



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

Monday, 25 June 2007  
9:00 a.m.

TRIAL CHAMBER II

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Before the Judges:

Julia Sebutinde (Presiding)  
Richard Lussick  
Teresa Doherty  
El Hadji Malick Sow (Alternate)

For Chambers:

Ms Carolyn Buff

For the Registry:

Mr Michael Adenuga  
Ms Rosette Muzigo-Morrison  
Ms Rachel Irura

For the Prosecution:

Ms Brenda J Hollis  
Mr Nicholas Koumjian  
Ms Wendy Van Tongeren  
Ms Leigh Lawrie

For the accused Charles Ghankay  
Taylor:

Accused not present in court

For the Office of the Principal  
Defender:

Mr Vincent Nmeielle  
Mr Charles Jalloh

1 Monday, 25 June 2007

2 [The accused was not present in court]

3 [Open session]

4 [Upon commencing at 9:00 a.m.]

09:00:23 5 MS IRURA: All rise.

6 PRESIDING JUDGE: Good morning. Could the court attendant  
7 please call the case.

8 MS IRURA: The Special Court for Sierra Leone is sitting in  
9 an open session in the case of the Prosecutor versus Charles  
09:01:52 10 Ghankay Taylor, SCSL-03-01-T, Judge Julia Sebutinde presiding.

11 PRESIDING JUDGE: Could somebody do something about some of  
12 these headphones?

13 While the headphones are being seen to, I would like to  
14 take appearances, please, starting with the Prosecution.

09:02:37 15 MS HOLLIS: Good morning, your Honours. Brenda J Hollis,  
16 Nicholas Koumjian, Wendy van Tongeren, and Leigh Lawrie, appear  
17 today for the Prosecution.

18 PRESIDING JUDGE: I note that the accused is not in court,  
19 and I recognise the Principal Defender and Duty Counsel,  
09:03:31 20 Mr Jalloh. Which of you is going to address the Court on behalf  
21 of the accused?

22 MR NMEHELLE: Well, your Honour, we will be addressing the  
23 Court as the Defence Office, possibly addressing issues that may  
24 pertain -- that pertain to the accused but not addressing the  
09:03:53 25 Court for the accused as such.

26 PRESIDING JUDGE: Could you perhaps explain, first of all,  
27 why Mr Taylor is not in court yet again.

28 MR NMEHELLE: I got a call this morning that Mr Taylor  
29 said he would not be in court, and he said that the Chamber knows

1 why he would not be in court. He didn't go into details as to  
2 why he is not in court. All he said is that he believes that the  
3 Chamber knows, the Honourable Chamber knows, why he is not in  
4 court.

09:04:32 5 PRESIDING JUDGE: Where does he get that idea? Has he  
6 formally communicated to the Chamber why he would not be in court  
7 today?

8 MR NMEHI ELLE: Your Honour, unfortunately, I didn't get the  
9 details as to that. The message that came from the detention was  
09:04:47 10 that he wouldn't come to court. And the question was why is he  
11 not coming to court, and he said the Chamber knows why he's not  
12 coming to court. That's the only information I got.

13 PRESIDING JUDGE: Well, for the record, the Chamber does  
14 not know, we've not been officially informed, why Mr Taylor is  
09:05:03 15 not in court today, and for some reason -- I don't know why he  
16 imagines that we do know. But I will take it, I think, pursuant  
17 to Rule 60, that he has voluntarily absented himself today,  
18 having given no reason for his absence, and therefore we will  
19 hear further submissions from you on his behalf.

09:05:31 20 MR NMEHI ELLE: Thank you.

21 Your Honour, I, as Principal Defender, stand before you to  
22 address issues that emanated from the initial -- the opening on  
23 June 4th on the basis of which the Honourable Trial Chamber  
24 issued an order directing, one, that I be facilitated to travel  
09:06:52 25 to The Hague to consult with Mr Taylor regarding his defence  
26 problems, and, secondly, to the Registry, to ensure that  
27 logistically the accused has adequate facilities in accordance  
28 with Article 17 of the Statute, without further delay.

29 Now, your Honours, that being my point of departure, I am

1 here, and of course I came here on the 14th -- I left Freetown on  
2 the 14th of June, arrived on the 15th, and engaged, with Duty  
3 Counsel, to consult Mr Taylor on the 15th, the 18th, the 19th and  
4 the 20th.

09:07:38 5 Now, following our consultation, I want to observe that, in  
6 our consultation with Mr Taylor, he expressed quite a number of  
7 concerns which, of course, is contained in a report that we  
8 submitted --

9 PRESIDING JUDGE: Mr Principal Defender, sorry to  
09:07:57 10 interrupt, but I just want to caution you to restrict yourself to  
11 matters that relate to Article 17 and Article 17 only.

12 MR NMEHELLE: Fair enough.

13 PRESIDING JUDGE: Please leave out any other administrative  
14 matters over which you have no jurisdiction.

09:08:15 15 MR NMEHELLE: Fair enough. I intend to do nothing other  
16 than that, your Honour.

17 When we consulted with Mr Taylor, Mr Taylor was very much  
18 concerned about his fair-trial rights.

19 Now, I want to observe preliminarily that Mr Taylor was  
09:08:31 20 very cooperative during the consultation and he showed a deep  
21 interest in resolving what he calls the current impasse, and he  
22 undertook to return and to participate in the proceedings before  
23 the Court if his concerns, as articulated to the Trial Chamber on  
24 the 4th of June, are addressed.

09:09:07 25 Again, based on our consultations, he was of the view that  
26 if these problems are addressed at this early stage, he would  
27 cooperate to ensure that the trial goes on without further  
28 hiccups and delay because he, too, is concerned about undue delay  
29 in his trial, which, according to him, will impact on his

1 fair-trial rights.

2 Now, primarily the issues resolved -- revolved around his  
3 legal representation or his self-representation. Now, in  
4 addressing him, we felt that it will not be in the interests of  
09:10:01 5 justice for him to maintain to want to represent himself and the  
6 integrity of the court, of the judicial process, because this is  
7 an enormous case where it is in the interests of everyone, the  
8 Court, both, and the accused, that the proceedings continue in a  
9 manner that addresses adequately --

09:10:29 10 PRESIDING JUDGE: Please just wait.

11 First of all, I just wish to note that the monitors are not  
12 working and therefore I presume the public has nothing on the  
13 screen either. I don't know why these arrangements were not  
14 completed before the court began, but I would urge that whatever  
09:10:49 15 you're doing to put the mistake right, you do not interrupt the  
16 proceedings, please.

17 Mr Nmehielle, please continue.

18 MR NMEHIELLE: Thank you, your Honour.

19 Like I mentioned just a few moments ago, in our  
09:11:12 20 consultation with Mr Taylor, we, as the Defence Office, were of  
21 the view, the best point that Mr Taylor has made a request that  
22 he would represent himself based on the concerns he raised  
23 because, according to him, they were not being addressed  
24 adequately, we felt that it would -- I mean, we thought that it  
09:11:36 25 is not in the best interests of Mr Taylor, the judicial process,  
26 and everyone involved, for him to represent himself, and  
27 therefore there was a need, in our view, to adequately address  
28 the issue of legal representation.

29 Now, Mr Taylor was open to the idea that it was not in the

1 interests of justice for him to represent himself or the  
2 integrity of the judicial process, and felt that the issues about  
3 his legal representation needs to be -- need to be adequately  
4 addressed from the point of view of ensuring adequate resources  
09:12:15 5 and adequate time to enable him, if he would need a legal  
6 representation, to have a legal team be put together that, in his  
7 words, will match the capacity of the Prosecution in this  
8 enormous case.

9 Now, from that perspective, we came away with an  
09:12:37 10 understanding that the issue could be addressed from the point of  
11 view of engaging with the Registry to ensure an adequate defence,  
12 in line with Article 17 of the Statute, to facilitate the  
13 accused's defence with the right resources and facilities.

14 Now, in our consultation with Mr Taylor as to what kind of  
09:13:03 15 legal representation would adequately address his concerns and  
16 fair-trial rights under Article 17, he pointed out to us that his  
17 team requires a leading senior counsel at the rank of a QC to  
18 properly lead the case because of its complexity and the  
19 magnitude of the case; and that he will also want a senior  
09:13:34 20 counsel in addition to assist the QC, or the very distinguished  
21 advocate that he thought was necessary, on a day-to-day basis, as  
22 well as two co-counsel. Now, according to him, that will be the  
23 kind of team that will match the array of lawyers that he  
24 believes the Prosecution have.

09:14:02 25 He also went further in terms of the legal assistants, the  
26 issue of consultants, to enable him or his defence to deal with  
27 issues that the Prosecution have, you know, elaborated on in  
28 terms of the indictment, as well as in their bid to present  
29 experts to prove their case.

1           Along the same line, he articulated issues of thorough or  
2 proper investigation or investigative resources. Now,  
3 investigative resources to enable his Defence team subsequently  
4 to articulate issues within the disclosures, the number of  
09:14:45 5 witnesses that the Prosecution have outlined to prove their case.  
6 And he felt that the current, what he called mid-level  
7 investigation services that he has would not be adequate enough  
8 to address the expanse of the indictment in relation to the  
9 geography within the West African sub-region, Africa, and even  
09:15:13 10 beyond Africa, which do implicate the case.

11           Now, he thought that he needed a chief investigator in  
12 addition to the international investigator he has now, who he  
13 believes will be in a position to assist the chief investigator  
14 who he believes should be nothing less than a criminal -- an  
09:15:35 15 experienced criminal investigator, what he calls a Scotland Yard  
16 type of investigator or a senior CIA kind of investigator, rather  
17 than a mid -- a junior person who is operating as an  
18 international investigator.

19           Now, he feels satisfied, of course, with the local national  
09:15:54 20 investigator that has been provided in Sierra Leone and the  
21 national investigator provided in Liberia, but that the case  
22 transcends more than that. According to him, a number of parties  
23 in terms of the dispute in Sierra Leone or the war in Sierra  
24 Leone were involved beyond the West African sub-region and beyond  
09:16:18 25 Africa that necessitates him to have an international  
26 investigator of good experience and repute to be able to tackle  
27 the issues that flow out of it, out of the whole process.

