the
28 status conference held on 27 October last year, Defence for the
29 first accused indicated that they would be making an opening

1 statement pursuant to Rule 84 of the Rules at the commencement of
2 their case. You confirm that, counsel?

3 MS ASHRAPH: I do, Your Honour.

4 PRESIDING JUDGE: Right. At the said conference the

12:38:04 5 Chamber also indicated the Defence for the second accused already
6 made an opening statement at the commencement of the trial.

7 Accordingly, the Chambers rules that the Defence for the second
8 accused has exercised the right to make an opening statement
9 pursuant to Rule 84. That is correct, Mr Nicol-Wilson?

12:38:34 10 MR NICOL-WILSON: That's correct, Your Honour.

11 PRESIDING JUDGE: And with reference to the third accused
12 the Chamber is cognisant that at the commencement of the trial
13 the third accused himself attempted to make a statement of a
14 political nature and was precluded from doing so. At the status
12:38:51 15 conference on 27 October last year the Chamber indicated that it
16 reserved at that stage its decision on whether to allow the
17 Defence for the third accused to make an opening statement. Any
18 response to that, Mr O'Shea?

19 MR O'SHEA: Well, we do intend to make an opening statement
12:39:18 20 and it will be our submission that the comments made by Mr Gbao
21 didn't constitute an opening statement in accordance, I think,
22 with the view of the Chamber itself.

23 PRESIDING JUDGE: Mr Harrison, is there any response to
24 that?

12:39:32 25 MR O'SHEA: Sorry, Your Honour, was I expected to make a
26 submission on that now?

27 PRESIDING JUDGE: Well, I wanted you merely to confirm the
28 state of the records in terms of --

29 MR O'SHEA: Yes. I am assuming that if there are to be

1 submissions on any legal question arising that wouldn't be taken
2 now?

3 PRESIDING JUDGE: No, not at this point, yes. Perhaps it
4 may but let me hear Mr Harrison.

12:39:58 5 MR HARRISON: Yes. The Prosecution's recollection of
6 events is very similar to that stated by the Court. At the last
7 status conference I recall Mr Justice Itoe making some comments
8 as well. So the Prosecution doesn't take any strong position one
9 way or the other on this matter.

12:40:17 10 PRESIDING JUDGE: Yes. Right. Well, from the record, it
11 appears that the statements made by the third accused do not
12 constitute an opening statement proper. It would be the
13 disposition of the Bench to allow him -- it would be the
14 disposition of the Bench to allow counsel for the third accused
15 to make an opening statement.

16 JUDGE ITOE: If he so wishes.

17 MR O'SHEA: I am grateful, Your Honour.

18 PRESIDING JUDGE: Procedure for the presentation of the
19 evidence. The Defence case will start with the opening
12:40:57 20 statements by the Defence for the first accused, followed by
21 Defence for the third accused. After the conclusion of the
22 opening statements the Defence for the first accused will proceed
23 to call the Defence witnesses, followed by the Defence for second
24 and third accused, respectively.

12:41:22 25 In terms of modalities of witnesses examination, with
26 specific reference to the testimony of each Defence witness at
27 the trial, the Chamber wishes to emphasise that the proposed
28 order of examination would be for the Defence for first accused
29 to examine its witnesses first, followed by cross-examination by

1 Defence for the second accused, and then Defence for the third
2 accused, and then by the Prosecution.

3 According to this Chamber's jurisprudence and practice, in
4 the CDF case, the scope of cross-examination should nominally,
12:42:07 5 and we say nominally or generally, be limited to issues raised
6 during examination-in-chief and the Defence for the first accused
7 may re-examine the witness on new issues raised during
8 cross-examination. I don't think -- this is our practice and I
9 don't think there is any -- in case any of you want to make any
12:42:30 10 comment on this?

11 MR O'SHEA: Your Honour, I do have a comment.

12 PRESIDING JUDGE: Yes.

13 MR O'SHEA: I am not sure how fixed Your Honours are in
14 terms of that practice, but I would submit that as third accused
12:42:43 15 we have good reason for making the request that I am about to
16 make.

