



Case No. SCSL-2003-01-PT

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.

CHARLES GHANKAY TAYLOR.

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22 September 2006

2:00 p. m.

STATUS CONFERENCE

TRIAL CHAMBER II

Before the Judge:

Julia Sebutinde

For Chambers:

Mr. Simon Meisenberg

For the Registry:

Mr. Herman von Hebel

For the Prosecution:

Mr. Christopher Staker

Ms. Wendy Van Tongeren

For the accused Charles Ghankay

Mr. Karim Khan

Taylor:

Mr. Roger Sahota

2 THE REGISTRAR: This is a Status Conference pursuant to  
3 Rule 56 in the case of the Prosecutor of The Special Court for  
4 Sierra Leone versus Charles Ghankay Taylor, case number  
14:03:23 5 SCSL-03-01-PT, the Honourable Justice Sebutinde presiding.

6 JUDGE SEBUTINDE: Good afternoon, Ladies and gentlemen.  
7 Welcome to the second pre-trial Status Conference in preparation  
8 for this particular trial.

9 I wish to begin the proceedings by recording the  
14:03:49 10 appearances. I'll start with the Prosecution side, please.

11 MR. STAKER: May it please Your Honour, for the  
12 Prosecution, Christopher Staker; with me, Ms. Wendy van Tongeren.

13 JUDGE SEBUTINDE: Thank you.

14 And for the Defence?

14:04:06 15 MR. KHAN: If it please Your Honour, Karim Khan for the  
16 accused. And I have the pleasure to introduce for the first time  
17 my legal assistant, Mr. Roger Sahota.

18 JUDGE SEBUTINDE: Thank you.

19 I also wish to recognize at this Status Conference the  
14:04:26 20 presence of the Registrar of the Special Court, Mr. Lovemore  
21 Munlo, his deputy, the Deputy-Registrar, Mr. Herman von Hebel. I  
22 also wish to recognize the Principal Defender, Dr. Vincent  
23 Nmechiele, and, of course, the legal officer for Trial Chamber  
24 II, Simon Meisenburg.

14:04:56 25 Now, the agenda for this Status Conference - and I  
26 understand we have two hours to plow through quite a number of  
27 items this afternoon - the agenda for the -- rather, a  
28 provisional agenda for this conference was published on the 4th  
29 of August by the Trial Chamber in its Scheduling Order, inviting

1 the parties to submit any additional items by the close of last  
2 Friday, the 15th. To the best of my knowledge, no additional  
3 items were filed. I therefore assume that the parties are happy  
4 with the provisional agenda as is. But, in any event, the last  
14:05:42 5 item on that agenda is AOB, and that usually gives the parties an  
6 opportunity to raise any other pertinent issues to the trial.

7 I'm really anxious for the parties to keep their  
8 submissions to a minimum and to avoid repetition because of the  
9 time constraints. We would like to cover as much ground as  
14:06:07 10 possible.

11 Turning to the agenda, the provisional agenda which now  
12 becomes the agenda of the Status Conference, I think I'm going to  
13 reorganize it a bit and start with item number 2, which is the  
14 composition of the Prosecution and the Defence teams in as far as  
14:06:38 15 you are able to say at this stage.

16 Maybe we'll start with the Prosecution side, because you've  
17 had much longer to organize yourselves.

18 MR. STAKER: Thank you, Your Honour. I am, of course, the  
19 Acting Prosecutor of the Special Court. Your Honour will be  
14:06:55 20 aware, the Trial Chamber will be aware, that Mr. Jim Johnson is  
21 the Chief of Prosecutions.

22 As to the Taylor team itself, with me at the bar table  
23 today is Ms. Wendy van Tongeren, who at present is the most  
24 senior lawyer on the team for this case. Others who are not with  
14:07:17 25 us in court and may not be familiar to the Bench because at this  
26 stage of the proceedings we do not regularly appear before the  
27 Bench, are Mr. Alain Werner, Ms. Shyamala Alagendra, Ms. Leigh  
28 Lawrie, and we have at present an intern assigned to the team,  
29 Ms. Ruth-Mary Hacker.

1 Now, we anticipate that there will be other members who  
2 will be recruited to the team in due course and they will become  
3 known at that appropriate time.

4 JUDGE SEBUTINDE: Thank you, Mr. Staker.

14:08:03 5 Could I call upon Mr. Karim Khan.

6 MR. KHAN: Of course, Your Honour. After that galaxy of  
7 stars that he's assembled against Mr. Taylor on behalf of the  
8 Prosecution, the Defence composition is, of course, far more  
9 modest. It is myself as lead counsel, my learned friend -- my  
10 friend Roger Sahota, who is a solicitor of the Supreme Court of  
11 England and Wales. We have recently signed a legal services  
12 contract with the Principal Defender, and I believe that's with  
13 the Registrar for consideration. Under that, we are entitled to  
14 one additional co-counsel.

14:08:42 15 Your Honour, in addition, very kindly I do have, and the  
16 court has been informed of this, I do have at my disposal at the  
17 moment legal advice, to me as opposed to the team at large, from  
18 Michael Mansfield, Q.C., Ben Emmerson, Q.C., and Mr. Rodney  
19 Dixon. All three are members of the English bar and they are  
14:09:09 20 assisting me at this stage.

21 But, Your Honours, as far as the legal and formal  
22 composition, it is myself and Mr. Roger Sahota at the moment.

23 JUDGE SEBUTINDE: Thank you, Mr. Khan. That is encouraging  
24 news, because I was beginning to get concerned, and so are my  
14:09:27 25 colleagues in Freetown, Trial Chamber II, the Judges of Trial  
26 Chamber II, because it's been long since you told us that you  
27 have a full Defence team. And I know that investigations can  
28 only begin in earnest with a full Defence team. But at least the  
29 fact that you've signed a contract now as -- officially assigned

1 counsel, and simply awaiting co-counsel is, indeed, good news.

2 MR. KHAN: Well, Your Honour, I'm much obliged for that. I  
3 should say, for the sake of clarity, I've signed it and the  
4 Principal Defender has signed it. It is with the Registrar for  
14:10:09 5 consideration. It's not totally completed yet, so I don't want  
6 to misrepresent.

7 Your Honour, I think it's fair to say that there's been no  
8 tardiness on the part of the Defence. One reason why a legal  
9 services contract was not signed previously, in all fairness and  
14:10:25 10 in all candour, is simply because no budget had properly been put  
11 in place. I think many people were taken aback at the speed of  
12 transfer of Mr. Taylor to the location here in The Hague, and of  
13 course that has budgetary implications. It was only once the  
14 Registry had managed to look at its coffers to see what was

14:10:44 15 available that a budget proposal could be put forward. And the  
16 first time it was put forward to Defence counsel, it was signed  
17 there and then.

18 So, Your Honour, there has been no tardiness on the part of  
19 the Defence and no extensive negotiations regarding it either.

14:10:58 20 JUDGE SEBUTINDE: I appreciate that very much, Mr. Khan.

21 I wonder if the Principal Defender has anything additional  
22 to say in that regard?

23 MR. NMEHIELLE: Well, I just want to add that -- yes, to  
24 confirm, indeed, that a legal services contract has been signed  
14:11:18 25 between myself and Mr. Karim Khan as assigned counsel. And, of  
26 course, under the terms of the legal services contract, it is  
27 within his purview to constitute his legal team, and I expect him  
28 to do that in terms of having another -- a co-counsel and  
29 possibly another counsel, if he wishes, to make the team a team

1 of four - lead counsel, two co-counsel and a legal assistant,  
2 possibly. But he has a choice as to how he wants to go about  
3 that.

14:11:54 4 I will forward the contract, of course, for the attention  
5 of the Registrar. But I can very well say that this is a fait  
6 d'accompli, more or less, in terms of signing a legal services  
7 contract.

8 JUDGE SEBUTINDE: Thank you, Mr. Principal Defender.

14:12:10 9 MR. KHAN: Ma'am, I don't want to be like a jack-in-a-box,  
10 but just for the sake of clarity, I will say -- and these are  
11 documents which Your Honour can have access to. They are  
12 confidential documents, but there's no objection for Your Honours  
13 having access to them. The proposal put forward and the budget,  
14 it was agreed, was on the basis of one lead counsel, one  
14:12:24 15 co-counsel, one legal assistant. An investigator is separately  
16 funded by the court. That's the basis of the budget that was  
17 agreed. If more is also available, of course -- more funds are  
18 available, of course they would be most gratefully and willingly  
19 accepted.

14:12:40 20 JUDGE SEBUTINDE: Mr. Khan, thank you. It will not be  
21 necessary for me or the Trial Chamber to inspect the private  
22 contract signed by yourselves. We don't go into those matters.

23 Now, if we could --

24 MR. STAKER: Your Honour.

14:12:56 25 JUDGE SEBUTINDE: Sorry, Mr. Staker. Yes, please.

26 MR. STAKER: If I could just make one comment on that. Of  
27 course, the size and the composition of the Defence team is not a  
28 matter that the Prosecution would involve itself in. But just  
29 for sake of clarification, I'd be interested to know, for the

1 record, whether the Defence is, in fact, availing itself of the  
2 full entitlements to which it could avail itself of under the  
3 legal aid system as it exists at the Special Court. If it is  
4 not, of course that's a matter for the Defence. But if it is the  
14:13:35 5 case that full use of the legal aid system is not being used,  
6 then we would understand that is a conscious choice and would not  
7 be invoked as a reason for the length of time required for  
8 various procedures, that it would not be raised that because of  
9 the small size of the Defence team, that more time is needed for  
14:13:55 10 the various procedures.

11 JUDGE SEBUTINDE: Mr. Staker, I would like to imagine that  
12 your concern with the size of the Defence team is purely with a  
13 view to ensuring that investigations are expeditiously carried  
14 out. But I would like to hear what Mr. Khan has to say in that  
14:14:15 15 regard.

16 MR. KHAN: Your Honour, I think I mentioned, whilst the  
17 Prosecution may continuously assert they have no interest in the  
18 composition and size of the Defence team, of course sometimes  
19 words speak just as loudly as actions.

14:14:31 20 Your Honour, on the last occasion before His Honour Judge  
21 Lussick, the Prosecution once again seemed to delve into the  
22 composition of the Defence team, and, Your Honour, that  
23 transcript is before you. The Defence made it abundantly clear  
24 that the composition of the Defence team is not and has not been  
14:14:52 25 preyed in aid at any stage as a reason for further time to  
26 prepare this case. Whatever can be done as far as the pre-trial  
27 preparation of Mr. Taylor is concerned is being done.

28 A legal services contract has only just been signed, but,  
29 Your Honour, it would be foolish for any counsel not to utilize

1 whatever resources have been made available under a legal  
2 services contract. And certainly I would like to think this  
3 counsel at least is not quite, in that regard at least, that  
4 foolish.

14:15:27 5 JUDGE SEBUTINDE: I think the matter has been well taken on  
6 both sides, and we'll leave it at that and move to the second --  
7 what would have been the first, but the second agenda item, which  
8 is the most important in my view, and that is an update from the  
9 parties on compliance with the disclosure obligations under the  
10 various Rules of Procedure and Evidence; namely, Rules 66, 67 and  
11 68 of the Rules of Procedure.

12 May I start by calling on the Prosecution. If the  
13 situation has changed from the first Status Conference, I  
14 wouldn't want you to repeat what you submitted in that Status  
14:16:10 15 Conference. But if there is any progress, I would like to hear  
16 that.

17 MR. STAKER: Yes, Your Honour, indeed, there has been some  
18 significant progress in that regard, and I can update you in that  
19 respect.

14:16:28 20 To begin first with one preliminary matter, there was a  
21 meeting on the 23rd of August between the parties and the  
22 Deputy-Registrar. I understand that the Bench has been informed  
23 of the occurrence of that meeting and indeed the content of what  
24 the exchanges on that occasion were.

14:16:49 25 JUDGE SEBUTINDE: That's correct, Mr. Staker. That's  
26 correct.

27 MR. STAKER: One of the matters that was discussed at that  
28 meeting was the timing of the provision by the Prosecution of a  
29 provisional witness list. At that meeting it was left on the



1 basis that the Prosecution would provide such a list, if  
2 possible, by this Status Conference and, in any event, by the end  
3 of this month.

4 I can advise Your Honour that this list was, in fact,  
14:17:22 5 provided to the Defence immediately before the commencement of  
6 this hearing today. Because it has only just occurred, I expect  
7 that my colleagues from the Defence may not be in a position to  
8 say anything in particular about it at this stage. But, in the  
9 view of the Prosecution, this is a major and significant step in  
14:17:50 10 the furthering of these proceedings.

11 To give some idea, just a brief overview of what the list  
12 is, it lists witnesses in a number of different categories. Some  
13 witnesses have been categorized as predominantly linkage  
14 witnesses; that is to say, that although some evidence they may  
14:18:20 15 give may be related to the crime base, they are being called  
16 predominantly for the purposes of showing linkage. Some have  
17 been categorized as predominantly crime base witnesses. We've  
18 also given indications of the areas in which we anticipate  
19 calling expert evidence and the categories of specialist areas on  
14:18:41 20 which the experts might be called.

21 We --

22 JUDGE SEBUTINDE: Mr. Staker, sorry to interrupt. Are you  
23 saying that on this list which you've served on the Defence,  
24 these categories are indicated?

14:18:54 25 MR. STAKER: Yes, yes, that's correct. They are further  
26 divided also into a core list and a backup list. What the  
27 figures then amount to are 133 witnesses on the core list, who  
28 are predominantly linkage or predominantly crime base, and  
29 additionally we've indicated that we would anticipate calling

1 between 14 and 19 expert witnesses. That means on the core list  
2 we have at present a maximum indicated of 152 witnesses.

3 Now, we make clear this is a provisional list. As matters  
4 progress, further witnesses may be added and, indeed, some  
14:19:43 5 witnesses on the list may be dropped. But at the last Status  
6 Conference, a figure that was being aired was something in the  
7 order of 180 witnesses if the Prosecution had to prove the entire  
8 case. We're now looking on this list at a figure of 152.

9 Now, of course, if there is significant agreement on facts  
14:20:07 10 with the Defence, that number may reduce considerably. As I say,  
11 of course, there may be further witnesses that are added.