28           Now, of course, he articulated other issues in relation to  
29 detention conditions which we may not go into here because they

1 are purely administrative. But to the extent that they impact  
2 his ability to participate in the trial from the point of view of  
3 articulating his Article 17 rights, then those could be  
4 addressed; issues of whether or not he would be properly -- he  
09:16:57 5 would eat and be able to attend the court for a period of -- an  
6 extensive period of sitting.

7 But the bottom line is that at the end of the day, after  
8 our consultation on the 20th, we produced a report with a number  
9 of recommendations along the line of the issues expressed, more  
09:17:20 10 so concerned about the need for the upholding of the Article 17  
11 rights of the accused to either self-representation, in which  
12 case facilities must be provided and resources and time must be  
13 provided to him; or, based on our advice, because of our  
14 experience and the work of the Special Court, more for him to  
09:17:46 15 rather have legal representation because of the interests of  
16 justice and the integrity of the judicial process rather than  
17 self-representation.

18 Now, we produced a number of recommendations which, if your  
19 Honours want us to clarify or to indicate to the Court, we would,  
09:18:00 20 but I just wanted to say that we reported this to the Registry  
21 and our expectation is that there's a need for engagement to move  
22 this matter forward, because I believe, from the Office of the  
23 Principal Defender's perspective, that there is a constituency of  
24 which the Honourable Chamber, I believe, is part, and of course  
09:18:22 25 the umpire that is interested in nothing but a fair trial for any  
26 accused before the Court, under Article 17 of the Statute of the  
27 Court. And I think that even the whole global society expects  
28 nothing less than a fair trial within Article 17 of the Statute,  
29 which cannot be overridden by other considerations.



1 Your Honour, this would be my report to the Court.

2 PRESIDING JUDGE: Mr Nmehielle, before you sit, I've  
3 listened to you carefully and what I've heard, in my own  
4 assessment, is a report of the bureaucratic/administrative  
09:18:59 5 procedures that you went through, the conversation you might have  
6 had with the accused. And, of course, it was never in question  
7 that Mr Taylor is entitled to representation. That was never in  
8 question, and so any report or conclusions alluding to the fact  
9 that it would be in his interests to have representation, in my  
09:19:25 10 view, is not taking the matter forward. What we expected this  
11 morning is to see counsel, replacement counsel, sitting there,  
12 addressing us on behalf of the accused, and so far you haven't  
13 given us a reason why this is not so.

14 MR NMEHIELLE: Your Honour, I would -- I would address the  
09:19:45 15 Court on this particular issue.

16 Now, the issue of replacement counsel for Mr Taylor for  
17 this morning is a very tricky one in the sense that, of course,  
18 reference in what has transpired since the 4th of June and the  
19 need to address this matter from the point of view of discussing  
09:20:11 20 these concerns and meeting logistically the needs of Mr Taylor, I  
21 had a period of between the 20th and the 25th, which is today,  
22 two working days, to address the issue of replacement of counsel.

23 Now, from the point of view of the Registry, any lawyer  
24 could be brought to replace counsel. Now, in our view, it is  
09:20:48 25 almost practically impossible that, notwithstanding we have tried  
26 to engage replacement counsel, we have briefed the Registry on  
27 the attempts that we are making, we have spoken to a number of  
28 people -- in fact, we have spoken to -- made contact with three  
29 leading QCs in the UK on this matter as to the possibility of

1 replacement counsel. One of them is only available for us to  
2 talk to him from the 27th of June. The others were not  
3 available, but their clerks or practice managers promised to call  
4 us back, and indeed one of them did call back to leave a message.

09:21:33 5 That was between the 20th and the 22nd and the 23rd.

6 Now, again, we advised the Registry on this issue. The  
7 point as to just choosing any lawyer to come here today is a very  
8 tricky one, like I mentioned, because even if we look into the  
9 former Defence team as constituted, if we do look into the former  
10 Defence team, Mr Karim Khan, of course, has withdrawn. Prior to  
11 that period, Mr Roger Sahota, who was legal assistant and bumped  
12 up to co-counsel, had left to engage fully in a trial in ICTY.  
13 And, of course, we were left with two legal assistants who had no  
14 standing, according to the rules, to appear in court.

09:22:15 15 So the effort was rather to look around to ensure that we  
16 get replacement counsel. Now, replacement counsel, from the  
17 point of view of the accused if the issue of his legal  
18 representation should be addressed adequately, is one that has  
19 brought us to the point of looking around for distinguished  
20 lawyers to be able to replace.

21 So that is a difficulty we have, and we have briefed the  
22 Registry on this. And we came to an agreement that it was  
23 necessary for us to do the utmost to engage -- to ensure that  
24 counsel is replaced within the shortest possible time, and that  
25 we have been on and it's not been very easy to get these people  
26 on board. If somebody has to say, Well, I am going to a funeral  
27 in the Caribbean, could you please call me back on the 27th of  
28 June, it becomes an issue for us to follow up within that period,  
29 and while others said we're not available and would return our

1 call, and for us to -- to find as to the next available time to  
2 be able to speak to them, and this was between, of course, the  
3 weekend period and today, which is Monday.

09:23:29 4 So the issue of having replacement counsel, like I said  
5 initially, is a very tricky one, and for all practical purposes  
6 it was almost -- it was impossible to have replacement counsel  
7 today, being Monday.

8 JUDGE LUSSICK: Mr Nmehielle, all of this seems rather late  
9 in the day. You personally arranged representation for Mr Taylor  
09:23:51 10 as long ago as April 2006. That's correct, isn't it?

11 MR NMEHIELLE: Initial representation in terms of  
12 provisional assignment of counsel, yes.

13 JUDGE LUSSICK: Well, that counsel that was provisionally  
14 assigned ended up being permanently assigned.

09:24:10 15 MR NMEHIELLE: Yes.

16 JUDGE LUSSICK: And when you say that he has withdrawn, in  
17 fact Mr Taylor has sacked him; is that correct?

18 MR NMEHIELLE: Well, from all indications from what  
19 transpired on the 4th, Mr Taylor had terminated instructions and  
09:24:28 20 his representation, in which case following --

21 JUDGE LUSSICK: All right. Well, that answers my question.

22 MR NMEHIELLE: Yes.

23 JUDGE LUSSICK: So between April 2006 and the start of this  
24 trial, which was the 4th of June this year and which was the  
09:24:44 25 first occasion that this Trial Chamber had been told that  
26 Mr Taylor's current representation was inadequate, did you have  
27 any contacts with the accused indicating that his representation  
28 arranged by you was, in fact, inadequate?

29 MR NMEHIELLE: Well, your Honour, as far back as March --

1 JUDGE LUSSICK: Which March?

2 MR NMEHI ELLE: March 2007. I received a memo from Duty  
3 Counsel, who had gone to visit Mr Taylor, and Mr Taylor had  
4 complained about his legal representation, what he called  
09:25:28 5 adequate representation, and wanted to discuss issues with me in  
6 this regard.

7 JUDGE LUSSICK: All right. Well, Mr Nmehielle, we have,  
8 then, complaints to you in March, two months ago, from Mr Taylor  
9 that he's not happy with his counsel. What's been done since  
09:25:48 10 then to arrange alternate counsel? We're talking of two months.

11 MR NMEHI ELLE: Your Honour --

12 JUDGE LUSSICK: All right. Three months.

13 MR NMEHI ELLE: Your Honour, the issue of counsel that was  
14 raised --

09:26:06 15 JUDGE LUSSICK: Well, is anything being done?

16 MR NMEHI ELLE: Well, I needed to, first of all, know what  
17 the details were, and I needed to consult with Mr Taylor on this  
18 issue. Unfortunately, for reasons that I may not go into here in  
19 the interests of the reputation of the Court, I was not allowed  
09:26:25 20 to go to consult with Mr Taylor to know exactly what these issues  
21 are to be able to address them. And again, this issue was also  
22 to be addressed from -- at about the Pre-Trial Conference and  
23 again -- particularly, we had intended to further deal with these  
24 issues from that time. And of course I could not consult with  
09:26:55 25 Mr Taylor.

26 Now, we have done every other thing necessary from the  
27 point of view of allowing Assigned Counsel to organise his team.  
28 We've tried to facilitate. Of course, it is now an open secret  
29 that our ability to facilitate a counsel to join the team as

1 co-counsel, because of his involvement in one of the cases before  
2 the Court, has not proved fruitful because your learned brothers  
3 in Trial Chamber I have not released him because he's a  
4 court-appointed counsel in one of the cases that is finishing.

09:27:32 5 That's one attempt to --

6 JUDGE LUSSICK: I'm sorry to interrupt, Mr Nmehielle, but  
7 we're straying from the point. You knew three months ago from  
8 Mr Taylor directly that things had to be done to arrange an  
9 alternate means of representation. Now you're saying that you  
10 were not able to consult with him.

09:27:48

11 MR NMEHIELLE: No, I wasn't.

12 PRESIDING JUDGE: Additionally, Mr Principal Defender,  
13 under the rules you are supposed to, your office is supposed to,  
14 maintain a list of counsel, in other words, in reserve, from  
15 which to select replacement counsel if and when the need arises.  
16 From your submissions, it would appear to me as if you don't have  
17 this list; or if you do, what's happening? Why can't you take  
18 counsel from this list?

09:28:04

19 MR NMEHIELLE: Well, we have the list and the list in  
20 question is presented to the accused, and from the accused's  
21 perspective, in terms of the legal capacity necessary to  
22 adequately deal with his representation, the accused did not see  
23 anybody within that list. I can say that in our list, our list  
24 is such a list that it does not, from all perspectives, attract  
25 the kind of -- it has not attracted the kind of legal expertise  
26 that the accused was looking at, and as a result -- that list is  
27 there. I have the list and the accused has not been able to  
28 choose anybody within that particular list. And we have --

09:28:53

29 PRESIDING JUDGE: Yes, but, Mr Nmehielle, let's get things

1 in perspective here. This particular accused person is not  
2 paying for his own legal services. He takes what is available  
3 under the legal aid scheme of your office. Is that not right?

