



Case No. SCSL-2003-01-PT

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

Friday, 26 January 2007  
2:00 p.m.  
STATUS CONFERENCE

TRIAL CHAMBER II

Before the Judge:

Teresa Doherty

For Chambers:

Mr. Tilman Blumenstock

For the Registry:

Mr. Lovemore G. Munlo  
Ms. Rosette Muzigo-Morrison

For the Prosecution:

Mr. Stephen Rapp  
Ms. Wendy van Tongeren

For the accused Charles Ghankay  
Taylor:

Mr. Karim Khan  
Mr. Roger Sahota  
Mr. James Supuwood  
Mr. Avi Singh  
Ms. Caroline Buisman

1 [The accused not present in court]

2 JUDGE DOHERTY: Madam Court Attendant, please call the  
3 matter.

4 MS. MUZIGO-MORRISON: The Special Court for Sierra Leone is  
13:58:12 5 sitting in open session for a Status Conference in the case of  
6 the Prosecutor against Charles Taylor, case number SCSL-2003-01.

7 I'm most obliged, Your Honour.

8 JUDGE DOHERTY: Thank you.

9 I'll take appearances, Your Honour.

13:58:33 10 MR. RAPP: Madam President, Your Honour, members of the  
11 Defence. Appearing today for the Prosecutor is the Prosecutor,  
12 Stephen Rapp, and Trial Attorney Wendy van Tongeren. Thank you.

13 JUDGE DOHERTY: Thank you, Mr. Rapp, and welcome to Trial  
14 Chamber II. Thank you.

13:58:54 15 For the Defence.

16 MR. KHAN: If it please Your Honour, Karim Khan, appearing  
17 on behalf of Mr. Charles Taylor, assisted today by Mr. Roger  
18 Sahota, Mr. James Supuwood, Mr. Avi Singh, and Ms. Caroline  
19 Buisman.

13:59:10 20 JUDGE DOHERTY: You went a little quickly towards the end  
21 there for me, Mr. Khan.

22 MR. KHAN: Your Honour, James Supuwood is our West  
23 Africa/Liberia legal advisor. Next to him is Mr. Avi Singh, and  
24 seated next to him, last but not least, Ms. Caroline Buisman.

13:59:35 25 Your Honour --

26 JUDGE DOHERTY: And?

27 MR. NMEHIELLE: Vincent Nmehielle, Principal Defender.

28 JUDGE DOHERTY: Thank you, Mr. Defender.

29 I note the accused is not present in court.

1 MR. KHAN: Indeed, Your Honour. I should make it clear,  
2 and I did alert the Senior Legal Officer and Mr. Registrar to  
3 this fact, that Mr. Taylor was complaining yesterday of some  
4 discomfort to his back. He had rather restricted mobility. He  
14:00:01 5 was seen today, and given the transit requirements, he is not  
6 attending today. I am authorised to waive his right to attend,  
7 and there's no bar, with Your Honour's leave, to today's  
8 proceeding continuing as normal.

9 JUDGE DOHERTY: Thank you for that indication, Mr. Khan. I  
14:00:22 10 will rule, then, that he's waived his rights, pursuant to Rule  
11 60, and the matter will proceed in his absence.

12 MR. KHAN: Indeed, I'm grateful.

13 JUDGE DOHERTY: There is one preliminary matter, counsel.  
14 Very late this afternoon we received a request from the  
14:00:32 15 Press and Public Affairs Office of the Special Court -- Mr. Khan,  
16 if you wish to be seated --

17 MR. KHAN: I'm grateful.

18 JUDGE DOHERTY: -- as I'm addressing both sides.  
19 Incidentally, I neglected to welcome Mr. Supuwood to the  
14:00:53 20 Special Court, and I'll deal with another matter relating to  
21 counsel in a moment.

22 The preliminary matter, it relates to a request by the  
23 Press and Public Affairs Office of the Special Court to allow a  
24 Reuters photographer to enter the court. The Court has decided,  
14:01:11 25 pursuant to Rule 81(D) of the Rules of Procedure and Evidence, to  
26 permit the Reuters reporter to be in the court for one minute  
27 after the court is seated and to take photographs on the  
28 condition that he ensures that the dignity of the proceedings are  
29 preserved and that he will be the only photographer with access

1 to the courtroom. And he has agreed to make available  
2 photographs taken -- to be made available to the press in Sierra  
3 Leone and to the Press and Public Affairs Office of the Special  
4 Court for any photographs for internal use. So he's come and  
14:01:50 5 gone, as I read that out.

6 Counsel, there is an agenda for today's hearing. There was  
7 time given for counsel to put any proposed additional items on  
8 the agenda. It is my understanding that no additional items have  
9 been put forward, and accordingly I will assume that the agenda  
14:02:18 10 is as issued on the 20th of November. I will, of course,  
11 entertain any other matters that may arise.

12 The first matter on the agenda is a matter of disclosure  
13 obligations under Rules 66, 67, and 68. Since that was drafted,  
14 yesterday I understand, Mr. Khan, two motions were filed in  
14:02:47 15 relation to the provisions of Rule 66 and Rule 68. That is  
16 correct?

17 MR. KHAN: Your Honour, that is correct. They are not new  
18 matters. They will not be a surprise to anybody in this court.  
19 Your Honour, they were raised orally at the last Status  
14:03:03 20 Conference. There was disagreement between the parties.  
21 Agreement could not be reached by way of any out-of-court  
22 discussions, and therefore, simply to give effect and to obtain  
23 judicial relief, a motion has been filed.

24 JUDGE DOHERTY: I'm aware of what was said at the previous  
14:03:22 25 two conferences.

26 MR. KHAN: Right.

27 JUDGE DOHERTY: However, since these matters are now before  
28 the Trial Chamber, my initial view is that the Trial Chamber is  
29 seized of them and we cannot deal with those issues unless, by

1 consent, some resolution is entered, by consent, today. That's  
2 my initial view, and I will ask both counsel what their view is  
3 on this agenda item.

4 MR. KHAN: Well, Your Honour, I'm most grateful for that.

14:03:54

5 I think it's an eminently sensible way of proceeding. I don't  
6 think there will be any controversy. Once again, it's not my  
7 intention to raise anything related to those matters that Your  
8 Honours, in due course, after consideration and receiving the  
9 Prosecution's written response, will adjudicate on, so they are  
10 not matters that are going to be raised by me today.

14:04:09

11 JUDGE DOHERTY: Mr. Rapp, have you any reply or observation  
12 to make on this?

13 MR. RAPP: Madam President, we really deal here with two

14 types of disclosure. One is the disclosure of documents, and I

14:04:24

15 think the motion for inspection of documents puts in issue the  
16 whole question of how documents are inspected and labeled. Under  
17 those circumstances, I suspect we will have some dispute, and  
18 it's not really appropriate to get into that.

19 With regard to disclosure of witnesses, we can make a

14:04:43

20 report of the situation in terms of the witness disclosure. Now,  
21 I believe there may soon be a motion in regard to varying  
22 protective measures, but I think it's possible to deal with the  
23 66(A)(i) or (A)(ii) issues here today and to have a report on  
24 that.

25 In that regard, I should say, Your Honour, that as far as

14:05:02

26 we've noted, all of the witnesses' - both on our core list and on  
27 our backup list - statements in redacted form, pursuant to the  
28 protective order, have been disclosed. There are a few witnesses  
29 that waive protection, and on those the statements have been

1 disclosed in an unredacted manner, except for four witnesses, one  
2 of whom it's been decided not to use, Witness TF-1-341, though  
3 that statement has been disclosed to the Defence for Rule 68  
4 purposes; and there are three other witnesses, TF-1-042,  
14:05:45 5 TF-1-044, and TF-1-272, individuals that have not yet given their  
6 consent to disclosure of their statements because of the concern  
7 of their protection. Obviously we couldn't use those individuals  
8 as witnesses unless we make that disclosure. But we're  
9 endeavouring as soon as possible to obtain that consent and to  
14:06:05 10 make the disclosure in redacted form, and certainly well in  
11 advance of the 66(A)(i) requirement of disclosure 60 days prior  
12 to the trial date.

13 Thank you, Madam President.

14 JUDGE DOHERTY: One matter I did note that I think I could  
14:06:25 15 raise is that in the previous hearings, Mr. Khan, you had asked  
16 for maps. I notice one of the annexures to one of your motions  
17 refers to maps. Have you had whatever maps you've needed?

18 MR. KHAN: Your Honour, we haven't had the maps we've  
19 needed. I have just received in court today some disclosure. In  
14:06:46 20 fact, it's a letter from -- well, addressed to the Prosecutor,  
21 and I'm very grateful to Mr. Rapp for providing it. I think  
22 matters are afoot, and I hope maps would be served soon.

