SPECIAL COURT FOR SIERRA LEONE
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TRIAL CHAMBER I

Before:	Hon. Justice Benjamin Mutanga Itoe, Presiding Judge Hon. Justice Bankole Thompson Hon. Justice Pierre Boutet	
Registrar:	Mr. Herman von Hebel	
Date:	2nd November 2007	
PROSECUTOR	**Against**	**ISSA HASSAN SESAY** **MORRIS KALLON** **AUGUSTINE GBAO** (Case No. SCSL-04-15-T)

Public Document

RULING ON *VOIR DIRE* – WRITTEN REASONS

Office of the Prosecutor:
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TRIAL CHAMBER I ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court") composed of Hon. Justice Benjamin Mutanga Itoe, Presiding Judge, Hon. Justice Bankole Thompson, and Hon. Justice Pierre Boutet;

HAVING HEARD the oral application made by the Office of the Prosecutor ("Prosecution") on the 5th of June 2007 to be allowed to use statements made by the First Accused, Issa Hassan Sesay, during interviews conducted with the Prosecution between the 10th of March 2003 and the 15th of April 2003 in order to cross-examine the Accused to impeach his credibility;

HAVING HEARD the submissions of the Prosecution and of the Defence for the First Accused, Issa Hassan Sesay ("Defence") on the 5th, 6th and 7th of June 2007 on the issue of the admissibility of these statements for the limited purpose of cross-examination as to credibility, and in particular, on whether a *voir dire* is necessary in order to determine whether the Accused's waiver of the right to counsel, and the statements, were made voluntarily;

NOTING the oral ruling of the Chamber on the 8th of June 2007, in which it ordered that, because it was not satisfied that the issue could be determined on the basis of the material before it, a *voir dire* should be conducted to determine the issue of the voluntariness of the Accused's waiver of his right to counsel and of the statements themselves;[1]

NOTING that the Chamber indicated at that time that a reasoned written Decision on this matter would be forthcoming;

PURSUANT to Articles 17 and 20 of the Statute of the Special Court for Sierra Leone ("Statute"), and Rules 42, 43, 54, 63, 89(B), 92 and 95 of the Rules of Procedure and Evidence ("Rules");

THE TRIAL CHAMBER HEREBY ISSUES ITS REASONED WRITTEN DECISION:

I. BACKGROUND

1. The Accused was indicted on the 7th of March 2003 and subsequently arrested pursuant to an order from this Court.[2] On various dates between the 10th of March 2003 and the 15th of April 2003, the Prosecution conducted a total of 11 interviews with the Accused Sesay while he was in the custody of the Special Court. On the 16th of April 2003, the Defence Office filed an Extremely Urgent and Confidential Request for an Order Regarding Issa Sesay and an interim order was issued on the 30th of April 2003 for the Prosecution to temporarily cease questioning the Accused.[3] In his Decision of the 30th of May 2003, Justice Thompson held, on the basis of the materials before him, that he found that the Accused's waiver of his right to counsel was voluntary and informed.[4]

2. On the 15th of June 2004, the Chamber issued its Decision on a Defence Motion seeking an order prohibiting the Prosecution from disclosing the interview material to any party.[5] The Chamber held in that decision that "the question of admissibility of the Material, if any, will [. . .] only arise and be determined at the trial stage and in any event after its disclosure".[6] The Chamber ordered the disclosure of this material, first in redacted, then in non-redacted form, to Counsel for the other Accused.[7]

3. The Accused began his testimony on the 3rd of May 2007, and his examination-in-chief finished on the 30th of May 2007. He was then cross-examined by the Defence for the Second

Accused, Morris Kallon, on the 30th of May 2007, and by the Defence for the Third Accused, Augustine Gbao, on the 30th of May and the 1st of June 2007.