4 MR NMEHIELLE: Well, that would be the case.

09:29:21 5 PRESIDING JUDGE: So, then, if the counsel that you have on  
6 your list have been good enough for 10, 11 -- 10 of the indictees  
7 in the Special Court, why are they not good enough for Mr Taylor?

8 MR NMEHIELLE: Well, your Honour, I wish I could answer as  
9 to why they are not good enough for him. That would be a tall  
09:29:43 10 order for me. But the point is that the accused has not chosen  
11 any person within the list. But from -- let me stress that from  
12 day one, the issue of representation had been addressed from the  
13 point of view of ensuring that legal expertise of measurably  
14 distinguished character is part of the team from day one. And,  
09:30:14 15 of course, because that issue continues to rear its head in terms  
16 of the composition of the team, it becomes a concern for us,  
17 particularly because our list is a list that does not attract  
18 such people.

19 PRESIDING JUDGE: But, Mr Nmehielle, surely -- you seem to  
09:30:33 20 agree with the accused that the people or the counsel who are  
21 listed on your list are of inferior quality to what he's looking  
22 for. Now, if you agree, it then brings me to the question:  
23 You've known that this case was different, if you like, and  
24 you've known the kind of calibre of counsel that you would be  
09:30:53 25 requiring for this case as far back as last year. Why, then, are  
26 we talking today, in June, on a day when we're supposed to be  
27 hearing witnesses, why are we scrounging around looking for  
28 Queen's Counsel?

29 MR NMEHIELLE: Your Honour, this is a problem that was

1 identified from the beginning, and it has to do with fiscal and  
2 budgetary constraints, according to the Registry, that has  
3 prevented the kind of resources that are necessary to attract the  
4 kind of counsel.

09:31:28 5 Your Honours, the issues of budgets, from the perspective  
6 of the Defence Office, have affected the ability to attract this  
7 kind of counsel, and I don't know if your Honours really want to  
8 go into the issues of the budget, in which case we will address  
9 you.

09:31:45 10 JUDGE LUSSICK: Mr Nmehielle, I don't like to keep harping  
11 on this, but I'm concerned that between March, when you were  
12 apprised by Mr Taylor that he's not happy with his current  
13 Defence team, and now we've lost three months. Now, one of the  
14 reasons you've said for those lost three months is that you  
09:32:08 15 wanted to contact Mr Taylor and were unable to do so. Now,  
16 you've just mentioned budgetary constraints. Do you put down the  
17 reason you couldn't see Mr Taylor before fairly recently to  
18 budgetary constraints as well?

19 MR NMEHIELLE: Well, your Honours, I will address it this  
09:32:30 20 way: From the point of view of the Registry, budgetary  
21 limitation is necessary in the work of the Special Court in what  
22 has been referred to as a lean and mean budget under which we're  
23 expected to operate. Now, proposals have been made from day one,  
24 both from the provisionally Assigned Counsel and subsequently  
09:33:02 25 when he was assigned, that there was a need, due to the  
26 complexity of this case, to attract senior counsel to this team.  
27 This has been mentioned before this Court on several occasions.  
28 And counsel had, working with the Defence Office, tried to raise  
29 the issue with the Registry, so there has always been the

1 budgetary constraints issue and --

2 JUDGE LUSSICK: My question, actually, was confined to  
3 asking you: These past three months, you haven't been able to  
4 see Mr Taylor.

09:33:37 5 MR NMEHELLE: Yes.

6 JUDGE LUSSICK: Is that budgetary related?

7 MR NMEHELLE: Yes, because, one, the ability of the  
8 Principal Defender to engage in that kind of consultation was  
9 limited in the budget. Secondly, the issue of the -- of what  
10 fees counsel could be entitled to was dealt with in the budget.  
11 And other issues that affect the facilitation of the case in  
12 terms of investigation were also affected by the budget whereby  
13 there appeared to be a mandate from the Management Committee that  
14 the budget proposed for the Defence was just too high and  
09:34:19 15 therefore should be cut, and various aspects of this budget were  
16 drastically cut.

17 Now, one of the issues that this budget intended to address  
18 was the need to attract reasonable legal expertise for the Taylor  
19 trial, and again all we hear about is comparisons of this case to  
09:34:41 20 cases that have happened in other places in relation to the  
21 amount of money that is necessary. And, of course, if we go and  
22 extrapolate from those examples, we find that this case stands  
23 uniquely alone, only to be compared to possibly the Milosevic  
24 case in terms of the budgetary arrangements that are necessary  
09:35:01 25 for an effective defence.

26 So, yes, your Honour, budgetary constraints have affected  
27 this right from when the problem arose, and that the former  
28 counsel had to engage in banter between Registry and counsel as  
29 to what amount is necessary; or "Maybe if you do away with the



1 arbitration clause and the legal services contract, we'll give  
2 you an extra 5,000. Is that going to be enough?" There has been  
3 that problem of budget really affecting the ability to have a  
4 formidable team.

09:35:33 5 Your Honour, I think it is not a matter of asking for the  
6 skies. It is a matter of asking for adequate resources. From  
7 our point of view, what we have proposed are adequate resources  
8 have almost always been rejected from the point of view of a  
9 limited budget.

09:35:50 10 PRESIDING JUDGE: Mr Nmehielle, in everything you've said,  
11 I have not heard you telling us the way forward. You have not  
12 told us, in view of your budget and your budgetary constraints,  
13 what your plans are to have Mr Taylor represented.

14 MR NMEHIELLE: Your Honour, that was the reason why we made  
09:36:09 15 a number of recommendations to the Registry after consulting with  
16 the accused, and I thought that or our office thought that the  
17 need for a way forward is to immediately engage on the issue of  
18 replacement of counsel, if the Registry will cooperate from a  
19 fiscal point of view, to be able to arrive at an acceptable --  
09:36:29 20 reasonable legal representation resources for the accused. We  
21 have made our representation to the Registry. All we expect is  
22 an engagement on this issue, but it appears that rather than  
23 engage on the issue, there's a need to relitigate the  
24 recommendations, which is a bit unfortunate for us.

09:36:47 25 PRESIDING JUDGE: Mr Nmehielle, I don't quite agree. We've  
26 had a number of submissions, written submissions, from the Office  
27 of the Registrar, from your own office, from the Prosecutor,  
28 since we last met on June 4th, and the Registrar has clearly  
29 indicated what his limitations are financially and you simply

1 have to fit in with these limitations. He's given figures in his  
2 submissions as to how far or how much he's willing to spend on  
3 Defence -- a Defence team. Therefore, it would appear to me that  
4 really the logical thing for you, as the Principal Defender,  
09:37:25 5 running a legal aid scheme, is to say to yourself, I'm going to  
6 cut my coat according to the cloth that I have.

7 MR NMEHIELLE: I have always done that, your Honour, under  
8 reasonable circumstances and I'm prepared to do that. But,  
9 again, the issue of the amount that was offered by the Registry  
09:37:46 10 in terms of being able to put a team forward is an issue that, in  
11 my view, should be looked more into from the point of view of  
12 engaging with the Registry rather than a submission as to the  
13 finality, because putting a team together -- we have envisaged to  
14 put a team together, a team of experienced lawyers -- lead  
09:38:10 15 counsel, supported by between three -- two and three co-counsel  
16 and two legal assistants, operating in The Hague for this trial.  
17 And the figure being put forward, within the complexity of the  
18 case, is something that I don't want to challenge in this -- in  
19 this particular hearing, but rather what I would prefer, to  
09:38:36 20 engage with the Registry to look more into whether or not that  
21 will provide the kind of adequate resources that are necessary.

22 I think the way forward for me is for the Registry and the  
23 office to sit down, rather than filing papers back and forth, and  
24 address this issue from the point of view of understanding that  
09:38:59 25 there is, indeed, some complexity that is -- that makes this case  
26 a bit -- much more unique or different from the other cases that  
27 have appeared before the Court, which we have said from the  
28 beginning. We have said this from the beginning. And that can  
29 enable us to deal with this issue. That notwithstanding, we are

1 in the process of consulting people, lawyers or counsel, to form  
2 a new Defence team for the accused. And, again, the resources  
3 that have been thrown at us -- because the question is, who is  
4 going to pay, how much are you thinking, that has always been the  
09:39:32 5 issue.

6 PRESIDING JUDGE: Mr Nmehielle, you say the way forward is  
7 for you to sit with the Registry? Did I hear you right? Is that  
8 exactly the way forward?

9 MR NMEHIELLE: For us to engage on this issue, appoint  
09:39:46 10 counsel, and move forward. And sitting with them is in terms of  
11 looking at the issue of resources one more time to be able to  
12 attract a team.

13 PRESIDING JUDGE: Yes, but, Mr Nmehielle, really, for you  
14 to come to court and tell us that -- I mean, you are part of the  
09:40:02 15 Registry; you fall under the Registry supervisory-wise. And  
16 you're telling us that since March you have not been able to sit  
17 down and thresh out these issues, and that today we're in court  
18 without an accused, without counsel, because you haven't sat down  
19 with the Registrar to sort out these issues? Is that a way  
09:40:24 20 forward? I don't understand. Please elucidate.

21 MR NMEHIELLE: Your Honour, the issue has been one of  
22 repeated requests from the Defence Office to be able to engage on  
23 this matter. There has been unilateral and one-way approach  
24 towards the issue of Defence resources recently, and that again  
09:40:48 25 impacts on administrative issues that your Honours may not be in  
26 a position to want to hear. But I think approving a higher  
27 budget will address this issue, really, and enable us to move  
28 forward in constituting a team. We are ready to approach lawyers  
29 to constitute a team, but as the Defence Office, though part of

1 the Registry, we function in a manner that enables us to  
2 facilitate a case of an accused almost independently of the  
3 Registry, but we have no resources of our own to just go ahead  
4 and begin to get lawyers to court. The issue is the need for a  
09:41:30 5 higher budget, the need for the Registry, core Registry, to see  
6 that there is indeed an issue of resources and possibly address  
7 it from the point of view of possibly the Management Committee to  
8 enable an adequate Defence to be provided to the accused in the  
9 circumstance.