23 One moment, Your Honour.

24 [Defence counsel confer]

14:07:06 25 MR. KHAN: Your Honour, this relates to maps for Liberia.  
26 So I think a request has been made from the Prosecution to the  
27 relevant body, and a relevant map detailing the contours of  
28 Liberia and the boundaries hopefully will be served in due  
29 course.

1 JUDGE DOHERTY: Will those also be made available to the  
2 Court, Mr. Rapp?

3 MR. RAPP: Yes, they will. And the particular issue there  
4 was there was a map that was produced and in the possession of  
14:07:32 5 the United Nations Mission in Liberia, and we had to have the  
6 permission of the Secretary-General's Special Representative -  
7 and I requested that upon my arrival in Freetown - and I'm  
8 pleased that yesterday we received his letter indicating that we  
9 may use that map, though they do not warrant or guarantee that  
14:07:51 10 it's the best product they were able to produce. And so we  
11 are -- we will obtain it and disclose it and also provide it to  
12 the Chamber.

13 JUDGE DOHERTY: That was the only matter that I felt was  
14 non-controversial that could be raised outside those motions.

14:08:08 15 Unless counsel has any matter that they think could be  
16 safely raised under either Rule 66 or 68 or 67, I would be glad  
17 to entertain it.

18 MR. KHAN: Your Honour, with your leave, there are a number  
19 of issues that I would wish to raise. I'll try to be very brief.  
14:08:31 20 I've alerted my learned friends to the areas I intend to raise  
21 with Your Honour for adjudication.

22 Your Honour, in relation to the witnesses that have been  
23 disclosed, so far the Prosecution have indicated that they intend  
24 to call between 14 to 19 expert witnesses. Your Honour, that's  
14:09:00 25 in their list of core witnesses that they provided some time ago.

26 Your Honour, my learned friend agrees that we have had but  
27 a few, perhaps one or two, but the vast majority of these have  
28 not been provided to us. Your Honour, whatever the Prosecution  
29 may respond - and there may be difficulties in instructing

1 experts for them and in obtaining an expert report - given the  
2 tentative trial date now set for June, it's my submission --

3 JUDGE DOHERTY: I beg you're pardon? Did I hear you use an  
4 adjective? I thought there was a trial date set.

14:09:48 5 MR. KHAN: Your Honour, given the date set for June,  
6 perhaps even more so if that's -- if it's Your Honour's intention  
7 for that to be a firm trial date, given the trial date set for  
8 June, the Defence must have disclosure of the statements that the  
9 Prosecution intend to rely upon as expert witnesses.

14:10:08 10 Your Honour, it is trite to say that the Defence require  
11 time, not just to read those expert reports but to locate and  
12 instruct their own experts in order to prepare for  
13 cross-examination.

14 Your Honour, the tentative trial date of June is only a few  
14:10:31 15 months away, and I would ask that you today order the  
16 Prosecution, who said previously they were ready for trial in  
17 April, to serve by the end of February all expert witnesses that  
18 they intend to rely upon. That would give the Defence time,  
19 hopefully, however tight, to instruct experts to read the report  
14:10:56 20 and see what our experts have to say. Your Honour, that deals  
21 with expert witnesses.

22 JUDGE DOHERTY: Just to make sure, you're asking for names  
23 and reports or just names and the subject matter?

24 MR. KHAN: Your Honour, the reports that the experts are  
14:11:16 25 relying upon. This is a right under the rules.

26 Your Honour, in addition, there is a matter dealing with  
27 the mode of disclosure that's being undertaken. Your Honour, the  
28 Defence have tried to reach some agreement with the Prosecution,  
29 and by way of a letter in fact on the 24th of January, the



1 Prosecution have confirmed that we remain in disagreement.

2 Your Honour, the area of dispute is this: That when, on  
3 the 17th of May, the Prosecution served the first tranche of  
4 disclosure to the Defence, they served paper copies; but in  
14:12:01 5 addition, they were kind enough to provide electronic copies of  
6 the first tranche of disclosure.

7 Your Honour, they were not immediately happy to do that,  
8 but they were kind enough to do so on the undertaking by me that  
9 I would not give that electronic disclosure to my client. Your  
14:12:25 10 Honour, that disclosure has not been given electronically to my  
11 client. Instead, we printed out and copied again, with the  
12 assistance of the Defence office and numerous interns working  
13 long hours, the entire tranche of the Prosecution disclosure.

14 Your Honour, the difficulty is this: We have offices in  
14:12:47 15 Freetown; we have members -- one member at the moment in Liberia,  
16 hopefully an investigator to start soon, as well as team members  
17 in The Hague. Your Honour, the Prosecution are opposed to me  
18 giving this electronic disclosure to members of my African team,  
19 people in Liberia and in Sierra Leone. They are opposed to that.

14:13:09 20 They are not opposed to me giving it to an international  
21 investigator, but they are opposed to me giving it, for example,  
22 to Mr. Supuwood or to my Freetown investigator.

23 Your Honour, those members of the team have been if not  
24 approved by the Prosecution, their names have been cleared by the  
14:13:27 25 Prosecution in the sense that no objection has been taken to them  
26 from information in the Prosecution's possession.

27 Your Honour, in my submission, a court, particularly funded  
28 by voluntary contributions, must be especially careful with its  
29 resources. The work has been done. It's available for me to

1 give to my team members. If the Prosecution maintain their  
2 position, Your Honour, I have no option but to get all that  
3 material photocopied again, at significant expense, or get it all  
4 scanned through again, duplicating costs, and giving the bill to  
14:14:07 5 Mr. Registrar.

6 JUDGE DOHERTY: What are you seeking from me, Mr. Khan?

7 MR. KHAN: Your Honour, I would seek an order that the  
8 Prosecutor be ordered to follow the best practice, which has been  
9 adopted by the ICTY and the ICTR, in which there is an EDS  
14:14:24 10 system. In that EDS system --

11 JUDGE DOHERTY: What does "EDS" stand for?

12 MR. KHAN: Electronic data -- electronic disclosure system.  
13 Your Honour, in that members of the Defence are trusted, and it's  
14 viewed to have leveled the playing field somewhat, that Balkan  
14:14:43 15 lawyers, lawyers dealing with the former Yugoslavia, lawyers  
16 dealing with the ICTR, are allowed to download electronically the  
17 Prosecution disclosure. They can go through it. It's a very  
18 efficient system that, in conjunction with hard copies, makes  
19 life easier. In my submission, it is all the more useful where  
14:15:00 20 we are geographically divorced between Monrovia, Sierra Leone,  
21 and The Hague.

22 In my submission, the Prosecution objection, with the very  
23 greatest of respect, is without logical coherence and is devoid  
24 of merit.

14:15:16 25 Your Honour, I do ask that you order the Prosecution to  
26 follow the best practice of the ICTY/ICTR and allow us to give  
27 what they have already given to me, allow me to give it to my  
28 investigators. Otherwise, as I've mentioned, the work will be  
29 done, but a bill will be given to the Registry.

1 JUDGE DOHERTY: Is there any relevant rule in the ICTY or  
2 ICTR?

3 MR. KHAN: Your Honour, it's the practice, I said, the best  
4 practice. It comes under the same rules of Rule 66 and 68. It's  
14:15:44 5 the same rule, almost verbatim taken. As you know, when the  
6 Special Court was adopted, the ICTR rules applied mutatis  
7 mutandis, as Your Honours know. So it's over time, with the  
8 experience of the Rwandan tribunal and the Yugoslav tribunal,  
9 it's a practice that's been adopted as serving the interests of  
14:16:05 10 justice.

11 JUDGE DOHERTY: I understand.

12 MR. KHAN: Your Honour, that's my submission in relation to  
13 electronic disclosure.

14 Your Honour, the only other remark I have, it deals with  
14:16:16 15 the pre-trial brief. I don't know if you wish me to address Your  
16 Honour now or later.

17 JUDGE DOHERTY: I would like to deal with those in the list  
18 on the agenda, so I'll invite reply from the Prosecution.

19 MR. KHAN: I'm grateful.

14:16:32 20 JUDGE DOHERTY: Mr. Rapp, you've heard counsel for the  
21 Defence. There are two issues, the expert reports, and perhaps  
22 you could refer me also if there are any provisions under Rule 94  
23 bis on this electronic disclosure system which counsel for the  
24 Defence is seeking. If you'd reply to those, please.

14:16:48 25 MR. RAPP: Thank you, Your Honour.

26 First of all, as soon as the Prosecutor has reports of  
27 experts, it will provide those reports to the Defence. The point  
28 is we do not have those reports at this time. The business of  
29 dealing with experts involves finding their time to write the

1 reports and to prepare them, to contract with them, if they  
2 require a contract, and that's a process that's ongoing. And as  
3 soon as we have the reports, we'll provide them.

