

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO.: SCSL-04-14-PT  
TRIAL CHAMBER I

THE PROSECUTOR  
OF THE SPECIAL COURT  
V.  
SAM HINGA NORMAN  
MOININA FOFANA  
ALLIEU KONDEWA

4 MARCH 2004  
PRE-TRIAL CONFERENCE

Before the Judges:

Bankole Thompson, Presiding  
Benjamin Mutanga Itoe  
Pierre Boutet

For the Registry:

Ms. Maureen Edmonds

For the Prosecution:

Mr. Luc Côte  
Mr. James C. Johnson  
Mr. Mohammed Bangura  
Ms. Adwoa Wiafe

For the Principal Defender:

Ms. Simone Monasebian  
Ms. Haddijatou Kah-Jallow

For the Accused Sam Hinga Norman:

Ms. Quincy Whitaker  
Mr. Sulaiman Tejan-Sie

For the Accused Moinina Fofana:

Mr. Michiel Pestman  
Mr. Arrow Bockarie

For the Accused Allieu Kondewa:

Mr. Charles Margai  
Mr. Yada Hashim Williams  
Mr. Ansu Lansana

Court Reporter:

Ms. Susan G. Humphries

1 (At this point in the proceedings, a portion of the transcript [pages 1 to 5] was extracted and sealed  
2 under separate cover, as the session was heard *in camera*)

3 JUDGE THOMPSON:

4 Well, counsel, as the notice of hearing sent to you indicates, the purpose of this hearing is to hold  
5 what our Rules of Procedure and Evidence characterise as status conferences. This one is in respect  
6 of the projected separate joint trial of Samuel Hinga Norman, Moinina Fofana and Allieu Kondewa,  
7 alleged to be members of the CDF armed faction. From an abundance of caution, it seems to the  
8 Chamber, as a matter of judicial prudence, to indicate at this stage the purpose of a status  
9 conference. And we can do no better than adopt the exact language of Rule 65 *bis*, the legislative  
10 authority for convening a status conference. According to Rule 65 *bis* the purpose or rationale behind  
11 a status conference is two-fold: "(i) organise exchanges between the parties so as to ensure  
12 expeditious trial proceedings;" and "(ii) review the status of his case and to allow the accused the  
13 opportunity to raise issues in relation thereto."

14  
15 It is also important to note that by Rule 78 of the Rules of Procedure and Evidence of the Court, "All  
16 proceedings before a Trial Chamber, other than deliberations of the Chamber, shall be held in public,  
17 unless otherwise provided." By Rule 79 of the aforesaid Rules, the Trial Chamber has discretionary  
18 authority to, "Order that the press and the public be excluded from all or part of the proceedings ..." on  
19 three grounds, namely: "(i) national security; or (ii) protecting the privacy of persons, as in cases of  
20 sexual offences or cases involving minors; or (iii) protecting the interest of justice from prejudicial  
21 publicity."

22  
23 Acting in pursuance of our discretionary power under Rule 79, it is the order of this Court that the  
24 press and the public be excluded from the remaining portions of the proceedings after item 3, general  
25 housekeeping matters, except for the accused persons and other counsel who may wish to be  
26 present. They will be invited to come in during agenda item titled number 10, trial schedule.

27  
28 The Chamber wishes to emphasise that this order is applicable to status conferences being held prior  
29 to the commencement of the trial and not necessarily to those that may be deemed expedient once  
30 the trial has begun.

31  
32 The Chamber's order is predicated upon the following reasons: first, the closed sessions on the items  
33 on the agenda so designated will be more conducive to candid and open exchange of views between  
34 the parties.

35  
36 Second, unlike the actual trials, status conferences are, in essence, informal meetings between the  
37 parties, the objective of which is to identify and resolve mostly the procedural and technical aspects of

1 the trial.

2  
3 Third, since most of the factual and legal issues to be deliberated upon at status conferences are still  
4 at a preliminary stage with the possibility of their being changed before the actual trial, there is a high  
5 potential -- there is a high potential that by premature disclosure of such factual and legal issues the  
6 interests of justice and the integrity of the proceedings may be jeopardised.

7  
8 I will now proceed to indicate the items of the agenda that are designated open and those that are  
9 designated closed.

10  
11 Item number 1, appearances of parties: open; item number 2, the Accused: open; item number 3,  
12 general housekeeping matters: open; item number 4, outstanding motions: closed; item number 5,  
13 disclosure: closed; item number 6, witnesses: closed; item number 7, protective measures: closed;  
14 item number 8, points of agreement on facts or law: closed; item number 9, judicial notice: closed;  
15 item number 10, trial schedule: open.

16  
17 And, of course, the Chamber has decided that at some point in time we may, in fact, consider the  
18 advisability of opening that particular segment of item number 3 -- item number 4, entitled  
19 "Prosecution's motion for leave to amend the indictment", open.

20  
21 Are there any clarifications, both sides? In fact, further clarification: that particular segment of item  
22 four will be taken out of turn. We will have to -- we may consider to deal with it just before item  
23 number ten.

24  
25 If there are no clarifications from the Bar, then we'll proceed to item number 2, the Accused, because  
26 the purpose of this particular item is to hear any comments from the Defence in terms of their clients,  
27 comments relating to their physical and mental welfare, issues arising from their detention  
28 environment, any other relevant issues for the purposes of this status conference. I shall now invite  
29 the counsel for the first Accused herein, Samuel Hinga Norman, to respond to our enquiry or to make  
30 any statements that may be considered relevant.

31 MR. TEJAN-SIE:

32 May it please you, My Lord. With regards to the Accused person, Sam Hinga Norman, we have one  
33 or two complaints we wish to bring before this conference, My Lord, regarding the conditions of his  
34 detention.

35 JUDGE ITOE:

36 Why don't you start with his mental condition first? We are interested to know how well he is keeping.

37

1 MR. TEJAN-SIE:

2 Yes, My Lord, he is keeping well --

3 JUDGE THOMPSON:

4 His developmental --

5 MR. TEJAN-SIE:

6 He is keeping well, taking cognisance of his age. As you can rightly see, My Lord, he has problems  
7 with his neck at the moment. The usual aches and pains that goes with a 63-year old man, My Lord,  
8 which are further exacerbated by the fact that, I mean, he is confined. We complain first and foremost  
9 with the exercise space provided in the detention facilities. Approximately, according to my  
10 instructions, it is something like 50 yards by 45 or 50 yards, My Lord, and there is a screen on both  
11 sides that prevents and confines their view to the sky for most part of -- while they are outside of the  
12 detention facility, My Lord. As you can rightly see, my client, My Lord, is not exactly young and a man  
13 of that age, My Lord, needs constant exercise and he needs to exercise in an environment that does  
14 not in any way affect his sight which, we submit respectfully, is the case at present.

15  
16 My Lord, we must also render our appreciation to the Registry for providing us with television news  
17 coverage, but we would very much want newspapers, My Lord, supply of newspapers. When our  
18 client was in Bonthe they were supplied with newspapers, according to my instructions, but since they  
19 were transferred to this facility they've not been served with newspapers. I've been performing that  
20 role once in a while. When I visit my client, to maintain his sanity I do take one or two newspapers,  
21 especially those that refer to him in any way. We would like that to be looked into. And, My Lord,  
22 they are locked up usually at 10:00 in the evening after which they are not entitled to use the modern  
23 toilet facilities that are available in the centre but have to make use of plastic buckets, which is most  
24 unhealthy and unhygienic and contrary to the detention rules of the SCSL.

25 JUDGE THOMPSON:

26 You say lack of modern toilet facilities --

27 MR. TEJAN-SIE:

28 Yes, My Lord, after 10:00.

29 JUDGE THOMPSON:

30 After 10:00 p.m. --

31 MR. TEJAN-SIE:

32 After 10:00.

33 JUDGE THOMPSON:

34 Is that it?

35 MR. TEJAN-SIE:

36 Yes, My Lord.

37

1 JUDGE BOUTET:

2       Until what time? From 10:00 until what time?

3 MR. TEJAN-SIE:

4       Until the morning.

5 JUDGE BOUTET:

6       What do you mean by morning?

7 MR. TEJAN-SIE:

8       By morning, I think, it's 8 o'clock or 7.30 now.

9 JUDGE THOMPSON:

10       Yes, and you say this is contrary to?

11 MR. TEJAN-SIE:

12       The detention rules, My Lord.

13 JUDGE THOMPSON:

14       Right.

15 MR. TEJAN-SIE:

16       And, My Lord, they are not provided with reading materials like books.

17 JUDGE THOMPSON:

18       Well, I mean, let's take them in – you've been doing very well so far itemising them bit by bit.

19 MR. TEJAN-SIE:

20       As My Lord pleases.

21 JUDGE THOMPSON:

22       First of all, your complaint was lack of adequate exercise facilities and the second was need for  
23       intellectual materials?

24 MR. TEJAN-SIE:

25       Yes, My Lord, newspapers and books --

26 JUDGE THOMPSON:

27       Notably newspapers and books.

28 MR. TEJAN-SIE:

29       -- and other reading materials, My Lord.

30 JUDGE THOMPSON:

31       And then the third complaint is in respect of lack of modern toilet facilities from 10:00, contrary to  
32       detention rules. Okay, what else?

33 MR. TEJAN-SIE:

34       Yes, My Lord – and, My Lord, if the food could be looked into as well, My Lord, our complaint is that --

35 JUDGE THOMPSON:

36       Feeding.

37

1 MR. TEJAN-SIE:

2 --- there has been -- some of these have been addressed in the past. I think they have changed  
3 about two or three caterers for the detention facilities.

4 JUDGE THOMPSON:

5 What are the specific complaints?

6 MR. TEJAN-SIE:

7 The specific complaints, My Lord, the other day I was there, the bread that was provided, My Lord,  
8 was most unsuitable for consumption, I must admit.