12 In addition to those witnesses, the backup list contains a  
13 total of 121 witnesses. Being on the backup list, of course, it  
14 is anticipated that they would only be called in substitution of  
14:20:32 15 witnesses on the core list.

16 So this gives an indication of the size of the case that we  
17 are anticipating at this stage of the proceedings.

18 One thing that was discussed at the meeting on the 23rd of  
19 August was whether the provisional list could give an indication  
14:20:53 20 of which witnesses we would expect to be called to give live  
21 testimony and which witnesses might be candidates for Rule 92  
22 bis.

23 We ultimately concluded that this was something that we  
24 could not meaningfully do. It would be simple enough for us to  
14:21:15 25 try and make some kind of guess. I think we could say as a rule  
26 of thumb we would anticipate that predominantly crime base  
27 witnesses would be candidates for Rule 92 bis; linkage witnesses  
28 would be candidates for live testimony.

29 But, of course, until negotiations have been conducted with

1 the Defence, which were also foreshadowed at the earlier meeting,  
2 negotiations into the possibility of agreeing on facts, until we  
3 know what's agreed and what's in dispute and what, following any  
4 agreement, is a very central issue and what is a peripheral  
14:21:55 5 issue, it would really not be meaningful prior to that to try and  
6 give any indication of which witnesses would be required to be  
7 called live and which might be 92 bis witnesses.

8 Now, moving on from that to the status of disclosure, if I  
9 begin with Rule 66(A)(i) and (ii) disclosure, the Prosecution has  
14:22:26 10 made disclosure packages -- given disclosure packages to the  
11 Defence on the 17th of May, the 11th of August, the 30th of  
12 August, and a package of material was given to the Defence again  
13 today, again just immediately prior to the commencement of this  
14 Status Conference.

14:22:48 15 Some of the witnesses of which Rule 66 disclosure was  
16 previously made have not made it to the provisional witness list.  
17 This is for a number of reasons. Some may not have been willing  
18 to testify; a number, in fact, are now deceased. And there are  
19 some witnesses on a provisional list of which disclosure had not  
14:23:15 20 been previously made. But we're now at the stage that Rule 66  
21 disclosure has been made of all witnesses on the core list, other  
22 than two in respect of which some permission will need to be  
23 sought before disclosure can be made.

24 As to witnesses on the backup list, there are some  
14:23:38 25 witnesses in respect of which disclosure has not yet been made.  
26 We anticipate that being completed within a week from today. And  
27 on that basis, on a week from today, Rule 66(A)(i) and (ii)  
28 disclosure will be up to date.

29 Now, I don't know if it may be convenient - I'm in Your

1 Honour's hands - if my colleagues for the Defence want to address  
2 that aspect of disclosure before we move on to Rule 66(A)(iii) or  
3 Rule 67 and Rule 68.

14:24:21 4 JUDGE SEBUTINDE: Okay. Let me give Mr. Khan -- Mr. Khan,  
5 do you wish to address this issue?

6 MR. KHAN: Well, Your Honour, it's a matter for you. I'm  
7 very happy to deal with disclosure in one go to save time. So  
8 perhaps if my learned friend, with your leave, completes his  
9 submissions regarding the state of the Prosecution disclosure,  
14:24:34 10 and I will respond to it in toto.

11 JUDGE SEBUTINDE: Okay. Thank you, Mr. Khan.

12 Mr. Staker, you might perhaps take us through the three  
13 rules.

14 MR. STAKER: Rule 66(A)(iii), the Defence has previously  
14:24:54 15 indicated its intention to invoke this rule. We note that, under  
16 the terms of that rule, disclosure is made by the Prosecution  
17 upon a showing by the Defence of the categories of those items  
18 that it considers to be material, material being a reference to  
19 material that is material to the preparation of the defence.

14:25:19 20 The Prosecution has not received any such request from the  
21 Defence to date, so at this stage we have no request under that  
22 provision on which we can act. But if we were to receive such a  
23 request, it would be dealt with at that time.

24 As to Rule 67 disclosure, we recall that at the last Status  
14:25:45 25 Conference, and again at the meeting with the Deputy-Registrar on  
26 the 23rd of August, the Defence indicated that it did not intend  
27 to offer any defence of alibi or special defence. We would ask  
28 the Defence to indicate if there's been any change in that  
29 position. We presume there hasn't.

1 We note that Rule 67(B) provides that failure to provide  
2 such notice does not prevent an accused from relying on any such  
3 defence, but Your Honour will, of course, be aware of the recent  
4 decision of Trial Chamber II on the 26th of July in the AFRC case  
14:26:28 5 to the effect that the failure of -- failure to give notice of a  
6 defence of alibi may be taken into account in assessing  
7 credibility. Now, this is presumably moot if the defence is not  
8 going to be raised, but I simply note that.

9 We note also that the Defence has indicated at the meeting  
14:26:49 10 with the Deputy-Registrar that it does not intend to file a  
11 defence case statement. Again, if there's been any change in  
12 that position, I'm sure Mr. Khan will let us know. On that  
13 front, I would merely note that the purpose of the defence case  
14 statement is to assist the Prosecution with its disclosure  
14:27:10 15 obligations under Rule 68. It may have been a way of progressing  
16 the case a little more speedily, but we don't seek to make any  
17 issue of that.

18 As to Rule 68, the material that has been disclosed to the  
19 Defence so far has included amounts of Rule 68 material. The  
14:27:37 20 Prosecution is aware that Rule 68 is an ongoing obligation, that  
21 the Prosecution is required to continue to review material in its  
22 possession with Rule 68 in mind. As new material comes in to the  
23 Office of the Prosecutor, it is reviewed, including for Rule 68  
24 purposes. Review of material already in the possession of the  
14:28:06 25 Prosecution is ongoing. We would expect that by the end of  
26 November we will have completed a review of all witness  
27 statements presently in the possession of the Prosecution.

28 I think that is all that we, on the Prosecution side, would  
29 have to raise on the matter of disclosure at this stage.

1 JUDGE SEBUTINDE: I don't know. Maybe this is the right  
2 stage for me to mention this. It is an issue that indeed did  
3 arise during your meeting, the parties' meeting, chaired by  
4 Mr. von Hebel in August. This is the issue of the request by the  
14:28:56 5 Defence that the disclosures really should be sorted according to  
6 the rules. I am aware that there is no legal obligation to do  
7 this. I'm also aware that there is no practice in the Special  
8 Court. But I'm just wondering whether the Prosecutor's office  
9 have changed their position at all from the views expressed in  
14:29:28 10 that meeting; namely, that they were not willing to sort this  
11 disclosure.

12 MR. STAKER: Your Honour, in the disclosure that was made  
13 on the 30th of August and again in the disclosure that was made  
14 today, the Prosecution did, in fact, identify material that was  
14:29:46 15 being disclosed specifically under Rule 68, and the intention is  
16 to continue that practice.

17 What has never been the practice in any international  
18 criminal tribunal, as far as I am aware, would be for the  
19 Prosecution to indicate within a single document where there may  
14:30:10 20 be Rule 68 material, if the material is disclosed, for instance,  
21 under Rule 66(A). If the Prosecution discloses a witness  
22 statement and says, "This is a statement of a witness that the  
23 Prosecution intends to call," it would follow that the content of  
24 that statement is inherently inculpatory. It's obviously  
14:30:33 25 something that would be reviewed by the Defence. It's a matter  
26 for the Defence to decide whether they may find something within  
27 that that they feel may assist their own case.

28 JUDGE SEBUTINDE: Thank you, Mr. Staker.

29 I think this is a good place to call upon Mr. Khan to

1 respond.

2 MR. KHAN: Your Honour, I'm most grateful.

3 Your Honour, it's always a pleasure to hear my learned  
4 friend's submissions as they always invariably also include a law  
14:31:01 5 lecture as well as a submission as to the state of disclosure.

6 Your Honour, perhaps if I can deal with the issues raised  
7 by my learned friend in this way: I will deal with Rule  
8 66(A)(iii) first.

9 Your Honour, in my submission, and these were matters  
14:31:22 10 raised before the Deputy-Registrar in our meeting in Freetown, in  
11 short, my learned friend has got it wrong. Your Honour, you will  
12 see that Rule 66(A)(iii) has two limbs. The first limb relates  
13 to documents that are relevant to the preparation of the defence.

14 Your Honour, I pause whilst you just peruse the rule again and  
14:31:55 15 have it in mind. And Your Honour will see the second limb deals  
16 with documents that are relevant to the preparation of the  
17 defence. They are quite distinct, they are quite separate, and  
18 the obligation is separately and clearly spelled out.

19 Your Honour, of course there needs to be a showing by the  
14:32:19 20 Defence when the Defence seek to troll through the Prosecution  
21 archives. Fishing expeditions are not allowed despite the very  
22 eloquent distinction put forward by His Honour Judge Geoffrey  
23 Robertson recently in his dissenting opinion in the Hinga Norman  
24 case.

14:32:45 25 But, Your Honour, the second aspect is one of fairness. It  
26 simply states that documents that the Prosecution now at this  
27 moment in time -- and I pause there. The Prosecution, of course,  
28 state that they are trial-ready. That's their public  
29 protestation. They are ready for trial; bring it on. So

1 documents that they intend to rely upon at trial as exhibits have  
2 to be disclosed to the Defence, not upon a showing of good cause  
3 but as a right.

14:33:19 4 Your Honour, to that extent, in my submission, my learned  
5 friend's articulation of the scope of the rule is, with the  
6 greatest of respect, simply wrong. And it is my submission that  
7 I am entitled and the Defence of Mr. Taylor is entitled as of  
8 right for the disclosure detailed at least in the second limb.

14:33:40 9 Your Honour, this was raised in Freetown. A considerable  
10 amount of time has gone by. No exhibits, no maps, no documents  
11 have been served from the Prosecution, which is trial-ready, upon  
12 the Defence.

13 Your Honour, that's the matter for you --

14 JUDGE SEBUTINDE: Mr. Khan, to interject here, is it your  
14:33:57 15 submission that actually these books do exist - books, documents,  
16 accounts, et cetera - do exist as part of the Prosecution case?

17 MR. KHAN: Well, Your Honour, I'll come to that in a moment  
18 as well because that goes down to the disclosure officer and also  
19 to the exculpatory statement that, in my submission, the  
14:34:16 20 Prosecution is obliged to give.

21 But, Your Honour, unless the Prosecution say simply there  
22 are no documentary exhibits, no maps, no sketches, no photographs  
23 that they seek to rely upon at trial, then that rule bites. But,  
24 Your Honour, of course, if my learned friend stands up now and  
14:34:32 25 says there are no documentary exhibits, of course I will take him  
26 at his word.

27 JUDGE SEBUTINDE: So do I understand you to say that, to  
28 date, none of the disclosures includes any of this material? And  
29 so you assume that none has been disclosed.



1 MR. KHAN: Well, Your Honour, I think it's very largely  
2 true. There may be -- it's a huge morass of documents. There  
3 may be an occasional document thrown in. The purposes for which  
4 it is being disclosed is not clear. And perhaps that ties in  
14:35:04 5 with the Rule 66, 68, and as well as 73 rules. I mean, what  
6 documents are the Prosecution using for what purpose?

7 But, Your Honour, overwhelmingly it is my understanding  
8 that is correct, from the boxes of documents that we were  
9 disclosed initially on the 17th of May.

14:35:24 10 JUDGE SEBUTINDE: Yes. Of course I will give Mr. Staker a  
11 chance to respond to that particular submission, except maybe at  
12 this stage for me to comment on that Rule 66(A)(iii), which seems  
13 to put the burden -- well, there are two burdens. One is on the  
14 Prosecution to disclose, but the other is on the Defence to  
14:35:44 15 indicate, "upon a showing by the defence of categories of, or  
16 specific, books, documents, photographs and tangible objects  
17 which the defence considers to be material to the preparation of  
18 a defence ..."

19 So, if and when these disclosures are made, the burden  
14:36:05 20 would shift to the Defence to indicate which of these documents  
21 they would like to inspect further.

22 But, I mean, I need to hear from Mr. Staker at the  
23 appropriate time. Not now. I want you to finish your  
24 submissions, Mr. Khan.

14:36:23 25 MR. KHAN: Your Honours --

26 JUDGE SEBUTINDE: But this is what I see in this Rule  
27 66(A)(iii), that there are two obligations; the one on the  
28 Prosecution to disclose, but the other is for the Defence to  
29 initiate and indicate, for very logical reasons, because you're

1 in the best place to show that these documents would be material  
2 to the preparation of the defence case, once the disclosures have  
3 been made. That was just a comment that I think one would read  
4 into the rule.

14:36:56 5 MR. KHAN: Well, Your Honour, I'm most grateful for your  
6 insight. In my submission, it's a matter of statutory  
7 construction. It's never been the case, it's never been the case  
8 in any jurisdiction, in any criminal case, that the Defence tells  
9 the Prosecution what evidence it should adduce in a bid to  
10 convict its client. Your Honour, there is clear --

11 JUDGE SEBUTINDE: I don't think that was the suggestion,  
12 Mr. Khan.

13 MR. KHAN: There's a clear distinction under the rule  
14 between the morass of documents which the Prosecution may have  
15 control over but which it is not seeking to rely upon, that  
16 requires a showing of good cause by the Defence.

17 JUDGE SEBUTINDE: That is why I was --

18 MR. KHAN: And secondly --

19 JUDGE SEBUTINDE: That is why I was asking, Mr. Khan, for  
14:37:37 20 clarification. As of today, are you saying that the Defence has  
21 not received any kind of disclosure that is envisaged in  
22 66(A)(iii)?

23 MR. KHAN: Your Honour, that is actually my understanding.  
24 I haven't seen maps, for example. I don't even have a map of  
14:37:53 25 Sierra Leone provided by the Prosecution; I don't even have a map  
26 of Liberia provided by the Prosecution. And, in my submission,  
27 it's a matter of statutory construction. The second limb is very  
28 different. It deals not with what I want to see, what I want to  
29 use. It's my entitlement to know the case against me. It's my

1 entitlement, as Defence counsel, to see what the Prosecution  
2 seeks to use in its bid to convict my client. It goes down to  
3 equality of arms and to prevent trial by ambush.