14:17:25 4 Your Honour has wisely pointed -- invited me to look at the  
5 rules, 98 bis -- not 98 bis, 94 bis (A) which does provide that  
6 the report of an expert witness shall be served not later than 21  
7 days before the witness is to testify. That rule also takes the  
8 expert witness disclosure out of the Rule 66 provision -- excuse  
9 me, the Rule 73 bis provision in terms of disclosing the subject  
14:17:55 10 matter and the summary of the witness's respective testimony.

11 So the regime basically provides that fact witnesses, we  
12 have to disclose those 60 days before trial under 66(A)(i) or  
13 (A)(ii), their statements; they will be disclosed in unredacted  
14 form 42 days before they testify. But the rules provide that  
14:18:17 15 with expert witnesses, one has until 21 days before their  
16 testimony, which is usually relatively late in the trial. And  
17 that allows the maximum time period for them to prepare the  
18 report. And to a substantial extent, the witnesses are also  
19 going to be called upon to give opinion based on facts in the  
14:18:36 20 record in the form of a hypothetical question.

21 So under the circumstances, the rules do not call for this  
22 kind of early disclosure of expert reports as a mandatory matter,  
23 and we think it would be inappropriate in the context of this  
24 Status Conference to attempt to vary the rule.

14:18:56 25 JUDGE DOHERTY: Doesn't Rule 94 bis say they will be  
26 disclosed as early as possible?

27 MR. RAPP: And, indeed, that's our position. As soon as we  
28 have the reports of the experts, we will disclose them.

29 JUDGE DOHERTY: Yours is purely a practical rather than --

1 a practical position. You don't have them at the moment.

2 MR. RAPP: Exactly.

3 JUDGE DOHERTY: Very well. Thank you.

4 MR. RAPP: And we can't be compelled to create them. And  
14:19:25 5 as long as we get them 21 days before they testify, that's  
6 sufficient under the rule.

7 Now, in regard to this mode of disclosure business. First  
8 of all, in regard to the reference to the electronic disclosure  
9 system, obviously the Chamber is aware of my former experience in  
14:19:45 10 the ICTR and specifically with EDS. I don't intend to testify  
11 here about it, but I would note simply that there is a different  
12 rule. Rule 68 has been divided into subparts, and I believe  
13 there's a 68(A)(ii) that provides for the provision of disclosure  
14 through electronic means, if practical. And that has occurred at  
14:20:12 15 both tribunals.

16 We do not have such a rule here. It hasn't been adopted.  
17 And to be frank, the systems upon which the evidence is organised  
18 and digitised at both tribunals make it much easier to make that  
19 accessible to the Defence. Our Office of the Prosecutor records  
14:20:34 20 at the Special Court for Sierra Leone, those documents that have  
21 not been created in electronic form but that are simply scanned  
22 into the system as images are not searchable electronically. We  
23 don't have the so-called ZyFind system that's used at the ICTY  
24 and ICTR, which, frankly, I think, is sometimes quite useful.

14:20:57 25 So applying the sort of EDS system to the Special Court for  
26 Sierra Leone would not be as effective as it has been in the  
27 other institutions, but that's a broader policy question.

28 What the Defence today is asking is, I think, something  
29 narrower than that, and that goes to the disclosure that we're

1 providing under Rule 66, whether those are witness statements or  
2 documents under 66(A)(iii) that we provide in lieu of Defence  
3 inspection under 66(A)(iii) or Rule 68 material, information  
4 that's possibly exculpatory or goes to the credibility of  
14:21:37 5 Prosecution evidence. In that situation, we have been providing  
6 hard-copy disclosure of what we have.

7 An agreement had been reached going beyond what was  
8 required of us that electronic disclosure or electronic copies of  
9 those documents - and they're often simply scanned documents that  
14:21:57 10 aren't really searchable - would be provided to Mr. Khan himself  
11 if they were to stay on his laptop. Later on in his request, it  
12 was extended to the investigator or the international  
13 investigator. And we don't want to particularly draw  
14 distinctions within the team, but obviously we get into the  
14:22:18 15 situation of making, what we view, a generous offer and then each  
16 time an additional demand is made and we're accused of being  
17 stingy because our initial generous offer wasn't generous enough.

18 Our concern, to be frank, Your Honour, is the possibility  
19 of redisclosure of this material through electronic means outside  
14:22:42 20 of the Defence team. And I know from experience that Defence --  
21 that documents provided to the Defence and then on to an accused  
22 person, that that accused person then delivered, through gaol  
23 visits, a floppy disk or a memory stick, et cetera, that those  
24 documents have ended up in international circulation. I've had a  
14:23:02 25 400-page statement of a witness disclosed two days after  
26 disclosure. On the --

27 MR. KHAN: I do apologise. I must object if my learned  
28 friend is seeking to extrapolate bad practice in other courts and  
29 seek to ascribe it to Mr. Taylor. That's unacceptable.

1 JUDGE DOHERTY: Mr. Khan, I will deal with that point in  
2 due course.

3 MR. KHAN: I'm grateful.

4 MR. RAPP: And I only mean to illustrate and not to suggest  
14:23:25 5 that that would happen here. But these are the concerns that we  
6 have. We have witnesses --

7 JUDGE DOHERTY: I was going to ask you, Mr. Rapp. You may  
8 have read Mr. Khan's instructions to his teams - it was filed  
9 with the Court some months ago - to try and put in place a  
14:23:39 10 comprehensive system to ensure there wasn't inadvertent or  
11 deliberate disclosure. I'm sure you've seen that.

12 MR. RAPP: Yes, I have. And he discussed also providing a  
13 copy of a protocol to us as well, which I don't think I have seen  
14 yet.

14:23:56 15 JUDGE DOHERTY: I think it's been given to the Trial  
16 Chamber.

17 MR. KHAN: Your Honour, that was filed ex parte,  
18 confidentially.

19 JUDGE DOHERTY: Very well. I won't deal with it any  
14:24:06 20 further, other than to say I understand there are provisions in  
21 place.

22 But what occurs to me, as you address me, Mr. Rapp, is this  
23 electronic system that Mr. Khan refers to in the ICTY and the  
24 ICTR is, in turn, dependent on two things: The rules of those  
14:24:28 25 two tribunals and an electronic system that we don't have in  
26 Freetown. Am I correct?

27 MR. RAPP: That's correct, Your Honour.

28 JUDGE DOHERTY: And this, then, begs the question whether I  
29 can give a directive if, A, I don't have a rule that I can follow

1 and, B, it can't be implemented anyway.

2 MR. RAPP: Well, in deference to my colleague, I think he  
3 was going beyond his initial demand to talk about an EDS system.  
4 I think his narrower demand was the question of whether we would  
14:25:09 5 make available disclosure electronically to all members of the  
6 trial team and to the accused, and what I mean is in electronic  
7 form; in other words, we'd burn it on a CD-ROM and physically  
8 hand it to them as opposed to hand them the papers.

9 Our concern is not the members of the trial team; our  
14:25:35 10 concern is that material being handed to non-members of the trial  
11 team, to the accused, who would presumably have a right to review  
12 it, and then potentially being copied or through some transfer of  
13 magnetic medium to a non-lawyer visitor to get out in the world,  
14 and that has happened at the other tribunals.

14:25:55 15 JUDGE DOHERTY: Mr. Rapp, I have in mind the definition of  
16 "Defence" in our rules, which it defines the Defence as the  
17 accused and/or the accused's counsel. It is my view that the  
18 protective measures in place which bind the Defence will also  
19 bind the accused, and therefore he is equally bound not to reveal  
14:26:23 20 or disclose any materials. And I would like to think that anyone  
21 bound by a court order will obey the court order until I have  
22 evidence to the contrary.

23 But that observation does not overcome the reservations  
24 I've already pointed out, that it seems to be both a practical  
14:26:49 25 and a rule question.

26 Unless there's some other matter you wish to put before me,  
27 I will ask Mr. Khan to reply just on that one point.

28 Mr. Khan.

29 MR. KHAN: Your Honour, I'm much obliged.



1 Your Honour, for the sake of clarity, I'm not asking -- I  
2 know resources are scarce and they're different courts and I'm  
3 not simply seeking to copy the administrative or resource  
4 capacities of different courts and transplant them in the Sierra  
14:27:20 5 Leone court context.