17 Your Honours would prefer that the opening statement of the
18 third accused be made immediately after the opening statement of
19 the first accused. The concern that I have with that particular
12:43:02 20 procedure is that whatever I say on that day may be, to some
21 extent, lost in the wind if several months expire before the
22 witnesses for Mr Gbao come into the witness box. I would like to
23 express a preference, if the Chamber feels it has the ability to
24 grant such leave, for our opening statement to be made at the
12:43:27 25 beginning of the Gbao case as opposed to the beginning of the
26 Defence as a whole.

27 PRESIDING JUDGE: There are two possible options here:
28 Either to reject that request outright or to ask you, when the
29 time comes, to make a proper application for the consideration of

1 the Bench whether within the stipulated rules we can exercise a
2 discretion to vary the order that we have enunciated. So there
3 are two options.

4 MR O' SHEA: May I respectfully --

12:45:05

5 PRESIDING JUDGE: Having articulated the two options we
6 will, in fact, not adopt the first option.

7 MR O' SHEA: Your Honour, I am very grateful. I was going
8 to gently suggest to the Chamber that there might be a third
9 option in that the difficulty with me making an application on
10 the day is that I will then have to prepare an opening statement
11 not knowing whether I am going to give it or not.

12:45:25

12 PRESIDING JUDGE: But you have the resources.

13 MR O' SHEA: Yes, but I would like to ask that I be in a
14 position to make the application, even if it is in writing, to
15 make the application earlier, rather than on the day itself.

12:45:40

16 PRESIDING JUDGE: That is fine. That is fine. At an
17 appropriate time. Okay. Right. Mr Nicol-Wilson?

18 MR NICOL-WILSON: Yes, we would want to have guidance as to
19 the procedure the Chamber is dealing with the common witness.

12:46:03

20 PRESIDING JUDGE: We have already indicated the common
21 witnesses -- we have already indicated that. My brother
22 explained that we have a CDF precedent on that.

23 JUDGE BOUTET: Mr Nicol-Wilson, what is your question
24 exactly?

12:46:22

25 MR NICOL-WILSON: Your Honour stated the procedure of
26 dealing with the witnesses. In the circumstance, he said that he
27 wants the first accused, call the witness, that witness will be
28 examined, will be cross-examined by the second and third and then
29 the Prosecution.

1 JUDGE BOUTET: Yes. Well, this is what Justice Thompson
2 just said for standard witnesses.

3 PRESIDING JUDGE: Standard, yes.

4 MR NICOL-WILSON: Well, now, I want to know the procedure
12:46:43 5 for common witnesses.

6 JUDGE BOUTET: It's just as I explained to you before. If
7 it's a common witness you are not cross-examining because this
8 is, in theory here, your witness, to the same extent that this is
9 a witness for the first accused. Therefore, when you put a
12:46:56 10 question to that witness, it's your witness, and you are in
11 examination-in-chief in respect to that witness.

12 MR NICOL-WILSON: I am grateful.

13 JUDGE BOUTET: You understand what I am saying there,
14 Mr Nicol-Wilson?

12:47:06 15 MR NICOL-WILSON: Yes, Your Honour.

16 JUDGE BOUTET: Okay.

17 JUDGE ITOE: And it's only after your examination-in-chief,
18 I mean, if the three of you are examining a common witness for
19 the three Defence teams, it's only after the examination-in-chief
12:47:20 20 of each counsel on the Defence teams that the Prosecution will
21 have to step in to cross-examine the witness and then, of course,
22 each and every one of you will have a right to re-examine if it
23 becomes necessary in the circumstances.