09:41:53 10 That is the crux of the matter, the need to provide  
11 adequate Defence, the need to ensure that a team is put together,  
12 and we cannot do that on our own because we do not have the  
13 resources. Everything boils down to whether or not the resources  
14 are adequate, and it is only the Registry that can provide that.

09:42:11 15 And, your Honour, if I may refer to the issue of logistical  
16 resources, and it is the same motion for logistical resources  
17 that was recently delivered. It was made very clear that the  
18 Registry, in conjunction with the Office of the Principal  
19 Defender, ought to work together to meet the logistical needs of  
09:42:34 20 the Defence team. And so because of the need for us to -- the  
21 need for us to work together is because the Defence Office has no  
22 resources of its own. It is provided resources by the overall  
23 Registry. That is what hampers our ability. And there is a need  
24 for a proactive relationship between the Registry and the Defence  
09:42:55 25 Office to engage on these issues, which has not been the case  
26 since March, I can say, and it has affected our ability to  
27 organise this team properly.

28 PRESIDING JUDGE: Mr Nmehielle, one last question: Under  
29 Rule 45(E) of the Special Court rules, this is a provision that

1 deals with a situation where counsel has withdrawn, Defence  
2 counsel has withdrawn, from the case. The last sentence of that  
3 rule says:

09:43:21 4 "In the event of such withdrawal, the Principal Defender  
5 shall assign another Counsel, who may be a member of the Defence  
6 Office, to the indigent accused."

7 Now, already, the part which deals with "another Counsel"  
8 seems problematic. But I'm just wondering what about the other  
9 leg or other arm of this rule, which says "who may be a member of  
09:43:43 10 the Defence Office"?

11 MR NMEHELLE: Yes, your Honour, and I want to underscore  
12 the word "may" in that provision. Now, of course, where the  
13 resources and the capacity are available, the Defence Office may,  
14 and I will take the word "may" advisedly in relation to the  
09:44:03 15 circumstances that the Defence Office currently faces.

16 Your Honour, as part of the budget preparation, I had  
17 proposed for a senior legal officer to be attached to the Defence  
18 Office in The Hague to be substantively involved in the Taylor  
19 trial should there be a need for the Defence Office to step in.  
09:44:26 20 That was rejected. Now --

21 PRESIDING JUDGE: By "senior lawyer," you mean at what  
22 level?

23 MR NMEHELLE: At least a P4 level, to be attached to the  
24 Defence Office in The Hague, to possibly step in as a trial  
09:44:42 25 counsel where necessary in a substantive manner. That was not  
26 approved. All that was approved was Duty Counsel at a P3 level.

27 Now, the circumstances of the Taylor trial in terms of  
28 whether or not the Defence Office can step in, we have a Duty  
29 Counsel who is doing administrative/detention duties in terms of

1 liaison with the accused, research as allowed by the Defence  
2 team, and it is almost practically impossible from the point of  
3 view -- and who is not instructed in the substantive aspects of  
4 the case, neither is he allowed to look at the disclosures that  
09:45:20 5 the Prosecution has made to the Defence team. I wonder how such  
6 counsel, Duty Counsel, can step in.

7 Of course, as much as the Prosecution would love the  
8 Principal Defender to take over the case of Mr Taylor, the  
9 Principal Defender functions not just addressing the Taylor case  
09:45:41 10 in terms of servicing it. It also addresses and services a  
11 number of other cases before the tribunal, of which he may be  
12 privy to some very confidential information that could result in  
13 a conflict of interest if he were to step in to take over the  
14 case.

09:45:57 15 More importantly, the rules do not envisage a situation  
16 where the Office of the Principal Defender takes over the case of  
17 the accused, because, as I understand the rules, the issue of  
18 representation of the accused is mainly during the initial  
19 appearance and thereafter to facilitate the case of the  
09:46:21 20 accused -- facilitate counsel, ensuring adequate resources, and  
21 moving on.

22 Now, the provision that may step in that an officer --  
23 somebody from the Defence Office may step in is a very limited  
24 measure, and in this particular case is not the kind of measure  
09:46:38 25 that, of course, I would recommend for the Taylor trial.

26 And the issue of whether or not the half measure or the ad  
27 hoc measure of allowing Duty Counsel to carry over the case or  
28 take over the case of Mr Taylor has been addressed in our sister  
29 institution here at the ICC, in the case of Lubanga, the

1 Prosecutor against Lubanga, where the Appeals Chamber of the ICC  
2 ruled that the regulations of the ICC that provide for the  
3 involvement of the Office of Public Counsel for the Defence do  
4 not take away from the need for adequate legal representation for  
09:47:23 5 the accused, and because the functions performed by such an  
6 office, which is almost similar to our office, it's no wonder  
7 that envisages a total take-over of the case.

8 So that makes it very difficult from the Defence Office in  
9 terms of its capacity to take over a massive case as that of  
09:47:43 10 Mr Taylor in its complexity and magnitude. That's the part that  
11 the Prosecution would want the Principal Defender to take over.

12 Your Honour, my submission is that, as difficult as it is  
13 in terms of the delay being caused, rather than take half  
14 measures just to be able to enable the Prosecution to continue  
09:48:05 15 its case, which may very likely, probably, impact the fair-trial  
16 rights of the accused under Article 17, it is necessary that  
17 whatever little delays that may be encountered be done -- be to  
18 enable us to achieve a longer term prevention of hiccups in this  
19 case.

09:48:29 20 I think that is what I could submit, in view of the fact  
21 that the Defence Office is not adequately resourced to take over  
22 the Taylor trial.

23 PRESIDING JUDGE: Mr Adenuga, I suppose you're representing  
24 the Registry. Would I be correct?

09:48:51 25 MR ADENUGA: You are, Madam President.

26 PRESIDING JUDGE: You have heard all the submissions from  
27 OPD, and really I'm interested in a way forward. The Principal  
28 Defender has made certain recommendations which were then  
29 communicated to the Acting Registrar. We want to know the way

1 forward. What progress, if any, has been made towards realising  
2 an adequate Defence team, a suitable Defence team, for Mr Taylor,  
3 as we speak?

09:49:20 4 MR ADENUGA: Madam President, if you allow, I would like to  
5 make a preliminary remark before I respond.

6 The issue of adequate resources and facilities has been a  
7 long and protracted one. Your Honours issued a decision on the  
8 23rd of January, 2007, on these issues and expressed satisfaction  
9 that the Registry was using its best endeavours to provide the  
09:49:40 10 Defence with adequate resources and facilities.

11 In terms of the way forward, the Registrar has filed a  
12 motion on 21 June 2007. The demands that have been made are  
13 excessive, your Honour, and if I may borrow your words, we may  
14 have to cut our coat according to our size. The accused is  
09:50:04 15 indigent but is insisting on the services of a Queen's Counsel or  
16 his equivalent. As your Honours have stated, there are counsel  
17 on the list of counsel maintained by the Office of the Principal  
18 Defender. Even if they do not take over long term, they may take  
19 over in the interim so that the case may at least move forward.

09:50:33 20 Specifically regarding the proposals put forward by the  
21 Principal Defender, the Acting Registrar has shifted a little bit  
22 within the budgetary constraints that the office faces. I do not  
23 wish to go into details of figures and budgetary issues, Madam  
24 President, but the Registrar has increased the amount of monthly  
09:50:58 25 remuneration to a figure that we consider adequate. The Office  
26 of the Principal Defender also requested the services of a very  
27 experienced international investigator. Again, the Registrar has  
28 agreed to move the post up one grade to the P4 level to  
29 adequately support the case of the Defence. And the Acting



1 Registrar remains flexible and is willing to continue to engage  
2 in resolving this issue.

3 How do we move forward today? Our own recommendation is to  
4 have an interim counsel take over this case and continue this  
09:51:37 5 case. The interim counsel could be one of the former members of  
6 the last Defence team. It could be Karim Khan. It could be the  
7 former co-counsel, Roger Sahota. There is nothing that has  
8 happened here before Madam President that has not happened in the  
9 other tribunals, that has not happened --

09:51:57 10 PRESIDING JUDGE: Mr Adenuga, these two people have left  
11 the Court. Don't take us backwards. They have effectively left  
12 the Court. That, to me, is not an option. It's not a solution.  
13 When you're talking about solutions, forget that one. The two of  
14 them have left the court, effectively.

09:52:15 15 MR ADENUGA: Madam President, if I leave the co-counsel and  
16 lead counsel, again, there are other members of the team, if I  
17 may go on. There are the legal assistants. I wish to stress,  
18 therefore, continuity. It may be better to integrate some of the  
19 old team with whichever new counsel is appointed to take the case  
09:52:32 20 forward.

21 PRESIDING JUDGE: Who are those? We didn't hear. Who are  
22 those, the legal assistants?

23 MR ADENUGA: Before Mr Khan left, Madam President, he had a  
24 fully constituted team. The co-counsel left before he left, but  
09:52:41 25 there were at least two legal assistants attached to the team.

26 PRESIDING JUDGE: These are legal assistants who do not  
27 even have audience before the Court. How can you count on those?

28 MR ADENUGA: Madam President, my recommendation was that an  
29 interim counsel is appointed, sufficiently experienced interim

1 counsel, but assisted by these former legal assistants because of  
2 their knowledge of the case for continuity purposes. Unless I  
3 can assist you further, Madam President.

4 PRESIDING JUDGE: Mr Adenuga, you express -- you use the  
09:53:14 5 phrase, "The Registrar is willing to do this" and "the Registrar  
6 is willing to do that." In my view, that is not a way forward.

7 You know, the strange thing is both the Principal Defender  
8 -- the Principal Defender is an office under the Registrar, so  
9 for us to sit here and listen to these exposés where the  
09:53:33 10 Registrar is willing to do this and willing to do that but  
11 actually hasn't done it is not cutting it.