9 JUDGE THOMPSON:

10 Unwholesome?

11 MR. TEJAN-SIE:

12 That was about two weeks ago. My client complained to me and these complaints have been --

13 JUDGE THOMPSON:

14 What is your preference, unsuitable or unwholesome?

15 MR. TEJAN-SIE:

16 My Lord?

17 JUDGE THOMPSON:

18 Both unsuitable or unwholesome?

19 MR. TEJAN-SIE:

20 Both.

21 JUDGE THOMPSON:

22 Okay. Next.

23 MR. TEJAN-SIE:

24 My Lord, we wish that to be looked into and -- I mean, My Lord, those are the complaints we have for  
25 now, My Lord, in so as far as the first Accused is concerned, My Lord. Thank you, My Lord.

26 JUDGE THOMPSON:

27 Very much appreciated, counsel. My learned brother on my right wishes to pose a question.

28 MR. TEJAN-SIE:

29 Yes, My Lord.

30 JUDGE BOUTET:

31 Have these complaints been made to the Registrar of the detention facility --

32 MR. TEJAN-SIE:

33 Yes, My Lord.

34 JUDGE BOUTET:

35 -- prior to today?

36 MR. TEJAN-SIE:

37 Yes, My Lord.

1 JUDGE BOUTET:

2 All of them?

3 MR. TEJAN-SIE:

4 We've made -- we've written about two to three correspondence to the Registry regarding these  
5 complaints from Bonthe still -- I mean, we complained while they were in Bonthe and we complained  
6 while they were transferred here. We've continuously complained. Some of them have been  
7 addressed along the way to our complaints, some of them are still yet to be addressed, some of them  
8 are just coming to our notice now.

9 JUDGE BOUTET:

10 Which one have you complained of officially, if I may, in the list you have just described?

11 MR. TEJAN-SIE:

12 We complained about the unhealthy and unhygienic conditions of -- in Bonthe, while they were in  
13 Bonthe.

14 JUDGE BOUTET:

15 I am talking about here.

16 MR. TEJAN-SIE:

17 Here? This is first time we are raising this issue because this is the first time that it has come to our  
18 notice that -- because we know that they are provided with this facility because I had the opportunity of  
19 visiting the facility before they were transferred to the facility, but this is just coming to me as far back  
20 as 48 hours that --

21 JUDGE THOMPSON:

22 So this has not been the subject of any correspondence?

23 MR. TEJAN-SIE:

24 -- these days they are locked up at 10:00 and after 10:00 they are not entitled to use those facilities.

25 JUDGE THOMPSON:

26 Okay, continue.

27 JUDGE BOUTET:

28 So the -- in the list that you have provided this Court with, none of that has been brought to the  
29 attention of the Registrar recently. Is it my understanding or I misunderstood what you said?

30 MR. TEJAN-SIE:

31 The present complaints that we are making now, with the exception of newspapers which we had  
32 complained earlier on about, all the others are new complaints.

33 JUDGE BOUTET:

34 Yes, but newspaper is an old complaint?

35 MR. TEJAN-SIE:

36 Yes, which we did orally and verbally as well as we've written to that effect.

37

1 JUDGE BOUTET:

2 And newspaper dates from the moment the detainees were transferred from Bonthe to here?

3 MR. TEJAN-SIE:

4 Yes, to here -- they have not been receiving supplies of newspapers.

5 JUDGE BOUTET:

6 And on the food issue when you did mention that you yourself saw that the bread on that date at  
7 dinner, whatever it was, was not suitable.

8 MR. TEJAN-SIE:

9 Yes, My Lord.

10 JUDGE BOUTET:

11 Have you complained to either the detention facility about that and or the Registrar?

12 MR. TEJAN-SIE:

13 No, My Lord, because then this conference was already -- we had already received notice about this  
14 conference when I saw the bread, so I just decided that I would use this opportunity to bring it -- to  
15 bring it up once again.

16 JUDGE BOUTET:

17 So you are saying today that they officially don't know about that?

18 MR. TEJAN-SIE:

19 No.

20 JUDGE BOUTET:

21 Okay, thank you.

22 JUDGE THOMPSON:

23 Counsel, do you intend at some point in time to address a written communication to the Registry?

24 MR. TEJAN-SIE:

25 Yes, My Lord, like we've always done before. We are just bringing it to the notice of this Court first.

26 JUDGE THOMPSON:

27 Well, in fact, I think the records will reflect these complaints because I am sure that you would  
28 appreciate that, again applying the principle of prematurity, unless you have exhausted all the  
29 administrative channels, the intervention of the inherent jurisdiction of the Court, as I like to say,  
30 cannot be properly put into operation.

31 MR. TEJAN-SIE:

32 As My Lord pleases. We are just making an observation, My Lord.

33 JUDGE THOMPSON:

34 All right.

35 JUDGE BOUTET:

36 Before you sit, I still have a few more questions, not on this issue, but on the situation of the Accused.

37 We are concerned, obviously, we are asking questions about the health of the Accused. You alluded

1 to the fact -- obviously if we look at him today he is wearing a collar. Has he been treated properly?

2 MR. TEJAN-SIE:

3 Yes, My Lord.

4 JUDGE BOUTET:

5 He has been treated properly?

6 MR. TEJAN-SIE:

7 Yes, My Lord.

8 JUDGE BOUTET:

9 I'm talking from a medical point of view?

10 MR. TEJAN-SIE:

11 Yes, we did apply for him to be examined by a specialist. And last week he was examined by the  
12 specialist. I think it is because of those examinations that he is wearing that collar now, My Lord. It  
13 took a long time, though, because -- it took months, and we would like these medical issues to be  
14 addressed immediately the complaints are made, especially for specialist examination, My Lord.

15 JUDGE BOUTET:

16 But, again, may I ask you the question, you say it took months; did it take months after you notified the  
17 Registrar's office or it just took months since the problems arose?

18 MR. TEJAN-SIE:

19 Well, My Lord, my co-counsel was particularly assigned to deal with the issues of the first Accused, if  
20 he can address you -- if she can address you further on this.

21 JUDGE BOUTET:

22 Very well.

23 MS. WHITAKER:

24 It certainly was an issue I raised from November with the detention centre and the Registrar asking for  
25 the Chief to be x-rayed by a hospital, both in relation to his neck and another serious issue. The  
26 x-rays finally took place after a personal struggle with the -- enlisting the help of the detention centre  
27 to require the doctor to do it. He was extremely uncooperative for quite a long period of time,  
28 eventually the Registrar, I think, insisted -- it was facilitated through the office of the Registrar, but it  
29 was a struggle since November and then I came back in January and then again went through the  
30 process and finally it took place last week in relation to his neck, not in relation to the other issue  
31 which I'm hoping he is going to be x-rayed in. And there has been -- he has been waiting for glasses.  
32 His glasses are completely out of focus, he has been waiting since his detention for glasses which he  
33 was measured up for. There was some problem with the contracts, I understand. It's apparently in  
34 hand, but as I say, he has been waiting for the year of his detention for glasses which he can see  
35 with.

36 JUDGE BOUTET:

37 Very well. My colleague, Judge Itoe, asked about the mental condition of the accused, presumably

1 you have not raised any issues and therefore on that particular side everything is okay?

2 MR. TEJAN-SIE:

3 Yes, My Lord.

4 JUDGE BOUTET:

5 Thank you.

6 JUDGE THOMPSON:

7 Counsel, the -- some of the -- this problem of health, if you were to make a judgment, and I am not  
8 putting you on the spot, but if you were to make a quick judgment of some of the problems that you've  
9 encountered in the context of delay in responding, purely of a bureaucratic nature --

10 MS. WHITAKER:

11 As opposed to?

12 JUDGE THOMPSON:

13 Non-bureaucratic.

14 JUDGE BOUTET:

15 As opposed to the fact that technical services may not exist in Freetown.

16 MS. WHITAKER:

17 No, it wasn't that. It certainly wasn't that. It was -- I was disappointed with the level of co-operation I  
18 had from the doctor. Let me put it at that.

19 JUDGE THOMPSON:

20 Actually, the records will reflect that she said non-co-operation with the doctor. And this is something  
21 that you made --

22 MS. WHITAKER:

23 It took -- I find it took a very long time for him to take on board the seriousness and he was -- until he  
24 was told to do it by someone else, he didn't respond to my requests.

25 JUDGE THOMPSON:

26 And you want this Court to make special note of that?

27 MS. WHITAKER:

28 I hope those problems won't reoccur in future, but it was most disappointing, and I would like to bring  
29 it to the Court's attention.

30 JUDGE THOMPSON:

31 Right. Well, the records will reflect this.

32

33 Next, counsel for the second Accused?

34 MR. PESTMAN:

35 I have three parts -- points I would like to raise. They might be premature.

36 JUDGE THOMPSON:

37 The reason -- I mean, we will determine whether they are premature.

1 MR. PESTMAN:

2 But they affect the health -- the mental and physical health of my client and I would like to raise them  
3 any way and bring them to your attention.

4 JUDGE THOMPSON:

5 Yes.

6 MR. PESTMAN:

7 The first issue will also be discussed by my colleague and these are the conjugal visits. It has been a  
8 matter of great importance for my client --

9 JUDGE THOMPSON:

10 Conjugal visits.

11 MR. PESTMAN:

12 -- for quite some time. My client has four wives and he has been in custody for almost a year, 11  
13 months now. He was arrested in May and he still remains as an accused and as an accused he has  
14 the right to a private life, basic human right, and I would like to bring this properly to your attention. I  
15 understand that the matter is now before the Registrar.

16 JUDGE THOMPSON:

17 What is the specific problem here about the conjugal visits?

18 MR. PESTMAN:

19 Your Honour, they are impossible. They are --

20 JUDGE ITOE:

21 When you are talking of a right to his private life, can you be more explicit on what you want? What  
22 do want for your client?