4. On the 14th of May 2007, the Prosecution filed copies of the statements and the respective rights advisements with the court.[8] On the 25th of May 2007, the Defence indicated that it objected to the admissibility of the statements.[9] On the 29th of May 2007, the parties made submissions on the issue of the timing of the ruling on the admissibility of these statements. On the issue of whether to hear arguments on admissibility at this point or at the point that the Prosecution sought to tender them, the Chamber ruled orally and unanimously that the application was premature and therefore declined to hear it at that time.[10] The Chamber further ruled that Counsel could not properly at this stage examine the Accused in chief about his arrest and the circumstances surrounding the taking of the statement on the grounds that it was impermissible to do so.[11]

II. SUBMISSIONS OF THE PARTIES

A. Submissions of the Prosecution

5. On the 5th of June 2007, the Prosecution made an oral application to use the statements to cross-examine the Accused for the purpose of impeaching his credibility, acknowledging its burden to prove beyond a reasonable doubt that the Accused's waiver of his right to counsel, and the statements themselves, were voluntary.[12] However, the Prosecution submitted, relying on the Appeals Chamber decision in *Prosecutor v. Ntahobali*,[13] that a formal *voir dire* procedure was not required to determine the voluntariness of the waiver or statements, arguing that the issue could be decided exclusively on the basis of a *prima facie* examination of the transcript, with the aid of the audio and videotapes of the interviews.[14] The Prosecution further submitted that the Chamber has the discretion, according to Rule 89(B), to decide which procedure will best favour a fair determination of the issues, and that this discretion extends to the decision about whether to hold a *voir dire*.[15]

6. The Prosecution further submitted that the Office of the Prosecutor had complied with Rules 42, 43 and 63 during the interviews[16], and that the presumption in Rule 92, that confessions are voluntary if Rules 63 and 43 have been complied with, applied.[17] Accordingly, it submitted, relying on the Appeals Chamber's Decision in *Ntahobali*, that the distinction between confessions and interviews is not the appropriate basis for determining whether to conduct a *voir dire*, because both statements require the same consideration under Rule 63.[18]

7. Consequently, the Prosecution contended that it is clear from the transcripts, the rights advisements, and the audio and videotapes, that the Accused had voluntarily waived his right to Counsel and that the statements he gave during the interviews were made with full knowledge of his rights. It further contended that the Accused's rights were read to him prior to every interview, that it is clear from the transcripts that he understood what was taking place, and that even his body language in the video is a clear indication of his willingness to take part in the interview process.[19] The Prosecution also indicated that it was relying on the Contact Decision of 30 May 2003, in which Justice Thompson held that the Accused's waiver of his right to counsel had been voluntary and informed.[20]

B. Submissions of the Defence

8. In response, the Defence submitted that the prior statements of the Accused were inadmissible pursuant to Rules 89 and 95, and were obtained in breach of Article 17(g)[21] and submitted that the involuntariness of the waiver and of the statements were manifest on the face of the transcript such that the Chamber should conclude that the Prosecution is unable to discharge its burden of proof, and should therefore exclude the statements automatically.[22] Should the Chamber not hold this opinion, the Defence submits that there is ample evidence on the face of the transcripts to raise a doubt as to the voluntariness of the interviews, and that the issue of voluntariness cannot be fully determined without a *voir dire* during which the evidence of Prosecution investigators is tested by the Defence.[23]

9. In further submissions, the Defence argued extensively that it is clear, from the face of the transcripts, that there have been several clear breaches of Rules 42, 63 and 92, to wit, that: i) that the waivers were never properly explained to the Accused and that they were explained in a way that was demonstrably inaccurate,[24] ii) that the Accused did not understand what he was purporting to waive,[25] iii) that the investigators acted improperly in threatening him and offering inducements, involving a process designed to trick the Accused into believing that notwithstanding his detention, he was a witness for the Prosecution, and inculcating in the Accused the belief that his wife was in Prosecution protective custody and that access to her was controlled by the Prosecution[26], iv) the Accused did not understand the role of Duty Counsel and the investigators took advantage of this,[27] v) Duty Counsel did not provide sufficient information about the Accused's rights to enable him to understand them,[28] vi) that at the time of the Accused's initial appearance, it was clear that he had not read the indictment and did not understand the charges against him,[29] v) and that the investigators interfered with privileged communications.[30]