24 MR NICOL-WILSON: I am grateful, Your Honour.

12:47:44 25 PRESIDING JUDGE: In terms of the order of call of Defence
26 witnesses, as a similar practice during the course of the
27 Prosecution case, for the purpose of trial management, the
28 Chamber will require each Defence team to provide an indication
29 of the order of call of their witnesses. Considering that the

1 Defence case will be heard on a continuous basis, rather than on
2 a basis of four to six week trial sessions as occurred in the
3 Prosecution's case, the Chamber is now of the view that the
4 Defence should provide an indication of the order of call of its
12:48:32 5 witnesses for at least every 15/20 witnesses, and 15 days prior
6 to their expected testimony at trial.

7 In other words, we are hoping that you should indicate in
8 your order for the call of your witnesses, 15 or 20 witnesses,
9 between 15 and 20, I would say, and 15 days prior to their
12:49:06 10 expected testimony at the trial. What is your response,
11 Ms Ashraph? That doesn't put any undue burden on the Defence.
12 You have so many witnesses. To ask you to indicate about 15 to
13 20 doesn't seem to be a burden.

14 MS ASHRAPH: I was going to say, Your Honour, the Sesay
12:49:37 15 team will happily comply with that order.

16 PRESIDING JUDGE: Yes. Counsel for the second accused?

17 MR NICOL-WILSON: Your Honour, that is accepted.

18 PRESIDING JUDGE: And the counsel for the third accused?

19 MR O'SHEA: Yes, that is a fair proposal, Your Honour.

12:49:51 20 PRESIDING JUDGE: Yes. And also you will have to indicate
21 the language in which your witnesses will be testifying in that
22 order. Thank you.

23 Well, the last item on the agenda is "Any other matter".
24 Specifically, we need to just recall the position about special
12:50:12 25 defences and alibi. At the status conference held on 27 October
26 last year the Defence for the first accused indicated that they
27 will not be calling or, rather, relying on any special defence or
28 even on alibi pursuant to Rule 67(A) of the Rules of Procedure
29 and Evidence. Do you confirm that, Ms Ashraph?

1 MS ASHRAPH: I confirm that position, yes, Your Honour.

2 PRESIDING JUDGE: At the same status conference the Defence
3 for the second accused indicated that they were reserving the
4 right to indicate whether they will rely on a special defence or
12:50:58 5 alibi. Can you now tell us, Mr Nicol-Wilson?

6 MR NICOL-WILSON: Your Honours, I can now authoritatively
7 say that we shall not be relying on any special defences or
8 alibis.

9 PRESIDING JUDGE: Thank you. And Mr Brown, counsel for
12:51:17 10 Mr Brown, would you indicate, perhaps, Professor O'Shea?

11 MR O'SHEA: Mr Brown or Mr Gbao?

12 PRESIDING JUDGE: Counsel for Mr Gbao.

13 JUDGE ITOE: Not Brown versus the Board of Education.

14 MR O'SHEA: Yes. No, we haven't identified any special
12:51:39 15 defences that we are relying on.

16 PRESIDING JUDGE: And not alibi, either?

17 MR O'SHEA: No.

18 PRESIDING JUDGE: So we have firm and definitive positions
19 on that.

12:51:51 20 Protective measures for witnesses at the trial. The
21 Chamber is cognisant that each of the Defence teams has sought
22 and obtained various protective measures for their witnesses.
23 The measures ordered are principally aimed at providing such
24 witnesses with general protection during the period preceding
12:52:19 25 their testimony at the trial.

26 In addition, the Chamber has also ordered that each
27 protected Defence witness will testify with the use of a
28 screening device from the public. For reasons of efficient trial
29 management the Chamber would, at this stage, remind each of the

1 Defence teams, and in particular the Defence of the first
2 accused, which will start its case first, to apply in good time
3 before this Chamber for the issuing of any other particular
4 protective measures for any specific witness testimony at the
12:53:10 5 trial, if necessary.

6 Let me also say, in respect of the second accused, that the
7 Chamber received a notice from the Defence team informing the
8 Chamber that six of its witnesses, in the current witness list,
9 all of them residing outside West Africa, and who have indicated
12:53:46 10 their willingness to testify, have now indicated that they intend
11 to testify at trial in open session; is that correct?