23 MR. PESTMAN:

24 He would like to -- He would like to see his wives, unattended.

25 JUDGE THOMPSON:

26 To be allowed to see his wives.

27 MR. PESTMAN:

28 Yes.

29 JUDGE ITOE:

30 And not to touch them?

31 MR. PESTMAN:

32 In the Netherlands we call them visits without -- private visits without supervision.

33 JUDGE THOMPSON:

34 Pardon?

35 MR. PESTMAN:

36 They are called private visits without supervision.

37

1 JUDGE ITOE:

2 Private visits without supervision.

3 MR. PESTMAN:

4 And I understand it's technically possible to do it; it is a simple issue. You can put a portakabin, one  
5 of the many things -- one of the things we have over there, you can put them in the court yards and  
6 close the door. I don't think it should be very complicated. The matter is before the Registrar. I know  
7 that in The Hague, at the ICTY, they do it and it certainly --

8 JUDGE BOUTET:

9 What do they do in ICTR?

10 MR. PESTMAN:

11 I know that in the ICTR they are not allowed, but they are allowed in The Hague. I don't know why  
12 they are not allowed in the ICTR, but I don't see any problem -- any reason not to do it here except for  
13 financial constraints. But I understand the matter is before the Registrar, and I hope he is going to  
14 take a speedy decision. It's been 11 months now since my client was arrested.

15 JUDGE BOUTET:

16 If you allow me, ICTR has been in existence for more than 9 years and you are telling us that they  
17 don't have that right?

18 MR. PESTMAN:

19 At ICTR?

20 JUDGE BOUTET:

21 The detainees at ICTR do not enjoy that privilege.

22 MR. PESTMAN:

23 Yes, that's right. I think "enjoy" is the right word. They don't have that privilege; I do not know why,  
24 but I think it's very unfair and I think they have the right, like my client, to this --

25 JUDGE BOUTET:

26 No, I'm just asking because --

27 JUDGE THOMPSON:

28 In other words, it is your submission that we must adopt a practice which does not necessarily  
29 coincide with the practise in the ICTR?

30 MR. PESTMAN:

31 I would urge you to do everything within your abilities to --

32 JUDGE ITOE:

33 You are aware --

34 MR. PESTMAN:

35 -- bring this to the attention --

36 JUDGE ITOE:

37 You are aware of the fact that you have detention rules which govern our facility here?

1 MR. PESTMAN:

2 But I don't think they exclude the possibility of private visits.

3 JUDGE ITOE:

4 Well, I'm just asking the question, you are aware, you know, that --

5 MR. PESTMAN:

6 Yes, I am aware, yes.

7 JUDGE ITOE:

8 And that, of course, all visits, you know, should be in conformity with those rules of detention?

9 MR. PESTMAN:

10 Yes, I'm aware, yes.

11 JUDGE ITOE:

12 Right, okay. That's all right.

13 JUDGE THOMPSON:

14 Move on to your next theme, Counsel.

15 MR. PESTMAN:

16 Yes, that was my first point I wanted to raise. The second --

17 JUDGE THOMPSON:

18 Item number 2.

19 MR. PESTMAN:

20 The second is equally serious. Two days ago my client's family in Bonthe was visited by several  
21 Sierra Leonean (*sic*) police officers from Bonthe District, and they tried -- they said they were acting  
22 on the instructions of the Prosecutor of this Court.

23 JUDGE THOMPSON:

24 Let's get the terminologies right, Counsel. Did you say Sierra Leonean police officers?

25 MR. PESTMAN:

26 Police officers, yes, from the -- not representatives.

27 JUDGE THOMPSON:

28 Because I thought I heard Salonean (*phonetic*).

29 MR. PESTMAN:

30 Sierra Leonean, yes.

31 JUDGE THOMPSON:

32 Sierra Leonean police officers.

33 MR. PESTMAN:

34 Okay, Sierra Leonean, thank you for correcting me.

35 JUDGE THOMPSON:

36 Family visits --

37

1 MR. PESTMAN:

2 Police officers from this country.

3 JUDGE THOMPSON:

4 -- visited members of the family in Bonthe, you said?

5 MR. PESTMAN:

6 Yes, explaining that they --

7 MR. CÔTE:

8 With your permission, My Lord, I know it's very impossible --

9 JUDGE THOMPSON:

10 Would you sit down, counsel, while he is seeking intervention.

11 MR. CÔTE:

12 I just want to raise a point that if we intend here to blame or critic or allege that the Prosecution was  
13 involved in something that is incorrect, I would just put the Court on notice that this is a public hearing  
14 and if there is allegation made here, I just hope that these allegations can be proved because if not it  
15 will only serve the purposes of blaming someone in public. I would suggest that if these issues --

16 JUDGE THOMPSON:

17 Counsel, are you not being pre-emptive, because we didn't in fact get exactly the complaint?

18 *(Overlapping microphones)*

19 JUDGE ITOE:

20 You said the police. *(Overlapping microphones)*

21 JUDGE THOMPSON:

22 Counsel, with the greatest respect to you, you are being pre-emptive. Let the Chamber have the  
23 complaint first and I can assure you that this Chamber, believing in the doctrine of equality of arms,  
24 will give the Prosecution a chance to respond either to this intervention or at our discretion. So -- but  
25 we have not even heard the complaint and it is my opinion --

26 MR. CÔTE:

27 No, I'm aware, My Lord, but the complaint may cause the prejudice that would be irreparable after;  
28 that's all, from the public point of view.

29 JUDGE THOMPSON:

30 No, no, counsel, with the greatest respect, you are being pre-emptive.

31

32 Fine, continue, counsel.

33 MR. PESTMAN:

34 Thank you. Of course, I am only relaying the information that came to me.

35

36 JUDGE THOMPSON:

37 Yes, let's hear the complaint.

1 MR. PESTMAN:

2 Yes, so they visited my –

3 JUDGE THOMPSON:

4 This is a democracy.

5 MR. PESTMAN:

6 They visit my client saying that they are acting on the instruction of the Special Court Prosecutor

7 JUDGE THOMPSON:

8 In other words, you received information --

9 MR. PESTMAN:

10 Yes.

11 JUDGE THOMPSON:

12 That?

13 MR. PESTMAN:

14 From my client that -- and his family and they tried to confiscate his outboard motor.

15 JUDGE ITOE:

16 They tried to?

17 MR. PESTMAN:

18 Confiscate his outboard motor. I don't know if it's the correct expression, but the motor used to --

19 outboard engine which provides his family with the only source of income. They are all fishermen.

20 This engine, by the way, he received as part of a European -- a programme of the European Union to

21 develop the region after the civil war. It's their only source of income and he is very much upset,

22 that's why it's relevant for this point on the agenda because his family is in dire straits. They have

23 serious financial difficulties. And if the police, I don't know whether they succeeded in confiscating the

24 outboard motor, but it would bring his family serious financial difficulties and would influence directly

25 the mental health of my client. I would like to know and I'm quite interested to know whether my

26 information is correct, and maybe the Prosecutor can help me to clarify this issue, because if it's

27 correct there is no rule --

28 JUDGE THOMPSON:

29 I beg your pardon?

30 MR. PESTMAN:

31 I would like to know whether this information is correct; the Prosecutor can maybe tell us, if it's true.

32 There is no rule which allows the confiscation of property, especially not as the police officers said

33 when they tried to confiscate the outboard motor --

34 JUDGE THOMPSON:

35 Now, before you continue, have you yourself as counsel, bearing your own obligations and

36 responsibilities to your client, conducted any reasonable enquiries?

37

1 MR. PESTMAN:

2 This information came to me two days ago.

3 JUDGE THOMPSON:

4 Do you intend to conduct some reasonable enquiries?

5 JUDGE ITOE:

6 I can see -- just a moment. I can see your partner, you know, nodding his head behind. Apparently  
7 he has something to --

8 MR. BOCKARIE:

9 Your Honour, when we got the information from (*inaudible*), Idrissa, who happens to be a nephew to  
10 Moinina Fofana, and he came down to Bo and informed us that the local unit commander based in  
11 Bonthe went into his village and attempted to seize his machine, and it's been a worry as said by  
12 Mr. Pestman. And besides here, he is a nephew to Mr. Fofana. And we act on those instructions and  
13 he said probably (*inaudible*) on the instructions of the Special Court. I mean, we don't know --

14 JUDGE ITOE:

15 Which Special Court?

16 MR. BOCKARIE:

17 We don't know --

18 JUDGE ITOE:

19 We are tired of this talk of Special Court.

20 MR. BOCKARIE:

21 We do not know, My Lord.

22 JUDGE ITOE:

23 Please, let us make this very, very clear. There is this expression which is very much in use by  
24 people, the press, and so on, "the Special Court", "the Special Court". The Special Court has three  
25 components: the Chamber, the Prosecutor and the Registry. When you make allegations and you  
26 say it is the Special Court, you are wrapping in everybody.

27 MR. BOCKARIE:

28 Yes.

29 JUDGE ITOE:

30 It means that you are saying, in effect, you know, that it is also the Chamber which ordered that that  
31 engine be seized. So as a counsel can you please be very careful with the -- this distinction?

32 MR. BOCKARIE:

33 Yes, my apologies (*overlapping microphone*) --

34 JUDGE ITOE:

35 Right.

36 MR. BOCKARIE:

37 -- but by the Prosecutor's office.