10. In addition, the Defence pointed to several indications of problems in the manner of conducting the interviews that warranted further exploration, noting that there were several off-tape conversations about the evidence, and issues concerning the circumstances of the Accused's arrest.[31] It further submitted that it was clear that Mr. Sesay was in distress during the first interview due to lack of knowledge of the whereabouts of his family, and that no reassurance was provided by the investigators regarding this.[32] The Defence also claimed that the Accused's inexperience with the system should be taken into account in assessing voluntariness, arguing that he had just emerged from a bush war, had no experience of Western or international systems of justice, was uneducated, and relied completely on the information provided by the investigators.[33]

11. The Defence likewise submitted that these are issues that cannot be considered properly solely by looking at the face of the transcripts, and the audio and videotapes, in that, for example, it would not be possible to obtain evidence of off-tape conversations or coercion prior to interviews without hearing from the investigators involved. Without such evidence, the Defence contended, the Prosecution could not discharge its burden of proving that the waivers and the interviews were conducted voluntarily.[34] The Defence argued that although Rule 92 creates a presumption that if Rules 43 and 63 were complied with, the confession was voluntary, this

presumption is rebuttable by the Defence raising evidence, at which point the Prosecution must prove that the statement was voluntary beyond a reasonable doubt.[35]

12. The Defence relied on *Bagosora* for the proposition that rights must be communicated in a manner that is reasonably understandable to the detainee, and not simply by some incantation which a detainee may not understand, and that if there are any indications that the Accused is confused about his right to counsel, steps must be taken to ensure that the suspect does actually understand the nature of his rights.[36] The Defence submitted that in *Bagosora* and *Prosecutor* v. *Halilovic*,[37] a single issue was sufficient for the court to rule the statement involuntary, whereas in this case, there are multiple issues that should raise doubts as to the voluntariness of the interview.[38] The Defence submitted that there had never been a case where transcripts alone have been used to discharge the Prosecution's burden.[39]

C. Submissions of the Prosecution in Response

13. The Prosecution corrected factual errors made by the Defence, and provided its interpretation of the cases relied upon by the Defence.[40] The Chamber ruled that the Prosecution should not be allowed to refer to extrinsic material outside of the records in making its submissions.[41] The Prosecution submitted that the Defence's allegation that the Accused's inexperience with the system should be taken into account was a variation of the argument made in *Delalic*, where it was submitted that due to cultural differences, the Accused did not understand his rights.[42] The Prosecution submitted that this argument was dismissed by the court in *Delalic*, and should similarly be discounted by the Chamber, particularly in light of the fact that rather than being as naïve as the Defence has portrayed him, Mr. Sesay was in fact attending high level meetings with heads of state.[43]

III. APPLICABLE LAW

14. The Chamber recalls that the relevant portions of the Rules applicable to this Motion are as follows:

Rule 89:

(A) The rules of evidence set forth in this Section shall govern the proceedings before the Chambers. The Chambers shall not be bound by national rules of evidence.

(B) In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.

(C) A Chamber may admit any relevant evidence.

Rule 92: Confessions

A confession by the suspect or the accused given during questioning by the Prosecutor shall, provided the requirements of Rule 43 and Rule 63 were complied with, be presumed to have been free and voluntary.

Rule 95: Exclusion of Evidence

No evidence shall be admitted if its admission would bring the administration of justice into serious disrepute.