12 MR ADENUGA: With respect, Madam --

13 PRESIDING JUDGE: For example, I would like to know, since  
14 when is the Registrar willing to have a P4 as Duty Counsel? This  
09:53:48 15 is a matter that has been requested, has been requested of him  
16 since March. March. Would I be correct? Since March of this  
17 year the issue has been, there is a need for Duty Counsel in The  
18 Hague at P4 level, as early as March of this year. And we are  
19 sitting here listening to you saying the Registrar is actually  
09:54:09 20 willing to do that. If he is willing, why don't we have a P4  
21 sitting here? We wouldn't be having this conversation.

22 MR ADENUGA: Madam President, when I was referring to the  
23 P4, I wasn't referring to Duty Counsel, I was referring to a P4  
24 international investigator.

09:54:24 25 PRESIDING JUDGE: I beg your pardon. Then you need to  
26 address us on Duty Counsel. Where does the situation stand?  
27 Because if we had Duty Counsel at P4 level, we might make our way  
28 forward.

29 MR ADENUGA: Madam President, I cannot give you a response

1 to that now.

2 MR NMEHIELLE: Your Honour, if I may step in. This issue  
3 of willing to address this matter from the point of view of the  
4 Registry is really one that does not address the points the way  
09:55:02 5 they should.

6 Now, your Honours, the issue of international investigator,  
7 I had made a budget proposal which was supported by the Cassese  
8 recommendation that an international investigator be appointed  
9 for the Taylor trial at a P5 level, which the Cassese report  
09:55:25 10 adopted, but somehow the Registry says, "No. Why should we have  
11 an international investigator at the P5 level for the Taylor  
12 trial? We have to cut it down to P3," and it was done  
13 unilaterally and I had no choice but to accept it.

14 Again, my proposal for a P4 legal officer substantively to  
09:55:40 15 be involved with this team from day one was made prior to March,  
16 even during the budgets, and of course subsequently in the  
17 staffing of The Hague, they were just rejected and thrown  
18 overboard. And I had even requested for an administrative  
19 assistant to help organise the administrative aspects of the  
09:55:59 20 Defence Office to enable the team to function. For instance, we  
21 run around between one photocopier and one Duty Counsel and the  
22 members of the Defence team. Again, that was rejected.

23 So the whole issue of willingness is not clearly seen from  
24 the practice that is on the ground.

09:56:19 25 Now, as to -- as to the offer being made, we are not  
26 bantering here. That's why I said that the way forward, I had  
27 expected after my mission to The Hague, was to agree. We had  
28 come to the point of knowing that there's a need for replacement  
29 of counsel and we began to engage on this issue. Surprisingly,

1 we saw a Rule 33 submission rather than pushing the matter  
2 forward.

3 Your Honours, I just thought that the best way to go about  
4 this matter is for your Honours to issue an order to the  
09:56:56 5 Registry, looking at the recommendations that we've made in the  
6 report, to provide adequate resources for -- particularly in the  
7 legal representation of the accused and investigative services,  
8 and consultancy or expert services to the Defence team that would  
9 be constituted, from what the Bench, the Honourable Trial  
09:57:19 10 Chamber, looks as fairly reasonable, and to also allow time for  
11 this to happen, because at the end of the day, delay is  
12 inevitable, no matter how little, to be able to organise this  
13 process forward, since the willingness of the Registry has not  
14 translated into positive action right from the beginning.

09:57:38 15 And if we will recall from day one, the former counsel had  
16 complained of the inadequacy and the inability to organise a  
17 formidable team because of inadequate resources that have been  
18 made -- that have been provided for the Taylor trial, from day  
19 one. I mean, we had counsel saying he had instructed -- he had  
09:58:01 20 consulted between 10 to 12 QCs. Nobody is willing to come  
21 because of the resources offered.

22 Again, yes, we are in a legal aid system, but we have a  
23 case, from the point of view of the Defence Office, that is very  
24 complex in terms of its expanse and even the legal dimensions of  
09:58:20 25 it, that can stand in close comparison to the Milosevic case.  
26 Therefore, that requires, therefore, much more than the current  
27 resources that are provided.

28 Your Honours, it is not us here making a case for the  
29 accused to have 10 or 20 QCs on his case. No. We want to be

1 reasonable in terms of ensuring that the Article 17 rights of the  
2 accused are addressed from the point of view of adequacy of legal  
3 defence.

09:58:58 4 JUDGE DOHERTY: Mr Nmehielle, when you say you're seeking  
5 an order to the Registry that they provide adequate facilities,  
6 what the Bench say is reasonable, are you asking the Bench to  
7 assess what are adequate facilities?

09:59:12 8 MR NMEHIELLE: No, your Honour. We have a recommendation  
9 in our report in terms of what we perceive to be adequate  
10 resources from the point of view of legal representation. For  
11 instance, we had recommended one Queen's Counsel to lead the case  
12 and to provide overall direction with respect to strategy and  
13 management of the case. We've recommended one senior counsel --

09:59:30 14 JUDGE DOHERTY: Just a moment, Mr Nmehielle. Are you  
15 asking us, therefore, to adopt this ad hoc and direct the  
16 Registrar accordingly? Is that what you're saying?

17 MR NMEHIELLE: Yes, your Honour. I was asking for the  
18 adoption of our report, recommendations, in relation to legal  
19 representation, and I addressed the Registry on that.

09:59:45 20 From the point of view of the fact that where every  
21 administrative action or decision has the tendency to affect the  
22 fundamental fair-trial rights of an accused under Article 17, as  
23 indicated by the Special Court's jurisprudence, particularly in  
24 this same motion for logistical resources, the Chamber can step  
10:00:11 25 in and can intervene and make an order for adequate resources.

26 PRESIDING JUDGE: Mr Nmehielle, I've had a browse of your  
27 recommendations. You seem to recommend QC, counsel at QC level,  
28 or just QC counsel?

29 MR NMEHIELLE: Well, I had said counsel at QC level or

1 equivalent experience, and of course --

2 PRESIDING JUDGE: The reason I ask that is that there is  
3 this fixation on Queen's Counsel, which does not recognise or  
4 take into recognition the fact that before this tribunal we have  
10:00:51 5 had very able counsel, senior counsel, from other jurisdictions  
6 who are just as capable and who are willing to work for the  
7 remuneration that the Special Court can afford, and I don't  
8 understand this fixation with Queen's Counsel. There are counsel  
9 from other jurisdictions. They don't go by the title Queen's  
10:01:15 10 Counsel, for obvious reasons, but they are just as qualified.

11 MR NMEHIELLE: Yes, your Honour. Of course, the issue is  
12 experience and expertise, and it just happens that some people  
13 with such experience and expertise are Queen's Counsel.

14 PRESIDING JUDGE: But you would have no objection if we did  
10:01:30 15 order an alternative?

16 MR NMEHIELLE: As long as it provides adequate  
17 representation to the accused, why not?

18 PRESIDING JUDGE: Now, I feel that I really need to give  
19 the Prosecutor -- you've heard, Madam Prosecutor, you've heard  
10:01:49 20 the submissions to and fro. And before we take a decision one  
21 way or the other, I think it's only fair to allow you opportunity  
22 to address us on this issue, if you have anything to say.

23 MS HOLLIS: Thank you for offering the Prosecution that  
24 opportunity, Madam President. We have just a few comments to  
10:02:12 25 make.

26 First of all, the difficulty that we are in now, we suggest  
27 to you, was orchestrated by the accused by waiting until the 4th  
28 of June, at the session in which the Prosecution was to give its  
29 opening statement, to indicate he would not be present, he would

1 not participate in the proceedings, and that he was terminating  
2 the counsel. So it's a bit difficult for this accused, through  
3 the Principal Defender, to now come and say, even though it's  
4 difficult, we should take all the time that the accused decides  
10:02:51 5 he needs to get what he thinks he wants in this case. That is  
6 not to say that he is not entitled to competent representation,  
7 and indeed he is. However, he is not entitled to determine who  
8 that representation will be presented by, nor the exact title of  
9 the people who will provide that representation.

10:03:19 10 The Statute, the jurisprudence, and fundamental fairness  
11 require competent counsel. Hopefully we have not heard the  
12 Principal Defender say in this courtroom that the list he  
13 maintains is a list that includes counsel who are not competent.  
14 Hopefully that has not been said. The Prosecution trusts that,  
10:03:40 15 indeed, that list contains the names of competent counsel.

16 So as to the way forward, first of all, we suggest you have  
17 to deal with this issue of purported self-representation, and we  
18 suggest that is not an issue because an accused such as this one  
19 cannot on one hand boycott the proceedings by refusing to attend  
10:04:10 20 and on the other hand say that he is representing himself. If he  
21 is boycotting the proceedings, he is not representing himself and  
22 so that, at this point at least, is not an issue.

23 Secondly to that issue, even were this Trial Chamber to  
24 determine that the accused has made an unequivocal request to  
10:04:35 25 represent himself and that he will be allowed to do so, this  
26 Chamber, because it is your obligation and authority to ensure a  
27 fair trial, could take steps to appoint either stand-by counsel  
28 or, if the accused proved unable to represent himself, to then  
29 provide court-appointed counsel. But the Prosecution's position

1 is that the Trial Chamber today should determine there is no  
2 issue of self-representation because this accused is, in effect,  
3 boycotting these proceedings.

4 Now, what about representation? This accused has Assigned  
10:05:20 5 Counsel. He has availed himself of the legal aid regime of the  
6 Special Court. He has no right to choose his counsel. He has a  
7 right to be consulted, but his attempts to boycott the  
8 proceedings or to obstruct the proceedings may not lead this  
9 Court to conclude that counsel cannot be assigned unless he  
10:05:45 10 agrees to it. He has no absolute right to agree.

11 So what counsel might be available either temporarily to  
12 move us forward or on a permanent basis?

13 First of all, counsel from the list, competent counsel from  
14 the list, to be assisted by members of the fully constituted  
10:06:10 15 Taylor team, who did not take it upon themselves to remove  
16 themselves from the case.