12 MR NICOL-WILSON: That is correct, Your Honour.

13 PRESIDING JUDGE: Unfortunately, however, it is not clear
14 from the notice whether these witnesses more generally intend to
12:54:09 15 renounce all protective measures ordered for them by this Court,
16 or whether they specifically intend to renounce solely the use of
17 the screening device during their testimony. So, we are not sure
18 whether they were saying: We don't need any protection at all or
19 whether it's just a question of not requiring the screening
12:54:45 20 device during their testimony; are you in a position to advise
21 us, Mr Nicol-Wilson?

22 MR NICOL-WILSON: Your Honour, it's limited to the use of
23 the screening device.

24 PRESIDING JUDGE: So they want to preserve the other
12:55:00 25 protective measures?

26 MR NICOL-WILSON: Yes, Your Honour.

27 PRESIDING JUDGE: Well, I hope you can make the necessary
28 amendment to the notice because our records -- it will reflect it
29 in the records of this proceeding.

1 MR NICOL-WILSON: We will, Your Honour.

2 PRESIDING JUDGE: Yes. Is there any --

3 MR HARRISON: On that particular point, I think the
4 decision was rendered yesterday with respect to the protective
12:55:24 5 measures. My recollection of the order is that the Court
6 determined that no prima facie case was demonstrated permitting
7 protective measures for persons residing outside of West Africa.
8 So, if these are persons outside of West Africa, which the notice
9 seems to say, then according to what I understand to be the
10 Court's decision there ought not to be any protective measures
11 including the use of a pseudonym in the witness list.

12 PRESIDING JUDGE: How do you respond to that? I would
13 think that you have already decided that no such protective
14 measures apply, then in fact, the situation is moot, is it?

12:56:09 15 MR NICOL-WILSON: Exactly, Your Honour.

16 PRESIDING JUDGE: Moot.

17 Right. Subpoenas for Defence witnesses. Is any Defence
18 team interested in moving the Court for subpoena orders? First
19 accused?

12:56:35 20 MS ASHRAPH: Your Honour, at the moment we are not seeking
21 any orders for subpoenas, and we are hoping that it will not be
22 necessary. Certainly we have had co-operation with witnesses we
23 are approaching, but if we come up against a road block then
24 obviously we will inform the Trial Chamber.

12:56:52 25 PRESIDING JUDGE: Thank you. Second accused?

26 MR NICOL-WILSON: Your Honour, then we shall make a request
27 if the need arises, but at this stage we don't envisage making
28 such a request.

29 PRESIDING JUDGE: Thank you.

1 MR O'SHEA: I envisage the possibility of us seeking such
2 an order in relation to a category of witnesses which are not yet
3 on our list.

4 PRESIDING JUDGE: Very well.

12:57:13 5 MR O'SHEA: But it will be more in the form of a request
6 for an order for a government to co-operate than a subpoena as
7 such.

8 PRESIDING JUDGE: Yes. Thank you. The final item is
9 "Outstanding motions". The following motions are currently
12:57:29 10 pending before the Trial Chamber in this case.

11 Prosecution application for leave to appeal, majority
12 decision on oral objection taken by counsel for the third accused
13 to the admissibility of portions of the evidence of witness
14 TF1-371, filed by the Prosecution on 21 August 2006.

12:57:56 15 Confidential Sesay Defence motion requesting the lifting of
16 protective measures in respect of protected witnesses filed by
17 the Defence on 19 January 2007. 3. Application for leave to
18 appeal 2 March 2007 decision, filed by Defence for Sesay on 5
19 March 2007, and Sesay Defence motion for immediate protective
12:58:27 20 measures for witnesses filed by the Defence on 5 March 2007.

21 Very well. Is there any comment on that, on the motions?
22 Any? Are there any submissions by the parties at this point on
23 any issues relating to the case? Yes, Mr Harrison.