Rule 42: Rights of Suspects during Investigation

(A) A suspect who is to be questioned by the Prosecutor shall have the following rights, of which he shall be informed by the Prosecutor prior to questioning, in a language he speaks and understands:

(i) The right to legal assistance of his own choosing, including the right to have legal assistance provided by the Defence Office where the interests of justice so require and where the suspect does not have sufficient means to pay for it;

(ii) The right to have the free assistance of an interpreter if he cannot understand or speak the language to be used for questioning; and

(iii) The right to remain silent, and to be cautioned that any statement he makes shall be recorded and may be used in evidence.

(B) Questioning of a suspect shall not proceed without the presence of counsel unless the suspect has voluntarily waived his right to counsel. In case of waiver, if the suspect subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the suspect has obtained or has been assigned counsel.

Rule 43: Recording Questioning of Suspects

Whenever the Prosecutor questions a suspect, the questioning, including any waiver of the right to counsel, shall be audio-recorded or video-recorded, in accordance with the following procedure:

(i) The suspect shall be informed in a language he speaks and understands that the questioning is being audio-recorded or video-recorded;

(ii) In the event of a break in the course of the questioning, the fact and the time of the break shall be recorded before audio-recording or video-recording ends and the time of resumption of the questioning shall also be recorded;

(iii) At the conclusion of the questioning the suspect shall be offered the opportunity to clarify anything he has said, and to add anything he may wish, and the time of conclusion shall be recorded;

(iv) The content of the recording shall then be transcribed as soon as practicable after the conclusion of questioning and a copy of the transcript supplied to the suspect, together with a copy of the recording or, if multiple recording apparatus was used, one of the original recorded tapes; and

(v) After a copy has been made, if necessary, of the recorded tape for purposes of transcription, the original recorded tape or one of the original tapes shall be sealed in the presence of the suspect under the signature of the Prosecutor and the suspect.

Rule 63: Questioning of the Accused

(A) Questioning by the Prosecutor of an accused, including after the initial appearance, shall not proceed without the presence of counsel unless the accused has voluntarily and expressly agreed to proceed without counsel present. If the accused subsequently expresses a desire to have counsel, questioning shall thereupon cease, and shall only resume when the accused's counsel is present.

(B) The questioning, including any waiver of the right to counsel, shall be audio-recorded and, if possible, video-recorded in accordance with the procedure provided for in Rule 43. The Prosecutor shall at the beginning of the questioning caution the accused in accordance with Rule 42(A)(iii).

15. The Chamber wishes to emphasize that, as a matter of law, it is for the Prosecution to prove the voluntariness of the Accused's waiver of his right to counsel, and of his statements "convincingly and beyond a reasonable doubt."[44]

16. The Chamber opines that it has discretionary authority under 89(B) to decide upon the best procedure for a fair determination of the issues before it, and this discretion extends to its decision about whether to hold a *voir dire*. We endorse the proposition found in the existing jurisprudence that a determination of the voluntariness of an Accused's statement may be a circumstance in which a *voir dire* may be used.[45] However, the Chamber recognizes that it is not required to hold a *voir dire* if it does not deem that one is necessary.[46] The material and the information before it may be sufficient to make such a determination.

17. If a statement is deemed voluntary and therefore admissible, it may be used to cross-examine the Accused, but if it has not been introduced in evidence during the Prosecution's case in chief, it cannot be admitted for the truth of its contents.[47] The use of such statements is therefore confined to the limited purpose of cross-examination to impeach credibility.

III. DELIBERATION

18. Guided by the applicable principles of law and applying them to the issues and facts as found so far the purposes of the instant application, the Chamber opines strongly that references in the transcripts to several off-tape conversations, the contents of which were never discussed in the taped portions of the interview, do raise sufficient doubts as to compliance with the governing rules and procedures. We also strongly opine that the apparent misapprehension that the Accused

was under during his interview that he was a suspect, rather than an Accused, does also raise some doubt as to compliance with Rules 42, 43 and 63.