14:38:27 4 Your Honour, in my submission, the second limb shows no  
5 showing of good cause by the Defence. It's a right. It's as  
6 simple as that.

7 Your Honour, perhaps if I move on.

8 JUDGE SEBUTINDE: Yes, please do. Please do.

9 MR. KHAN: Rule 68 -- well, Rule 67 first.

14:38:41 10 My learned friend mentioned the AFRC case. Your Honour, we  
11 are, of course, aware of our legal obligations. And perhaps we  
12 can set a principle down; one would hope that the Defence lives  
13 up to it. We try not to make fickle submissions. Wherever we  
14 state a position, perhaps it can be taken as continuing unless we  
14:39:02 15 seek to change that position before the Court.

16 So, Your Honour, there's no change from the Defence. We  
17 did consider the matter. We didn't just stand up and say, on a  
18 whim, that there was no special defence being offered. It was  
19 considered and there has been no change. If there is, of course  
14:39:18 20 Your Honours would be the first to know of it.

21 Your Honour, in relation to the case statement aspects,  
22 Your Honour, under 68, a case statement again is not required --  
23 sorry, a Prosecution statement that they have fulfilled their  
24 Rule 68 disclosure obligations is not predicated upon any action  
14:39:47 25 by the Defence. Again, Your Honour, it goes down to this basic  
26 concept that the Prosecution brings this case, the Prosecution  
27 must prove it, and in doing so, it must give full and frank  
28 disclosure to the parties to prevent trial by surprise.

29 Your Honour, if you look at the terms of Rule 68, and

1 particularly Rule 68(B), Your Honour, you will see that there is  
2 no obligation on the Defence to give a case statement. It simply  
3 states that within 30 days of the initial appearance - of the  
4 initial appearance - the Defence should be given a statement  
14:40:25 5 disclosing to the Defence existence of evidence known.

6 Your Honour, in my submission, the Prosecution are  
7 obligated, both under the Rules of Procedure but in any event as  
8 a matter of good prosecutorial practice, to show that they have  
9 turned their mind to the disclosure obligations under the rules.

14:40:47 10 Your Honour, of course I accept total good faith on the part of  
11 my learned friends. Your Honour, but -- there is an obligation  
12 to show that they have turned their mind to what are important  
13 responsibilities of ensure a fair trial, and they are, after all,  
14 not to strive officiously for a conviction but simply to present  
14:41:10 15 evidence in a fair manner.

16 Your Honour, I did mention on the last appearance before  
17 His Honour Judge Lussick that, in my most respectful submission,  
18 it would be at the very least a jolly good idea, to use an  
19 English expression, that the Prosecution appoint a disclosure  
14:41:31 20 officer to certify that the rules are being complied with.

21 Your Honour, there have been -- one can't be blind to the  
22 various difficulties raised in various international courts.  
23 Whilst the Prosecution may not have been formally sanctioned or  
24 disciplined, there has been a continuous vein of judicial  
14:41:48 25 criticism of disclosure practices before other ad hoc tribunals.  
26 My learned friend will be intimately familiar with Furundzija,  
27 with Krstic, with Halilovic. Your Honour, the list goes on. And  
28 time and time again, the Prosecution say, "Well, this has been  
29 overlooked; it's been a mistake; there's huge archives," and it

1 goes down to disorganization.

2 Your Honour, what I don't want to do - and I gave my  
3 I learned friends a heads-up in a meeting we had in Freetown - I  
4 don't want to be in a position months from now where I have an  
14:42:22 5 option of either alleging bad faith on the part of the  
6 Prosecution, a tactical surprise on the part of the Prosecution,  
7 incompetence or negligence. Your Honour, I will not, on behalf  
8 my client, be able to sit quietly by whilst late disclosure is  
9 produced that may very well, even if we are given time suddenly  
14:42:42 10 when a new document appears, may very well have impacted on the  
11 content and focus of previous cross-examination of Prosecution  
12 witnesses.

13 How, then, can the Prosecution guard against such  
14 eventualities? In my submission, it's for the Prosecution's own  
14:42:59 15 protection, as much as for a safety mechanism, for them to  
16 appoint a disclosure officer to certify that they have fulfilled  
17 their obligations under the rules.

18 Your Honour, His Honour Judge Lussick thought that a  
19 sensible idea on the last occasion.

14:43:17 20 JUDGE SEBUTINDE: You mean the one of disclosure officer?

21 MR. KHAN: Indeed, Your Honour.

22 Your Honour, the same principle applies for Rule 68, that  
23 the Prosecution have to show that they have turned their mind, in  
24 my submission as much as for good practice as anything else, that  
14:43:30 25 they have disclosed what is exculpatory evidence. That hasn't  
26 been done. In my submission, it ought to be done. And I would  
27 ask that Your Honour gives consideration to making a ruling on  
28 that point.

29 Your Honour, it's never been the Defence position at any

1 stage, neither today, nor at the very useful and constructive  
2 hearing before the Deputy-Registrar in Freetown, that the  
3 Prosecution are obligated to detail paragraph by paragraph within  
4 a statement what is Rule 68, what is Rule 66. That would be  
14:44:03 5 absurd, that would be onerous, and it is something that the  
6 Defence have never requested.

7 But, Your Honour, what we have requested, and it has  
8 applied before other international courts which may have some  
9 persuasive effect on Your Honour in considering this matter, is  
14:44:22 10 that rather than just dumping boxes of documents on a party, in a  
11 bid to focus the issues, in a bid to show that they have turned  
12 their mind to disclosure obligations rather than just emptied out  
13 cupboards into boxes, they have to, in my submission, detail why  
14 a document is being served. Is it because it is, in its totality  
14:44:44 15 or in part, Rule 68? Is it because it's Rule 66? Or why? Is it  
16 because they are intending to use it for trial under 73(F), I  
17 believe it is, or not? Your Honour, that has not been done.

18 In my submission, as far as trial management is concerned,  
19 as far as creating a safety net at an early opportunity to  
14:45:04 20 prevent a miscarriage of justice or unfairness to a party, that  
21 procedure can very painlessly be put in place. My learned friend  
22 has articulated a galaxy of stars, a constellation of people that  
23 are working around him that are all phenomenally able; they, the  
24 lawyers, without any mention of the investigators and the other  
14:45:25 25 resources at his disposal.

26 I cannot see for the life of me, Your Honour, with the  
27 greatest of respect, why there would be the slightest trepidation  
28 or reluctance on the part of the Prosecution to have such an  
29 officer simply sign off that they have fulfilled their legal

1 obligations under the rules. It is not a favour that the Defence  
2 are asking; it is a simple procedural safeguard.

3 Your Honour, in relation to the new disclosure, it has been  
4 served just before Your Honour came in. I haven't had an  
14:46:00 5 opportunity to go through it, although my learned friends, both  
6 the Acting Prosecutor and his -- and perhaps lead counsel in this  
7 case, have very ably given me a succinct summary and I'm very  
8 grateful for that courtesy.

9 Your Honour, it does appear that there are a very great  
14:46:18 10 number of witnesses. They all have to be prepared. I won't go  
11 on any longer. Perhaps that is relevant to the commencement date  
12 of the trial which will be dealt with a bit later.

13 Your Honour, if you will bear with me one moment, I need to  
14 consult, perhaps.

14:46:43 15 Your Honour, I'm very grateful for the assistance of my  
16 friend. As far as your previous question is concerned about the  
17 exhibits we've had, Your Honour, I stand by my submission that  
18 I'm not sure of the extent of disclosure. But for the sake of  
19 clarity, we were disclosed on the 17th of May one CD which had 15  
14:47:06 20 documents on it. Whether or not they are going to be exhibits or  
21 68 or they were just put in there, I don't know at this moment  
22 because that was not properly delineated.

23 On the 11th of August, the Prosecution very kindly, I must  
24 say, gave us 83 documents, which is said to be exhibits,  
14:47:23 25 including logs and letters, and also 97 open source documents.  
26 But, Your Honour, of course one looks at the number of  
27 Prosecution witnesses and then looks how they have whittled it  
28 down to 150, 160 - I don't know exactly how many - 153 core  
29 witnesses, never mind the pool that's a backup that perhaps we

1 can count on seeing some of.

2 But, Your Honour, there should be, in my submission, a  
3 statement from the Prosecution stating do we have all the  
4 exhibits or not. If we don't, under the rule that I have already  
14:47:56 5 made submissions on, we are entitled to those exhibits. But,  
6 Your Honour, some documents have been given. The extent to which  
7 the full exhibit list and documentary evidence has been disclosed  
8 is very much in issue. I am, for myself, extremely uncertain and  
9 doubtful that the Prosecution have properly served the exhibits  
14:48:17 10 that they intend to rely upon at trial.

11 So, Your Honour, to that material extent, my submission is,  
12 with the greatest of respect, unchanged.

13 Your Honour, I'm grateful of the time. Those are my brief  
14 responses, or my responses anyway, if not brief, to my learned  
14:48:34 15 friend's submissions, unless you have any questions at this  
16 stage, Your Honour.

17 JUDGE SEBUTINDE: No, thank you, Mr. Khan. I just want to  
18 afford Mr. Staker an opportunity to address particularly two  
19 things.

14:48:44 20 Mr. Staker, is the OTP withholding information, withholding  
21 exhibits?

22 MR. STAKER: Well, in my submission, certainly not, Your  
23 Honour. I think this may come down to a difference of view as to  
24 how the rules operate. Certainly the way the Prosecution has  
14:49:05 25 been conducting itself is in accordance with the procedures that  
26 have been applied in all previous cases before the Special Court.

27 Mr. Khan said that there was an issue of statutory  
28 construction about Rule 66(A)(iii). It would be our submission  
29 that if we do have a legal difference over a point of statutory



1 construction, that the appropriate method of resolving that would  
2 be by way of formal motion. I would submit that a Status  
3 Conference is not the appropriate forum for arguing them out  
4 extemporaneously, perhaps looking to an oral decision.

14:49:50 5 But if I could state our position succinctly, it is that,  
6 if one looks at the terms of Rule 66, it provides for an  
7 obligation to disclose witness statements. This is 66(A)(i) and  
8 (ii); that relates to witness statements. The practice in the  
9 Special Court, which I believe is a similar practice in other  
14:50:20 10 international criminal tribunals applying similar rules of  
11 procedure and evidence, is that it's at the stage of Pre-Trial  
12 Conference that orders are made setting deadlines for the  
13 provision by the prosecution of an exhibits list. There is  
14 nothing in the rules about disclosure of exhibits prior to that  
14:50:39 15 time, other than two provisions that may come into play.

16 The first is Rule 68. That means that where documents  
17 contain exculpatory material, there is an obligation to disclose  
18 those. And the other is Rule 66(A)(iii) where, as I say, it's  
19 not the practice for the Prosecution to disclose all documents  
14:51:06 20 somehow relevant to the case to the Defence at an early stage.  
21 It's at the Pre-Trial Conference stage that the exhibits to be  
22 used at trial are then specified. But if, at an earlier stage,  
23 the Defence says to the Prosecution, "We are conducting our  
24 investigations; it's material to the preparation of our defence  
14:51:29 25 that we find material related to issue X or Y or Z; we want to  
26 inspect any documents or material in your possession related to  
27 those issues," now, it may be that is a different understanding  
28 of the rule to Mr. Khan, but as I say, if there is an issue as to  
29 statutory interpretation, the appropriate way of proceeding would

1 be by way of formal motion.

2 If I might then perhaps proceed with the other points  
3 raised by Mr. Khan. He made the point in relation to Rule 67,  
4 that when he indicated that he wouldn't be raising certain  
14:52:16 5 defences, that wasn't said on a whim, and that if his position  
6 changes, he would say so; otherwise, we should take it as  
7 continuing. Well, I would express my regret to Mr. Khan if my  
8 comment in any way was taken as giving some kind of offence. All  
9 I was merely indicating was that the Prosecution wasn't seeking  
14:52:34 10 to bind the Defence by that and left open to the possibility that  
11 the Defence's position might have changed. But I'm perfectly  
12 happy to proceed on the basis, as Mr. Khan put it, and if we hear  
13 nothing from him, we'll take it that nothing has changed in that  
14 respect.

14:52:50 15 In relation to Rule 68, the question has been raised about  
16 a Rule 68 statement. From the Prosecution's perspective, we  
17 simply don't understand exactly what such a statement would be  
18 intended to say or who would provide it or on what basis. If one  
19 looks at --

14:53:16 20 JUDGE SEBUTINDE: Mr. Staker, are you talking about 68(B)?

21 MR. STAKER: Rule 68 -- yes.

22 JUDGE SEBUTINDE: 68(B). Because I think that is the rule  
23 that stipulates the obligations of the Prosecutor.

24 MR. STAKER: Yes.

14:53:35 25 JUDGE SEBUTINDE: All right.

26 MR. STAKER: The rule refers to a statement, but it will be  
27 seen that the rule does not refer to the Prosecution actually  
28 providing copies of documents or statements to the Defence.

29 Now, it's our submission that if we provide the actual

1 documents, that actually goes further than making a statement.  
2 If one looks at the wording of the rule, one can imagine that it  
3 would be possible to comply with the rule by providing the  
4 Defence with a written statement saying, "The Prosecution is  
14:54:08 5 aware of the following persons who might be able to give  
6 testimony as witnesses that would be exculpatory to the Defence,"  
7 and list the names of those witnesses; or "The Prosecution is  
8 aware of the existence of the following documents which may  
9 contain exculpatory material." Now, that, in my view, would be a  
14:54:29 10 statement that would comply with the wording of that rule.

11 If the Prosecution then goes further, not simply making  
12 such a statement but actually providing the Defence with those  
13 witness statements and providing the Defence with copies of those  
14 documents, it's gone beyond the obligations under that rule.  
14:54:48 15 It's simply not clear to the Prosecution what further step this  
16 rule would impose an obligation on the Prosecution to do.

17 JUDGE SEBUTINDE: Mr. Staker, what are you, in fact,  
18 saying? Are you, in fact, saying that as far as you are  
19 concerned, the OTP has complied with Rule 68(B) by their normal  
14:55:12 20 disclosure, without an accompanying statement indicating the  
21 exculpatory nature of the evidence? Are you saying that the OTP  
22 is satisfied that that's what they've done?