1 JUDGE THOMPSON:

2 Right, and that is very helpful, Counsel, because, as my brother has said, that these statements keep  
3 being bandied about in the press and the press -- of course one would expect that the press is  
4 sophisticated enough to know that the Special Court has different units, and therefore -- and also that  
5 the Office of the Prosecution enjoys a considerable measure of autonomy from the Chamber. We do  
6 not tell them what to do except within the context of adjudication, but in terms of investigation they  
7 enjoy almost very, very -- what we might call considerable degree of prosecutorial discretion. But  
8 here I think we need to be very careful and I reckon that you are acting on information that your client  
9 gave you and which your client probably got from one of his relatives. I think the responsible way to  
10 deal with this is to be able to conduct reasonable enquiries to verify the veracity of this allegation and  
11 then at some point in time, to address complaints, if the allegation is true, to the Registrar because  
12 you can see that the Prosecution felt a little troubled about allegations of that nature, but we wanted to  
13 know the exact nature of the allegations. So we'll be giving counsel on that time some opportunity to  
14 comment, but at this particular stage our interest is, has there been some investigation to corroborate  
15 or confirm or prove or disprove this allegation --

16 MR. BOCKARIE:

17 Your Honour --

18 JUDGE THOMPSON:

19 On your side.

20 MR. BOCKARIE:

21 Yes.

22 JUDGE THOMPSON:

23 Remember your duty is to your client.

24 MR. BOCKARIE:

25 Yes, yes, Your Honour, in fact, when we got the information we had to send a (*inaudible*) and a  
26 person that is the nephew of Moinina Fofana to ascertain whether attempts were being made to seize  
27 his outboard engine. I mean, he is here, My Lord, and he confirmed it, My Lord, that indeed -- in fact,  
28 he said presently at the time he gave the report, two police --two policemen are stationed in Mina  
29 village trying to get hold of this machine, My Lord. (*inaudible*) here.

30 JUDGE THOMPSON:

31 Well, did he tell you also that they were acting on behalf of the Special Court, the Sierra Leonean  
32 police officers you said, not so?

33 MR. BOCKARIE:

34 My Lord, unfortunately, we --

35 JUDGE THOMPSON:

36 I mean, I want to know, were they Sierra Leonean police officers according to your information?

37 MR. BOCKARIE:

1 Yes, yes, My Lord, the local unit police commander based in Bonthe District --

2 JUDGE THOMPSON:

3 Yeah, did they also -- did he also ascertain whether they were acting on behalf of the Special Court?

4 MR. BOCKARIE:

5 Well, he did not get in touch with the police. He did not get in touch with the police, but he confirmed  
6 that they were in town.

7 JUDGE THOMPSON:

8 Because our difficulty here is that if this allegation is not pursued in terms of further investigation,  
9 invoking the jurisdiction of the Court now, it may be difficult. We will make a note of it, but that's all we  
10 can do, I mean, for the purposes of the status conference.

11

12 My brother judge here wants to ask a question.

13 JUDGE BOUTET:

14 You have stated that you've done the investigation that you were just describing, but has anyone  
15 contacted or tried to contact the Prosecution to ascertain that statement before you made the  
16 statement today? You mentioned that it was done two days ago.

17 MR. BOCKARIE:

18 My Lord, a letter has been written which will be served.

19 JUDGE ITOE:

20 Which will be served or has been served?

21 MR. BOCKARIE:

22 No, no, we got the information and wrote a letter. It has been served today, My Lord.

23 JUDGE BOUTET:

24 Yes, we heard it was two days ago, if it was urgent because it is claimed that this is very, very urgent  
25 for your client, why is it you didn't call the Prosecution?

26 MR. BOCKARIE:

27 Well, Your Honour, we were trying to get more detail and this thing happened all the way in Bonthe  
28 District, and the person who gave the information had to travel all the way from Bonthe to Bo.

29 JUDGE BOUTET:

30 Yes, but don't you think it would have been appropriate for you to call the Prosecution, if the  
31 Prosecution is involved in this, to try to determine the extent of their involvement?

32 MR. BOCKARIE:

33 Your Honour, we -- it was when it was brought to the attention of our client he was really worried.

34 JUDGE BOUTET:

35 I understand and I would --

36 MR BOCKARIE:

37 Yes. He was worried, Your Honour, and he had to call me. He had to call me and I had to get in

1 touch with his friend who is Idrissa. He is here. He went to the village to ascertain whether indeed  
2 attempts were made by the police to get hold of this outboard engine.

3 JUDGE BOUTET:

4 We are a special court; we have no control over the Sierra Leone police per se, you bring this matter  
5 here to this Court today because, I understand, that the basis for your argument is that the  
6 Prosecution is involved in this. And obviously the Prosecution is part of this Court and that's why it is  
7 of very, very fundamental interest to this Court to know what it's all about. My question was, this is an  
8 issue that was brought to your attention two days ago, between then and now have you attempted to  
9 talk to the Prosecution?

10 MR. PESTMAN:

11 Maybe you would allow me to -- Your Honour would allow me to answer that question. The answer is  
12 no, we didn't. We thought it suitable to raise the question now and I think that this whole issue can  
13 easily be clarified. If the Prosecution does not know --

14 JUDGE BOUTET:

15 Yes, but if it could have been easily clarified, why wasn't it clarified easily two days ago?

16 MR. PESTMAN:

17 Two days ago -- we have been very busy with the preparations for this status conference --

18 JUDGE BOUTET:

19 Yes, but --

20 MR. PESTMAN:

21 -- and, as you know, we have a bail hearing tomorrow with very important issues to address.

22 JUDGE THOMPSON:

23 We are actually, as my brother has expressed our reservations here, that if -- we cannot act on  
24 something that we are not -- we don't have facts to support. It may well be -- and we are not saying  
25 that this is not true, we don't know, but if the allegation is that Sierra Leonean police officers went  
26 there and tried to seize the vehicle that you are talking about, it may well be that they might have  
27 been acting under some legal process from the High Court somewhere and so, I mean, the  
28 information that you give us may now be outside our jurisdiction. But if it is in the context of our  
29 jurisdiction, then we are saying we do not have enough particulars upon which to even respond, and  
30 the best we can do is to let the records reflect it until you've done your necessary enquiries. But we  
31 will give the Prosecution a chance to see if they -- I think if you wish to comment -- if you wish to  
32 comment. Thank you, Counsel.

33 JUDGE ITOE:

34 But just for clarification, the boat or so has not yet -- has not been seized?

35 MR. PESTMAN:

36 I don't think it has --

37

1 JUDGE ITOE:

2 It has not been seized?

3 MR. PESTMAN:

4 I understand it was not seized. No, it wasn't.

5 JUDGE THOMPSON:

6 It was just an attempt.

7 JUDGE ITOE:

8 I want the records to be right, you know, on that.

9 MR. PESTMAN:

10 Yes.

11 JUDGE THOMPSON:

12 In other words, it was an attempt to seize it?

13 MR. PESTMAN:

14 Yes, and apparently they said that it was a looted property and for that reason --

15 JUDGE THOMPSON:

16 It was what?

17 MR. PESTMAN:

18 Looted property -- looted property and for that reason they wanted to confiscate it or seize it.

19 JUDGE THOMPSON:

20 Well, you see, that complicates -- it's complicating. Right, the Prosecution wishes to --

21 MR. JOHNSON:

22 Anything that we would say would be pure speculation. We had a meeting with the Defence  
23 yesterday but this was not brought up. I am not familiar with this. What we say will be pure  
24 speculation. It would even be speculation for me to comment with the initial arrest warrant and  
25 that's -- there was an order to seize assets and things, but again, that's pure speculation. We need  
26 more, we need a little bit more.

27 JUDGE THOMPSON:

28 Well, I think that's a very cautious approach. We too feel that unless we have something more, this  
29 Court is being invited to act on the basis of unsubstantiated allegations, but the records will reflect the  
30 complaint.

31

32 Number three.

33 MR. PESTMAN:

34 Yes, number three, I would like to talk about financial restraints --

35 JUDGE THOMPSON:

36 Financial restraints.

37

1 MR. PESTMAN:

2 -- for the Defence. Yesterday I found out that there is a fundamental disagreement between the  
3 Defence -- between me and the Defence Office about interpretation of our contract. I won't go into  
4 details about this -- the exact nature of this agreement, but it could mean -- and I think that's important  
5 for this Court to realise -- that we'll run out of money -- that we'll run out of money if the trial does not  
6 start on the 1st of May of this year. It could have serious consequences for the preparation of our  
7 cases and would -- I suppose I need not explain that that would seriously endanger our right to  
8 properly and adequately prepare for our defence.

9 JUDGE BOUTET:

10 Pardon me, can you just repeat that? I did not clearly understand what you were saying on that issue.  
11 Are you suggesting that the Principal Defender's office --

12 MR. PESTMAN:

13 Yes.

14 JUDGE BOUTET:

15 -- has told you that if the trials were not to start by the 1st of May you would not be paid or such --  
16 words to that effect?

17 MR. PESTMAN:

18 I said that there is a risk, a serious risk that if this trial does not start on the 1st of May, that we will no  
19 longer be paid.

20 JUDGE ITOE:

21 Is that one of your concerns?

22 MR. PESTMAN:

23 There is a -- it's a technical issue, but there is --

24 JUDGE ITOE:

25 We are getting speculative and wasting time.

26 MR. PESTMAN:

27 I don't think this is speculative, it is serious. It's a very serious --

28 JUDGE ITOE:

29 No, no, no, we are getting speculative because we have to wait until the event presents itself.

30 MR. PESTMAN:

31 There is a --

32 JUDGE ITOE:

33 Are you not paid up to now? Up to now that you are talking is there any default in paying the Defence  
34 team?

35 MR. PESTMAN:

36 There is a cap, a maximum we are allowed to spend for pre-trial preparations. We all assumed, and  
37 so did the Defence Office, that the trial would start on the 1st of May of this year. That is when my

1 money is effectively finished. We might be able to save a little bit of money to go on for a couple of  
2 weeks, a month or two, but basically there's a cap on the amount of money we are allowed to spend,  
3 the amount of work we are allowed to do for this case, for the pre-trial periods. If the case does not  
4 start on the 1st of May, as everyone expected, then we are very soon going to run out of money and  
5 that would bring us, the Defence, serious problems.