6 Your Honour, I'm not asking for an EDS system. All I'm  
7 asking, Your Honour, is that what the Prosecution have they share  
8 with us in the sense of electronic disclosure. Your Honour,  
9 they've given, they've provided, electronic CDs. For the life of  
14:27:40 10 me, Your Honour, I cannot see any prejudice in me giving my  
11 electronic CDs to Mr. Supuwood, who is a Liberian, or to a Sierra  
12 Leoneans. There's a prohibition for that. But I can give it to  
13 Ms. Buisman from Holland. Your Honour, that's --

14 JUDGE DOHERTY: I didn't get that prohibition from  
14:28:00 15 Mr. Rapp. Mr. Rapp presents me with a rule that you referred to  
16 in another court and it's not referred to here, and a purely  
17 practical problem of disseminating this information. The way  
18 you're presenting it, it seems to me that it's on a -- I wouldn't  
19 say a racial basis because of two different nationalities, but  
14:28:22 20 for some other reason other than a practical problem.

21 MR. KHAN: Well, Your Honour, I was quite frank. Your  
22 Honour, I said that the position of the Prosecution, with  
23 respect, is without logical coherence or rational support. Your  
24 Honour, it can't make sense that they allow me to give electronic  
14:28:45 25 disclosure to Ms. Buisman and prohibit me from giving it to  
26 Mr. Supuwood. I don't see, for the life of me, how that can be  
27 sustained. Your Honour --

28 JUDGE DOHERTY: Mr. Rapp, is that the situation? Because  
29 that is not what I'm getting from you. I'm getting a different

1 impression from you altogether.

2 MR. RAPP: Well, understand, we get into this distinction  
3 with the accused, which, you point out, may be unsupported by the  
4 rule.

14:29:08 5 Our original arrangement was that we would provide this  
6 material in an electronic form, though obviously by  
7 hand-delivery, to counsel alone. We wanted to restrain, to the  
8 extent that we could, its wide dissemination because of the fear  
9 that the wider that it's distributed, there's a chance that  
14:29:29 10 positively everything could go up electronically and it couldn't  
11 be captured once that was done. That was our concern.

12 Frankly, within the trial team, we don't have any problems  
13 with providing this material that we've disclosed so far in  
14 electronic form. But I think when we get to unredacted  
14:29:49 15 disclosure - because we're now being faced with a situation where  
16 we said that Mr. Khan could have it and then dealt with people  
17 one by one - I think when we get to unredacted disclosure, we  
18 won't make any electronic disclosure available to Mr. Khan or to  
19 anyone else. We'll provide it in hard copy. We simply do not  
14:30:06 20 want to run the risk that by the simple act of pushing a button  
21 in the online world, that material could end up out there.

22 And if we can't draw a distinction between the trial team  
23 and the accused, who cannot be effectively sanctioned - he's  
24 already facing the most serious possible penalty provided under  
14:30:21 25 international law; a contempt sanction is meaningless - we will  
26 not provide electronic at that point. At the moment, as long as  
27 it's redacted, we don't have as great a concern.

28 JUDGE DOHERTY: Thank you, Mr. Rapp.

29 Thank you, Mr. Khan. I've reached a decision on these two

1 points.

2 There are two matters, then, raised by Defence. One is to  
3 do with expert reports. I remind the parties of the provisions  
4 of Rule 94 bis (A) which imposes a mandatory provision that an  
14:31:01 5 "expert witness called by a party shall be disclosed to the  
6 opposing party as early as possible," and I direct that the  
7 Prosecution disclose as early as possible. I accept the  
8 submission of counsel that they don't have the expert report and  
9 therefore I cannot order something that doesn't exist. But I  
14:31:21 10 remind counsel of that obligation.

11 On the second point concerning the mode of disclosure, the  
12 provisions of Rule 66(A)(i) oblige the Prosecutor to disclose to  
13 the Defence copies of statements of all witnesses, et cetera.  
14 That is the rule that this Court can enforce, and I do not  
14:31:48 15 consider that -- I can't go beyond that to tell the Prosecutor  
16 how to run his office. He's obliged to disclose and I order him  
17 to do so.

18 MR. KHAN: Your Honour, a couple of matters, with your  
19 leave, because in fact I hadn't finished my response prior to the  
14:32:05 20 floor being given to my learned friend. Perhaps it's useful to  
21 have recourse through 65 bis, just in relation to the difference  
22 of the rules in your powers.

23 Of course, one of the general purposes of today's hearing  
24 is to organise an exchange between the parties so as to ensure  
14:32:21 25 expeditious trial proceedings.

26 Your Honour, in my submission, that gives Your Honour, with  
27 her experience, substantial discretion in deciding both by way of  
28 direct order as well as by way of advice, non-binding order, to  
29 the parties how they can liaise or coordinate so that matters can

1 be properly and fairly put in the interests of a fair and  
2 expeditious trial. So, Your Honour, that's the first point I  
3 have to make.

14:32:54 4 In relation to the ICTR practice, I didn't address you. Of  
5 course, the ICTY and ICTR rules evolved significantly since their  
6 inception. But what is important when one is looking at the  
7 Yugoslav and Rwandan rules is the overriding provision that the  
8 rules were flexible, geared towards a fair and expeditious trial.

9 Now, the EDS system came under -- it was a species that  
14:33:16 10 arose out of the same Rule 66. Your Honour --

11 JUDGE DOHERTY: Mr. Khan, are you trying to go behind the  
12 directive I've just given?

13 MR. KHAN: Your Honour, I was seeking to clarify in  
14 relation to the issue with disclosure. But, Your Honour, in  
14:33:37 15 light of your order regarding expert reports, what I would ask is  
16 a supplemental order that the Prosecution, within a time period  
17 Your Honour feels appropriate - perhaps two weeks - provide to  
18 the Trial Chamber and to the Defence a time line of both the  
19 identities, if known, of the putative experts and, secondly, when  
14:34:02 20 they expect to have reports.

21 Your Honour, in addition to that, I would ask for an  
22 order - and it's a practice that's followed at least in the  
23 Yugoslav tribunal - that prior to the finalised report being  
24 available, a summary be served upon the Defence as soon as  
14:34:18 25 possible; so as soon as possible, even if it's not the final  
26 expert report, a general outline of the areas covered by the  
27 expert be served upon the Defence.

28 Your Honour, in my submission, it's far too relaxed on the  
29 Prosecution to say, "Well, whenever we have it, we have it and

1 we'll give it to you." A bit of pressure would be useful to  
2 focus their minds in this issue, given the June start date.

3 I would ask that orders be given that within two weeks,  
4 Your Honours and the Defence be notified as to the identity of  
14:34:52 5 the putative experts and the time line within which these  
6 different reports are going to be served upon us. I don't see  
7 any reason why that cannot be provided to us.

8 That's my supplemental position, Your Honour.

9 JUDGE DOHERTY: I can see as a purely practical thing,  
14:35:08 10 having seen expert reports over the years, how slow experts can  
11 be in getting their reports done, and therefore I'm wary of  
12 stipulating a time for a report if the counsel on the other --  
13 who the order is directed to cannot necessarily fulfil it.

14 However, I can certainly -- I'll invite Mr. Rapp's reply, but  
14:35:38 15 that is an observation I make myself with reservation.

16 Mr. Rapp, you've been asked to make known the -- presumably  
17 the names and the fields of expertise, and then we'll come to the  
18 summaries. Have you determined your fields and the names, and  
19 are you ready to disclose those?

14:36:03 20 MR. RAPP: Well, Your Honour, we have a list of --  
21 internally, of 13 prospective experts and then nine sort of other  
22 context witnesses, more journalistic type of individuals. But in  
23 terms of selecting between them, we have not done that, and we  
24 want to make sure that we present the expert that's the best and  
14:36:25 25 the most complete and the most authoritative in each area.

26 There are rules, and those rules create very tough  
27 standards on the Prosecution to have its case ready. What 66 --  
28 what Rule 73 bis says is that at the time that the pre-trial  
29 brief is filed, we're required to list all our witnesses,

1 including our expert witnesses; but then it relieves us from the  
2 requirement under 73(B)(iv)(b) to provide a summary of facts upon  
3 which that witness will testify.

14:37:12 4 Now, that's the rule, and our position is that we will  
5 comply with the rule. But we also recognise that the spirit of  
6 the rules is that as soon as one has the information, one doesn't  
7 wait until that deadline to provide it. And so we will move on  
8 this as expeditiously as possible and get that information.

14:37:34 9 Now, I've just queried Ms. van Tongeren about the actual  
10 expert witness situation, and I'm pleased to report that we just  
11 have received one report that is complete and another one that we  
12 have a draft of that's going to -- that's in revision. So I  
13 believe very shortly we'll be able -- well, certainly immediately  
14 we'll be able to provide the one and very shortly the second one.

14:37:51 15 And it's obviously in our interest to get these witnesses  
16 selected as quickly as possible. But I think it's inappropriate  
17 to compel us to provide things contrary to the rules.