19. Based on the foregoing reasoning, the Chamber cannot, at this stage, conclude there is sufficient material before it to allow for a proper determination of the voluntariness or otherwise of the statements at this stage. In the Chamber's opinion, a fuller exploration of the circumstances surrounding the Accused's waiver of his right to counsel and statements is therefore required, and would best be achieved by the holding of a *voir dire*. The Chamber reiterates that the burden is on the Prosecution, during the *voir dire*, to establish the voluntariness of the waiver and of the statements beyond a reasonable doubt.

20. Hence the need, at this stage, for the holding of a *voir dire*, leaving the issue of the voluntariness of the statement and its admissibility to be determined after the conclusion of the *voir dire*, the Contact Decision of Justice Bankole Thompson on the issue of the voluntariness of the waiver notwithstanding.[48]

IV. DISPOSITION

REITERATES its order that a *voir dire* be conducted to determine the issue of the voluntariness of the statements;

ORDERS the Court Management Section to immediately reclassify the following Decisions as public:

i) *Prosecutor v. Sesay*, SCSL-03-05-PT-026, Interim Order to Temporarily Cease any Questioning of the Accused of the Special Court, 30 April 2003.

ii) *Prosecutor v. Sesay*, SCSL-03-05-PT-042, Decision on Request of Defence Office for Order Regarding Contact with the Accused, 30 May 2003.

iii) *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT-163, *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-PT-93, Confidential Decision on Motion to Prevent Prosecution from Serving Certain Materials to Other Accused Until Admissibility Determined, 15 June 2004.

Done at Freetown, Sierra Leone, this 2nd day of November 2007

Hon. Justice Bankole Thompson | Hon. Justice Mutanga Itoe
Presiding Judge
Trial Chamber I | Hon. Justice Pierre Boutet

[Seal of the Special Court for Sierra Leone]

[1] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Transcript, 8 June 2007, pp. 2-3.
[2] *Prosecutor v. Sesay*, SCSL-03-05-PT, Decision Approving the Indictment and Order for Non-Disclosure, 7 March 2003; *Prosecutor v. Sesay*, SCSL-03-05-PT, Warrant of Arrest and Order for Transfer and Detention, 7 March 2003.
[3] *Prosecutor v. Sesay*, SCSL-03-05-PT, Interim Order to Temporarily Cease any Questioning of the Accused of the Special Court, 30 April 2003.
[4] *Prosecutor v. Sesay*, SCSL-03-05-PT, Decision on Request of Defence Office for Order Regarding Contact with the Accused, 30 May 2003 [Contact Decision], p. 8.
[5] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-PT, Confidential Decision on Motion to Prevent Prosecution from Serving Certain Materials to Other Accused Until Admissibility Determined, 15 June 2004 [Confidential Decision]. The Chamber notes that these decisions were originally filed confidentially. However, as these matters were discussed publicly in court on the 5th, 6th and 7th of June 2007 with the agreement of both parties, the Chamber is of the view that there is no longer a reason to maintain the confidentiality of these decisions.
[6] Confidential Decision, para 38.
[7] *Ibid.*, para 42.
[8] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Confidential Prosecution Witness Statements, 14 May 2007.
[9] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Transcript, 25 May 2007, p. 104.
[10] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Transcript, 29 May 2007, pp. 53-54.
[11] *Ibid*., p. 54.
[12] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Transcript, 5 June 2007, pp. 8-9.
[13] *Prosecutor v. Ntahobali and Nyiramasuhuko*, ICTR-97-21-AR73, Decision on "Appeal of Accused Arsene Shalom Ntahobali againt the Decision on Kanyabashi's Oral Motion to Cross-Examine Ntahobali using Ntahobali's Statements to Prosecution Investigators in July 1997", 27 October 2006 [*Ntahobali* (AC)], para 12.
[14] Transcript, 5 June 2007, pp. 14-15, 45-46. The Prosecution argued that this was consistent with the Appeals Chamber's decision in the CDF case, where it held that "Rule 89(C) ensures that the administration of justice will not be brought into disrepute by artificial or technical rules, often devised for jury trial, which prevent judges from having access to information which is relevant" (*Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-AR65, Fofana – Appeal Against Refusal of Bail, 11 March 2005, para 26).
[15] Transcript, 5 June 2007, p. 26, citing *Ntahobali* (AC), para. 12. The Prosecution also noted that the Trial Chamber in the *Ntahobali* Decision indicated that there had been several cases where determinations had been made about voluntariness by considering the transcripts of proceedings only, without holding a *voir dire*. (*Prosecutor v. Ndayambaje, Kanyabashi, Nyiramasuhuko, Ntahobali, Nsabimana and Nteziryayo*, ICTR-98-42-T, Decision on Kanyabashi's Oral Motion to Cross-Examine Ntahobali using Ntahobali's Statements to Prosecution Investigators in July 1997, 15 May 2006 [*Ntahobali* (TC)], para 54, citing *Prosecutor v. Bagosora, Kabiligi, Ntabakuze and Nsengiyumva*, Decision on the Prosecutor's Motion for the Admission of Certain Materials under Rule 89(C), 14 October 2004 [*Bagosora*], *Prosecutor v. Bizimungu, Mugenzi, Bicamumpaka and Mugiraneza*, ICTR-98-41-T, Decision on Prosper Mugiraneza's Renewed Motion to Exclude his Custodial Statements from Evidence, 4 December 2003, and *Prosecutor v. Kabiligi and Ntabakuze*, ICTR-97-34-I, Decision on Kabiligi's Motion to Nullify and Declare Evidence Inadmissible, 2 June 2000.