6 JUDGE THOMPSON:

7 I don't know what my learned brothers think, but I think it's quite a relevant issue. It is relevant. I think  
8 you are virtually saying that if you are going to effectively represent your client you want to know  
9 whether the -- the obligations in your contract will be honoured and I think this is a matter that can  
10 legitimately be vigorously and aggressively pursued with the Registrar. Remember that the Registrar  
11 has supervisory jurisdiction over the defender's office, the Principal Defender. And I think we can  
12 reflect this concern that you've been put on notice by the Principal Defender that if the trial doesn't  
13 begin on a particular date, you will be out of pocket in terms of representing your client. Of course, if  
14 that is true then, of course, this Court -- this jurisdiction in protecting the rights of the accused will be  
15 properly implicated. So we can reflect that and ask you to pursue the matter as vigorously and as  
16 aggressively as you can with the Registrar.

17 MR. PESTMAN:

18 We definitely will. Thank you.

19 JUDGE THOMPSON:

20 Yes, Counsel for the third Accused.

21 MR. MARGAI:

22 Thank you, My Lord. My Lord, in so far as the health of the third Accused is concerned, I think I will  
23 be right in saying that he is as healthy as can be expected. We thank God for that.

24 JUDGE THOMPSON:

25 Yes.

26 MR. MARGAI:

27 But his principal concern is these conjugal visits, which I shall elucidate upon, and call a spade a  
28 spade without embellishment. What he would like is to allow his wives, albeit rotationally, to spend  
29 weekends with him. My Lord, this is not an unusual or unreasonable request, having regard to the  
30 fact that an accused person is deemed innocent until his guilt is established.

31  
32 And, furthermore, since his apprehension, he has been kept in detention. We had written a letter to  
33 the Prosecutor intimating our intention to apply for bail and asking whether they had any objection.  
34 They replied a few days ago, through no fault of theirs because there has been a change in the  
35 leadership of the defence of the third Accused. Before my appointment, the team was being led by  
36 James McGee, who had to withdraw on health grounds. And their reply is in the negative, that they  
37 would object to bail.

1

2 But since taking over the leadership of the defence of the third Accused, I have thoroughly looked at  
3 the Rules of Procedure and Evidence to which Rule 65(B), which deals with bail -- and I believe that in  
4 any bail application one should first of all seek clarification from the Chamber as to the application or  
5 non-application of Rule 65(B) to the Special Court of Sierra Leone.

6

7 My reason for saying so, My Lord, is that if I understand Rule 65(B) correctly, in the case of Rwanda,  
8 the accused persons were not tried in their country, they were tried in Tanzania, Arusha, and  
9 therefore -- I don't know whether --

10 JUDGE THOMPSON:

11 Continue, continue.

12 MR. MARGAI:

13 Thank you. And, therefore, the necessity to seek the opinion of the receiving country, in my view, is  
14 indeed in place. But unlike Rwanda, the accused persons here are all Sierra Leoneans, ordinarily  
15 resident in Sierra Leone, and if bail were to be granted, they would have to be in Sierra Leone until  
16 such time.

17

18 But more importantly, again drawing a distinction between the Rwandese case and the Sierra  
19 Leonean case, the government of Rwanda was not a party to the setting up of the court. That was an  
20 international court. In the Sierra Leonean case, it is my humble opinion that the Sierra Leone  
21 government is a party to the agreement upon which the establishment of this Court is predicated. The  
22 question then arises if the opinion of the Sierra Leone Government were to be sought as a matter of  
23 necessity in any bail application, how then can one be sure of impartiality?

24 JUDGE THOMPSON:

25 Actually, counsel, are you trying to re-litigate the matter that has already been litigated?

26 MR. MARGAI:

27 No, I am not, My Lord, I am merely stating my difficulty as to a bail application.

28 JUDGE ITOE:

29 But we are not meeting on a bail application:

30 JUDGE THOMPSON:

31 Actually, the difficulty --

32 MR. MARGAI:

33 No, no, no, My Lord, I am sorry. I --

34 JUDGE THOMPSON:

35 The difficulty we have --

36 JUDGE ITOE:

37 It will come in its proper time.

1 JUDGE THOMPSON:

2 Yes, the difficulty we have is that this is a status conference, we are trying to see whether certain  
3 matters, certain obligations have been fulfilled. I mean, it's all interesting, the kind of jurisprudential  
4 analysis which we are hearing from you, it's beautiful, it can form a thesis for some PhD thing or that  
5 kind of thing, but we are really dealing with housekeeping matters.

6 MR. MARGAI:

7 I know that, My Lord.

8 JUDGE THOMPSON:

9 And we, of course, understand that your client has been under restraint and all that. If you can so  
10 structure your thoughts as to practicalise, so to speak, the difficulties that he is having as a result of  
11 continuing detention in terms of his mental and physical condition, but not as to whether the obligation  
12 of the government involved should be sort of -- These are all jurisprudential questions which we are  
13 not really -- we don't have that judicial digestion, so to speak, yet to accommodate that this morning  
14 actually, because we are really not here --

15 MR. MARGAI:

16 If I do, Your Lordship, correct the --

17 JUDGE THOMPSON:

18 Well, I do. I enjoy it.

19 MR. MARGAI:

20 I know Your Lordship has a greater appetite (*overlapping microphones*). But be that as it may, quite  
21 frankly, I merely mentioned that to buttress this desire for conjugal visits.

22 JUDGE THOMPSON:

23 Right -- All right. We'll then --

24 MR. MARGAI:

25 And then perhaps pre-empting your Lordships asking me the question, but there is a possibility of a  
26 bail application and we applied.

27 JUDGE THOMPSON:

28 All right.

29 MR. MARGAI:

30 I mean, that was why I pre-empted you by saying that the reason why we have not taken advantage of  
31 a bail application is for the aforesaid reason.

32 JUDGE THOMPSON:

33 I see. I now see your (*overlapping microphones*)

34 MR. MARGAI:

35 As Your Lordship pleases.

36 JUDGE THOMPSON:

37 Perhaps this is an appropriate point at which we will rise to give the stenographers a break.

1           *(Recess)*

2 JUDGE THOMPSON:

3           We resume our proceeding in open session and what --

4 JUDGE ITOE:

5           Mr. Margai was on his feet.

6 JUDGE THOMPSON:

7           Do you want to wind up now?

8 MR. MARGAI:

9           Yes, My Lords. Winding up, My Lords, I believe that this is an issue that ought to be given some  
10           sympathetic and favourable consideration, having regard to all that has been said.

11 JUDGE THOMPSON:

12           We appreciate your --

13 MR. MARGAI:

14           Thank you.

15 JUDGE THOMPSON:

16           Thank you. The records will reflect these matters. I am assuming, I hope rightfully, the Prosecution  
17           has nothing to say on these matters.

18

19           Then, we will now proceed. Nothing to say on that?

20 MR. JOHNSON:

21           No.

22 JUDGE THOMPSON:

23           My brother judge is going to ask a question.

24 JUDGE ITOE:

25           I was referring to the boat issue and maybe if the Prosecution wished, you know, they could have  
26           clarified this issue because a lot has been said about it.

27 MR. JOHNSON:

28           Which issue, Your Honour? There was the visits and the --

29 JUDGE ITOE:

30           The issue of the speed boat or so, the outboard or whatever.

31 JUDGE THOMPSON:

32           The attempted -- attempted --

33 JUDGE ITOE:

34           The attempted --

35 JUDGE THOMPSON:

36           -- confiscation --

37

1 JUDGE ITOE:

2 -- confiscation of the boat, you know, because --

3 JUDGE THOMPSON:

4 Do you have any knowledge?

5 JUDGE ITOE:

6 -- indirectly -- indirectly, the impression was given that it could well have come -- instructions could  
7 well have come, I mean, indirectly.

8 MR. JOHNSON:

9 I point that because the order for arrest did direct the national authorities to seize all evidence of  
10 crimes. I'm working with the Office of the Prosecutor, I have no knowledge of this incident which was  
11 brought up and we will certainly look into it.

12 JUDGE ITOE:

13 That's all right.

14 JUDGE BOUTET:

15 Mr. Margai, I can tell you that the issues that you have raised are indeed important and we will give it  
16 due consideration.

17 MR. MARGAI:

18 As My Lord pleases. Thank you.

19 JUDGE BOUTET:

20 These issues concerning detainees at this time and given the fact that, as you have stated, that they  
21 are presumed innocent until proven guilty, they have to be convicted, has to be taken into account in  
22 so far you have these facts and we will look into this.

23 MR. MARGAI:

24 Thank you.

25 JUDGE THOMPSON:

26 I think the next item on our agenda is housekeeping -- general housekeeping matters, and here, all we  
27 require is some indication whether the Defence teams are fully formed. And perhaps, the enquiry  
28 here is whether the list on the record with the Chamber of all its members, as ordered by the Trial  
29 Chamber, is representative of the position as we know it. Does the defence unit of the Court wish to  
30 comment on this? Mr. Yillah, do you know whether the Defence teams are all fully formed?

31 MR. YILLAH:

32 My Lord, as far as the knowledge of the Defence office goes, all the Defence teams are fully  
33 constituted.

34

35 My Lord, this -- the general procedure goes like this: the Defence office assigns a lead counsel upon  
36 instructions of the Accused persons. It is the responsibility of that lead counsel to constitute his team  
37 and present the members to the Defence office. All we do at that stage is to ensure that the members

1 presented comply with the rules.

2 JUDGE THOMPSON:

3 Yes.

4 MR. YILLAH:

5 In other words, that they are qualified to be counsel, to appear as counsel before this Court. When --  
6 once we are satisfied with that, we get them.

7 JUDGE THOMPSON:

8 And to the best of your knowledge, information and belief --

9 MR. YILLAH:

10 To the best of my knowledge --

11 JUDGE THOMPSON:

12 Information and belief --

13 MR. YILLAH:

14 -- information and belief --

15 JUDGE THOMPSON:

16 Everything is --

17 MR. YILLAH:

18 -- all the Defence teams are fully constituted, all accused persons have been assigned lead counsel  
19 and it is the responsibility of lead counsel to constitute his team. We do not interfere in that  
20 responsibility.

