

Case No. SCSL-2004-16-T
THE PROSECUTOR OF
THE SPECIAL COURT
V.
ALEX TAMBA BRIMA
BRIMA BAZZY KAMARA
SANTIGIE BORBOR KANU

TUESDAY, 04 APRIL 2006
10.10 A.M.
STATUS CONFERENCE

TRIAL CHAMBER II

| | |
|--|--|
| Before the Judges: | Richard Lussick, Presiding Julia Sebutinde Teresa Doherty |
| For Chambers: | Mr Simon Meisenberg Ms Carolyn Buff |
| For the Registry: | Ms Krystal Thompson |
| For the Prosecution: | Mr James Johnson Mr Karim Agha Mr Jim Hodes Mr Charles Hardaway Ms Maja Dimitrova (Case Manager) |
| For the Principal Defender: | Ms Claire Carlton-Hanciles Ms Prudence Acirokop |
| For the accused Alex Tamba Brima: | Ms Glenna Thompson Mr Kojo Graham |
| For the accused Brima Bazy Kamara: | Mr Andrew William Kodwo Daniels Mr Mohamed Pa-Momo Fofanah |
| For the accused Santigie Borbor Kanu: | Mr Ajibola E Manly-Spain |

1 [AFRC04APRIL06A-SGH]

2 Tuesday, 04 April 2006

3 [Status Conference]

4 [Open Session]

5 [The Accused present]

6 [Upon commencing at 10.10 a.m.]

7 MS THOMPSON: Good morning, Your Honours. This is case
8 number SCSL-2004-16-T, the Prosecutor against Alex Tamba Brima,
9 Brima Bazzy Kamara and Santigie Borbor Kanu; Status conference.

10 PRESIDING JUDGE: Good morning. Firstly, I would like to
11 apologise for our late sitting. We had some transport problems
12 and we were just about to come into court when we were handed a
13 document from Mr Knoops, only one copy, so we had to each read it
14 and pass it on.

15 Now, this is a status conference. What we hope today to do
16 is to set a date for a pre-trial conference. We have asked
17 fairly minimal requirements from the Defence thus far, but for
18 this conference, simply the number of witnesses expected to be
19 called by each defence team and the anticipated length of the
20 defence case. I will call on the Defence shortly to provide us
21 with those details, but I thought we should begin by telling you
22 our general approach to the matter of disclosure by the Defence.

23 Firstly, it is quite obvious that the disclosure
24 obligations of the Defence are different from those of the
25 Prosecution, but the Defence, nevertheless, does have disclosure
26 obligations and the disclosure should be at least sufficient to
27 enable the Prosecution to properly test the Defence evidence.

28 The rules in Rule 73ter contemplate certain matters which
29 the Court may order the Defence to disclose. However, we

1 consider that an order for such disclosure should be made at a
2 pre-defence conference. Unlike the ICTY, there is no equivalent
3 provision in our rules to the ICTY Rule 62ter under which a
4 pre-trial judge may order disclosure by the Defence prior to the
5 pre-defence conference. And that is why we have mentioned on a
6 previous occasion, that is the 31st March, the pre-defence
7 conference because we are of the view that the requirements
8 thereunder, which the Court may order, should only be made at
9 that conference.

10 Nevertheless, the Defence would have been aware of the
11 provisions of Rule 73ter and they would have expected that they
12 would need to make some disclosure based on that provision and
13 they have had time to consider the issue from as far back as last
14 November when the Prosecution closed its case.

15 So, bearing that in mind, what we are considering - and we
16 will listen to submissions from both parties on this - but we are
17 considering calling a pre-defence conference sometime this week,
18 perhaps Thursday or Friday, and at that conference making
19 production orders and giving a certain amount of time for
20 production of the matters which are the subject of those orders,
21 and on the question of time we were thinking of perhaps three
22 weeks which would include the Easter break. And we ought to
23 consider, too, fixing a date for hearing, but we will not do that
24 today we will go into that further at the pre-defence conference.

25 Well, before hearing from either of the parties, if I can
26 call on counsel for Brima to perhaps just provide us, if you can,
27 with the items we mentioned last Friday, which was the number of
28 witnesses expected to be called by your defence team and the
29 anticipated length of the Defence case. I am presuming, the

1 second item, I am presuming, you have discussed that with the
2 other defence teams.