17 In that regard, your Honours, it appears that the Trial  
18 Chamber has accepted the termination by the accused of Mr Khan  
19 and has accepted his withdrawal. However, we do suggest that  
10:06:31 20 unless the Trial Chamber accepts that, that withdrawal is not  
21 effective; that, indeed, under 45(E), Rule 45(E), it is for the  
22 Chamber to determine such matters, especially now that we are at  
23 the commencement of this trial.

24 So we would suggest that counsel from the list be  
10:06:54 25 appointed, with or without the accused's agreement; that those  
26 counsel be assisted by members of the fully constituted Taylor  
27 team, who may still be available. We also suggest that, contrary  
28 to the assertions of the Principal Defender, that he and Duty  
29 Counsel are available to assist, at least in the short term, so



1 that undue delay is avoided.

2 The Principal Defender has indicated that because of his  
3 position, he may have received confidential communications that  
4 would be a conflict. Absent a conflict, the theoretical  
10:07:35 5 possibility does not preclude him from participating in these  
6 proceedings.

7 In addition, Duty Counsel should be allowed and encouraged  
8 to proceed with the counsel from the list in that he has been  
9 involved in these proceedings. Any restrictions on the role of  
10:07:54 10 Duty Counsel which were in effect when Assigned Counsel was here  
11 and was performing his duties are no longer in effect if this  
12 Trial Chamber has accepted the withdrawal of Assigned Counsel.  
13 And in that regard, of course, we do note that Mr Khan is not  
14 here today in this courtroom.

10:08:14 15 That is the way forward that we would recommend.

16 PRESIDING JUDGE: Thank you.

17 Mr Nmehielle, you have something to say in response?

18 MR NMEHIELLE: Yes, your Honour. I just want to observe  
19 that, with all due respect to Madam Prosecutor, there seems to be  
10:08:36 20 a mischaracterisation of the fact that the accused person waited  
21 until the opening to raise the issue -- the problems that affect  
22 his defence, all with a view to cause delay or frustrate the  
23 process. This Court -- I do not believe that is a fair  
24 characterisation of what transpired.

10:09:06 25 Now, from the point of view of representation, it is on  
26 record that the accused intends to represent himself, but we have  
27 reported that we have prevailed on him that it is not in the best  
28 interests of the court or the judicial process for him to  
29 represent himself. This case needs to be addressed from the --

1 from the point of view of adequacy of representation to enable  
2 the interests of justice to be done.

3 Now, the proposal for the Court to appoint stand-by counsel  
4 or court-appointed counsel is not an issue that -- I think that  
10:09:45 5 is not yet ripe for that to happen. I know that the Prosecution  
6 wants to proceed with this case. We want to ensure that this  
7 case proceeds and that the timetable is kept. But at the same  
8 time, these are issues that would tend to, in my opinion, from my  
9 experience at the Special Court, would tend to frustrate even the  
10:10:09 10 process of having a court-appointed counsel imposed upon a  
11 accused who may eventually, from my experience, refuse to  
12 cooperate and at the end of the day question the process, whether  
13 or not it is what we accept, but it does happen. And that would  
14 be, too, using a sledgehammer to kill an ant at this stage of the  
10:10:34 15 proceedings, in my view, to impose counsel or to appoint stand-by  
16 counsel because the accused wants to represent himself. We all  
17 agreed that the issue of self-representation will not address the  
18 interests of justice.

19 PRESIDING JUDGE: Sorry, Mr Nmehielle, sorry to interrupt.  
10:10:55 20 On that issue, before you move forward, Ms Hollis may well have a  
21 point regarding the request to represent himself, the request by  
22 Mr Taylor to represent himself. Mr Taylor did address the  
23 Chamber in a letter on the 4th of June indicating that he would,  
24 from that date, no longer require the services of court-assigned  
10:11:22 25 counsel to represent him in these proceedings and he would  
26 henceforth conduct his own defence. Now, we took that letter --  
27 it was unequivocal, we took it at face value, and we believed  
28 him. He has not contradicted or withdrawn that letter to date.  
29 Now, the question that begs is that a person having said

1 they will now represent themselves and in the same breath absent  
2 themselves from court, in my view, can only have one  
3 interpretation: Boycott.

4 MR NMEHI ELLE: Your Honour, if --

10:11:56 5 PRESIDING JUDGE: If Mr Taylor is sincere in representing  
6 himself at least for today or before he gets his counsel  
7 replaced, he should be here in court to do that, to represent  
8 himself. He isn't here --

9 MR NMEHI ELLE: Your Honour --

10:12:14 10 PRESIDING JUDGE: -- and, therefore, in my view, Ms Hollis  
11 may well have a point, that that can have only one  
12 interpretation, namely, boycott.

13 MR NMEHI ELLE: Your Honour, I fully appreciate your  
14 remarks, but, your Honour, the point remains that the letter you  
10:12:30 15 just read is predicated upon a number of reasons which impact on  
16 adequate resources, and of course we were assigned to a mission  
17 to consult with the accused on his defence problems and that  
18 mission produced an undertaking. It has not given the accused  
19 the opportunity to call the shots here. No. It produces an  
10:13:01 20 undertaking of his willingness to continue to participate because  
21 we -- from our experience and from the experience of this Court  
22 and other courts that self-representation will not be in the  
23 interests of justice, despite whatever the accused may have said,  
24 we prevailed on him that it is not the best way to go. But,  
10:13:21 25 again, he has the final decision to make. We can only advise  
26 from the provisions of Rule 45. So that letter is predicated on  
27 a number of issues which are resources.

28 PRESIDING JUDGE: The point I'm making is he hasn't  
29 withdrawn the letter as of this morning, and you, on the other

1 hand, are going ahead to arrange a Defence team for him. How are  
2 you going to resolve these two parallel situations?

3 MR NMEHIELLE: Your Honour, I would have thought that -- I  
4 would have thought that our representation to the Court that the  
10:14:00 5 accused has agreed to come back to participate in the process if  
6 these issues are addressed is an indication that what he has  
7 indicated in that letter is qualified. And as to whether or not  
8 he should have been here to withdraw that letter is a different  
9 issue for me as to whether or not -- what he should do at this  
10:14:35 10 point in time, particularly because we are not standing in the  
11 position of counsel for the accused as at today. We are, rather,  
12 doing our duty in facilitating adequate representation for the  
13 accused.

14 So I would assume that, having sent us on a mission to  
10:14:51 15 consult with him, and we got an undertaking from him to come back  
16 and to participate in the process, I think that prevailed upon  
17 him to be -- to begin to even consider the issue of the formation  
18 of a legal team. And I thought that that is a success. He could  
19 have easily said, "You get out. I don't want to talk to you and  
10:15:11 20 I don't want to participate." But we've moved away from that  
21 point of view, to try to bring the accused back to the Court in  
22 the interests of justice.

23 So, of course, I could convey a message to him that the  
24 Chamber is of the view that he has not withdrawn the letter in  
10:15:28 25 question. If the Honourable Chamber wants me to convey that  
26 particular message, of course I will.

27 PRESIDING JUDGE: It is a matter of fact. The letter has  
28 not been withdrawn and we take it at face value. But that is  
29 beside the decision we're about to make.

1 JUDGE LUSSICK: Mr Nmehielle, is there going to be an  
2 application by either you or Mr Jalloh to this Court?

3 MR NMEHIELLE: Your Honour, the application -- I mean, by  
4 "application," you mean today in the course of these proceedings  
10:16:08 5 or subsequently? Because the application we intend to make is  
6 for the Chamber to adopt our report, particularly in terms of  
7 resources for the team for the defence of the accused person and  
8 for adequate time and facilities to enable the team to be put --

9 JUDGE LUSSICK: I'm sorry, I should have been more  
10:16:31 10 explicit. The Prosecution is here with witnesses. They're ready  
11 to proceed today. Now, in relation to that situation, do you  
12 or Mr Jalloh have any application?

13 MR NMEHIELLE: Your Honour, yes, we do have, and that  
14 application is predicated on the filing we made from our office  
10:16:51 15 asking for the suspension of time limits, the postponement of the  
16 hearing today, and to give adequate time to enable these issues  
17 to be sorted out before the case can proceed. We made that  
18 application and the filing, and we will refer back to it and  
19 repeat it now.

10:17:09 20 JUDGE LUSSICK: Well, what specifically do you call  
21 adequate time?

22 MR NMEHIELLE: Your Honours, there are two issues in terms  
23 of timing for us, at least from the perspective of the Defence  
24 Office. The Defence Office, in my view, from my experience, will  
10:17:24 25 require not less than four weeks to put together a Defence team,  
26 possibly up to six weeks, in view of recess and all that.

27 Now, putting together a team is our responsibility from the  
28 circumstance. Thereafter, the team that is put together will be  
29 in a position to determine, to approach the Court, as to whether

1 they need time to proceed. And I want to bifurcate that request.  
2 We cannot make the second part of the request because we're not  
3 in a position to. But in terms of being able to put together a  
4 team, we would say between four to six weeks to constitute a  
10:18:08 5 team, provided that the Registry would cooperate with us in terms  
6 of ensuring that adequate resources in putting a team together  
7 are provided.

8 Thank you, your Honour.

9 JUDGE DOHERTY: Mr Nmehielle, a point of clarification in  
10:18:27 10 your former address. You said that Duty Counsel was not allowed  
11 to have disclosure. Where did that refusal emanate from?

12 MR NMEHIELLE: In fact, there was a direction, as I  
13 understand it - my Duty Counsel has just pointed me to the fact -  
14 that the Office of the Prosecutor itself directed Mr Karim Khan,  
10:18:56 15 former counsel, not to make the disclosure available to the  
16 Office of the Principal Defender. So in such a situation -- and  
17 that is the clarification, in fact, that I need to give.