23 MR. STAKER: There may be two different issues that are  
24 being confused here. One is, when material is disclosed to the  
14:55:37 25 Defence, should an indication be given to the Defence that  
26 certain material is Rule 68 as opposed to being disclosed for  
27 some other reason or under some other rule. As I said in the  
28 last two disclosures made by the Prosecution, we have given that  
29 indication, and that will be the practice of the Prosecution in

1 the future. And it would be the hope of the Prosecution that  
2 that is no longer an issue.

3 The other question relates to compliance with the terms of  
4 the rule, the obligation to disclose material that's exculpatory.  
14:56:12 5 I've given an overview earlier in this Status Conference of what  
6 the status of that is. Of course, the rules recognize that Rule  
7 68 is an ongoing obligation. New material continues to come into  
8 the possession of the Office of the Prosecutor. As material  
9 comes in, it is reviewed, reviewed including for 68 purposes, and  
14:56:39 10 disclosure will be made if it is found to fall within Rule 68.  
11 In addition, the Prosecution continues to examine other material  
12 in its possession and further disclosures under Rule 68 may be  
13 made.

14 My point is that Mr. Khan said that it's necessary to show  
14:56:59 15 that the Prosecution has turned its mind to the question of  
16 disclosure. In my submission, the fact that documents have been  
17 disclosed, the fact that our current practice is to indicate  
18 where material is disclosed specifically under Rule 68, further  
19 inherently indicates that the Prosecution has turned its mind to  
14:57:20 20 the question.

21 Where disclosure is made, covering letters have been  
22 provided to the Defence indicating what is in the package of  
23 disclosure material that's being made. I would find it difficult  
24 to imagine that someone would suggest that when disclosure is  
14:57:39 25 made it's simply been a case of trolling through a cupboard and  
26 dumping boxes of materials on the Defence. I think the covering  
27 letters indicate that this has been material that has been  
28 reviewed.

29 On that basis, I would simply reiterate: The Prosecution

1 does not understand what further purpose the statement would  
2 serve. But further than that, the Prosecution also does not  
3 understand who would make such a statement, and on what  
4 authority, and what this statement would say, other than the  
14:58:13 5 Prosecution has complied with its obligations.

6 JUDGE SEBUTINDE: You mean under Rule 68(B)?

7 MR. STAKER: Under Rule 68(B).

8 JUDGE SEBUTINDE: You're saying you don't understand who  
9 has the obligation under Rule 68(B) to make such a statement?

14:58:27 10 Because, in my view, it's very clear. "The Prosecutor shall,  
11 within 30 days of the initial appearance of the accused, make a  
12 statement ..." But, like you said, Mr. Staker, it is a statement  
13 disclosing the existence of evidence. And then the rule goes on  
14 to end: "The Prosecutor shall be under a continuing obligation  
14:58:52 15 to disclose any such exculpatory material."

16 Now, of course these are issues for a proper application  
17 before the Trial Chamber, but I was hoping that in the Status  
18 Conference we would at least agree on the obligations of each  
19 party and at least comply with and rule out the necessity of  
14:59:26 20 these applications. This is the whole point of these Status  
21 Conferences; to draw to a close understanding between the parties  
22 as far as possible.

23 In my opinion, Rule 68(B) is clear. There are no two ways  
24 about it. It is not similar to 66. It is not. It deals  
14:59:47 25 specifically with exculpatory material in favour of the accused  
26 person, and it lays two obligations on the Prosecution. One,  
27 within a time frame, 30 days of the initial appearance, to make a  
28 statement disclosing the existence of this evidence known, and on  
29 a continuing basis, to continue to make a statement whenever this

1 evidence comes up to the Prosecution's knowledge.

2 Now, I think what Mr. Khan was saying is that so far --  
3 well, at least until recently, there has not been this  
4 identification of exculpatory evidence as such. Everything has  
15:00:31 5 just been thrown into the same melting pot and passed over,  
6 disclosed under Rule 66. And I can appreciate that this would  
7 cause a difficulty for the Defence to sort out what is  
8 exculpatory and what is not, out of the entire basket of  
9 disclosures.

15:00:52 10 MR. STAKER: If I may, Your Honour. It seems that if there  
11 is a difference in view on the legal operation of these rules,  
12 then it may be a matter that has to be proceeded with by formal  
13 motion, unless perhaps that in discussions between the  
14 Prosecution and the Defence we can come to some understanding  
15:01:11 15 beforehand. But it would be my submission that differences on  
16 issues of law, even when it comes to interpretation of the Rules  
17 of Procedure and Evidence, are not matters that can be  
18 satisfactorily dealt with at a Status Conference.

19 JUDGE SEBUTINDE: I agree, Mr. Staker. Do you have  
15:01:31 20 anything else? I really want to wind up on this disclosure item  
21 and to move forward.

22 MR. STAKER: The only other point I would address would be  
23 the one relating to a disclosure officer.

24 JUDGE SEBUTINDE: Yes.

15:01:44 25 MR. STAKER: Again, there is nothing in the rules about  
26 that. It may be that the Chamber does have a power to order that  
27 if the Chamber chooses. But it's not in the rules; it's not  
28 something that's been ordered in other cases before the Special  
29 Court. And while it may have happened in one or more cases in

1 the Yugoslavia tribunal, it's certainly not the normal practice.  
2 And there, again, I recall that at the meeting on the 23rd of  
3 August with the Deputy-Registrar, the matter was left on the  
4 basis that if the Defence wanted to pursue it, they would file a  
15:02:16 5 formal motion.

6 JUDGE SEBUTINDE: Mr. Staker, while I appreciate this  
7 adversarial approach to every issue, let me ask you this: Do you  
8 see any advantage in the appointment by your office of such an  
9 officer? Any advantage to yourselves? Advantage in as far as  
15:02:34 10 your disclosure obligations would be handled in a particular way  
11 with the existence of this officer?

12 MR. STAKER: In our opinion --

13 JUDGE SEBUTINDE: Do you see any advantage for your office?

14 MR. STAKER: In our opinion, no, Your Honour. And that's  
15:02:50 15 not said with any sense of wanting to evade obligations or  
16 anything of that nature. We do not understand what the role or  
17 function of a disclosure officer would be and what the  
18 responsibilities resting upon a disclosure officer would be.

19 If I've understood correctly, what is being said is that a  
15:03:08 20 disclosure officer would sign off saying that that officer had  
21 personally reviewed all material for Rule 68.

22 JUDGE SEBUTINDE: Yes, and sorted it out according to Rule  
23 66, 67 or 68. Basically I think that's what the Defence --  
24 because it is a big obligation, it's a big -- it's a tedious job,  
15:03:30 25 and I think this was the spirit in which the Defence suggested  
26 that perhaps a specific officer, who is responsible for this kind  
27 of assignment, could be appointed. They suggested it.

28 I'm aware that the OTP is an independent body. The Trial  
29 Chamber cannot order it to change its modus operandi. That is

1 why I'm appealing to you and saying to you, could you reconsider  
2 and see if there's any advantage, mutual advantage, in the  
3 appointment of such an officer?

15:04:09 4 MR. STAKER: Well, if I've understood Your Honour, you're  
5 requesting us to give it further consideration. We can certainly  
6 do that. I've stated our position, but we're happy to ponder it  
7 further.

8 JUDGE SEBUTINDE: Okay. Please proceed with -- I take it  
9 that you're done with your disclosure submissions.

15:04:25 10 MR. STAKER: Yes, Your Honour.

11 JUDGE SEBUTINDE: Thank you, Mr. Staker.

12 MR. KHAN: Your Honour, if I may be indulged. Hopefully  
13 I'll be very brief.

14 Your Honour, my learned friend's quite right that a  
15:04:39 15 disclosure officer is not detailed in the rules. But, Your  
16 Honour, neither is it detailed in the rules that there is the  
17 equivalent of a 65 ter type hearing that the Prosecution accepted  
18 to take part in with the Deputy-Registrar back in August in  
19 Freetown. That's not in the rules. But as a means of expediting  
15:04:59 20 this trial, not wasting court time, focussing the issues, the  
21 parties agreed mutually that we would submit to the -- being  
22 presided over by the Deputy-Registrar to focus the issues.

23 Your Honours, it would not be lost on anybody, never mind  
24 somebody -- someone and a team so experienced as that on the  
15:05:20 25 other side of this courtroom, that the first time of industrial  
26 action by any union is always work to rule. And, Your Honour, if  
27 one works to rule, one gets a Milosevic-type hearing. If the  
28 Defence insisted that everything be proved, which is their right,  
29 which cannot be complained of, we would get a four-year trial.



1 But, Your Honour, the parties, in my submission, have an  
2 obligation, as ministers of justice, to focus the issues. And,  
3 Your Honour, my interpretation of the rules - perhaps it's my  
4 Yorkshire and patine upbringing of a tribal people - it's very  
15:06:02 5 basic, very straightforward, uncomplicated. The rules basically  
6 mean what they say. And they are focused on what? Not some  
7 grand complicated theory but on ensuring an expeditious trial and  
8 a fair determination of the matter.

9 As I mentioned on the last hearing, Your Honour, none of  
15:06:16 10 this is rocket science. For my own part, I am personally --  
11 although, of course, filings can fly across the courtroom. For  
12 my own submission, matters of common sense can be dealt with  
13 summarily, either by way of oral ruling by Your Honours. But,  
14 Your Honour, if one descends to simply fighting for basic rights,  
15:06:37 15 which really are not a matter of huge controversy, one gets long  
16 trials that are needlessly complicated.

17 Your Honour, I'm grateful for my learned friend, and it's a  
18 great courtesy that he and his team have extended, that the last  
19 two disclosures have detailed what is Rule 66 and 68. Your  
15:06:55 20 Honour, I'm not binding them and saying that's an acceptance of  
21 their legal responsibility to do so. But it is surely indicative  
22 of a preference for such a precise type of disclosure. And all I  
23 would ask is that they do the same for the 17th of May disclosure  
24 as they have accepted to do in the two more recent batches of  
15:07:22 25 disclosure.

26 Your Honour, I won't see it to go further at the moment.  
27 It is my submission that Your Honours, as trial managers, as well  
28 as a tribunal of fact and law, do have the power to make orders  
29 on the Prosecution. It is precisely on that basis that your

1 brother judges in the Yugoslav tribunal made an order on the  
2 Prosecution to appoint a disclosure officer in the case of Sefer  
3 Halilovic. That's been mentioned before.

4 Your Honour, I do accept: The Prosecutor can't do every  
15:07:55 5 single task himself, but he may delegate that which is  
6 specifically provided for in the rules. Your Honour, the whole  
7 purpose of a disclosure officer would focus on exactly what my  
8 learned friend pleaded about: Who would give an exculpatory  
9 statement? Well, if the Prosecution appointed a disclosure  
15:08:16 10 officer, it's a matter for them. That person, it would seem as a  
11 matter of common sense, would be the perfect person to sign off  
12 and say, "At this moment in time, as far as the disclosure and  
13 the documents in the Prosecution's possession is concerned, they  
14 have disclosed everything exculpatory." It would prevent, and I  
15:08:33 15 have marked it up very clearly both today, Your Honour, and at  
16 the status -- at the hearing in Freetown, it will prevent later  
17 on other allegations being made and the atmosphere of the  
18 courtroom descending into one of acrimony.

19 Because if the Prosecution, it turns out, have documents at  
15:08:50 20 this moment in time which are exculpatory and they are not  
21 disclosed in time, it has the potential to cause a great  
22 miscarriage of justice. And the Defence, whatever personal  
23 affection they have for the Prosecutor and his team, will have no  
24 option but to make the most strenuous complaints and seek the  
15:09:07 25 greatest measures in response thereto.

26 Your Honour, those are my submissions in response to this  
27 issue, and I'm grateful for the time.

28 JUDGE SEBUTINDE: Thank you, Mr. Khan.

29 To both parties, I just want to close this particular issue

1 this way: Just to remind you that rules are really handmaidens  
2 of justice. They are not meant to bind us, but we are supposed  
3 to use them to get the trial going and to prepare for the trial  
4 in a way that will enhance justice on both sides.

15:09:44 5 But also to say that if and when the Defence feels that  
6 there is a need for a Chamber order, then I would encourage them,  
7 by all means, to make the necessary applications to the Trial  
8 Chamber, the full Trial Chamber, and that would not be  
9 appropriate in a Status Conference.

15:10:05 10 At the same time I want to encourage the Prosecution to  
11 administer justice by ensuring that these disclosure obligations  
12 are fulfilled in the best way that they possibly can in order to  
13 avoid a proliferation of applications from the other side.

15:10:34 14 I want also to call upon the OTP to consider yet again the  
15 possibility of a disclosure officer, whose role may include  
16 sorting out these disclosures in an orderly way. That, again,  
17 will expedite matters, will expedite investigations, and will  
18 assist the Defence in the preparation of their case eventually.

15:11:05 19 It seems to me there were two sticking points on the part  
20 of the Defence, and that was the filing of evidence pursuant to  
21 Rule 68(B) and also the filing of exhibits or -- yes, the  
22 disclosure of exhibits.

23 Now, here on the exhibits, I have to agree with  
24 Mr. Staker's submissions, observations, that there are -- there  
15:11:22 25 is a time to file a list of exhibits, under Rule 73 bis (v), and  
26 that is before the Pre-Trial Conference. And I suppose this is  
27 where the Trial Chamber may help, well before the Pre-Trial  
28 Conference, to perhaps issue certain orders, if necessary. But  
29 we're not going to do it on our own accord. It may help for this

1 list of exhibits to be filed fairly early, fairly early, to  
2 enable the Defence to put into operation any of these rules,  
3 especially Rule 66(A)(iii). Because once you have this list of  
4 exhibits indicated, you may then be in a position to say, "We  
15:12:19 5 want to look at this, this, this and the other."

6 But the right -- the obligation on the Prosecution, I  
7 think, is with relation to the filing of a list of exhibits under  
8 73 bis. And, again, these are issues that the Defence will have  
9 to accompany with written applications, appropriate motions made  
15:12:41 10 before the whole Trial Chamber. But at least I've noted the  
11 concerns and I'm sure my colleagues, too, will address them as a  
12 whole Trial Chamber.