18 Now, in a moment we'll get to the issue of when the 73 bis  
19 pre-trial report and list is due, and that will be an important  
14:38:12 20 issue, but it has to be, I think, dealt with in that context,  
21 Your Honour.

22 JUDGE DOHERTY: I see no reason to amend or deviate from  
23 the directive I've already given, and the directive stands.

14:38:42 24 I move on now to the second item, which is the indication  
25 from the parties on any points of agreement, including admissions  
26 or statements not in dispute and agreed issues. This was  
27 discussed at some length at the previous Status Conference.

28 I understand from correspondence that a list of agreed  
29 facts of both fact and law were served on you, Mr. Khan, on the

1 31st of October. Was that correct? How is that coming on?

2 MR. KHAN: The position is as stated in the letter from the  
3 Prosecution to Your Honours, and it's in accord with my previous  
4 submissions: That I will turn my mind to agreeing facts once  
14:39:26 5 I've read the evidence. Your Honour, I have not read all the  
6 evidence in the case or am in a position at the moment to agree  
7 facts. I have given the Prosecution my assurance that as far --  
8 as soon as possible before trial, I will turn my mind to the  
9 areas where we can focus. But at the moment it's simply not  
14:39:49 10 sensible to start agreeing matters without understanding either  
11 the contours of the Prosecution case or particularly the full  
12 gamut of evidence.

13 Your Honour, this goes back, of course, to the motion that  
14 I had previously filed and which has been adjudicated on  
14:40:06 15 regarding adequate time.

16 JUDGE DOHERTY: At the last Status Conference, Mr. Khan, I  
17 note you said you could at least agree some basic facts, and you  
18 gave an example. In fact, you gave two examples.

19 MR. KHAN: Yes.

14:40:22 20 JUDGE DOHERTY: Have you moved any further on from that?

21 MR. KHAN: Your Honour, I've told the Prosecution in  
22 candour, as I told Your Honour on the last occasion -- your  
23 colleague on the last occasion, that areas, for example, like  
24 geographical boundaries will not be disputed. But, Your Honour,  
14:40:39 25 what I intend to do is to deal with matters once I'm in a  
26 position to do so.

27 Your Honour, to start going through evidence and agreeing  
28 facts without reading the Prosecution evidence, I'm not prepared  
29 to do it. I need some more time, and when I'm ready I will agree

1 certain facts.

2 Your Honour, I've told the Prosecution at this moment in  
3 time everything is in issue. Once I'm in a position to do so,  
4 consistent with my professional responsibilities, I will go and  
14:41:04 5 start agreeing areas that we're able to, for example, crime base  
6 evidence.

7 Your Honour, the Prosecution know there's going to be no  
8 dispute, for example, that my client was President of Liberia  
9 between the relevant period, and the rest of it. But simply, I  
14:41:22 10 haven't had time at the moment to deal with those matters given  
11 the huge number of other matters that the Defence have to cope  
12 with and the other surrounding circumstances that Your Honours  
13 are well aware of.

14 JUDGE DOHERTY: I'm a little concerned that it appears that  
14:41:35 15 in the three months since there was -- these facts were served or  
16 disclosed upon you, to you, that we appear not to have moved on.  
17 Am I right in that observation, that we appear not to have moved  
18 on?

19 MR. KHAN: In relation to agreed facts?

14:41:56 20 JUDGE DOHERTY: Yes.

21 MR. KHAN: Your Honour, we've agreed -- moved on in  
22 relation to the case.

23 JUDGE DOHERTY: I'm talking about --

24 MR. KHAN: Your Honour, there's no obligation on the  
14:42:03 25 Prosecution -- on the Defence to agree a jot. Your Honour,  
26 there's no obligation on the Defence to agree to anything. The  
27 Prosecution bring this case and they must prove this case beyond  
28 reasonable doubt.

29 Now, Your Honour, I've told the Prosecution and I've



1 informed Your Honours that in good faith, at the relevant time,  
2 I'm going to endeavour to focus this trial, from the Defence  
3 perspective, on matters that are relevant. But, Your Honour, I'm  
4 not willing to accommodate the Prosecution, bend over backwards,  
14:42:31 5 when it's not in the interests of my client. My time at the  
6 moment is most efficaciously spent in case preparation and  
7 reading the evidence.

8 Now, Your Honour, I gave the statistics; five minutes a  
9 page, how long it will take. We haven't gone through the  
14:42:48 10 evidence, and I'm not going to start agreeing facts until I've  
11 done that. I think that's professionally incompetent and I'm not  
12 willing to do that.

13 JUDGE DOHERTY: I am not for one moment, Mr. Khan,  
14 suggesting that the burden ever shifts from the Prosecution to  
14:43:00 15 the Defence, and it would be regrettable if you've formed that  
16 impression. I certainly do not intend that impression to be  
17 given. That onus never moves. And that is why, for example, the  
18 Defence are under no obligation to make statements. I throw that  
19 out as an example at random.

14:43:25 20 However, the rules do provide that the Trial Chamber can  
21 direct the Defence to file a list of agreed facts. I'm referring  
22 here to subrule (F) of 73 bis.

23 MR. KHAN: Your Honours, quite right. At the moment, there  
24 will be no agreed facts by the Defence. When I'm ready to do so,  
14:43:48 25 I will. I've said so in good faith. Your Honour, the proof of  
26 the pudding is in the eating. When I'm ready to do so, in  
27 advance of trial, facts will be agreed by the Defence with the  
28 Prosecution and areas will be, hopefully, narrowed.

29 But, Your Honour, at the moment, given the amount we've had

1 to do and the limited resources we've had and all the other  
2 difficulties, working without an office, I'm sorry, Your Honour,  
3 I haven't thought agreeing facts with the Prosecution is a  
4 priority for my client given that I have to learn what the  
14:44:17 5 allegations are, first of all.

6 JUDGE DOHERTY: What about -- I note the last Status  
7 Conference didn't refer to agreed points of law, but I note from  
8 the notice served on you, there was a reference to agreed points  
9 of law. My observations on the evidence equally applies to  
14:44:37 10 points of law. But is it likely that there will be any agreed  
11 points of law?

12 MR. KHAN: Yes, Your Honour.

13 JUDGE DOHERTY: Mr. Rapp, you've heard counsel for the  
14 Defence on this thorny issue.

14:44:52 15 MR. RAPP: Madam President, we're frankly disappointed.  
16 The trial team did spend a great deal of time going through  
17 public records and, in the end, putting together hundreds of  
18 statements of facts from the public record that we did not  
19 believe, with rare exception, would be in substantial dispute,  
14:45:13 20 and would provide the Chamber with a foundation of historic fact  
21 from which they could then proceed, without prejudice to the  
22 accused, to determine the real facts in this case, the facts that  
23 I think are legitimately in dispute.

24 As Your Honour just invited Defence counsel's attention,  
14:45:34 25 this Rule 73 bis (F) talks about this occurring prior to the  
26 pre-trial conference, and that is very important for us because  
27 we have to select witnesses.

28 I mean, if you look at the statement of fact, we have  
29 statements like -- you could look at 155:

1 "ECOMOG, acting on behalf of the deposed government of  
2 President Kabbah, ousted the AFRC Junta from power on or about  
3 the 14th of February, 1998."

14:46:08 4 No real dispute, I don't think, on that fact, but they're  
5 unwilling to stipulate to it so we're going to have to make sure  
6 a witness says that to the extent we need to show what role the  
7 AFRC, which we allege later will have some tie to the accused,  
8 had in power.

14:46:25 9 And so this puts us into a situation as we sit down and  
10 select our witnesses and -- as someone might complain, Why 133  
11 core witnesses, and why are you talking about 92 bis witnesses on  
12 background information? Because we don't have these stipulations  
13 of fact, we have to prepare to call people to prove this up.  
14 Maybe it won't be that difficult.

14:46:46 15 The key thing here, which I think we'll get to in a moment,  
16 is when we have to have this pre-trial list done, and ideally we  
17 should have this information before that. And I think what  
18 Mr. Khan is telling us is that there is no way that we're going  
19 to have it before that, and that would be unfortunate and it will  
14:47:04 20 require a larger case, at least on the front end. And I think it  
21 would be efficient and in the interests of justice.

22 JUDGE DOHERTY: In the light of Defence's submissions, I am  
23 loathe to make an order under 73 bis (F) at this particular  
24 moment. However, I am concerned to hear that even the basic  
14:48:08 25 facts which counsel, Mr. Khan, indicated back in September and,  
26 if I recall correctly, in July that could be agreed, and the  
27 examples you've repeated here present today, that even those have  
28 not been agreed and thereby are partly putting the Prosecution on  
29 notice that they will have to be proved.