24 MR HARRISON: Yes. The Prosecution's primary concern is
12:59:06 25 fulfilling the disclosure requirement. The Prosecution's
26 understanding is that the trial will resume on 2 May and perhaps
27 even a witness will be taken on that day. The 42 days for
28 disclosure, I think, would be tomorrow, and the Prosecution is
29 asking the Court if it can give any further direction to the

1 parties with respect to disclosing, first of all, a summary of
2 the accused, and secondly, of those witnesses who will be
3 following shortly after the accused, so that there will be
4 adequate time to prepare, and so that there would be no reason or
12:59:47 5 need to seek any adjournments throughout the proceedings.

6 PRESIDING JUDGE: Thank you. Counsel for the first
7 accused, you want to respond to that?

8 MS ASHRAPH: Your Honour, if the first witness is Mr Sesay,
9 then we will endeavour obviously to get a summary to the
13:00:47 10 Prosecution.

11 PRESIDING JUDGE: When?

12 MS ASHRAPH: Well, if the first day is tomorrow then I
13 suppose we will be doing it by tomorrow. Obviously if that is
14 the Court order then we will do it. I wasn't aware it --

13:00:58 15 PRESIDING JUDGE: Otherwise we are disposed to making an
16 order this afternoon.

17 MS ASHRAPH: We will do it by tomorrow. We will do it by
18 tomorrow. Obviously Mr Sesay would take some time, I imagine,
19 leaving us to comply with the 42-day rule in respect of later
13:01:14 20 witnesses.

21 PRESIDING JUDGE: Very well. Mr Harrison?

22 MR HARRISON: Yes, I understand that is certainly in
23 accordance --

24 PRESIDING JUDGE: Otherwise, we will be disposed to make an
13:01:26 25 order this afternoon.

26 MR HARRISON: Is it possible --

27 JUDGE ITOE: But the other witnesses, I think the other
28 aspect of the question is not answered because it's Mr Sesay and
29 the other witnesses as well.

1 PRESIDING JUDGE: Of course; he is the longer witness.

2 MR HARRISON: The Defence always has some great -- a large
3 body of knowledge which the Prosecution isn't privy to. They are
4 much more able to estimate how much time the direct examination
13:01:52 5 of Mr Sesay is going to take. If it took a day I think we will
6 be in serious problem. With direct examination in their own
7 judgement, it's without doubt two weeks, then the problem is not
8 as severe.

9 PRESIDING JUDGE: Yes.

13:02:05 10 MR HARRISON: But I wanted to reiterate something just so
11 that the Prosecution is in no doubt what the Prosecution is
12 trying to do and so the Defence is clear.

13 The Prosecution is going to be asking questions only on
14 those areas where significant matters are in issue. And the
13:02:27 15 Prosecution is going to be striving to get through upwards of 20
16 to 25 witnesses a week.

17 In order to comply with the disclosure there is going to
18 have to be a lot of attention directed to actually getting the
19 information out and provided to all the parties in advance of
13:02:56 20 when the witness is going to testify.

21 PRESIDING JUDGE: Yes, Ms Ashraph.

22 MS ASHRAPH: Your Honour, the estimate of 20 to 25
23 witnesses per week seems to be based on the experience of the
24 AFRC and the CDF trial, and it's my position that's not
13:03:15 25 necessarily going to be the state in relation to the RUF trial.
26 Certainly I have not got any real knowledge of the CDF trial but,
27 having seen some of the transcripts in the AFRC trial, I can tell
28 it's a rather different -- the nature of evidence is different
29 and it's a completely different basis on which the trial is being

1 put, not to mention, of course, that the RUF has a broader
2 indictment, both in terms of geographic locations and temporal
3 jurisdiction. 20 to 25 witnesses a week I think would be
4 optimistic.