21 JUDGE THOMPSON:

22 Anything from the -- anything from you, Ms. Whitaker? Well, we'll move on to the --

23 MR. MARGAI:

24 Your Honour, if I could be heard? Without attempting to contradict what my learned friend has said, I  
25 mean, he has addressed -- he is limited to the assignment of lead counsel and in that respect I think  
26 he is right. But then in my case, as I said earlier, I was appointed lead counsel on the 27th of January  
27 in place of McGhee.

28 JUDGE THOMPSON:

29 Yes.

30 MR. MARGAI:

31 I have put in place, I would say, about 75 per cent of the team --

32 JUDGE THOMPSON:

33 All right.

34 MR. MARGAI:

35 But I intend to conclude that by the end of this month.

36 JUDGE THOMPSON:

37 Thank you. The records will reflect that.

1 Counsel would note that the Prosecution filed their pre-trial brief on the 2nd of March this year, and  
2 the Defence pre-trial briefs are due in on the 23<sup>rd</sup> of March 2004. I don't -- I'm not entertaining any  
3 controversies or contentions on that, except if somebody wants to make a quick -- brief -- brief --  
4 brief --

5 MR. MARGAI:

6 Just brief, less than a minute.

7 JUDGE THOMPSON:

8 Who goes first?

9 MR. MARGAI:

10 She goes first.

11 JUDGE THOMPSON:

12 Okay, right.

13 MS. WHITAKER:

14 Yes, Your Honour, we would submit that it is wholly inappropriate at this stage to require the Defence  
15 to file a pre-trial brief. The level of disclosure is such that we have a very incomplete view of the  
16 Prosecution case. The level of redaction in our case, I think you were addressed on it in your  
17 previous hearing, but we have redactions to such a level that you literally can't -- every other word --

18 JUDGE THOMPSON:

19 Right, okay. Fine, I will be able to see that --

20 MS. WHITAKER:

21 And until we have full disclosure --

22 JUDGE THOMPSON:

23 Perhaps -- perhaps, I would make a suggestion that the kind of submissions that you proposed to me  
24 would be properly accommodated on the disclosure time. You are quite right.

25 MS. WHITAKER:

26 So be it, Your Honour. We are simply not in a position to file any pre-trial brief until after we've had  
27 timely disclosure.

28 JUDGE THOMPSON:

29 Quite right. Okay, so discuss it as a controversial contentious issue under disclosure when we come  
30 to that.

31 MS. WHITAKER:

32 Certainly, Your Honour.

33 JUDGE THOMPSON:

34 So now all we're doing is just to give you a factual representation of what the position is. They've got  
35 a briefing. We, in fact, are expected -- but you will tell us the difficulties you encountered.

36 MS. WHITAKER:

37 As you wish, My Lord, we will ask for an extension to some date in the future to be able to tender this.

1 JUDGE THOMPSON:

2 All right. Item number four: outstanding motions. Oh, counsel --

3 MR. MARGAI:

4 My Lord, I associate with what has been said and advise (*inaudible*).

5 JUDGE THOMPSON:

6 Thank you. Yes. Item four: outstanding motions. We have indicated already that as far as the motion  
7 for leave to amend the indictment, we shall consider that under -- just before item ten. Now, all I need  
8 to do under this item is to move straight away into closed session.

9

10 (At this point in the proceedings, a portion of the transcript [pages 34 to 91] was extracted and sealed  
11 under separate cover, as the session was heard *in camera*)

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1 JUDGE THOMPSON:

2 The next item -- we now move into open session and before we go on to trial schedule we would like  
3 the Prosecution to answer some questions for the satisfaction of the Chamber, or to enlighten the  
4 Chamber as much as possible on the Prosecution's motion for leave to amend the indictment -- the  
5 Prosecution's motion for leave to amend the indictment. We will go through these questions carefully.  
6 One, on what date was evidence discovered to support the extended time frame? On what date was  
7 evidence discovered to support the extended time frame?

8 MR. JOHNSON:

9 I can --

10 JUDGE THOMPSON:

11 Wait, let me give you all the questions and then you just tick them in bulk. That is the first part of  
12 question one. Why was an expansion of 28 months, as in paragraph 28 of the indictment, the  
13 amended indictment, not discovered earlier?

14  
15 Question two: if the evidence supporting the charges of sexual violence -- if the evidence supporting  
16 the charges of sexual violence was found in October -- was discovered in October and November  
17 2003, why has there been a delay until February 2004 before bringing the motion to amend?

18  
19 The third question: has evidence relating to the new charges been given to the Accused because  
20 there seems to be a dispute on this, the Prosecution -- the Defence seems to deny this.

21  
22 Question four: are the additional locations further particulars or new locations? Are the additional  
23 locations further particulars or are they new locations?

24  
25 And, of course, this is an interpretational question, number five, the motion states, "The Prosecution  
26 has a duty to charge these additional crimes." The question here is, is it a duty or a discretion? In  
27 other words, does the Prosecution see itself as having a duty to charge all potential crimes for which  
28 there is evidence? That is why I want to know whether -- is there a relevant distinction here between  
29 a duty and a discretion. That is one interpretation and question.

30  
31 Six: what prior notice, if at all, did each of the Accused receive that he may entail criminal liability for  
32 sexual crimes, for crimes under the extended time frame and for crimes in the additional locations?  
33 What prior notice did each of the Accused receive?

34 MR. JOHNSON:

35 Could you say that one again, please, Your Honour?

36 JUDGE THOMPSON:

37 What prior notice did each of the Accused receive that he may entail criminal liability for sexual

1 crimes, for crimes under the extended time frame, or for crimes in additional locations? Of course,  
2 you are entitled to guide us if we have misread some parts of the amended -- the proposed amended  
3 indictment, it is so complicated itself.

4  
5 And the seventh question is, why was not this motion brought before or with the joinder motion?

6  
7 The eighth question -- and that will be the last -- how will the Prosecution define forced marriage and  
8 what are the elements of the offence?

9  
10 Those are the questions we want to ask. Guide us, and if there are questions that you feel intrigued  
11 about, make the point and tell us why you are intrigued. Go ahead.

12 MR. JOHNSON:

13 Some of these questions, Your Honour, I can certainly address now and will do my best.

14 JUDGE THOMPSON:

15 Very well then.

16 MR. JOHNSON:

17 A few of them I --

18 JUDGE THOMPSON:

19 You can submit something in writing to us.

20 MR. JOHNSON:

21 That would be -- yes.

22 JUDGE THOMPSON:

23 Okay, well, do the best you can.

24 MR. JOHNSON:

25 Okay, okay, thank you, Your Honour.

26  
27 As far as the dates for the -- I mean, I don't have a recollection of the exact dates for the extended  
28 time frames, other than to say they were certainly -- these extended time frames were certainly  
29 identified after the indictments were signed and issued in the first instance in November -- or rather in  
30 March of last year for the one and certainly after June of last year for the subsequent two indictments.  
31 Again, I would have to give -- do a little more to answer your question on 28 months for the time frame  
32 that we have extended, 28 months. Again, it was newly discovered evidence, it was discovered  
33 certainly after June, I think, to my recollection most of this evidence was discovered in the fall, I can  
34 be more  
35 specific --

36 JUDGE THOMPSON:

37 All right.

1 MR. JOHNSON:

2 I can be specific on the gender crimes.

3 JUDGE THOMPSON:

4 Okay.

5 MR. JOHNSON:

6 In that the gender crimes were -- although I can be certainly upfront with you that the Prosecutor, in  
7 light of his duties and obligations under the statute to pay particular (*inaudible*) and particular attention  
8 to gender crimes, that we suspected gender crimes as early as the summer, but we were not able to  
9 find positive evidence of those gender crimes until into the fall, until late September/October time  
10 frame. It took some time to see these witnesses, to identify these witnesses, to confirm these  
11 witnesses, and that took us into the November time frame.

12 JUDGE THOMPSON:

13 So this is a statutory obligation, mandatory?

14 MR. JOHNSON:

15 We feel it is a duty -- we feel it's a duty of the Prosecutor --

16 JUDGE THOMPSON:

17 Yes.

18 MR. JOHNSON:

19 -- to, when we identify such serious crimes as a nature of this, to proceed forward with those crimes.

20 JUDGE THOMPSON:

21 Yes, my reading probably was reading it in the context of the overall prosecutorial discretion subject to  
22 -- because there may be serious crimes that you discovered, but there may be reasons why the  
23 Prosecution may not want to charge with that, or their reasons and there are lots of things that go into  
24 your prosecutorial discretion as to whether you decide to charge this or that. Anyway, I am not -- I'm  
25 not making capital out of that, but let's just have the answers.

26

27 The next question?

28 MR. JOHNSON:

29 You -- and I may be taking these a little bit out of order and I am quite --

30 JUDGE THOMPSON:

31 That is okay.

32 MR. JOHNSON:

33 Again, the additional locations in their -- we figured -- we feel that these additional locations were new  
34 locations, not further --

35 JUDGE THOMPSON:

36 So they are not particulars, they are not further and better particulars?

37

1 MR. JOHNSON:

2 Not further particulars, these new locations were based on new evidence discovered, and again the  
3 time frame I will have to come back to you more specifically on exactly the time that this new evidence  
4 was discovered, but that is one reason why we proceeded with those locations in the amendment,  
5 because again, we felt that they were -- we did not have them at the time and it was indeed new  
6 locations.

7

8 The evidence to support these was provided to the Accused in the latest round -- in the latest batch --  
9 bundle of disclosure that was in mid-February to just over two weeks ago.

10

11 The elements of forced marriage I am not prepared at this point in time to discuss with you, except  
12 maybe in a very, very limited way or in a --

13 JUDGE THOMPSON:

14 Yes, well, perhaps you may want to abandon that second part and deal with the first part because --

15 MR. JOHNSON:

16 I beg your pardon.

17 JUDGE THOMPSON:

18 You may want to abandon the second part and answer the first part; the definition.

19 MR. JOHNSON:

20 Oh, of forced marriage?

21 JUDGE THOMPSON:

22 Well, I mean, here we are -- well, I mean, the context in which you have charged this.

23 MR. JOHNSON:

24 Yes, well we certainly -- of course, we consider forced marriage to be included in the offence of other  
25 inhumane acts. We think that -- we think that forced marriage, I mean, we could not charge it as  
26 sexual slavery because we think forced marriage is something more than sexual slavery.