13 I think I want to leave the disclosure issue at that and to  
14 encourage the parties to continue working, remembering that,  
15:13:03 15 apart from representing your clients, you are also officers of  
16 the court, amongst other things.

17 Mr. Khan, I see you on your feet, but I really want us to  
18 get on to the third agenda item.

19 MR. KHAN: Your Honour, that was just a courtesy as you  
15:13:19 20 were speaking.

21 JUDGE SEBUTINDE: Is it really necessary, Mr. Khan?

22 MR. KHAN: Unless you said otherwise, I thought I would  
23 stand whilst you were addressing us.

24 JUDGE SEBUTINDE: We really must run.

15:13:31 25 The third agenda item which I thought I would very briefly  
26 address is a quotation from the transcript of the first Status  
27 Conference where the Prosecution was quoted as being "in the  
28 process of preparing proposed agreed facts and matters of law for  
29 the Defence's consideration and we're planning to provide it to

1 the Defence soon. "

2 Could I hear from the OTP, if there's been any progress in  
3 this direction?

4 MR. STAKER: Yes, Your Honour. This was another matter  
15:14:01 5 that was discussed at the meeting with the Deputy-Registrar on  
6 the 23rd of August. The anticipated time frame is that the  
7 Prosecution will provide a list of proposed agreed facts by the  
8 end of October, and it's envisaged that then throughout November  
9 there would be a time for negotiation between the Prosecution and  
15:14:24 10 the Defence to see what may or may not be agreed.

11 JUDGE SEBUTINDE: So should I record towards the end of  
12 November, the --

13 MR. STAKER: End of October, to provide a list to the  
14 Defence.

15:14:41 15 JUDGE SEBUTINDE: End of October.

16 MR. STAKER: And then the month of November would be a  
17 period of negotiations.

18 JUDGE SEBUTINDE: Mr. Khan, would you like to comment on  
19 that at all?

15:14:49 20 MR. KHAN: Your Honour, I'm happy to see what my learned  
21 friend puts forward, and that of course will dictate the response  
22 from the Defence. But, Your Honour, I did mention in the last  
23 Status Conference, as well as previously perhaps, that there may  
24 be basic agreed facts, such as, for example, that my client was  
15:15:09 25 the President of the Republic of Liberia, that can be agreed  
26 without any difficulty whatsoever. There may be more complex and  
27 subtle agreed facts that cannot be prudently agreed by the  
28 Defence until the Defence investigation is far more mature than  
29 it is at the moment.

1 Your Honour, with that caveat, of course, I am happy to  
2 look at whatever the Prosecution is put forward in the spirit of  
3 cooperation, in a mutual bid on refining this issue, so that this  
4 trial can properly be dealt with in the interests of all parties.

15:15:40 5 JUDGE SEBUTINDE: Of course I do appreciate also, Mr. Khan,  
6 that if the OTP intends to supply you with this list by the end  
7 of October and expects you to agree or disagree by the end of  
8 November, that is not adequate time.

9 MR. KHAN: Your Honour, I have no idea how long the list is  
15:16:00 10 going to be. If the list is simply basic, that Liberia is an  
11 independent state, as is Sierra Leone, my client having been the  
12 President, I can agree that today. Your Honour, if it's more  
13 complex, of course I can't do it by November.

14 This is a case of huge complexity, and, Your Honour,  
15:16:17 15 perhaps this will be addressed a little later, it is a case of  
16 huge complexity on many levels - political as well as legal as  
17 well as factual - and, Your Honour, it would be extremely  
18 difficult to agree everything at this stage. But perhaps the  
19 best option is the parties agree whatever they can as we go on.  
15:16:35 20 Some things we can agree now, and as the investigation  
21 progresses, we can agree other things and perhaps the Prosecution  
22 can agree other things as well.

23 In that spirit of cooperation, perhaps this trial will be  
24 dealt with in a manageable and coherent manner. That's certainly  
15:16:51 25 the intention of the Defence, and I believe of the Prosecution as  
26 well.

27 JUDGE SEBUTINDE: Thank you, Mr. Khan. I think that is  
28 well put. Indeed, you know, the parties can agree on even  
29 issues. Things that are in issue, you can agree upon that. And

1 the whole point of agreeing on facts and even issues, matters in  
2 issue, is, again, to save trial time and argument during the  
3 trial, and to focus proceedings in a given direction, to focus  
4 your evidence in a given direction. Because if, at the  
15:17:25 5 beginning, you know what issues you have to address, then you  
6 know what evidence to call and what evidence not to call, you  
7 see. The whole point is to focus.

8 Even with this proposed list of agreed facts and issues, et  
9 cetera, there is no hard and fast obligation on the Defence to  
15:17:43 10 agree. It's one of those things that parties do to move the  
11 trial forward.

12 MR. KHAN: Your Honour, I'm very grateful for that. The  
13 Defence, we are looking forward to this trial. We are looking  
14 forward to finishing this matter, because it's the intention of  
15:18:00 15 the Defence, at the end, our client will be acquitted. So we're  
16 not going to delay matters. We're not going to grandstand. We  
17 are going to play this very straight because we have a very real  
18 legal defence.

19 But, Your Honour, it goes back, in fact, to Your Honour's  
15:18:14 20 insightful comments to a difficulty faced by the Defence. At  
21 this stage, largely the Defence is reactive to the Prosecution.  
22 They are bringing the case, and we do need to know what the case  
23 is. In fact, the case is not that clear, apart from the  
24 broad-brush approach. It goes back to the scope of the  
15:18:33 25 disclosure which is much wider than simply the indictment.

26 So these are matters that require refinement by the  
27 Prosecution in consultation with the Defence. These were alluded  
28 to in quite some detail in the last hearing in Freetown. And  
29 perhaps when matters are more -- the issues are narrowed by the

1 Prosecution, the Defence will have a better idea as to the  
2 Prosecution's theory of the case, what evidence they are using  
3 for what purpose, and that will help the Defence respond in  
4 relation to what can be agreed, when, and how.

15:19:04 5 Your Honour, I'm grateful.

6 JUDGE SEBUTINDE: I think this really brings me to the  
7 issue of a trial date. It's good that Mr. Khan says they are  
8 looking forward to this trial, and I think the time has come for  
9 the parties and the Court to think about a provisional trial  
10 date. We cannot continue to hold these Status Conferences  
11 without focusing in any direction.

15:19:26

12 I'm choosing my words carefully here. I'm talking of a  
13 provisional trial date, meaning a trial date that we can focus  
14 upon and agree upon as a tentative start to the trial, and which  
15 can work as a gauge and as a focal point for us to focus our  
16 activities.

15:19:49

17 Now, I'm aware from the past Status Conferences and  
18 submissions of the -- the first Status Conference, I beg your  
19 pardon, that the Prosecution indicated that they would be ready  
20 to commence this trial as early as February, end of February.  
21 The Defence also indicated that they were not in a position to  
22 commence this trial, and that the earliest they could even think  
23 of was July of 2007.

15:20:10

24 Now, whilst I appreciate that there is this big divergence  
25 in time, I am mostly concerned about the rights of Mr. Taylor to  
26 be tried without undue delay. By the end of February, he will, I  
27 think, have been in custody for over one year, and I think beyond  
28 a year it begins to become inordinate delay. And so I think it  
29 is only right and proper and in the interests of justice that we

15:20:39



1 should agree upon a tentative trial date during this Status  
2 Conference.

3 My colleagues in Freetown, the Judges of Trial Chamber II,  
4 are solidly agreed that a tentative trial date should be set  
15:21:27 5 towards this end, to help us focus our activities or the parties'  
6 activities.

7 The second thing that I want us to achieve during this  
8 Status Conference is to set out an action plan focused towards  
9 that tentative trial date, an action plan where parties do  
15:21:48 10 certain things by a certain time. Again, it's all intended to  
11 assist the parties to diligently carry out their obligations and  
12 to focus towards the beginning of this trial.

13 Now, I know that this was one issue that the parties did  
14 discuss in their meeting, I think in August, and had a few views  
15:22:13 15 exchanged. Perhaps, for the record, I want to hear the views of  
16 the Prosecution on the start of this trial date -- on the  
17 establishment of a provisional or tentative trial date, and then  
18 I will hear the other side as well, before I tell you the  
19 thoughts of the Bench. In other words, is it a good idea? And  
15:22:47 20 when do you think this tentative date should be?

21 MR. STAKER: Your Honour, the Prosecution has, in the past,  
22 made known its views on its desire to see the case begin quickly.  
23 You've mentioned the Defence's position that they need more time.  
24 The Prosecution is certainly of the view that there should be no  
15:23:23 25 unreasonable delay. It may be a matter of disagreement, to a  
26 degree, between the Prosecution and the Defence as to what time  
27 is reasonable. At the same time, the Prosecution is also  
28 conscious of the right of the Defence to adequate time to  
29 prepare.

1 I have to confess that in coming to this Status Conference,  
2 it had been our feeling that it may be premature to fix a date at  
3 this hearing today simply because the anticipated negotiations  
4 between the Prosecution and the Defence were envisaged, as I say,  
15:24:10 5 for end of October and through November. I think that may be a  
6 very telling time that will indicate whether there is great scope  
7 for agreement and that the issues may be considered -- the issues  
8 may narrow significantly.

9 It may also be - and I certainly hope this won't be the  
15:24:35 10 case but we have to be prepared for the eventuality - that it may  
11 turn out that there is less scope for agreement than we hope for  
12 and that the case will be somewhat larger than we would have  
13 liked.

14 For that reason, it is perhaps difficult to have any clear  
15:24:55 15 idea today. On the other hand, if the Bench were inclined to try  
16 and fix a tentative date to focus minds somewhat, that might have  
17 the desired effect, indeed, of focusing minds.

18 Now, the date mentioned by the Prosecution in the past was  
19 February next year. The Defence has been speaking of July. It  
15:25:22 20 may be that there is some middle ground. April was a date that  
21 was mentioned in the meeting with the Deputy-Registrar. It may  
22 be that a date in April tentatively might be something that could  
23 focus minds.

24 I don't know if I can say much more than that, Your Honour.

15:25:47 25 JUDGE SEBUTINDE: Thank you, Mr. Staker.

26 Mr. Khan, is it a good idea to focus --

27 MR. KHAN: It is a good idea. Coming from Your Honour, I  
28 will accept it immediately. But it is the Defence submission  
29 that it is very useful to have an indication as to the

1 commencement date of the trial.

2 Your Honour, every case of course is different, counsel  
3 appearing in every case is different, and there is a unique  
4 dynamic to every criminal case. All of these are factors, these  
15:26:18 5 are imponderables, these are different ingredients that give the  
6 unique flavour to every single trial that takes place. Your  
7 Honour perhaps is in a much more objective position than the  
8 Defence to thus far objectively make a -- come to a view as to  
9 the conduct of the parties and intention of the parties to really  
15:26:43 10 narrow these issues in the trial.

11 Your Honour, I should say at the outset that previously the  
12 Defence had said July on the last occasion, not before July.  
13 Your Honour, for the reasons I will give with your leave in a  
14 moment, it's the Defence's considered opinion now, after managing  
15:27:02 15 with a great deal of work to analyse and compartmentalize  
16 Prosecution evidence into various categories ourselves, that a --  
17 and take instructions from our client, at least commence taking  
18 instructions from our client, the Defence submission is that the  
19 commencement date of this trial should be September of next year.

15:27:22 20 Your Honour, I do understand fully that there are various  
21 imperatives at work here, financial and political. But, Your  
22 Honour, the only consideration that Your Honour and her  
23 colleagues will bear in mind is the fair conduct of this trial.

24 It is my submission, and assuming good faith on both parts,  
15:27:48 25 on the part of the Prosecution and the Defence, that one should  
26 not get overly preoccupied by the commencement date of this  
27 trial. One should rather look at the conclusion date, the date  
28 when it is anticipated this trial will finish.

29 It is my submission that if the Defence are given proper

1 time now, pre-trial, there is every expectation that the trial of  
2 Mr. Taylor will be concluded by September or October of next  
3 year -- of, sorry, 2008. Your Honour, that is, for a case of  
4 this complexity, a very significant achievement.

15:28:30 5 Your Honour, I will not going into the comparative analysis  
6 of the various other cases before international courts. I  
7 mentioned on the last case the case of the AFRC, which Your  
8 Honours are intimately familiar with, of one year and 11 months  
9 pre-trial; the case of Chief Hinga Norman, more than a year and  
10 several months. These were much simpler cases, territorially  
11 confined, more or less, to the Republic of Sierra Leone. This  
12 case is far wider in its territorial scope, in the allegations  
13 that have to be faced, and the investigative demands that are  
14 placed not just on the Prosecution but particularly on the  
15 Defence.

15:29:07 15  
16 Your Honour, as a matter of international law, in my  
17 submission, the right of adequate time and facilities is an  
18 essential component of the right of a fair trial. Article 17 of  
19 the rules finds not just echo but almost verbatim reproduction in  
15:29:27 20 Article 14 of the CCPR; it finds form in Article 21 of the  
21 Yugoslav statute; 20 of the Rwanda Statute; and I think it's 67,  
22 perhaps, of the ICC Statute. Yes, 67(1)(d) of the ICC Statute.

23 So, Your Honour, it's common ground between the parties  
24 that it's an extremely important right. There is an independent  
15:29:49 25 right, of course, to a fair and expeditious trial. Both these  
26 rights are to the benefit of an accused. They are not whips to  
27 beat an accused with. They are for the benefit of pre-trial  
28 preparation.

29 Your Honour, I have mentioned previously -- I don't want to

1 go on ad nauseam about the difficulties faced in the, I think,  
2 fourth months into a given disclosure on the 17th of May, a huge  
3 amount of disclosure presented perhaps not in the most organized  
4 or user-friendly or accessible manner. Matters have been  
15:30:24 5 complicated by needless issues but essential issues, issues of  
6 transfer, changing the seat of the Court, issues of access --

7 JUDGE SEBUTINDE: Mr. Khan, we've been down this road  
8 before, and I think your submissions were quite taken in the --  
9 during the first Status Conference in this regard.