13:03:46

5 What I will say is this: Is that we will comply with the
6 42-day rule. We will clearly speak to the Prosecution, also to
7 the other counsel for the other co-accused, as to length of --
8 perhaps after having seen the summaries -- the possible length of
9 cross-examination and try and ensure that there are no gaps in

13:04:06

10 our witness list and have as many witnesses available as we can
11 take at any one time. Clearly, we are only going to choose the
12 best witnesses. It's quality not quantity which is governing our
13 decision-making and also the witnesses in Mr Sesay's best

13:04:25

14 interests and to have an expeditious trial, so we will be running
15 with as many witnesses as we can take. And we would hope to take
16 as many witnesses as possible in a week, but I think 20 to 25 is
17 overly optimistic.

13:04:44

18 JUDGE ITOE: And I think, even after you have provided a
19 definitive list of your witnesses, we do expect that you will, in
20 one day, envisage taking one or two witnesses and have a backup
21 list of witnesses waiting in the waiting, just in case we go
22 faster than we anticipated.

13:05:05

23 MS ASHRAPH: Indeed. What we don't want is dead court time
24 if you -- in view of succession. We are aiming to avoid that at
25 all costs because it obviously does no one in this room any good.

26 MR HARRISON: The only other thing the Prosecution is
27 asking of the Court is to contemplate whether an order should be
28 put in place setting a date certain for when the first accused is
29 going to state if he is going to testify.

1 PRESIDING JUDGE: Ms Ashraph?

2 MS ASHRAPH: Your Honour, if you give us that date we will
3 comply with it. What I will say is this is that: It is highly
4 that Mr Sesay will testify. I would work on the assumption that
13:05:43 5 he is going to testify. Obviously by tomorrow we are going to
6 have to give a summary of our first witness. Is that -- is the
7 summary --

8 JUDGE ITOE: Do we then understand that as soon as you give
9 a summary of that evidence it's an indication that he will
13:05:55 10 testify?

11 MS ASHRAPH: Yes, Your Honour. I mean, obviously an
12 accused has the right to change his mind. That is the situation;
13 he can change his mind. There is always the possibility, but it
14 is slight.

13:06:07 15 JUDGE ITOE: Considered.

16 MS ASHRAPH: But it is slight. It is slight at this stage.
17 I don't know if I can put it any more strongly than that.

18 JUDGE BOUTET: No, but, based on that, should the accused
19 change his mind, it means that you should provide the Prosecution
13:06:22 20 with information about more than that one witness because if he
21 changes his mind then they need to have 42 days start as from
22 tomorrow for the other witnesses.

23 MS ASHRAPH: I understand that. May I say that if we only
24 provide a summary of Mr Sesay's evidence then the Court and the
13:06:35 25 parties here should take it that he will be testifying without a
26 doubt.

27 JUDGE BOUTET: True. But I would like to be reassured that
28 you will disclose in the shortest time possible as much as you
29 can information about the other witnesses as well. So that we

1 need not to issue an order to say it is 42 days, now, you must
2 issue another one.

3 MS ASHRAPH: Well, Your Honour, I will obviously discuss it
4 within the team. What I will say is this: We think Mr Sesay is
13:07:06 5 highly likely to testify. A summary will be given tomorrow, in
6 accordance with the rule. He is likely to take some time giving
7 evidence, and the witnesses following him will comply with the
8 42-day rule. Depending on discussions that we have today, if
9 there seems to be any measure, any real calculable risk that he
13:07:38 10 will not testify, then we will seek to disclose further witness
11 summaries, obviously all witness numbers, to enable all the
12 parties to prepare.

13 JUDGE BOUTET: Thank you.

14 PRESIDING JUDGE: Any further submissions on any issues?
13:07:47 15 Mr O' Shea?

16 MR O' SHEA: I have a separate issue I would like to raise,
17 Your Honour.

18 PRESIDING JUDGE: Please.

19 MR O' SHEA: And it relates to the trial schedule.

13:07:56 20 PRESIDING JUDGE: Yes.