18 [Trial Chamber confers]

19 JUDGE DOHERTY: Ms Hollis, you've heard the Principal  
10:19:22 20 Defender. Have you any comment?

21 MS HOLLIS: Your Honour, the Office of the Prosecutor's  
22 position was that disclosure would be made to the Assigned  
23 Counsel, and Mr Khan was the Assigned Counsel.

24 PRESIDING JUDGE: What is your response to the application  
10:19:40 25 on the ground?

26 MS HOLLIS: Your Honours, again, we go back to the point  
27 that the termination of counsel with whose services the accused  
28 indicated he was fully satisfied was first brought to the  
29 attention of this Chamber and the Prosecution on the 4th of June.

1 He was fully satisfied with those services. Therefore, the  
2 dilemma we are in today is of the accused's making. He had  
3 counsel with whom he was fully satisfied, competent counsel,  
4 ready to proceed. But rather than go forward with that, he  
10:20:22 5 chose, in an effort to manipulate the proceedings, to come  
6 forward and fire that counsel at the last moment, or at least  
7 attempt to. Therefore, when we're looking at a solution, what  
8 the Prosecution suggests is that the accused should not be  
9 allowed to unduly benefit from a situation of his own making.

10:20:43 10 In terms of the delay it would take to put a team together,  
11 the Prosecution suggests, once again, that what should happen is  
12 that the Principal Defender, the Duty Counsel, members of the  
13 fully constituted Defence team who are still available, should go  
14 forward with this case with some delay, because it takes them  
10:21:13 15 some time to be prepared to begin to cross-examine witnesses, but  
16 that they should go forward with this case with perhaps someone  
17 from the list so as to minimise the delay for the case to go  
18 forward. While the case is going forward, if there needs to be  
19 additional members brought on as a permanent team, those efforts  
10:21:40 20 could be going on while this case is moving forward.

21 But to say that we must stop now, as though we are back at  
22 ground zero, we suggest, is not consistent with the circumstances  
23 that brought us here today, nor is it consistent with the needs  
24 of the case, the needs of the accused. We have the means to go  
10:22:01 25 forward, and while we're going forward, then other steps can be  
26 taken to bring on additional team members.

27 Again, it appears that much too much emphasis is being  
28 placed on what the accused decides will be the way these  
29 proceedings run.

1 In terms of trying to entice the accused back into this  
2 courtroom, the Prosecution suggests that the accused has no right  
3 to refuse to attend criminal proceedings. Rather, what is in the  
4 rules and the Statute -- the Statute talks about the rights of  
10:22:35 5 the accused to be present, not to be absent; the rules talk about  
6 the discretion of this Trial Chamber to move forward in certain  
7 circumstances, such as when the accused refuses to attend. The  
8 rules do not say that the accused has a right to attend.

9 This Court, in fact, could order the accused to come  
10:22:54 10 forward. And in fact the Prosecution suggests that indeed the  
11 Court should order that because there is one technical but  
12 significant outstanding matter that has not been dealt with and  
13 that is an entry of a plea on the amended count 5 of the  
14 indictment. Now, of course, should the Trial Chamber elect not  
10:23:15 15 to exercise its discretion to force the accused to be in the  
16 courtroom, it could enter a plea of not guilty on that count, and  
17 perhaps the Court will wish to exercise its discretion in that  
18 manner.

19 But it is this Trial Chamber that has the duty and the  
10:23:32 20 authority to control these proceedings and to do the overall  
21 supervision of these proceedings to ensure that justice prevails  
22 and that it is a fair trial. It is not for this accused to  
23 negotiate his presence in this courtroom. It is for the Trial  
24 Chamber to determine whether they will require his presence or  
10:23:51 25 whether, pursuant to the rules, they will move forward in light  
26 of his refusal to attend.

27 This is not a matter for him to decide. This is a matter  
28 for your Honours to decide based on your sound discretion.

29 Thank you.



1 [Trial Chamber confers]

2 PRESIDING JUDGE: The Chamber will retire for approximately  
3 an hour and we will return with a decision on the way forward at  
4 11:30. We shall reconvene at 11:30.

10:24:43 5 Please adjourn the court.

6 MS IRURA: All rise.

7 [Recess taken at 10:24 a.m.]

8 [On resuming at 12:12 p.m.]

9 MS IRURA: All rise. Please be seated.

12:13:18 10 PRESIDING JUDGE: Firstly, I want to apologise for taking  
11 longer than we had indicated, simply because we needed that much  
12 more time to formulate our decision.

13 The following is the Trial Chamber's decision regarding the  
14 issues as they lie on the floor:

12:13:36 15 The Trial Chamber recalls that on the 4th of June, 2007,  
16 the accused, Mr Charles Ghankay Taylor, wrote a letter addressed  
17 to the Presiding Judge notifying the Chamber that he, amongst  
18 others, terminated instructions to his then legal representatives  
19 and that he was from that time forward going to represent  
12:13:59 20 himself. This is what the letter said in summary.

21 The Trial Chamber notes that the accused's absence in court  
22 today, in absence of any explanation to the Court, is not only  
23 inconsistent with his indication to represent himself - for how  
24 can one represent oneself if they're absent? - but it's also  
12:14:27 25 tantamount to boycotting the proceedings, in the Chamber's view.

26 The Trial Chamber agrees with the Prosecutor that the  
27 accused does not have the option to appear before this Court as  
28 and when he chooses to. Regardless of the issues or difficulties  
29 he is encountering in sorting out his fair-trial issues - and we

1 in no regard consider those issues as small or trivial; they are  
2 valid issues - but regardless of those issues, the accused is  
3 under an obligation to appear before the Court at all times.  
4 When he chooses not to appear, we can assume that he has deemed  
12:15:10 5 to absent himself or he is, in fact, boycotting the proceedings  
6 as a whole.

7 Now, having said that, the Trial Chamber notes the  
8 Principal Defender's submission this morning that he has tried,  
9 the Principal Defender has tried, and succeeded in persuading  
12:15:28 10 Mr Taylor that the idea of self-representation would not be in  
11 the interests of justice, nor of the integrity of the judicial  
12 process in these circumstances. The Trial Chamber, therefore,  
13 accepts that Mr Taylor no longer wishes to represent himself and  
14 instead would accept Assigned Counsel to represent him.

12:15:53 15 The Trial Chamber would like to draw the attention of the  
16 Principal Defender to the provisions of Article 24(D) of the  
17 Practice Direction on Assignment of Counsel. The provisions  
18 require the Principal Defender, upon accepting withdrawal of  
19 Assigned Counsel, to, and I quote, "immediately assign new  
12:16:15 20 counsel to represent the accused and, where appropriate,  
21 authorise the nomination of other counsel in the Defence team."

22 We also would like to draw your attention, Mr Principal  
23 Defender, to Article 25(A) of the same Directive which provides  
24 that "where counsel is withdrawn by the Principal Defender, or  
12:16:40 25 where the services of Assigned Counsel are discontinued," as in  
26 this case, "Duty Counsel of the Office of the Principal Defender  
27 shall give the accused legal assistance until a new counsel is  
28 assigned, unless the accused waives his right to such  
29 assistance."

1 In other words, the Statute, the rules, and Directive on  
2 Assignment of Counsel do not envisage a vacuum situation whereby,  
3 after assignment -- Assigned Counsel are withdrawn, there would  
4 be no provision made to replace counsel.

12:17:18 5 The Chamber, therefore, notes that the Principal Defender  
6 should have endeavoured, at least in the short term and in the  
7 interim, to comply with the provisions of Articles 24 and 25, as  
8 I've read them above, of the Directive on Assignment, and this  
9 should have been done in the interests of justice.

12:17:41 10 Now, regarding the long-term provision for Assigned  
11 Counsel, the Trial Chamber has noted the submissions of both the  
12 Principal Defender and Mr Adenuga on behalf of the Acting  
13 Registrar. The Trial Chamber notes that the issue of inadequate  
14 representation has been known to the Acting Registrar in general  
12:18:02 15 and to the Principal Defender in particular since early March  
16 2007 and nothing practical seems to have been done to address the  
17 problems.

18 The focus of the Registry has not been to provide the  
19 accused with adequate representation as required by Article 17 of  
12:18:20 20 the Statute. Rather, the Registry's focus has been conserving  
21 funds and working within budgetary constraints. In the Trial  
22 Chamber's view, the whole issue has wrongly boiled down to  
23 availability of finances rather than fair-trial issues being  
24 addressed.

12:18:45 25 The Trial Chamber wishes to emphasise that if this Court is  
26 expected to conduct a fair and expeditious trial, then the  
27 provision of adequate representation and adequate resources are  
28 inevitable. They must be provided.

29 The Trial Chamber has, on a number of occasions before

1 today, warned the Registry of potential delay arising out of the  
2 failure to resolve these issues in a timely fashion, and today  
3 our worst fears have been realised.

4 In our view, the resolution of this issue lies squarely  
12:19:25 5 with the Registrar, Acting Registrar, in consultation with the  
6 Office of the Principal Defender, and failure to resolve this  
7 issue has led to this and probably further delay of these  
8 proceedings.

9 We wish to emphasise here that we really would not like --  
12:19:48 10 or we've frowned upon undue delay in this trial. That it would  
11 come from an institution within the Court is really regrettable,  
12 or it would come from some kind of a consideration of budgetary  
13 constraints, et cetera, is really regrettable, and I do not know  
14 how to underline that.

12:20:10 15 In the circumstances, the Trial Chamber makes the following  
16 orders, which we consider to be in the interests of justice and  
17 which we hope will move this trial forward. They are divided  
18 into short-term measures and long-term measures.

19 Now, in the short term, the Principal Defender is directed  
12:20:31 20 to immediately comply with the provisions of Article 24(D) of the  
21 Directive on Assignment of Counsel by assigning new counsel to  
22 represent the accused, either from the list of counsel or from  
23 OPD.

24 Again, in the interim, the Principal Defender is further  
12:20:50 25 directed to retain, if possible, the residual team members of the  
26 Taylor Defence team to assist this newly Assigned Counsel.