[16] The Defence clarified that it was not bringing any challenge based on Rule 43 (Transcript, 5 June 2007, p. 44).
[17] *Ibid.*, p. 39.
[18] *Ibid.*, p. 28, citing *Ntahobali* (AC), para 18.
[19] *Ibid.*, p. 46.
[20] *Ibid.*, pp. 36-37, 41.
[21] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Skeleton Argument of the Defence (Admissibility/Exclusionary Principles) [Skeleton], para 1, Transcript, 5 June 2007, p. 51.
[22] Skeleton, para 4, Transcript, 5 June 2007, pp. 85-86, Transcript, 6 June 2007, pp. 60-62.
[23] Skeleton, para 8, Transcript, 5 June 2007, pp. 86-87.
[24] Transcript, 5 June 2007, p. 72, 106, Transcript, 6 June 2007, p. 48.
[25] Transcript, 6 June 2007, p. 48.
[26] Transcript, 5 June 2007, pp. 88-89, 109-114, Transcript, 6 June 2007, pp. 47-48. The Defence initially submitted that the Accused's wife had been in the protective custody of the Prosecution, but later corrected this, based on a letter from Naeem Ahmed, Deputy Chief of Witness and Victim Services ("WVS") dated 7 June 2007 (Exhibit 218), indicating that the Accused's wife had been in the custody of the WVS since 14 May 2003 (Transcript, 7 June 2007, pp. 2-4). The Prosecution clarified that she had been placed in the custody of the WVS as a result of a request from the Prosecution. The Defence indicated that the Accused, and Mr. Petit of the Office of the Prosecutor were under the impression that she was under the protective custody of the Prosecution, and maintained its original submissions regarding this issue (Transcript, 7 June 2007, pp. 2-4).
[27] Transcript, 6 June 2007, pp. 27-36.
[28] *Ibid.*, pp. 47-48.
[29] *Ibid.*, p. 30, 48.
[30] *Ibid*., p. 26, 47.
[31] *Ibid.*, p. 49.
[32] Transcript, 5 June 2007, p. 108, Transcript, 6 June 2007, pp. 46-47.
[33] Transcript, 5 June 2007, p. 91, 104, Transcript, 6 June 2007, p. 47.
[34] Transcript, 5 June 2007, p. 52.
[35] Transcript, 6 June 2007, pp. 5-12, relying on *Prosecutor v. Delalic, Mucic, Delic and Landzo*, IT-96-21, Decision on Zdavko Mucic's Motion for the Exclusion of Evidence, 2 September 1997 [*Delalic*], paras 41-42. The Prosecution later submitted that Delalic in fact said nothing about the proper construction of Rule 92 (Transcript, 7 June 2007, p. 36).
[36] Skeleton, para 17, Transcript, 6 June 2007, referring to *Bagosora*, para 17.
[37] *Prosecutor v. Halilovic*, IT-01-48-AR73.2, Decision on Interlocutory Appeal Concerning Admission of Record of Interview of the Accused from the Bar Table (AC), 19 August 2005 [*Halilovic*].
[38] Transcript, 5 June 2007, p. 98.
[39] Transcript, 6 June 2007, pp. 51-52. The Defence distinguished the cases mentioned in para 54 of *Ntahobali* (see note 15) from the instant case (Transcript, 6 June 2007, pp. 51-52).
[40] Transcript, 7 June 2007, pp. 2-58. The Defence conceded to some of these corrections (Transcript, 7 June 2007, p. 2, Transcript, 6 June 2007, p. 4)
[41] Transcript, 7 June 2007, p. 21.
[42] Transcript, 7 June 2007, pp. 59-60 referring to *Delalic*.
[43] Transcript, 7 June 2007, p. 60.