15:30:44 10 All I really wanted was an indication from you or from the  
11 Defence as to what they thought about a provisional trial date at  
12 this stage. I think I've understood you and the submissions at  
13 this stage, and we're still on this one issue. I haven't even  
14 gone to the action plan. But on this issue of a tentative trial  
15:31:09 15 date, do I understand you to say that you are not in favour --  
16 you're in favour of a tentative trial date but closer towards the  
17 end of the year, 2007.

18 MR. KHAN: Your Honour, I'm totally in favour for a  
19 tentative trial date to be indicated now. The trial date I'm  
15:31:30 20 looking for, when the Defence say we are ready to commence this  
21 trial, given the scope and complexity, is September of 2007.

22 JUDGE SEBUTINDE: Thank you, Mr. Khan.

23 Let me just say this on these dates that we are juggling  
24 around: I note that before the accused was afforded a Defence  
15:32:01 25 team, a proper Defence team, Mr. Khan, you submitted that you  
26 would have been comfortable to start in July. I'm surprised that  
27 now that you have a Defence team you are shifting it further  
28 towards the end of the year, and that bothers me somewhat, as a  
29 start date. But I suppose since I'm talking about a tentative

1 trial date, I might as well rule on this matter. Because my  
2 colleagues in Freetown and I did sit, and what I am about to say  
3 is not entirely my own ruling, but this is the feeling of the  
4 Trial Chamber.

15:32:43 5 We are of the view that this is the right time to fix a  
6 tentative trial date, more importantly to focus the activities of  
7 the pre-trial stage towards this date. I've carefully called it  
8 a tentative or provisional trial date because it is subject to  
9 adjustment. It is subject to adjustment for good cause. We are  
15:33:11 10 prepared to adjust it. It is not just a loose date that I'm  
11 going to throw on the table.

12 MR. KHAN: Right.

13 JUDGE SEBUTINDE: It is a tentative trial date that we  
14 would really like to keep and we would really implore the parties  
15:33:24 15 to work towards. But if, for good cause, there is good cause  
16 shown or exhibited, the Trial Chamber is prepared to be very  
17 flexible about this date.

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

19 JUDGE SEBUTINDE: I want to assure you of this.

15:33:39 20 MR. KHAN: Before any ruling, of course, as a matter of law  
21 and fairness, of course I would ask to make submissions as to the  
22 likely start date.

23 Your Honour, I stopped, obviously, because the initial  
24 issue is simply whether or not you wish today to give an  
15:33:53 25 indication, however preliminary and however flexible, as to a  
26 start date. But, Your Honour, it would be wholly improper, in my  
27 submission, to fix a start date without hearing submissions from  
28 the parties as to the difficulties faced.

29 JUDGE SEBUTINDE: We're talking about different things,

1 Mr. Khan. I am talking about a provisional start date. You are  
2 talking about a start date. Now, it is my understanding that the  
3 parties themselves cannot agree on a start date. The Prosecution  
4 is talking February; the Defence is talking September --

15:34:24 5 MR. KHAN: Yes.

6 JUDGE SEBUTINDE: -- a date in September; and the Bench is  
7 talking a provisional trial date somewhere in the middle.

8 MR. KHAN: Yes, Your Honour, I didn't -- perhaps it was my  
9 total lack of eloquence, for which I apologize. I understood  
10 exactly what Your Honour was doing. Before even a tentative  
11 trial date is set, it's my submission that, as a matter of law,  
12 it would be perverse and it would be a fettering of discretion,  
13 which ordinarily in any domestic system would be judicially  
14 reviewable, for a judge to set even a tentative trial date  
15 without hearing submissions from the parties as to how reasonable  
16 that is.

17 JUDGE SEBUTINDE: Mr. Khan, I have given you the last 20  
18 minutes to address me on a tentative trial date, and you have  
19 taken me into submissions that are clearly recorded in the first  
20 Pre-Trial Conference and that's why I stopped you. I said I've  
21 heard all that before. Now, if there is anything additional that  
22 you want to say, please say it.

23 MR. KHAN: I'm most grateful, Your Honour. I'm most  
24 grateful.

15:35:26 25 Your Honour, the Prosecution have given, as of the 17th of  
26 May, approximately 32,000 pages of disclosure. That's, of  
27 course, continuing.

28 Your Honour, on a basic analysis, to try to give some form,  
29 to try to give some expression to the difficulties and the task

1 facing the Defence, I would seek to give some semblance of  
2 empirical construction to the scale of the task faced by the  
3 Prosecution.

4 JUDGE SEBUTINDE: Mr. Khan, I must stop you in your tracks.  
15:35:56 5 I have all this on record in the proceedings of the first Status  
6 Conference.

7 MR. KHAN: Your Honour, no --

8 JUDGE SEBUTINDE: Yes, I do.

9 MR. KHAN: -- with respect.

15:36:05 10 JUDGE SEBUTINDE: Unless there is additional pages that  
11 you're going to refer to.

12 MR. KHAN: Your Honour --

13 JUDGE SEBUTINDE: But please do not take me back, because  
14 we are time-constrained.

15:36:13 15 MR. KHAN: Yes.

16 JUDGE SEBUTINDE: And there is the issue of the action plan  
17 which is equally important.

18 MR. KHAN: Your Honour, I will endeavour to be  
19 exceptionally brief.

15:36:21 20 JUDGE SEBUTINDE: Let me say this, Mr. Khan: I am not in  
21 any way disputing the task before the Defence that the Defence  
22 have to comply with. That is how I predicated my statement, by  
23 saying I appreciate the Prosecution's side; I also appreciate the  
24 Defence side.

15:36:36 25 MR. KHAN: Of course.

26 JUDGE SEBUTINDE: And that's why I called upon you to  
27 express views as to when you would be comfortable to begin.

28 MR. KHAN: Yes.

29 JUDGE SEBUTINDE: Now, I'm not telling you when you should



1 begin or that you shouldn't begin in September. But I'm calling  
2 upon you to see from this Bench's side that I have a duty,  
3 representing my colleagues, I have a duty to take charge of these  
4 proceedings --

15:36:58 5 MR. KHAN: Of course.

6 JUDGE SEBUTINDE: -- and focus us all towards a certain  
7 focal point.

8 MR. KHAN: Indeed, Your Honour.

9 JUDGE SEBUTINDE: That's all I'm saying. I'm not, in any  
10 way, saying, "The Defence is lazy; the Defence hasn't got time;  
11 the Defence will not be given time." That's not what I'm saying.

12 MR. KHAN: Your Honour, I understand that totally and  
13 there's no misunderstanding. And I know Your Honours would be  
14 the last to produce a date like a rabbit out of the hat, on a  
15 whim. Of course it would be considered. But, Your Honour, there  
16 are further details to give -- that have to be taken into  
17 account, in my submission, in fixing a reasonable tentative start  
18 date.

19 Your Honour, if one even spends five minutes a page on  
20 32,000 pages, that's 2,666 hours, or 333 eight-hour working days.  
21 Your Honour, if the Prosecution are saying that even a third of  
22 that is irrelevant, that requires -- say, a third of it, 10,000  
23 pages, on a further review of 10 minutes a page, not  
24 unreasonable, a total of 561 working days.

15:38:00 25 Your Honour, it's a huge issue. This issue is not simply  
26 one, in my submission, in my most emphatic submission, with  
27 respect, an issue of trial management. It's not an issue of case  
28 management and your duties there. It's a matter of essential and  
29 fundamental fairness.

1           Your Honours, this was raised in the hearing before the  
2 Deputy-Registrar, and it was then that the parties were told that  
3 April was a preferred start date of the parties. Your Honours,  
4 the Defence submission now, as then, is that it would be  
15:38:29 5 extremely surprising for any reasonable Bench to have, in good  
6 faith, come upon such a date without hearing submissions from the  
7 parties.

8           Of course there is a political side of this. The Court  
9 wishes to be seen to be moving. It needs to obtain funds --

15:38:43 10           JUDGE SEBUTINDE: Mr. Khan, I'm going to stop you again in  
11 your tracks. Did you have a chance to make submissions with  
12 regard to this issue in your meeting before the  
13 Deputy-Registrar --

14           MR. KHAN: Your Honour --

15:38:55 15           JUDGE SEBUTINDE: -- regarding a tentative trial date?

16           MR. KHAN: Your Honour, it's not a case of submissions to  
17 the Deputy-Registrar. I put it forward, and, Your Honour, you  
18 have a summary, although not the full transcript.

19           JUDGE SEBUTINDE: Yes, I do. I do, you see.

15:39:04 20           MR. KHAN: Yes, but not the full transcript, Your Honour.

21           JUDGE SEBUTINDE: I don't need the full transcript. I'm  
22 just saying this -- but the way you're going on, it's as if  
23 you're challenging my right and duty to channel these proceedings  
24 towards some kind of order --

15:39:18 25           MR. KHAN: Your Honour, never.

26           JUDGE SEBUTINDE: -- you see?

27           MR. KHAN: Your Honour, never.

28           JUDGE SEBUTINDE: So it seems to me, Mr. Khan, that you're  
29 not saying anything new that you did not say either in that

1 meeting or in the first Status Conference; namely, that you have  
2 these over 30,000 pages to plow through, of evidence to plow  
3 through. And that is not new. And we appreciate that. It's not  
4 a mean task. Nobody is demeaning the task of the Defence.

15:39:49 5 MR. KHAN: Your Honour, the Human Rights Committee of the  
6 CCPR - I think it's General Comment 13 - discusses, as Your  
7 Honours well know, that what amounts to adequate time and  
8 facilities depends upon the complexities of the specific case  
9 faced. Your Honour, to set, as a matter of judicial discretion,  
10 even a tentative trial date, the complexities must be fully  
11 understood. That's my point, Your Honour. Of course, after  
12 understanding the points --

13 JUDGE SEBUTINDE: Of course we do understand that,  
14 Mr. Khan. We do understand. Like you said, nobody pulls a date  
15 out of a hat.

15:40:21 16 MR. KHAN: Yes. Well, Your Honour, I've said as much as I  
17 can say. I would be loathe and one would hope, of course, that  
18 the April start date mentioned by the Deputy-Registrar, absent  
19 any submissions from the parties, is not going to be simply put  
20 forward because of non-judicial concerns and fund-raising  
21 concerns.

22 Your Honour, with that I make no further submissions.

23 JUDGE SEBUTINDE: Mr. Khan, this date, and I wasn't in the  
24 meeting, but I understand that this date was arrived at in the  
25 presence of both parties and after debate by the parties. It was  
26 a proposal. The Deputy-Registrar did not set a date.

27 MR. KHAN: No, no date was --

28 JUDGE SEBUTINDE: And according to the minutes we've been  
29 given, I did not find an alternative tentative date from the

1 parties.

2 MR. KHAN: Your Honour, there's no allegation that a date  
3 was fixed by the Deputy-Registrar. There is no allegation of  
4 your powers. Simply as a matter of candour, the point I was  
15:41:15 5 raising is, prior to any submissions being made by the parties,  
6 the parties were informed, without any understanding of the  
7 complexities of the Defence, that the initial preference for the  
8 Judges was April. In my submission, if that is going to be  
9 continued with, absent any submissions of the parties, that  
15:41:32 10 amounts to a fettering of discretion.

11 JUDGE SEBUTINDE: Mr. Khan, the whole purpose of that  
12 meeting at that time was to enable you to air your views so that  
13 we would save time at this Status Conference --

14 MR. KHAN: Yes.

15:41:46 15 JUDGE SEBUTINDE: -- around that proposed date.

16 MR. KHAN: Yes.

17 JUDGE SEBUTINDE: And I'm glad that the Deputy-Registrar  
18 did mention to you that that, indeed, was the date the Judges  
19 were proposing. We expect -- I expected to see an alternative,  
15:41:59 20 two, three, other alternatives, you know, in the minutes, but  
21 there weren't any.

22 So, to cut this long story short, I have heard from the  
23 parties and I've taken into consideration the fact that the --

24 MR. KHAN: Your Honour, I do apologize for the very great  
15:42:19 25 discourtesy. I do apologize. Your Honour, I don't want to take  
26 time up further. My last submission on this issue is, perhaps,  
27 another alternative is that, after making a finding that an  
28 initial indication of a start date is relevant, Your Honour may  
29 deem it appropriate to require submissions from the parties as to

1 when that date should be, and after hearing those submissions  
2 fully, you can make a judicial determination.

3 Your Honour, that's my brief submission. I do apologize.

4 JUDGE SEBUTINDE: Okay. I'm going to conclude this matter  
15:42:52 5 this way, that is the matter of the tentative start date in this  
6 way: I have heard from both sides the preparedness or the  
7 readiness of the parties to begin at various dates next year, to  
8 begin this trial. The Prosecution, on the one hand, has proposed  
9 that they are ready to begin any time after April -- sorry, after  
15:43:18 10 February of 2007. The Defence, on the other hand, has now  
11 shifted their start date further from July to September of next  
12 year.

13 Now, I am concerned about the need to try Mr. Taylor  
14 without undue delay. I'm also well aware of the fact that he's  
15:43:46 15 been on remand for a long time, and if we were to start in  
16 February, he would have been on remand for a year. I'm also  
17 aware of the fact that, up until probably this week, the Defence  
18 has not had a full Defence team to enable it to prepare its case  
19 adequately.

15:44:11 20 So it is my view, and that of my colleagues, that a period  
21 of six months from the time that a full -- from the time that a  
22 contract has been signed providing Mr. Taylor with the Defence  
23 team, and I'm taking that to be end of September, say, 30th  
24 September effectively, and I'm saying that from the 30th of  
15:44:40 25 September this year, we consider that the Defence is in a  
26 position to work, to investigate, carry out investigations fairly  
27 comfortably, as is envisaged under the Statute and the rules.  
28 I'm also of the view, as are my colleagues in Freetown, that six  
29 months would not be unreasonable time to be given to this

1 Defence team - that would be October, November, December,  
2 January, February, March - to fairly get on with the case and do  
3 their investigations.

4 Therefore, I will reiterate a tentative trial date of 2nd  
15:45:25 5 April, Monday, 2nd April 2007.

6 Now, I emphasize the word "tentative". This is a tentative  
7 trial date which is going to assist the parties and the Bench to  
8 work towards the final trial date. It is flexible; it is  
9 adjustable. But I'm just calling on the parties to focus on this  
15:45:57 10 date and to focus your activities towards this date. We feel  
11 that six months afforded to a full Defence team would go a long  
12 way in preparing them towards a real trial date or the final  
13 fixed trial date.