1 I always feel it's not the duty of a judge to tell either  
2 party how to run their offices or run their case, but, Mr. Khan,  
3 would you be prepared at least to agree those basic matters that  
4 you have indicated here to the court you will, to at least  
14:48:57 5 shorten this --

6 MR. KHAN: Your Honour, I've put forward a very consistent  
7 position, with the greatest of respect. It is my intention -- as  
8 I said, the proof of the pudding is in the eating. As soon as  
9 possible, I will agree the greatest number of facts as I can.  
14:49:11 10 They will include the very obvious matters, for example, borders  
11 and who's the president when, where, for what country, for what  
12 period.

13 But, Your Honour, we signed a contract in September.  
14 There's been numerous problems. And time spent agreeing facts  
14:49:26 15 with the Prosecution is time spent away from reading the  
16 Prosecution evidence. Your Honour, that basic difficulty has to  
17 be understood.

18 Your Honour, if it assists the Prosecution to agree facts  
19 which I've said orally are not going to be in dispute, I can try  
14:49:40 20 and get something to them, you know, next week, without giving an  
21 undertaking, in the next two weeks anyway, about those peripheral  
22 matters. But I think that's not going to be of huge assistance,  
23 because the devil is going to be in the core witnesses, which I  
24 doubt are going to be agreed at all, and crime base witnesses --

14:49:59 25 JUDGE DOHERTY: Mr. Rapp has given us an example of a  
26 historical fact that I would have thought may not have been in  
27 dispute, given it's been shown historical.

28 MR. KHAN: Your Honour, I don't have time at the moment,  
29 and I don't think it's the forum, to go through all of the facts.

1 But some facts are non-controversial. Some historical facts --  
2 well, "historical fact" is almost an oxymoron, in some respects,  
3 and it can't be soberly considered without reading all the  
4 evidence and taking instructions, because it may be a disputed  
14:50:33 5 fact.

6 So those very simple, obvious facts I can agree in the next  
7 couple of weeks. I don't give a formal undertaking, but Your  
8 Honours, no doubt, will be notified and you'll see when those  
9 facts are agreed. But I don't have time, simply, to start  
14:50:45 10 agreeing the difficult issues, the core issues, which are going  
11 to help the Prosecution when I haven't read -- you know, we  
12 haven't had time to take full instructions and read the papers.

13 The Prosecution have had five years; we've had less than  
14 five months since the pre-trial conference -- since the signing  
14:51:03 15 of the contract in September.

16 JUDGE DOHERTY: I thought documents were served on you in  
17 May.

18 MR. KHAN: Your Honour, since the -- Your Honour, I was  
19 alone.

14:51:10 20 JUDGE DOHERTY: I see.

21 MR. KHAN: Your Honour, I was totally alone. A team was  
22 put in place when a legal services contract was signed.

23 JUDGE DOHERTY: Incidentally, that reminds me, at the last  
24 trial conference, you said it had been signed but not approved.  
14:51:25 25 Has that been finalised?

26 MR. KHAN: Your Honour, Mr. Registrar is in front of you.  
27 I haven't had any feedback since I signed the contract and gave  
28 it to Mr. Registrar.

29 JUDGE DOHERTY: I see.

1 Mr. Nmehielle, you are on your feet.

2 MR. NMEHIELLE: I don't really know what the meaning of  
3 "signed but not approved" is. For all intents and purposes, for  
4 the Office of the Principal Defender, we have a contract, of  
14:51:54 5 which -- with all the signatures acquired. All we need do is  
6 transmit Mr. Khan's copy to him, and there's no particular  
7 approval required. Thank you.

8 JUDGE DOHERTY: Perhaps I recalled the word incorrectly,  
9 but I know it was mentioned at the last Status Conference. Thank  
14:52:12 10 you for that clarification Mr. Nmehielle.

11 MR. KHAN: Your Honour, I'm grateful to my learned friend,  
12 Mr. Singh. Your Honour, relevant in this whole context is the  
13 piecemeal disclosure. The latest disclosure we got, I  
14 understand, was on the 7th of January -- 8th of January. These  
14:52:30 15 are all factors that have to be considered sensitively if one  
16 wishes to be fair to the Defence.

17 Your Honour, going back to Mr. Rapp's contention, it's not  
18 clear at the moment, at this stage of my preparation, that ECOMOG  
19 was acting on behalf of President Kabbah. That may be an issue  
14:52:50 20 of dispute. The conduct of ECOMOG is not without controversy.

21 JUDGE DOHERTY: Very well. I have indicated that I am  
22 loathe to make a 73 bis (F) order at this time. I therefore urge  
23 you, Mr. Khan, to review the basic facts which you have already  
24 indicated twice in court that you can agree and at least give  
14:53:14 25 those to the Prosecution; and to bear in mind the powers of the  
26 Court to direct if other matters cannot be done expeditiously and  
27 in a timely fashion.

28 MR. KHAN: Your Honour, I will. As far as the other powers  
29 [microphone not activated]

1 JUDGE DOHERTY: I have not forgotten that either.

2 I'll move on, then, to the preparation for the Pre-trial  
3 Conference.

4 Mr. Khan, you've already indicated to the Court that there  
14:53:54 5 are no special defences and that you will not be filing a  
6 statement, and I will presume that situation stands. So most of  
7 what, therefore, comes under 73 will relate to Mr. Rapp's office.

8 Mr. Rapp, how are you progressing on the matters for a  
9 Pre-trial Conference? I think we've covered some of them  
14:54:20 10 already, actually.

11 MR. RAPP: Well, the most critical thing I think that the  
12 Pre-trial Conference is tied to is the pre-trial brief and the  
13 so-called final list of witnesses. Our position is that we want  
14 time to make sure that the selected list of witnesses that we  
14:54:42 15 place into that pre-trial brief are the best witnesses and the  
16 ones that, in fact, will be called.

17 We would prefer to have the order for the filing of the  
18 pre-trial brief and for the list of witnesses to be fixed 42 days  
19 before the trial date, on the same day that unredacted disclosure  
14:55:06 20 is due for the first witnesses. Of course, the Trial Chamber can  
21 require that it be earlier than that, and that's within the hands  
22 of the Trial Chamber. I believe it's then provided that the  
23 Pre-trial Conference would then be conducted after that was  
24 filed.

14:55:22 25 We would be concerned about having to complete the witness  
26 list in the final sense until we've had an opportunity to see  
27 each of the witnesses, and particularly to determine which  
28 witnesses we may want to offer by written testimony under 92 bis  
29 rather than oral testimony.

1           Obviously, whenever the order is made, whenever the Trial  
2 Chamber orders us to do this, we will provide the pre-trial  
3 brief, lay out our legal theories of the case, state who the  
4 witnesses are, provide summaries to the extent they haven't been  
14:56:04 5 provided before, and state exactly to what count each of those  
6 witnesses will be testifying. But that list may be longer the  
7 earlier we're required to do it, because we have to reserve the  
8 ability to include sometimes multiple witnesses if we haven't had  
9 an opportunity to speak to -- members of the trial team haven't  
14:56:27 10 had an opportunity to speak to these witnesses. And they're not  
11 quite halfway through meeting with these witnesses at this time.

12           But as I indicate, we'd prefer that that be 42 days  
13 beforehand, but we will meet the Court's requirements to  
14 provide --

14:56:43 15           JUDGE DOHERTY: Forty-two days before the hearing date?

16           MR. RAPP: Forty-two days before the trial date, yes. In  
17 other words, I would presume that would be around the 23rd of  
18 April.

19           JUDGE DOHERTY: I'm just trying to recall when the court is  
14:57:00 20 going into recess. I'm afraid I didn't bring that with me.

21           MR. KHAN: Your Honour, of course, with your leave, I would  
22 like to respond to that in due course.

23           JUDGE DOHERTY: Any other matters before I ask Mr. Khan  
24 what his response is, Mr. Rapp? You're thinking only of the  
14:57:41 25 pre-trial brief. Could you refer me to that 42-day rule? I'm  
26 just looking for it here, please.

27           MR. RAPP: We're referring to the 42 days in the protective  
28 order. I believe there's a protective order of 5 May 2006, and  
29 that's the disclosure of unredacted witness statements prior to



1 testimony.

2 Now, frankly, it would be our intention to disclose in  
3 unredacted form on that day all the witnesses likely to appear in  
4 the first trial session, so we would also at that time wish to  
14:58:18 5 file our pre-trial brief, which of course would include all of  
6 our witnesses listed by pseudonym, and certainly at that point  
7 some of them would have been -- of course, their identity  
8 revealed.