27 And thirdly, in the interim again, Duty Counsel, the  
28 present Duty Counsel, is directed to appear in court on Monday,  
29 the 2nd of July, 2007 - that's a week from today - when this case

1 reconvenes, to represent the accused if Assigned Counsel is not  
2 yet in a position to start -- to assume his duties. So, in other  
3 words, the trial will commence on the 2nd of July, and these are  
4 the interim measures that we'll put in place. The trial will  
12:21:36 5 continue on the 2nd of July.

6 Now, in the long term, and this is directed at the Acting  
7 Registrar, the Acting Registrar is directed to ensure that by the  
8 31st of July, 2007 --

9 [Trial Chamber confers]

12:21:57 10 PRESIDING JUDGE: Sorry, I beg your pardon. I'm told the  
11 2nd of July is a public holiday here in the Netherlands; is that  
12 correct?

13 MR ADENUGA: It's an ICC/Special Court holiday.

14 PRESIDING JUDGE: Then, in that case, I will adjust that  
12:22:15 15 order to read that we shall adjourn these proceedings to Tuesday,  
16 the 3rd of July, when we expect these proceedings to continue,  
17 and I will tell you in a minute how they will continue.

18 Now, this next order is directed at the Registrar as a  
19 long-term measure. He is directed to ensure that by the 31st of  
12:22:38 20 July, 2007, which is barely more than a month from today, the  
21 Principal Defender is enabled to assemble a Defence team for  
22 Mr Taylor comprising the following: One lead counsel of the  
23 qualities described or mentioned in Rule 45(C) of the rules, two  
24 co-counsel of the quality described in Rule 45(C) of the rules,  
12:23:10 25 and one senior investigator at a P4 level. These will supplement  
26 the residual members of the team of Charles Taylor as they now  
27 exist, the various assistants.

28 Now, the fully constituted Defence team should be in place  
29 by the 31st and ready to address the Chamber when we reconvene.

1 Court will adjourn to the -- in the interim, court will  
2 adjourn in a week's time, to the 3rd of July, for the  
3 continuation of the Prosecution case. That's, fairly, a week  
4 from today. During that time we expect either Duty Counsel to  
12:24:03 5 represent the accused or the newly Assigned Counsel in the  
6 interim to represent the accused, because the Prosecution will  
7 continue with their case on that day.

8 Now, the Trial Chamber also wishes --

9 Yes, Ms Hollis, did I make a mistake?

12:24:25 10 MS HOLLIS: No, your Honour. I'm sorry to interrupt. I  
11 will withhold my question until you have finished. Thank you.

12 PRESIDING JUDGE: So I was going to continue that the Trial  
13 Chamber wishes to inform the parties of the forecast of what's  
14 going to happen in the next two months.

12:24:45 15 First of all, the Chamber is required to be in Freetown for  
16 sentencing proceedings with regard to the AFRC trial, and we  
17 should be there from the 12th of July until about the 19th of  
18 July for this purpose, and so we will not be here but we will be  
19 in Freetown and therefore the proceedings in this case during  
12:25:11 20 that time will not be able to take place.

21 We will be back in The Hague on the 20th of July, but  
22 unfortunately that is the day that the ICC recess also commences  
23 and so we will not be able to sit in court for these proceedings  
24 until the end of the ICC recess.

12:25:39 25 Now, this is what we had initially said, that we would  
26 comply with the ICC recess times. The ICC recess, I think, ends  
27 on the 13th of August, if I'm not mistaken, 13th of August, 2007.  
28 However, this was before the President of the Special Court  
29 issued an order designating the recess for Freetown. Now, the

1 Special Court recess starts a little bit later than the ICC  
2 recess and also lasts a little bit longer than the ICC recess, a  
3 week longer.

4 Now, given the fact that parties cannot file any documents  
12:26:23 5 until the Special Court recess is over, we did not think it wise  
6 to reconvene this trial during the pendency of the Special Court  
7 recess. In other words, we expect to reconvene the trial after  
8 the -- on Monday, the 20th of August, that is, after both  
9 recesses are over. So Monday, the 20th of August, is the day  
12:26:51 10 that we'd reconvene next, after we adjourn next week. We will  
11 have one more week --

12 [Trial Chamber confers]

13 PRESIDING JUDGE: If I've confused you, this is how it will  
14 be: We will now adjourn to Tuesday, the 3rd of July, and we will  
12:27:18 15 sit through to the 11th of July. We will then adjourn to enable  
16 ourselves to travel to Freetown for the sentencing proceedings in  
17 the AFRC case. We will then return to Freetown [sic] just in  
18 time for the recess to begin. Court will be in recess from the  
19 20th of July until the 20th of August. The first day that we  
12:27:48 20 will next reconvene will be the 20th of August, 2007. I hope  
21 that is clear.

22 [Trial Chamber confers]

23 PRESIDING JUDGE: What I meant was the Court will return  
24 from Freetown to The Hague after the sentencing proceedings.

12:28:11 25 Now, Ms Hollis, you still have questions?

26 MS HOLLIS: The question, your Honour, had to do with the  
27 practicalities of our disclosure obligations and also outstanding  
28 responses to motions.

29 It is the understanding of the Prosecution, based on what

1 Madam President has just announced to the court, that we should,  
2 as of today, serve disclosure on the Duty Counsel, as no other  
3 counsel has yet been appointed.

4 PRESIDING JUDGE: That is correct, Ms Hollis. That is  
12:28:44 5 correct.

6 MS HOLLIS: And will it be Duty Counsel that will be  
7 responding to these outstanding motions?

8 PRESIDING JUDGE: That is correct, according to Rule -- I  
9 think, Article 25(A), that is how we understand it.

12:28:58 10 MS HOLLIS: Thank you, your Honour. And then finally, just  
11 for absolute clarification, we will sit the week of the 3rd, but  
12 at the end of that week, we will not sit again until the 20th of  
13 August; is that correct?

14 JUDGE LUSSICK: You will sit the week of the 3rd, and the  
12:29:15 15 last day of sitting will be the 11th of July. We fly back to  
16 Sierra Leone the next day.

17 MS HOLLIS: Thank you very much.

18 PRESIDING JUDGE: Mr Principal Defender.

19 MR NMEHELLE: Yes, your Honour, there are, indeed,  
12:29:32 20 practical difficulties from the perspective of the Office of the  
21 Principal Defender and as a result I would like to make a few  
22 observations.

23 Now, of course, by the order of the Court, Duty Counsel is  
24 supposed to, in the interim, assist with the case. As indicated,  
12:29:57 25 this case, the trial, is to continue on the 3rd of July. There  
26 are a lot of pending motions which Duty Counsel does not have  
27 the -- I mean, within the time period, the ability to respond to  
28 all of them, and of course the disclosures that he has not been  
29 privy to before now, to look into between 35 to 40,000 pages of



1 disclosure, Prosecution disclosure, and continuing disclosure,  
2 for him to be ready to possibly participate in the case as of the  
3 3rd of July, this will create real practical difficulties.

4 And, your Honours, there are some issues I would like to  
12:30:52 5 address you in chambers rather than in public in terms of  
6 practical difficulties for the OPD regarding this issue. I  
7 wouldn't want to mention them in public.

8 So these are the difficulties I just thought I should throw  
9 out to the Honourable Chamber.

12:31:10 10 PRESIDING JUDGE: Mr Nmehiele, the orders we've made are  
11 made in light of the existing rules and the existing articles  
12 on -- the existing Directive on Assignment of Counsel. We have  
13 not come out with any directives that fall outside of these  
14 provisions. We've not invented anything new.

12:31:32 15 Now, practical difficulties or no difficulties, we cannot  
16 have a vacuum situation whereby the trial is held to ransom or  
17 the progress of the trial is held to ransom because you've not  
18 been able to assign counsel. It is precisely for such a  
19 situation that Duty Counsel has been appointed. If you think  
12:31:54 20 that the present Duty Counsel is not able to handle the case,  
21 then please come up with someone who can. And I don't think that  
22 Duty Counsel is required, for the purposes of responding to the  
23 motions, to be conversant with the 40,000 pages of disclosure.  
24 That is one.

12:32:15 25 But, secondly, it is all the more reason that you should  
26 expedite the appointment of this other counsel, Assigned Counsel,  
27 that we've directed in the short term. And if counsel, on the  
28 3rd of July, have any problems addressing the Court or dealing  
29 with any issues, surely they are capable of making their own

1 applications in that regard.

2 I see no reason to adjust our court orders, especially in  
3 the absence of alternatives. You leave no room to the Trial  
4 Chamber -- to the Trial Chamber for alternative orders. So we  
12:32:54 5 have to go by what the rules say and what the directives say.

6 MR NMEHIELLE: But, your Honour, the practical difficulties  
7 extend to the fact that some of these motions are already due,  
8 and the issue of -- the order of the Court today, as interpreted  
9 in relation to the provisions of Article 24(D), we had a  
12:33:17 10 situation, your Honour, where the accused is representing -- was  
11 representing himself that gave rise to the fact that the  
12 provisions of Article 24(D) could not immediately apply, in my  
13 view. And as such the order of today does not, in my view, take  
14 into account the fact that the accused was representing himself  
12:33:46 15 until today, whereby we reported to the Court that we prevailed  
16 on him to rethink the possibility of being represented by counsel  
17 and therefore the need to put together a legal team.

18 All that said, the practical difficulty is that some of  
19 these motions are already due, and if Duty Counsel will have to  
12:34:06 20 respond to them, it has to be with the aid of the Court in terms  
21 of an extension of time within which he is able to do that so  
22 that we don't create a legal anomaly under the circumstances.

23 PRESIDING JUDGE: Mr Principal Defender, that is up to  
24 counsel. There is legal provision and latitude for him to apply  
12:34:25 25 for extension of time. We shall deal with that if and when it  
26 arises.

27 MR NMEHIELLE: Thank you.

28 PRESIDING JUDGE: With that, the Court stands adjourned  
29 until Tuesday, the 3rd of July, for continuation of the

1 Prosecution case.

2 MS IRURA: All rise.

3 [Whereupon the hearing adjourned at 12:34 p.m.]

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