14 So the date that I have set is the 2nd April 2007.

15:46:22 15 Which now brings me to the final item of the agenda, or  
16 penultimate depending on (A) or (B), and that is of an action  
17 plan. Again, the parties are familiar with the action plan  
18 tabled by Mr. von Hebel, the Deputy-Registrar, on our behalf,  
19 which we had wanted you to look through and give your views or  
15:46:46 20 try and agree upon certain dates within that meeting.

21 Definitely these are activities that have to be carried out  
22 under the rules by the various parties. And all this action plan  
23 does is to lay certain time frames, deadlines by which everybody  
24 is supposed to have complied with certain activities, focusing on  
15:47:09 25 the tentative trial date. And I'm hoping that at the end of the  
26 day, though you may not like the tentative trial date, it will  
27 all work out for everybody's good. At the end of the day, we  
28 will get this trial moving, even if we have to shift the trial  
29 date forward.

1           So I want to read this list out without putting the  
2           deadline dates in, because I think the deadline dates may be for  
3           debate, but also there may be aspects that you want to insert  
4           within this action plan or work plan for the parties that, for  
15:47:52 5           some reason, we may have inadvertently overlooked.

6           Of course, needless to say, the rolling disclosure  
7           continues throughout, so there's no -- it sort of is everywhere.  
8           It continues. There's no time frame for it.

9           But the provision of a provisional witness list with  
15:48:16 10          details as to crime base; that is viva voce witnesses vis-à-vis  
11          92 bis evidence. And I really would appreciate Mr. Staker's  
12          input in this. The 22nd of September, that is today, do you  
13          think that, as far as an action plan is concerned, you would say  
14          that the OTP has complied with this particular action?

15:48:52 15          MR. STAKER: Yes, Your Honour. Before the hearing today,  
16          as I mentioned, a provisional witness list was provided to the  
17          Defence. I appreciate Mr. Khan hasn't had an opportunity to look  
18          at it yet. But the Prosecution's understanding is that it is the  
19          witness list that was envisaged at the meeting with the  
15:49:07 20          Deputy-Registrar, with the one qualification that it does not  
21          indicate which witnesses we envisage would be called live and  
22          which would be 92 bis. I gave the reasons why we thought it was  
23          premature to add that information at this stage.

24          JUDGE SEBUTINDE: Mr. Khan, any comment on that?

15:49:35 25          Sorry, did you hear what I said, or you didn't? I was  
26          saying could you, Mr. Khan, comment on that first item if you so  
27          wish?

28          MR. KHAN: Your Honour, no, not at this juncture. I'm  
29          grateful.

1 JUDGE SEBUTINDE: Thank you. So maybe we can adopt this  
2 22nd of September as the time line for that first item,  
3 provisional witness list with details as to crime base, live.

4 Mr. Staker, you're saying, in effect, that the words "with  
15:50:12 5 details," you want to delete those because you're not practically  
6 able to do that at this stage?

7 MR. STAKER: Well, Your Honour, if we take off the wording  
8 in the minutes of that meeting with the Deputy-Registrar, we  
9 would delete the words "live/92 bis" et cetera. The list we  
15:50:33 10 provided indicates whether witnesses are linkage or crime base  
11 witnesses or experts and has included a division into a core list  
12 and backup list.

13 JUDGE SEBUTINDE: Okay. So you want to adopt the words  
14 you've just said.

15:50:48 15 MR. STAKER: I think that would be --

16 JUDGE SEBUTINDE: Because we'll just take the transcript  
17 and quote you in there.

18 MR. STAKER: Yes, okay. We're working -- we're describing  
19 ex post facto something that's been done.

15:51:01 20 JUDGE SEBUTINDE: I understand. Thank you.

21 Now, the proposal for agreed facts to the Defence, this is  
22 the date, Mr. Staker, you've cited as end of October, this item.

23 MR. STAKER: Your Honour, that's not what was in the table  
24 of the minutes, but that is reflected later in the minutes, as I  
15:51:28 25 understand, agreed between the parties.

26 JUDGE SEBUTINDE: So we could substitute a date, the 31st  
27 of October instead of the 22nd. That does take us a bit far.

28 MR. STAKER: In paragraph 17(B) of the minutes of that  
29 meeting, it's indicated that "it had been agreed amongst the



1 parties that OTP will present a proposal for agreed facts by the  
2 end of October, with negotiations to follow in November. "

3 JUDGE SEBUTINDE: Okay. So that date for the second item  
4 is changed to 31st October, and immediately after it we could  
15:52:10 5 insert an item, "negotiations between the parties by November  
6 30th." So you can use the whole month of November, but the dates  
7 that we're putting are sort of the last day for doing a certain  
8 thing. By November 30th, negotiations between the parties as to  
9 the agreed facts, et cetera.

15:52:41 10 Then the fourth item is this creature called the defence  
11 case statement, relating to Rule 8.

12 Mr. Agga, do you want to comment on this?

13 MR. KHAN: Your Honour, he's a prosecutor.

14 JUDGE SEBUTINDE: Oh, I beg your pardon, Mr. Khan. Mr.  
15:53:06 15 Khan, I am so sorry.

16 MR. KHAN: Your Honour, not at all.

17 Your Honour, this will be considered in due course. As the  
18 Defence have submitted previously in relation to agreed facts, it  
19 will not be prudent or professionally responsible to produce a  
15:53:17 20 case statement until the investigation is at a far more mature  
21 stage and the Defence have taken full instructions. But, Your  
22 Honour, whenever the Defence is able, prior to trial, to produce  
23 a better understanding in a pre-trial brief, for example, the  
24 Defence, of course, will do that. But, Your Honour it's not the  
15:53:39 25 intention at the moment to produce a case statement at all.

26 JUDGE SEBUTINDE: I suppose we could delete this item. I  
27 propose that we delete it from the action plan, or simply say  
28 that the exercise could be ongoing. I don't know. What do you  
29 prefer?

1 MR. KHAN: Whatever pleases Your Honour.

2 JUDGE SEBUTINDE: Okay. Perhaps we'll leave it in just to  
3 remind everybody that this is an item -- that this is a relevant  
4 action on the part of the Defence. So we'll leave it in and  
15:54:10 5 simply write the words "ongoing" in the deadline. No deadline,  
6 "ongoing."

7 The second Status Conference item could be deleted because  
8 it's happened.

9 Now, there's a proposal to have -- to hold a third Status  
15:54:34 10 Conference in the month of November, in the month of November --

11 [Judge Sebutinde and legal officer confer]

12 JUDGE SEBUTINDE: Now, I've been cautioned that the  
13 recording of this needs to -- we need to wind up to a close. I  
14 have a few minutes.

15:54:58 15 I want to propose the third Status Conference sometime in  
16 the course of November. Now, I'm unable to set a date because it  
17 will depend on the court management of the ICC, and this is a  
18 matter that has to be determined between the court managers of  
19 the Special Court and of the ICC. So there will be a Status  
15:55:22 20 Conference, a third Status Conference in November, but the  
21 parties will be notified about a date. But you could, for the  
22 purposes of this time line, say, by 30th November latest, by 30th  
23 November, there would be a third Status Conference. So it will  
24 be end of November.

15:55:44 25 Now, Defence notice of special alibi, Mr. Khan, you want me  
26 to delete that?

27 MR. KHAN: Your Honour, as stated previously, yes, it's  
28 irrelevant.

29 JUDGE SEBUTINDE: Yes. Now, pre-trial brief pursuant to

1 Rule 73 bis.

2 MR. KHAN: Your Honour, it's my submission, all other  
3 matters, to save time for any other business, all other matters  
4 perhaps can be dealt with at the next Status Conference. I think  
15:56:09 5 it's perhaps premature for those matters to be dealt with at the  
6 moment.

7 JUDGE SEBUTINDE: No. The purpose of this exercise is to  
8 draw an action plan.

9 MR. KHAN: All right.

15:56:18 10 JUDGE SEBUTINDE: The purpose is to draw an action plan and  
11 to focus on the date we have set for ourselves. I cannot leave  
12 this for another day.

13 MR. KHAN: Your Honour, as you please.

14 JUDGE SEBUTINDE: So there is the pre-trial brief.  
15:56:31 15 Mr. Khan, you should be interested in this because this is the  
16 one that gives you disclosure of the list of exhibits. And I  
17 think the date here is December 2006. I don't think it's a bad  
18 proposal, but we could shift it forward to November, 30th  
19 November.

15:56:55 20 MR. KHAN: Your Honour, yes. Even earlier than that. The  
21 pre-trial brief I'm not overly concerned about; the exhibits I  
22 am. There is a distinction.

23 JUDGE SEBUTINDE: Mr. Staker?

24 MR. STAKER: Your Honour, the view of the Prosecution, I  
15:57:10 25 think, is that it is perhaps a bit premature at this stage to be  
26 discussing the subsequent procedures. As was indicated before,  
27 the month of November was the period envisaged for negotiations  
28 between the Prosecution and the Defence. What happens in that  
29 month may prove very crucial. I know Your Honour has said

1 negotiations will be ongoing. I think it's inevitable that  
2 negotiations will be ongoing. But I think if, in the month of  
3 November, it's possible for the parties to really focus on this  
4 and see by the end of the month what progress has been made, it  
15:57:52 5 will be in light of that that we would all be in a much better  
6 position to look at the road ahead.

7 What I would propose - of course I'm entirely in the  
8 Bench's hands - is that the next Status Conference might be some  
9 days later; a date might be, for instance, the 8th of December.  
15:58:11 10 That will have given the month of November for negotiations to  
11 take place. It would mean that at the next Status Conference we  
12 would have a much clearer picture of where we are. And in the  
13 light of the negotiations, it may be that the Defence and the  
14 Prosecution have found if not a lot of common ground, at least  
15:58:28 15 some, which would point the way ahead.

16 Our submission would be that perhaps it is premature to fix  
17 dates for pre-trial briefs and so forth at this Status Conference  
18 now.

19 JUDGE SEBUTINDE: Okay. Thank you, Mr. Staker.

15:58:40 20 I really must bring this to a close. I've been warned that  
21 the audiotapes are about to close.

22 Anyway, I will not set a date for the third Status  
23 Conference, but just to say that it will be held sometime in  
24 November or December. I appreciate the efforts between parties  
15:59:20 25 to talk. But I will relay this to my colleagues, who had asked  
26 me to fix a tentative date in November, to say that the parties  
27 would prefer December. And, in any event, the Trial Chamber will  
28 issue a written order on this.

29 I want to thank the parties --

1 MR. KHAN: Your Honour, I do apologize. You did say at the  
2 outset that the last item on the agenda was any other business.  
3 Your Honour, I would ask for time, for five minutes, on any other  
4 business as promised at the outset.

15:59:50 5 JUDGE SEBUTINDE: In that case, I will -- I've been asked  
6 by the court management to adjourn this meeting for five minutes  
7 for them to be able to adjust the tapes. As you know, this  
8 transcript is really important.

9 MR. KHAN: I'm most grateful, Your Honour.

16:00:04 10 JUDGE SEBUTINDE: I wouldn't want us to conduct any  
11 business that is not recorded.

12 MR. KHAN: I'm grateful.

13 JUDGE SEBUTINDE: So maybe we will adjourn. It is exactly  
14 4:00. We will adjourn for five minutes, and when we come back,  
16:00:16 15 we will handle other business. Thank you.

16 --- Recess taken at 4:00 p.m.

17 --- On resuming at 4:08 p.m.

18 JUDGE SEBUTINDE: Good evening, once again. We are on the  
19 last agenda item, which is any other issues that the parties wish  
16:08:40 20 to raise that are pertinent to the case.

21 Mr. Khan, shall I start with you -- incidentally, I don't  
22 intend to protract the proceedings too long. We've already sat  
23 for two hours, and I really don't intend to go on for another two  
24 hours.

16:08:55 25 MR. KHAN: Your Honour, you've heard enough of me today, I  
26 do understand that, and I can see you've also seen and heard  
27 enough of me today. Your Honour, I will try to be brief.

28 The only other business, in fact, relates to an application  
29 to reconsider the decision to set a tentative trial date. Your

1 Honour, the Prosecution has had five years, they've had five  
2 years to investigate this case, they've had --

3 JUDGE SEBUTINDE: I didn't quite catch you. You said an  
4 application for what?

16:09:20 5 MR. KHAN: To reconsider the decision to set a tentative  
6 trial date. Your Honour, I did make a submission earlier that  
7 the order, perhaps, instead should be to hear submissions from  
8 the parties in writing and to adjudicate after you have been  
9 fully informed as to a start date.

16:09:36 10 Your Honour would be the last person I know, being  
11 practical and principled, to set a start date which has no  
12 consequence at all. It must mean something, however tentative.

13 JUDGE SEBUTINDE: Mr. Khan, I have not set a start date. I  
14 have set a tentative start date.

16:09:55 15 MR. KHAN: You did.

16 JUDGE SEBUTINDE: And the purpose of that date is to focus  
17 our work plan and our organization towards a certain focal point.  
18 That start date is very fluid.

19 MR. KHAN: Indeed. Your Honour, I'm most grateful for  
16:10:05 20 that.

21 JUDGE SEBUTINDE: I am surprised that you are -- are you  
22 making an oral application for review or what?

23 MR. KHAN: Your Honour, I am making an oral application to  
24 reconsider setting a tentative trial date. Your Honour, it has  
16:10:13 25 to be borne in mind under the equality of arms principle that the  
26 Prosecution have had five years to investigate this case. Of  
27 course they're ready. They haven't been twiddling their thumbs  
28 in Freetown at the public expense. Of course they're ready.  
29 They spent three years since the indictment. The Defence are

1 simply not ready.

2 Your Honour, one can't understand this rush to judgment.

3 There is, and we are operating -- it would be blind and untrue to  
4 deny we are operating also in a political environment. We saw

16:10:42 5 how precipitously the Security Council acted. But, Your Honour,

6 there must always be a wall between political pressure or

7 financial pressure and the halls of justice. And, Your Honour,

8 who is maintaining that wall? Or, with a nod towards the

9 Netherlands, who is maintaining that dike, keeping out this tide

16:11:00 10 of power from rushing over and flooding and silting up the rivers

11 of judicial authorities? Your Honour, it's you and your

12 colleagues.