9 But the way I read 73 bis is that the Trial Chamber, prior  
14:58:34 10 to the Pre-trial Conference, orders the pre-trial brief, and then  
11 at the Pre-trial Conference the pre-trial brief and other matters  
12 are then discussed in terms of what needs to be done for the  
13 trial. So there's no requirement that the Pre-trial Conference  
14 occur on the 24th of April. It could occur several days  
14:58:54 15 thereafter.

16 JUDGE DOHERTY: Mr. Khan, you wish to say something on  
17 that?

18 MR. KHAN: Your Honour, indeed.

19 It does seem, one has to say, that in light of the response  
14:59:07 20 relating to experts and then this new rather novel idea that a  
21 pre-trial brief be latched, be linked, absent a rule, to service  
22 of unredacted statements, the tendency seems to be creeping into  
23 the Prosecution of disclosure at the last possible moment rather  
24 than disclosure at the earliest opportunity.

14:59:33 25 Your Honour, in international criminal law at the moment,  
26 both verified by the International Association of Prosecutors,  
27 we're moving much more to a cards-on-the-table approach, with  
28 disclosure as soon as possible.

29 Your Honour, there's been no change of circumstance, in my

1 respectful submission, since the last Status Conference before  
2 your sister judge, Judge Sebutinde, on the 22nd of September.  
3 Your Honour, on that occasion, a tentative trial date existed of  
4 April. Judge Sebutinde suggested an order that the Prosecution  
15:00:12 5 serve the pre-trial brief by the 30th of November, 2006.

6 Now, Your Honour, I did not take up the learned judge's  
7 kind invitation on that occasion; I didn't press the Prosecution  
8 for service of that pre-trial brief. But that date, from the  
9 transcript, seems to have been discussed previously, along with  
15:00:34 10 the tentative trial date, by Your Honours in Freetown before  
11 arriving in The Hague.

12 Your Honour, four months prior to the trial date is the  
13 relevant period. Given the June date which has been set by Your  
14 Honours in your latest decision, in my respectful submission, the  
15:00:55 15 Prosecution have no reason whatsoever, no good standing, no firm  
16 foundation, to oppose an order from Your Honours that disclosure  
17 of the pre-trial brief be served on the Defence by the 28th of  
18 February, which is four months before the trial date.

19 Your Honour, that would accord and be consistent with the  
15:01:15 20 ruling Her Honour Judge Sebutinde was minded to make on the last  
21 occasion. In my submission, it would allow the Defence proper  
22 time to prepare; it would allow the Defence to understand the  
23 contours of the Prosecution case. It would have the advantage,  
24 with the annexes, of the list of witnesses it intends to call and  
15:01:32 25 the list of exhibits that Judge Sebutinde pointed to, the points  
26 of the indictment that the witnesses -- each specific witness  
27 would speak to, would help the Defence know the purpose for which  
28 each witness was being called.

29 Your Honour, many of these statements are not obvious.

1 Some of them have wide temporal periods predating post --  
2 predating the indictment. Several cover different geographical  
3 areas out with the indictment, including not only Liberia or  
4 Sierra Leone but other states.

15:02:04 5 So the sooner the Defence get the pre-trial brief and know  
6 what the Prosecution have in mind, the easier it is going to be  
7 to agree further facts.

8 So, Your Honour, I will, with pleasure, agree these basic  
9 facts soon; but, in my respectful submission, if the Prosecution  
15:02:20 10 really are trial-ready, if they really are willing to be open and  
11 confident in their case, confident that they can properly  
12 disclose and allow the Defence to know the case against him, they  
13 should be ordered to give the pre-trial brief, along with the  
14 other requirements, the list of witnesses and the exhibits, by  
15:02:45 15 the end of February. They've had long enough. They've had two  
16 months extra since the last Status Conference, and in my  
17 submission, there's been no change of circumstance since that  
18 occasion.

19 Your Honour, for those reasons, it's my respectful  
15:02:56 20 submission that Your Honour order that the pre-trial brief and  
21 all be served upon the Defence by the 28th of February.

22 Unless I can assist further, Your Honour, those are my  
23 submissions on that issue.

24 JUDGE DOHERTY: Thank you, Mr. Khan.

15:03:52 25 Mr. Rapp, have you any reply on counsel's submissions?

26 MR. RAPP: Well, Your Honour, I suspect we're getting into  
27 a cart-and-horse kind of argument here. But obviously we don't  
28 know what witnesses to call if we don't know what facts we need  
29 to prove and which ones are stipulated, and counsel's delay and

1 unwillingness, even though we did spend a great deal of time  
2 preparing these things that probably could have been spent more  
3 wisely on other things, I think makes it more difficult for us to  
4 prepare that pre-trial brief. But we will prepare it whenever  
15:04:27 5 Your Honours wish.

6 Our main concern is that we have the time that's available  
7 to make our witness list as compact as possible and to make it as  
8 precise as possible. If we were to file it now -- you've  
9 certainly seen our case summary, you've seen the -- the Defence  
15:04:47 10 has seen the witness statements. And it's clear, by the way, if  
11 you look at a witness statement, whether this witness is talking  
12 about mutilation or pillage, whether he's talking about Kono or  
13 talking about Freetown. We don't think that the simple note of  
14 what count he's going to testify about is going to be all that  
15:05:07 15 elucidating to the Defence. We can do that.

16 But having the benefit of this 4th of June trial date - I  
17 think it was Judge Cassese who said that sometimes haste at the  
18 front end can mean a longer process at the back end - we want to  
19 take advantage of this time in order to make sure that what we  
15:05:26 20 file is as precise as possible based upon the fullest possible  
21 evaluation of our evidence. And we don't think this harms the  
22 Defence, because they have our summary of our case and they have  
23 the statements of these witnesses in redacted form, which leaves  
24 the allegations of the witnesses that are -- the facts as to the  
15:05:46 25 material allegations clearly revealed to them, and so we don't  
26 see that they need that material, a pre-trial brief, in order to  
27 do other things in their case.

28 We'd suggest the 42 days would work the best. Sometime  
29 prior to that we could work with as well. But it would be best

1 if it were done at a reasonable time so that we can complete the  
2 best possible work on our witness list.

3 JUDGE DOHERTY: Right --

4 MR. KHAN: Your Honour, I don't wish to be like a  
15:06:31 5 jack-in-a-box.

6 JUDGE DOHERTY: I recall you saying that before, Mr. Khan.

7 MR. KHAN: Your Honour, I'm a man, unfortunately, of many  
8 words but most of them repeated, so I hope you'll forgive me.

9 JUDGE DOHERTY: Consistency.

15:06:43 10 MR. KHAN: Well, Your Honour is most kind, most gracious.

11 Your Honour, with the greatest of respect, I hear what my  
12 I earned friend says, but the Prosecutor, of course, is well aware  
13 of his responsibilities. In my submission, the pre-trial brief  
14 should be focused by the Prosecutor in deciding, irrespective of  
15:07:03 15 any assistance from the Defence, what witnesses, what evidence,  
16 he requires to prove the case against my client.

17 Your Honour --

18 JUDGE DOHERTY: First of all, Mr. Khan, I don't think  
19 you've got a right of reply to a reply. You've had a response,  
15:07:19 20 there's been a reply, and I don't think you've got a right of  
21 reply to another reply.

22 MR. KHAN: Your Honour, I don't have a right.

23 JUDGE DOHERTY: Secondly -- yes. Secondly, when I look at  
24 Rule 73 bis (B) and the matters that have to be considered, they  
15:07:36 25 include, at subrule (iii) "a statement of contested matters of  
26 fact and law," a list of witnesses is at (iv), "admissions by the  
27 parties and a statement of other matters not in dispute."

28 Now, we're not getting anywhere with those, and you've  
29 given me reasons why we're not getting anywhere with them, and

1 because of your reasons I haven't made any orders against you in  
2 relation to those. I've asked you to work with them. So I'm  
3 bearing in mind that you have problems in fulfilling matters on  
4 your side that the Prosecution need in order to comply with 73  
15:08:21 5 bis (B). Therefore, how can I impose a time that you stipulate  
6 on them when they're not -- when they don't have your part of the  
7 list that they're going to put in? Okay, true, they can say, all  
8 issues are in dispute. There's not seven days in the week;  
9 there's not 12 months in the year. Everything is on proof. But  
15:08:52 10 that's not going to get us anywhere. Let us be realistic.

11 Their obligations, in turn, are partly dependent on certain  
12 matters that you have to fulfil, and I have not made an order  
13 against you on those, although I've indicated the powers of the  
14 Court. So let us meet -- try and strike a balance between the  
15:09:16 15 time you need and the time -- in order to inform the Prosecution  
16 and the time the Prosecution then will need to compile their  
17 pre-trial brief, in the light of what you have said.