21 MR O' SHEA: I am going to be asking the Bench for an
22 indication about how the trial is going to operate, and the
23 reason is this:

24 During the Prosecution case the budget which we operated
13:08:12 25 on, as Defence, was premised on the circumstances. The
26 circumstances were that we were sitting for periods of about six
27 weeks at a time and then we would be away for periods of four to
28 six weeks at a time. The reason for that I think was because of
29 the CDF trial. Those circumstances have changed. The CDF trial

1 is no longer running, so the question arises whether this RUF
2 trial is going to be running continuously or with breaks as it
3 was during the Prosecution case.

13:08:49 4 It's a fundamental question for us and it's a question for
5 which if we could have an indication from the Bench now, that
6 will give me the appropriate excuse to make an application for
7 special considerations to the Defence Office, and subsequently
8 the Registrar, if need be, because our budget works on the basis,
9 at the moment, that the expenses for keeping counsel here in
13:09:12 10 Sierra Leone come out of that budget. So we would either need
11 more money, or we would need a situation where the Registry no
12 longer insisted upon the DLA, et cetera, coming out of our budget
13 in order to be able to sustain our position here during the
14 trial.

13:09:34 15 So an indication from the Bench that we are operating
16 continuously would give us the appropriate excuse to make the
17 appropriate application. I don't know if the Bench is in a
18 position to give an indication as to that at this stage.

13:12:01 19 PRESIDING JUDGE: Mr O'Shea, we -- is this on this very
20 issue?

21 MS KAH-JALLOW: Yes, Your Honour. I wish to -- I am
22 speaking on behalf of the Office for the Principal Defender. I
23 just want to inform Your Lordships that the issue of separation
24 of the DLA from legal fees is before an arbiter as we speak.
13:12:20 25 It's a matter of arbitration. So I thought you would like to
26 know before you made any comments on the issue.

27 PRESIDING JUDGE: Right. Thank you.

28 MR O'SHEA: Can I just clarify that that arbitration has
29 nothing to do with the Gbao Defence. It is, as I understand,

1 it's specifically in relation to an application made by Mr Sesay.

2 PRESIDING JUDGE: Well, in any event, we will, regarding
3 your request for some indication as to the sitting, whether we
4 are going to sit continuously or not the Bench will, in fact, be
13:12:54 5 issuing a consequential directive on that as soon as possible.

6 MR O' SHEA: Thank you very much, Your Honour.

7 PRESIDING JUDGE: Yes, Ms Ashraph.

8 MS ASHRAPH: Yes, Your Honour. One final thing, simply for
9 the record, it again has to do with funding of the Defence. The
13:13:12 10 Sesay team has lost two very capable legal assistants in the last
11 two or three months as a result of not being to able to offer a
12 competitive salary commensurate with their experience. At the
13 moment our legal assistants are paid an amount we consider to be
14 derisory considering their experience and certainly relative to
13:13:34 15 other similarly qualified professionals of the Court. I only
16 seek this for the record. It's obviously not an issue for Your
17 Honours at this moment. I merely state it for the record
18 because, obviously, a continual loss of capable legal assistants
19 will impact on our ability to be ready for the trial, so I just
13:13:52 20 note it for the record here today.

21 PRESIDING JUDGE: Yes. This Court has been so lumbered
22 sometimes with a lot of fiscal issues which properly belong to
23 administration, but we do understand our role that if there are
24 fiscal problems that impact adversely upon the fairness and the
13:14:17 25 expeditiousness of the trial we probably will have to intervene.
26 But we hope you can have this resolved elsewhere. And unless
27 it's necessary to come to us for some further directives we would
28 advise that you exhaust all possible administrative remedies.

29 MS ASHRAPH: I am grateful, Your Honour.

1 PRESIDING JUDGE: Any further submissions? If not I will
2 now conclude this proceeding and thank you very much for your
3 time and attention. That is the end of the proceeding.

4 [Whereupon the pre-defence conference adjourned
5 at 1.20 p.m., to be reconvened on Wednesday,
6 the 2nd day of May 2007, at 9.30 a.m.]

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