13 Your Honour, I do submit that there are very good reasons,

14 at the very least, to vacate your order of setting a tentative

16:11:18 15 trial date, and instead - there can be no prejudice - simply

16 making an order that you receive submissions from the parties as

17 to a tentative trial date.

18 Your Honour, I don't want to belabour the point, but Your

19 Honour herself has said that prior to hearing submissions, Your

16:11:33 20 Honour and her colleagues came to an April start date. That's

21 without hearing submissions from the parties.

22 Your Honour, the Defence's willingness to submit to a

23 procedure which is not in the rules, a 65 ter procedure, should

24 not, in all fairness, be used as a stick to beat the Defence

16:11:48 25 with.

26 Your Honour, sometimes, going back to my initial comments,

27 parties need to be pushed; sometimes, Your Honour, there is such

28 cooperation, such a willingness to focus, that it has the

29 opposite effect.

1 As I mentioned, Your Honour, the first form of industrial  
2 action is working to rule. The Defence have indicated -- they  
3 have not filed frivolous motions, we have not made descendent,  
4 making this proceeding a media circus. There's been no empty  
16:12:16 5 filings before the Court to waste court time. We are conducting  
6 a very serious, very diligent, very professional defence in the  
7 interests of our client.

8 Your Honour, the bar means something. And when counsel  
9 makes a submission detailing empirical evidence detailing a  
16:12:33 10 disparity in time between the Prosecution, five years, and, May,  
11 getting disclosure, even when the Prosecution accept exculpatory  
12 evidence has not been sorted out, to rush to judgment in some  
13 vain attempt, on at least one view, to satisfy public opinion  
14 that the Court is moving is unfair and unnecessary and has the  
16:12:51 15 potential for a grave miscarriage of justice, and, more  
16 practically, changing the dynamic in the courtroom from one of  
17 cooperation to one of needless adversarial challenge.

18 Your Honour, all these are pertinent and important matters  
19 that should exercise the mind of a Chamber, in my submission, and  
16:13:10 20 Your Honour in particular, in deciding what is appropriate in a  
21 given context. There has been an immense amount of cooperation  
22 and goodwill between the matters.

23 But simply to demand at the moment and say that April is a  
24 tentative start date, when there is no chance whatsoever that any  
16:13:25 25 professional Defence counsel, aware of this case, would start in  
26 April, is simply unnecessary and pointless and otiose. Whatever  
27 the objectives are, Your Honour, it serves no practical purpose  
28 legally, whatever implications it may have to the wider political  
29 community.



1 JUDGE SEBUTINDE: Would you wish for the OTP to reply?

2 MR. KHAN: Your Honour, of course I would, and I would ask  
3 for the right to respond to that.

4 Very briefly, Your Honour, I can't see any prejudice in,  
16:13:58 5 simply, today, vacating your order for a tentative trial date and  
6 instead making an order that you receive submissions from the  
7 parties so that you and your colleagues back in Freetown don't  
8 arrive at a predetermined decision but make a decision on the  
9 facts and on the merits.

16:14:16 10 Your Honour, those are my submissions.

11 JUDGE SEBUTINDE: Thank you, Mr. Khan.

12 Very briefly, Mr. Staker, what do you have to say on this  
13 issue?

14 MR. STAKER: Two fundamental observations, Your Honour.  
16:14:29 15 The first is, I am sure that absolutely nobody in this courtroom,  
16 and certainly not the Prosecution, fails to appreciate the  
17 importance of the rights of the accused and of the judicial  
18 obligation of Judges to be independent and impartial.

19 I take it -- I share with my colleague, Mr. Khan, the  
16:14:59 20 fundamental consideration that political considerations do not  
21 enter the courtroom any more than in a national system. There  
22 may be economic pressures bearing on the funding of courts and  
23 budgets. That does not enter the courtroom. But I do not  
24 understand Your Honour in any way to have suggested that was the  
16:15:21 25 case. But I take on board what Mr. Khan says: One must be  
26 conscious to ensure that that does not occur.

27 The other point I've said before is that the Prosecution  
28 does appreciate the importance and the fundamental nature of the  
29 right of the Defence to adequate time to prepare.

1 I do also understand that the accused also has a right to a  
2 speedy trial, and that it is part of the role of the judiciary in  
3 the legal system in which we operate to be proactive to ensure  
4 the efficiency of proceedings.

16:16:00 5 We understand that the trial date that was mentioned is a  
6 tentative trial date. Your Honour has made clear that there is  
7 flexibility built in and that, I think as Mr. Khan said,  
8 occasionally a gentle nudge is needed. We understood this  
9 tentative trial date to be something that would focus minds, that  
16:16:23 10 would nudge the parties to action, that would prevent matters  
11 simply from drifting.

12 I don't know that I would say much more than that. I think  
13 on the basis of what I've said, I would not see a need for  
14 further submissions on this question. However, given the  
16:16:42 15 importance that Mr. Khan attaches to this point, I would also not  
16 oppose the suggestion that parties be invited to present more  
17 observations on the question, particularly, as I said at the  
18 beginning, as the Prosecution itself did not come here today with  
19 the assumption that a tentative trial date would be set.

16:17:10 20 I say we, the Prosecution, have no problem with the  
21 tentative date that was set. We don't consider, given that it's  
22 tentative and subject to flexibility, that it's inconsistent with  
23 the rights of the Defence. But if further submissions are  
24 required by the Defence, it's not something that we would  
16:17:34 25 vigorously oppose.

26 JUDGE SEBUTINDE: Thank you.

27 Mr. Khan.

28 MR. KHAN: Your Honour, I'm most grateful to my friend's  
29 sensible and constructive indication, in effect in favour of the

1 application, that further submissions can be received.

2 Your Honour, the question has to be posed: What is the  
3 purpose of the order? Well, the answer comes: To focus minds.  
4 Your Honour, that is predicated on the assumption that minds are  
16:17:58 5 not focused. That, on any fair construction, on any reasonable  
6 construction, is patently not the case.

7 Your Honour, one could even go so far as to say that in any  
8 international case, perhaps matters have not progressed as  
9 speedily, in a case of this magnitude, or as smoothly as in this  
16:18:20 10 present case.

11 Your Honour, the whole premise is unfounded, in my  
12 submission. The right to an expeditious trial is --

13 JUDGE SEBUTINDE: The premise of what, of fixing a  
14 tentative trial date or fixing it on a given date?

16:18:35 15 MR. KHAN: Your Honour, this rush to judgment that appears  
16 to be taking place, this rush in an "Alice and Wonderland" world,  
17 given the wider political world, not Your Honours, that people  
18 have been saying, "Off with his head." The Defence rather --

19 JUDGE SEBUTINDE: Mr. Khan, Mr. Khan, I really don't like  
16:18:50 20 the tone of your language.

21 MR. KHAN: Your Honour, the Defence has submitted --

22 JUDGE SEBUTINDE: There is no need for this kind of tone.  
23 This Court is known for its courtesy all around, from the Bench  
24 to the parties, and vice versa.

16:19:00 25 MR. KHAN: Your Honour, I did say, of course, not your  
26 Bench. I was quite careful. But, Your Honour, I did say --

27 JUDGE SEBUTINDE: You are addressing me. You are  
28 addressing me. I would urge you please to keep to the point and  
29 keep your submissions short.

1 MR. KHAN: Your Honour, I will endeavour to do so.

2 JUDGE SEBUTINDE: In reply, that is, submissions in reply.

3 MR. KHAN: Forgive me if any discourtesy at all was taken.

4 It, of course, was not meant and I do apologize if that's the  
16:19:28 5 case.

6 But, Your Honour, for the reasons adumbrated previously,  
7 the Defence submit that there is compelling reasons of fairness  
8 and procedure for Your Honours to hear proper and full  
9 submissions on a complicated issue before setting even a  
16:19:46 10 tentative trial date, because making any judicial determination,  
11 of course, has a purpose and it must be informed.

12 At this moment in time, in my respectful submission, the  
13 tentative trial date in April that was mooted back in Freetown in  
14 August, absent hearing submissions, has not been fully informed  
16:20:03 15 and has been made prior to hearing in submissions back in  
16 Freetown, prior to the transfer here to The Hague. And, Your  
17 Honour, I would ask, with the greatest of respect and the  
18 greatest of humility, that Your Honour vacate the oral ruling and  
19 substitute it, if Your Honour is so minded, with an order that  
16:20:22 20 the parties file submissions on this very important question  
21 within any time period Your Honour deems appropriate. And after  
22 hearing that, a decision is made.

23 Your Honour, I'm most grateful once again for the chance to  
24 make submissions and indebted for Your Honour rising and allowing  
16:20:39 25 any other business to be raised in your courtroom.

26 JUDGE SEBUTINDE: Thank you. Thank you, Mr. Khan.

27 MR. KHAN: I'm grateful.

28 JUDGE SEBUTINDE: Before proceeding to any other business  
29 that may be pertinent, I wish to make a quick ruling on this oral

1 application by Mr. Khan for the Defence in which he seeks a  
2 setting aside of my order setting a tentative trial date on the  
3 grounds that I have not heard submissions from the parties in  
4 this regard, an application that has not been opposed by the  
16:21:15 5 Prosecution.

6 Now, the main ground of Mr. Khan's application is  
7 predicated upon the assumption that I have not heard from the  
8 parties. I would like to remind the parties that the subject of  
9 a tentative start date of the trial has been debated on a number  
16:21:39 10 of occasions before today.

11 The first of these occasions was in the first Status  
12 Conference in July before my brother, The Honourable Judge  
13 Lussick. At that conference the parties made extensive  
14 submissions that are on record. And the question at that time  
16:21:58 15 was with regard to how ready each side felt, how ready were they  
16 to proceed with the trial, when does each side think it would be  
17 ready to proceed with the trial. Now, at that time the  
18 Prosecution indicated that they would be ready to start in  
19 February; the Defence indicated that they didn't even have  
16:22:18 20 counsel, but in any event they were thinking of not earlier than  
21 July. The Judge then ruled that it was premature to set a trial  
22 date, having heard from the parties.

23 Now, the next occasion when that subject arose, and at  
24 which occasion the parties were given ample time to discuss this  
16:22:40 25 issue and make their submissions known, was before the  
26 Deputy-Registrar, who was assigned by the Trial Chamber to  
27 conduct this meeting between the parties, and to find out from  
28 them what their views were, firstly, about the time -- the  
29 setting down of a tentative trial date and, secondly, about an

1 action plan towards this trial date.

2 Now, we have minutes applied to us of this meeting in which  
3 both parties had ample discussions around this subject. These  
4 minutes were availed to us, and I have read them and have  
16:23:20 5 familiarized myself of them. As I stated before earlier on in  
6 these proceedings, as much as the parties did not come out  
7 supporting the date that the Trial Chamber had suggested, they  
8 didn't suggest an alternative. They simply stuck, each of them,  
9 to their dates that they had submitted in the first Status  
16:23:40 10 Conference.

11 Now, the third occasion, when both parties have had a  
12 chance to address this matter and make submissions, was today.  
13 When I was discussing this agenda item, I began by saying, "I  
14 want to propose a tentative trial date," and I asked each party  
16:24:04 15 what their views were, one, of the idea of setting a tentative  
16 trial date; and, secondly, when they think in their opinion that  
17 date should be. And I held my peace because I didn't want to  
18 influence the parties.

19 Now, I think it was the Prosecutor who drew upon the date  
16:24:23 20 presented in the meeting of 2nd April as being the date, and this  
21 debate continued, and I gave Mr. Staker ample opportunity to  
22 address me as of today as to what he thought, one, was it a good  
23 idea -- those were the very words I used: Is it a good idea?  
24 And I explained why I needed a tentative trial date. It's all to  
16:24:49 25 do with case management. And you cannot tell me it's not within  
26 a Bench's duty to manage a case. We have to case manage the  
27 parties. Otherwise, there's no need for these Status Conferences  
28 either, because if the parties could stand to their obligations  
29 and be counted, we would not need these Status Conferences, we

1 would not need these orders and applications and these  
2 submissions back and forth.

3           Unfortunately, in the real world, things don't work that  
4 way, and it's the role of the Bench, the Judges either sitting as  
16:25:22 5 a Bench or as designated, to ensure that you periodically hold  
6 Status Conferences and properly manage the case towards the trial  
7 date. And even after the trial date, you've got to continue  
8 managing this.

9           So I gave each side an opportunity today to make relevant  
16:25:41 10 submissions towards two questions I asked you: Is it a good idea  
11 to have a tentative trial date? And I think, Mr. Khan, you said,  
12 even before I finished, you said, "It's a wonderful idea." I'm  
13 not quoting you wrong. You said, "It's a wonderful idea" to have  
14 a tentative trial date. You then went on to give your  
16:26:09 15 submissions, many of which were a repetition, probably  
16 emphasising the Defence case, but they were a repetition of your  
17 submissions in the first Pre-Trial Conference and at intervals I  
18 interjected.

19           But, as far as I am concerned, you have had three distinct  
16:26:27 20 opportunities to make submissions on this one aspect. I have  
21 listened to the submissions from both sides and I have come up  
22 with a tentative trial date. The date I have come up with is  
23 tentative. I cannot emphasize enough that this date is  
24 tentative; it's provisional; it's liable to change for good cause  
16:26:51 25 shown. But it is necessary.

26           Now, I see no reason to set aside my order or to review it.  
27 That is my ruling on that issue. The date remains 2nd April  
28 2007, which will be a Monday.

29           MR. KHAN: I'm grateful.

1 JUDGE SEBUTINDE: Now, if there is any other business, I  
2 will hear from the parties. If not, I want to thank the parties  
3 for a very well-conducted Status Conference. Thank you for your  
4 submissions and your assistance. And like I promised, the Trial  
16:27:36 5 Chamber will let you know when the third Status Conference will  
6 be. I thank you.

7 Court is adjourned sine die.

8 --- Whereupon the Status Conference adjourned sine die.

9 at 4.27 p.m.

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