27 JUDGE THOMPSON:

28 All right.

29 MR. JOHNSON:

30 We think sexual slavery may be included within forced marriage, but that forced marriage is  
31 something beyond that.

32 JUDGE THOMPSON:

33 In other words, so you are saying that you are not here risking being -- risking an objection from the  
34 other side that you might, in fact -- your indictment might be guilty of multiplicity of counts?

35 MR. JOHNSON:

36 We don't think that it is.

37

1 JUDGE THOMPSON:

2 In other words, you can commit -- an accused can commit forced marriage without committing sexual  
3 slavery?

4 MR. JOHNSON:

5 I think that sexual slavery is, under the right conditions, would be wholly within forced marriage, but  
6 forced marriage is something greater with additional elements.

7 JUDGE THOMPSON:

8 But you can commit sexual slavery without committing forced marriage?

9 MR. JOHNSON:

10 Pardon?

11 JUDGE THOMPSON:

12 An accused can commit forced -- sexual slavery without committing forced marriage?

13 MR. JOHNSON:

14 Yes, absolutely.

15 JUDGE THOMPSON:

16 So you would want -- the indictment could not be attacked on grounds of multiplicity or duplicity of  
17 counts?

18 MR. JOHNSON:

19 Well, I think this is an issue -- an issue for --

20 JUDGE THOMPSON:

21 No, I am just speculating, that's all.

22 MR. JOHNSON:

23 I believe this is an issue for trial, for the evidence.

24 JUDGE THOMPSON:

25 Yes.

26 MR. JOHNSON:

27 And for the evidence that is adduced at trial, to see if it meets the --

28 JUDGE THOMPSON:

29 And with your experience you agree that multiplicity or duplicity can go to jurisdiction sometimes?

30 MR. JOHNSON:

31 Yes, Your Honour.

32 JUDGE THOMPSON:

33 Yes.

34 MR. JOHNSON:

35 But no, we do not see -- we do not see a significant issue there, and that is not to say that there would  
36 not be motions forthcoming based on that. If there were, we would feel confident that these motions  
37 could be handled judicially as well as not delay the trial.

1 JUDGE THOMPSON:

2 Okay.

3 MR. JOHNSON:

4 You asked why this was not brought before the joinder. I can say that, as I have explained, these  
5 charges were finally put together with the degree of confidence that we could proceed forward with --  
6 in indicting these charges in November. At that time we had filed for joinder and we made a decision  
7 within the Prosecution that because we have filed for joinder that rather than filing three addition --  
8 three motions, that we await further joinder decision and file one motion.

9 JUDGE THOMPSON:

10 So, of course, we don't -- I mean, the Chamber does not want to push you on this issue of -- sort of,  
11 re-visiting the issue on the gender based crimes, you are saying that your position is that there is a  
12 statutory obligation to give due consideration to these crimes?

13 MR. JOHNSON:

14 I believe that there is, yes.

15 JUDGE THOMPSON:

16 And then, of course, you, I don't think -- you answer this question whichever way you want to. Does  
17 this mean that these are the last gender based crimes to be brought? But answer it in whatever way  
18 you want. If you cannot answer, it is okay. Because you say you have -- one of you sit down. You  
19 have a statutory obligation to bring gender based crimes.

20 MR. CÔTE:

21 I think under international criminal law with crimes of such importance, it is the duty of the Prosecutor  
22 to present the full scope of the alleged criminal behaviour of the Accused.

23 JUDGE THOMPSON:

24 Yes.

25 MR. CÔTE:

26 I would like to remind the Court of the first judgment on gender crimes by the ICTR where the  
27 Prosecutor did not indict for sexual crimes and was ordered during trial by the Bench, when witnesses  
28 came out and talked about that, the judges from the Bench turned to the Prosecution and said, "Don't  
29 you think that you have a duty to indict for that?" And there was an amendment filed during the trial to  
30 include those new charges. So, I believe that in such important cases --

31 JUDGE THOMPSON:

32 Was the statute of ICTR on all fours with our own Statute on the issue of gender base?

33 MR. CÔTE:

34 I think on the type of crime -- yes, on the type of crime that we have, yes, except for Article 5 for which  
35 we didn't charge anyone.

36 JUDGE THOMPSON:

37 In other words, so really what you are saying is that -- and of course I am not -- I'm not --

1 MR. CÔTE:

2 It is a duty.

3 JUDGE THOMPSON:

4 I am not raising -- I just want to enlighten myself that you are saying it is a statutory duty.

5 MR. CÔTE:

6 I think it's a duty that could have --

7 JUDGE THOMPSON:

8 And I want to learn --

9 MR. CÔTE:

10 -- because of the importance of those crimes that it would -- I mean, I think the Prosecutor has a  
11 responsibility to submit to the Court the full scope of the facts --

12 JUDGE THOMPSON:

13 Yes.

14 MR. CÔTE:

15 -- that may raise -- that may attract criminal responsibility of the Accused.

16 JUDGE THOMPSON:

17 All right.

18 JUDGE BOUTET:

19 Mr. Prosecutor, when you say it's a statutory responsibility, are you using Article 15 of the Statute  
20 which describes the Prosecutor's role, more specifically where it says, given the nature of the crimes,  
21 and I'm quoting from paragraph 4 of Article 15, "Given the nature of the crimes committed and the  
22 particular sensitivities of girls, young women and children, victims of rape, sexual assault, abduction,  
23 slavery of all kinds, due consideration should be given ..." and so on and so forth. So it is in that kind  
24 of --

25 MR. CÔTE:

26 I am not too comfortable, Your Honour, with mandatory duty as recorded.

27 JUDGE THOMPSON:

28 Well, I would not put it as high as that. I will just say statutory obligation.

29 MR. CÔTE:

30 I think --

31 JUDGE THOMPSON:

32 In other words, more or less differentiating it from some exercise of prosecutorial discretion based on  
33 extra legal considerations or a mixture of extra legal and socio-cultural considerations.

34 MR. CÔTE:

35 Yes.

36 JUDGE THOMPSON:

37 It is that kind of thing my mind is focusing on.

1 MR. CÔTE:

2 Yes.

3 JUDGE THOMPSON:

4 And I appreciate the response.

5 MR. CÔTE:

6 But it is certainly, like I say, the amendment that we seek leave for is introducing in front of this Court  
7 a new chapter of evidence that was recently discovered which we believe that we have a duty to  
8 submit to this Court and that the Accused shall respond to that.

9 JUDGE THOMPSON:

10 Yes. Well, as I say, it has been very innovative because I never knew about the concept, as we had it  
11 in another situation, of bush wife phenomenon and it is quite a learning experience.

12 MR. CÔTE:

13 And just to add on this, like I said yesterday, the idea here is to give an opportunity for the Prosecution  
14 to characterise the concept of bush wives, or forced marriage as it was known in this country, under a  
15 different legal concept, which is an inhuman act, and we believe that it goes beyond sexual slavery.  
16 And this is the reason why we seek leave on this particular item because we will not be able to argue  
17 it in front of you at the end of the trial if we don't have the legal count of other inhuman act, crimes  
18 against humanity.

19 JUDGE THOMPSON:

20 Right, thank you. Well, we will give the Defence just three minutes each to comment -- or two minutes  
21 each to comment, before we have questions for you too.

22

23 Right, counsel for the first Accused

24 MS. WHITAKER:

25 May I say Your Honours have identified some clearly highly relevant questions. I think our responses  
26 are fairly fully encapsulated in our written response to the application. But in response to some of the  
27 questions, the dispute about the service of the evidence is because it was served as we drafted our  
28 response, I believe it was, and it certainly hadn't reached me by the time I filed the response on the  
29 19th of February. So, although I think it had been filed by the time their reply was served, we've  
30 certainly had no notice at all, although I am surprised to hear that in fact as early as November the  
31 Prosecution had decided the charges were in a form which they were intending to apply to amend or  
32 add. And yet, they chose not to mention this at the joinder hearing, a highly relevant matter, in my  
33 submission, or indeed to give us notice of it until we received the application in February.

34

35 Clearly, in our submission, as we said in our written response, not only does the amendment, if  
36 allowed, put us back effectively in the starting position of the preparation of our defence, inevitably  
37 delaying the trial, but, we submit, that all the preliminary motions would have to be re-opened.

1

2 We submit that in relation to child soldiers, concessions made by the Defence, because it was outside  
3 the indictment period that we were then faced, are now being used by the Prosecution in a manner  
4 that amounts to an abuse of your processes. We would certainly require re-arguing that issue, and  
5 indeed, also the Lomé Accord which we hadn't submitted any representations on because at that  
6 stage all our allegations were pre the Lomé Accord.

7 JUDGE THOMPSON:

8 So what else will you be filing for amendment, motions you have already (*inaudible*)?

9 MS. WHITAKER:

10 Child soldiers would have to be fully re-argued, amnesty, the effect of amnesty, because we did not --  
11 because they were pre-Lomé and there would, in my submission, inevitably be new preliminary  
12 motions arising out of the definition of (*inaudible*).

13 JUDGE THOMPSON:

14 Actually we just wanted to confine you to that particular aspect. I will ask -- thank you very much,  
15 Counsel.

16

17 Mr. Pestman, what -- along the same lines, in the light of the questions that we have asked and the  
18 answers we have received.