[44] *Delalic*, para 42, *Bagosora*, para 14.
[45] *Prosecutor v. Milosevic*, IT-02-54-T, Decision on Prosecution Motion for Voir Dire Proceeding, 9 June 2005, p. 3, where the court lists several examples of circumstances where a *voir dire* procedure might be used, including determining the admissibility of a confession by the Accused. The court held that the matter was one for the Trial Chamber's discretion, but that "although the procedure may be applicable both to statements of witnesses and confessions by the Accused, the Trial Chamber is of the view that there is a stronger case to use it in respect of statements such as a confession by an Accused" (p. 4).
[46] In *Halilovic*, the court held that "the requested break in the interview itself should have been sufficient to raise the concern of the Chamber to explore more fully the voluntariness of that interview. This does not necessarily require the holding of a *voir dire*, although there may be certain advantages in doing so" (para 46). In *Ntahobali (AC)*, the court held that "the *voir dire* procedure originates from the common law and does not have a strictly defined process in the Tribunal. There are no provisions in the Rules which direct Trial Chambers to adopt a formal procedure for determining whether they should conduct a *voir dire*. Instead, Rule 89(B) of the Rules provides that reference should be made to evidentiary rules 'which will best favour a fair determination of the matter'. This discretion can extend to the conduct of a *voir dire* procedure when it is deemed appropriate by the Trial Chamber" (para 12). In *Ntahobali*, the Appeals Chamber found that there was nothing wrong with the Trial Chamber's decision not to conduct a *voir dire* to determine the issue of voluntariness of the Accused's statement, but instead heard submissions of the parties and considered a written statement of the Accused.
[47] *Ntahobali* (TC), paras 60-61. This is also consistent with the decision of this Chamber in the CDF case, where it held that prior inconsistent statements of a witness are admissible for the purpose of impeaching his credibility only, but cannot be used for any other purpose, following certain requirements set out in that decision (*Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, Decision on Disclosure of Witness Statements and Cross-Examination, 16 July 2004, paras 18 and 21).
[48] Transcript, 5 June 2007, where Judge Thompson stated "it's the collective disposition of the Bench to hear you as fully and as amply as possible on all the aspects that are raised by the Prosecution, and using that decision of May 2003 as merely just a guide, a citation, an authority, but not foreclosing or precluding you from even raising issues that may be, what, peripheral or core or tangential" (p. 49).