18 MR. KHAN: Your Honour, I do -- I think we're all cognizant  
19 of the difficulties detailed just now by Your Honour. The  
15:09:40 20 question, of course, is how to cut the Gordian Knot, because  
21 these difficulties persuaded the Prosecutor to ask for July start  
22 date and not oppose a September start date. So this difficulty,  
23 Your Honour, is a direct consequence of Your Honour's decision to  
24 fix a June start date.

15:09:58 25 Your Honour, talking about days in the week, there are only  
26 seven days in a week, and there's a certain amount the Defence  
27 can do. At the moment we are going to start trial in June not  
28 being ready, but we will start because that's your order. But  
29 I've made it quite clear we will not be ready given the huge welt

1 of material that we face. The position of the Prosecution and  
2 the Defence are not the same. They've had years; we've had  
3 months.

15:10:25 4 Your Honour, at the moment I have been quite candid, with  
5 the greatest of respect, regarding what would be agreed. As far  
6 as orders are concerned, I don't see any order that can compel me  
7 to agree witnesses. There is simply --

8 JUDGE DOHERTY: I do not for one moment suggest -- I have  
9 been at pains to point out that I have not lost sight of the  
15:10:41 10 obligations --

11 MR. KHAN: Indeed.

12 JUDGE DOHERTY: -- so let us not argue on things that are  
13 not in dispute.

14 MR. KHAN: Your Honour, the question is how long does the  
15:10:51 15 Prosecution need? My submission was that the burden should be on  
16 them to show change in circumstance since the 30th -- since the  
17 22nd of September, when Her Honour Judge Sebutinde was going to  
18 order them to disclose the pre-trial brief two months ago, on the  
19 30th of November. I didn't force the point on that occasion,  
15:11:15 20 Your Honour. In my submission, they've had an extra two months.

21 I'm asking that they be given a further one month from that  
22 occasion, so three extra months, and I can't see any change of  
23 circumstances that would merit a longer --

24 JUDGE DOHERTY: Can you refer me to the transcript, please?

15:11:31 25 MR. KHAN: Indeed. Your Honour, if you'll pause with me a  
26 moment.

27 Your Honour, whilst my learned friend is finding that, in  
28 all the different cases that I've been involved in, I've never  
29 seen, of course, either a matter of practice or form, the

1 pre-trial brief being dependent upon agreed facts. In fact, many  
2 occasions what one does see is that after the pre-trial brief is  
3 given, many more facts are agreed because the Defence are in a  
4 better position to understand the Prosecution case.

15:12:15 5 Your Honour --

6 JUDGE DOHERTY: I'm not -- please, Mr. Khan, don't get --

7 MR. KHAN: I'm grateful to my learned friend for giving me  
8 the reference. It's 15:56:20, so 15 minutes, 56 ...

9 JUDGE DOHERTY: That's page 59, I think, of the transcript.

15:12:34 10 MR. KHAN: Of the 22nd of September. Can I read it?

11 JUDGE DOHERTY: I have it before me.

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

13 Your Honour, perhaps I should read it into the record, with  
14 your leave.

15 "JUDGE SEBUTINDE: So there is the pre-trial brief.

16 Mr. Khan, you should be interested in this because this is the  
17 one that gives you disclosure of the list of exhibits. And I  
18 think the date here is December 2006. I don't think it's a bad  
19 proposal, but we could shift it forward to November, 30th  
20 November."

21 JUDGE DOHERTY: Yes, I have read it, and I notice

22 Mr. Staker's response to it.

23 MR. KHAN: Your Honour, I was just simply detailing the way  
24 that Judge Sebutinde was going and the very clear indication that  
15:13:29 25 she was about to give an order.

26 JUDGE DOHERTY: Thank you.

27 In the light of the submissions by the parties, and on  
28 taking into account the matters to be dealt with under Rule 73  
29 bis (B), I order that the pre-trial brief be filed by Wednesday,



1 the 4th of April, 2007.

2 Are there any other issues that I have to deal with?

3 MR. KHAN: Your Honour, I don't believe so.

4 JUDGE DOHERTY: Thank you, Mr. Khan.

15:15:22 5 Mr. Rapp.

6 MR. RAPP: Just by way of announcement, and not intending

7 to argue the issue at all because it will be an issue for Your

8 Honours, we'll be filing next week a motion regarding videolink

9 witnesses, and attempting to do that in a general way by

15:15:24 10 categories of witnesses, simply from the practical point of view

11 of determining whether there will be a videolink may take

12 preparations and expenditures and it will necessitate decisions

13 in terms of transport of witnesses as opposed to videolink

14 witnesses. And if we don't bring that matter forward to the

15:15:40 15 Trial Chamber, the system may not be in place to be utilised when

16 we get to the trial date. We're going to attempt to do it in

17 terms of categories of witnesses, understanding that the actual

18 determination about an individual witness could be deferred to a

19 later point.

15:15:57 20 JUDGE DOHERTY: I'm sure you've read the transcript of the

21 conference of His Honour Justice Lussick in July, and I think

22 Mr. Khan made his position very clear in relation to videolink

23 witnesses in that Status Conference. And I think subsequently to

24 that Status Conference there is an appeal tribunal decision of

15:16:33 25 the ICTR on that whole question of videolink witnesses, or

26 evidence being adduced via videolink in the light of objections

27 by the Defence. I don't have the ruling before me. I'm acting

28 purely on memory. But I just refer to it in passing.

29 MR. RAPP: Okay. I don't wish to argue it, but I would

1 invite Your Honours to look at the decision - I was personally  
2 involved in it - and it deals with the issue that the judges were  
3 present with the witness and the accused was by videolink.

15:17:10 4 JUDGE DOHERTY: That, indeed, was it, yes. They were in  
5 two different jurisdictions. But, as I said, I've referred to --  
6 Mr. Khan, I think, has made his position clear, and no doubt when  
7 the motion is filed, we will await his response.

8 MR. RAPP: Yes. It will be a matter -- he and I have  
9 discussed it today and it will be a matter of contention, but a  
15:17:29 10 matter that I think needs to be resolved if we're going to have  
11 such a system in place.

12 JUDGE DOHERTY: As you know, juvenile witnesses were dealt  
13 with by way of videolink during some of the trials in Freetown.  
14 In making that observation, I do not in any way preempt any of  
15:17:47 15 the decisions. I have not seen the motion, I have not seen the  
16 reply, and it would be improper to make any other comment and I  
17 defer from doing so.

18 Incidentally, Mr. Rapp, I do recall at the last Status  
19 Conference there was a question as to whether the Defence team  
15:18:06 20 was finalised. I've asked Mr. Khan about his so I, in turn, will  
21 ask about yours.

22 MR. RAPP: The choice of leadership of the Prosecution team  
23 is resolved. Ms. Brenda Hollis, formerly a Senior Trial Attorney  
24 at the ICTY and a person who worked as a consultant in the Office  
15:18:23 25 of the Prosecutor of the Special Court for Sierra Leone, will  
26 join the team as the leader, as the team leader, and will arrive  
27 in Freetown, I believe, on the 5th of February.

28 The other members of the team, there is still a trial  
29 attorney position where an offer is outstanding and we're working

1 on determining whether that will be accepted or whether we will  
2 go to an alternative candidate. But we hope to have that matter  
3 resolved within the next week.

4 JUDGE DOHERTY: Thank you, Mr. Rapp.

15:18:54 5 So it would appear that, Mr. Khan, you have your team  
6 finalised but the Prosecution hasn't finalised theirs.

7 MR. KHAN: Well, Your Honour, in fact, we don't have the  
8 team finalised. We're still awaiting one local investigator, but  
9 the Principal Defender is informed and the Prosecutor, in fact,  
10 are informed of developments.

15:19:07

11 JUDGE DOHERTY: Thank you.

12 There are no other matters, then, counsel; is that correct?

13 Mr. Khan, could I draw your attention to a practice  
14 direction --

15:19:17

15 MR. KHAN: Yes.

16 JUDGE DOHERTY: -- by both Presiding Judges of Trial  
17 Chamber I and Trial Chamber II concerning the robing of counsel  
18 at the bar table.

19 MR. KHAN: I'm grateful.

15:19:26

20 JUDGE DOHERTY: Yes. I think it's stated around July, or  
21 something, of 2005.

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

23 JUDGE DOHERTY: If there are no other matters, we'll  
24 adjourn. Close the court.

15:19:37

25 I will not set a date for another Status Conference or a  
26 Pre-trial Conference. I will leave that for a date to be fixed.

27 If there are no other matters, Madam Court Attendant,  
28 please close the court.

29 MS. MUZIGO-MORRISON: All rise.

1 [Whereupon the Status Conference adjourned sine.  
2 die at 3:20 p.m.]  
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