19 MR. PESTMAN:

20 Yes, I would like to make one comment.

21 JUDGE THOMPSON:

22 Yes.

23 MR. PESTMAN:

24 The Prosecution states in the consolidated reply that information they gave us about gender crimes  
25 was found in or collected in October and November of 2003 at paragraph 15 of the consolidated reply.  
26 I had a look at the information we received afterwards and none of the statements which relate to  
27 sexual violence were taken in November of 2003. Two of the statements were taken in October 2004  
28 (*sic*) and both on the 1st of October.

29 JUDGE ITOE:

30 2004? He said 2003.

31 MR. PESTMAN:

32 2003. So with the exception of two statements which were taken on the 1st of October 2003, all the  
33 others -- all of them were taken before that date, so that is simply not true to -- all the information.

34 JUDGE THOMPSON:

35 There is a factual inaccuracy there?

36 MR. PESTMAN:

37 Yes.

1 JUDGE THOMPSON:

2 Right. Thank you very much. Learned counsel for the third Accused, what preliminary motions will  
3 you be filing?

4 MR. MARGAI:

5 My Lord, I will be very brief in the light of all that has been said by my colleagues here on the Defence  
6 team. I only wish to add that any amendments sought at this late stage should take into consideration  
7 Article 17 of the Statute, the right to fair trial, because the operative word here is diligence. I mean, I  
8 was very pleased when you posed the question.

9 JUDGE THOMPSON:

10 Well, it's a right to a fair and expeditious trial, that is the concept.

11 MR. MARGAI:

12 Precisely, diligence. I mean, if I am alleging such very serious crimes against an individual and I have  
13 had over one year to investigate and I have already set the machinery into motion as far as applying  
14 for a joinder, because in applying for a joinder it presupposes that in fact the Prosecution --

15 JUDGE THOMPSON:

16 Is ready to move on.

17 MR. MARGAI:

18 -- precisely, My Lord, so I want you to take that on board. That's all, My Lord.

19 JUDGE THOMPSON:

20 We will take that on board.

21 MR. MARGAI:

22 Thank you.

23 JUDGE THOMPSON:

24 I like the terminology here. Prosecution, one short point?

25 MR. CÔTE:

26 No, no, just a short reply. I mean, without getting into the intricacies of the Prosecution investigation  
27 strategy, what I want this Court to understand is that when investigators go on the field they come  
28 back with information from witnesses, statements from witnesses. We took the stand that before filing  
29 any amendment or confirming any new counts that we are going to send lawyers in the field to confirm  
30 that information and to be sure that we are ready to amend. So what my colleague, Mr. Pestman,  
31 says it may be quite clear that there is some information that was brought as early as September, but  
32 before that we collect all that information and we send a team of lawyers responsible to meet those  
33 witnesses for sure that they were willing to collaborate and come to testify and confirm their  
34 statement. This is where the Prosecution side, not the investigation side, decided that, "Yes, we have  
35 enough here to submit it to the Court."

36 JUDGE THOMPSON:

37 I am sure counsel appreciate that, but of course they also -- they should protect the interests of their

1 clients.

2

3 MR. CÔTE:

4 Of course.

5 JUDGE THOMPSON:

6 Our next item is trial schedule. Here we ask two short questions before we wrap up, so to speak,  
7 these proceedings. One, how long does the Prosecution estimate its case to be? Tentative,  
8 provisional, how long are you going to take?

9 JUDGE BOUTET:

10 The worst case or the best possible case.

11 MR. CÔTE:

12 Well, if they plead guilty, no --

13 MR. JOHNSON:

14 Four to six months, Your Honour.

15 JUDGE THOMPSON:

16 Well, your case -- four to six months?

17 MR. JOHNSON:

18 Yes, four to six.

19 JUDGE THOMPSON:

20 Four to six months. All right.

21 JUDGE ITOE:

22 Four to six.

23 JUDGE THOMPSON:

24 Four to six months.

25

26 So then, if that is your tentative estimate, then we shift to the other enquiry here, that is a tentative  
27 date for a pre-trial conference. Remember this is a status conference, we have what is called a pre-  
28 trial conference and we have what is called a pre-defence conference, playing with all these new --  
29 these innovations. So what sort of date do we think is feasible for a pre-trial conference from your  
30 perspective, Mr. Prosecutor?

31 MR. CÔTE:

32 I will reiterate what I said yesterday because there is, in my sense, no difference in this case and the  
33 other cases. The Prosecution believe that it is important that we set the trial date to be able to start to  
34 disclose to the Defence, 42 days in advance, the identity of the witness. Yesterday we said to this  
35 Court that with a trial date which shall not be -- just set for the purposes of having disclosure of  
36 identity, but really to start the trial. And this Court shall keep that in mind if it comes to the opinion that  
37 a trial date should be scheduled.

1

2 The Prosecution also believe that a trial date in mid-May would be suitable for this Court, which  
3 means that we would not need a confirmation of that at the beginning of April from this Court. So if  
4 we can disclose information, non-redacted, to the Defence, we will avoid a lot of problems of redaction  
5 at that time because we are going to start to disclose the complete statement if we have a trial date in  
6 the middle of May, which I think is quite feasible.

7

8 To that extent, we are suggesting to have a pre-trial conference either at the beginning of April or  
9 exactly following the recess of this Court, which is the week of the 19th of April, which will then give us  
10 a full month to comply with any request of the Court.

11 JUDGE THOMPSON:

12 Just the beginning of April, you want to come here on April Fools' Day?

13 JUDGE ITOE:

14 It is in the Court recess.

15 JUDGE THOMPSON:

16 At the beginning of April --

17 MR. CÔTE:

18 I understood yesterday from this Court that maybe the first -- I would say the first opportunity after the  
19 recess.

20 JUDGE THOMPSON:

21 Yes, which would be about the 19th.

22 MR. CÔTE:

23 The 19th, the week of the 19th of April I think we can have all three pre-trial conferences in the three  
24 cases and be ready to move on for trial in mid-May. But again, if we don't have a trial date set before  
25 the trial conference -- the pre-trial conference --

26 JUDGE THOMPSON:

27 Yes.

28 MR. CÔTE:

29 -- then we may not be in a position to have a trial before the month of June --

30 JUDGE THOMPSON:

31 Yes.

32 MR. CÔTE:

33 -- considering the delay.

34 JUDGE THOMPSON:

35 All right.

36 MR. CÔTE:

37 But I think that to avoid any more further delay and to give the Accused a right to an expedited trial,

1 that we should have fixed a trial date for the middle of May and a pre-trial conference a month before.

2 JUDGE THOMPSON:

3 So setting a trial date would provide the catalyst, so to speak?

4 MR. CÔTE:

5 Well, the trial date – well, exactly, it will give us a date from which we can work with the Defence and  
6 try to give them all the witness statements in a non-redacted form.

7 JUDGE THOMPSON:

8 Well, the Chamber will take note of that. What is the Defence response to that proposal, it's a  
9 proposal?

10 MS. WHITAKER:

11 We welcome the setting of a trial date in mid-May on the current indictment. Of course, if leave is  
12 granted then the position --

13 JUDGE BOUTET:

14 Ms. Whitaker, you are going too fast.

15 JUDGE THOMPSON:

16 Slowly, slowly. You welcome --

17 MS. WHITAKER:

18 We welcome a trial date in mid-May on the current indictment. However, if leave is granted to amend  
19 it, the position will be completely different. But a date of April the 19th for a pre-trial conference  
20 sounds sensible as well.

21 JUDGE BOUTET:

22 In both scenarios?

23 MS. WHITAKER:

24 I'm sorry?

25 JUDGE BOUTET:

26 In both scenarios? You were saying that if we are proceeding on the actual indictment you would be  
27 ready to proceed?

28 JUDGE THOMPSON:

29 That's scenario one.

30 MS. WHITAKER:

31 In terms of the pre-trial conference, I think --

32 JUDGE BOUTET:

33 That's what I mean, yes. Either scenario you would be prepared for a pre-trial conference --

34 JUDGE THOMPSON:

35 On the 19th?

36

37 JUDGE BOUTET:

1 -- on 19th of April?

2

3 MS. WHITAKER:

4 Your Honour, I think it would be helpful in either scenario, yes.

5 JUDGE THOMPSON:

6 That is helpful, yes. Mr. Pestman.

7 MR. PESTMAN:

8 Yes, I completely agree.

9 JUDGE THOMPSON:

10 Thank you. And Mr. Margai?

11 MR. MARGAI:

12 I agree, My Lord.

13 JUDGE THOMPSON:

14 Well, again, I think --

15 MR. CÔTE:

16 Just for scheduling purposes, Your Honour --

17 JUDGE THOMPSON:

18 Yes.

19 MR. CÔTE:

20 -- I think you have to keep in mind that the 19th, as such, is not a good date considering the fact of  
21 everybody coming back from the recess --

22 JUDGE THOMPSON:

23 Yes, that's just a proposal. Yes, quite.

24 MR. CÔTE:

25 -- will be on that flight on the 19th. My colleagues will fly in certainly on the 19th.

26 JUDGE BOUTET:

27 You understand how many holidays, public holidays, are there at the end of April in Sierra Leone.

28 MR. CÔTE:

29 At the end of the month, yes.

30 JUDGE BOUTET:

31 So we will notify a suitable date.

32 MS. WHITAKER:

33 A convenient date around that time.

34 JUDGE BOUTET:

35 It may not be the 19th, it may be the 20th or 21st, but around the 19th.

36 MR. CÔTE:

37 Yes.

1 JUDGE THOMPSON:

2 Well, counsel, thank you very much. This has been, from our perspective, extremely productive and  
3 we assure you that we will take into consideration all the points that have been made and see what  
4 package we can come out in terms of consequential orders from the Chamber, and we will continue to  
5 work with you so that we can get to the trial as quickly as possible.

6  
7 Again, I want to thank you for your co-operation and I think this is the end of the hearing. So we will  
8 rise.

9 *(Court Adjourned at 5.40 p.m.)*

10 *(Pages 1 – 106 by Susan G. Humphries)*

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CERTIFICATE

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

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

\_\_\_\_\_  
Susan G. Humphries