3 MR GRAHAM: Good morning, Your Honours.

4 PRESIDING JUDGE: Good morning.

5 MR GRAHAM: Yes, we did. We had a meeting sometime
6 mid-afternoon yesterday.

7 Your Honours, more particularly in respect of the -- your
8 request, we have a working arrangement this morning and I think
9 in terms of and in the spirit of collective contribution and
10 participation my learned friend Mr Daniels will be handling the
11 first part of the agenda relating to the number of witnesses, the
12 proposed date for the pre-defence conference and will handle the
13 issues relating to the commencement of the trial. So at this
14 point in time I will hand over the stage to my learned friend
15 Mr Daniels to take over. Thank you.

16 PRESIDING JUDGE: Thank you, Mr Graham. Yes, Mr Daniels,
17 you will be speaking on behalf of all three defence teams, is
18 that right?

19 MR DANIELS: That is so, Your Honour.

20 PRESIDING JUDGE: Yes, thank you.

21 MR DANIELS: I propose to deal with the issues as Your
22 Honour set them out at the last adjourned date starting, no
23 doubt, with the number of defence witnesses we intend to call.
24 For the moment we are estimating at least 50 to 70 common
25 witnesses and we have arrived at this figure taking account of
26 the number of districts where the alleged offences took place.
27 That is seven districts, so on a rough estimation with ten
28 witnesses per each district we arrive at 70.

29 Then, as regards individual witnesses, at this stage we are

1 proposing 20 each. Twenty witnesses each. That makes 60 plus 70
2 and in addition to that we are proposing to call five expert
3 witnesses. So if my mathematics is right, that brings us to 135.

4 JUDGE SEBUTINDE: Mr Daniels, are the proposed expert
5 witnesses also common to all of you?

6 MR DANIELS: Yes.

7 PRESIDING JUDGE: Well, of course, you will bring those
8 expert witnesses under the provision of Rule 94bis at the
9 appropriate time.

10 MR DANIELS: That is so, Your Honour. On to the second
11 matter, that is to do with the length of the defence case. We
12 have taken account of the recesses that we will have and we have
13 also, using the Defence -- the Prosecution length of time, which
14 was probably about eight months and they had I think 59
15 witnesses. So based on those figures we are or we think that the
16 case should last between 10 to 12 months inclusive of the
17 recesses that we do have.

18 We had originally proposed the 1st May, or we had spoken
19 amongst ourselves that 1st May would be the date for the
20 pre-defence conference. We have spoken to the Prosecution and
21 have indicated that if need be we would be prepared to also
22 submit a provisional list of witnesses, including pseudonyms and
23 exhibits, but the Prosecution will speak for themselves.

24 The reason why we chose that particular date is because the
25 defence teams had a pre-arranged investigation trip scheduled for
26 tomorrow. We are supposed to be leaving to the Kono District
27 right after the end of this side of the legal year. So we
28 thought that the most practical date would be 1st May.

29 PRESIDING JUDGE: Well, as you said, Mr Daniels, we will

1 hear from the Prosecution as well, but that 1st May has been
2 calculated on the understanding that prior to that time you will
3 be providing the Prosecution with a provisional list of witnesses
4 and exhibits; is that correct?

5 MR DANIELS: That is the understanding. As regards the
6 date for commencement, I think my learned friend will address the
7 Court on that matter.

8 PRESIDING JUDGE: Yes, Mr Graham.

9 MR GRAHAM: Thank you, Your Honour. Once again, Your
10 Honour, I speak on behalf of the Defence team, but I think this
11 is the most sensitive aspect of the agenda for hearing as far as
12 today, Your Honour. I may proceed by saying that whatever
13 submissions we make before the Court this morning, we do so in
14 good faith having in mind the practical experiences we have been
15 through on the ground in terms of trying to prepare for this
16 case.

17 Your Honours, we could well have had the alternative of
18 making copious submissions under Article 17 in terms of having
19 adequate time for the preparation of our defence. For us it is
20 not just simply the legal issues. Your Honour, I will start
21 first of all by addressing the issue of witnesses. But in terms
22 of time frame, Your Honours, I will sincerely tell you that if we
23 had our wish, this trial should commence as soon as we come back
24 in September. I know Your Honours will be surprised by this
25 proposal, it may look probably and sound a bit strange, but, Your
26 Honour, I am sure that once I go through the reasons why we
27 propose this date, Your Honours will probably have a feeling that
28 this is a reasonable proposal that we have put before Your
29 Honours this morning.

1 Your Honours, the principal reason for saying this, I will
2 start first with the crime bases. Your Honours, as per the
3 decision under Rule 98, the indictment as of now stands in its
4 entirety. Your Honours, you recall the nature of the prosecution
5 case. The case ended sometime in November of last year then we
6 had to deal with the issues of Rule 92 and then subsequently
7 Rule 98 after the end of January.

8 Your Honours, from February all the Defence teams have been
9 down on the ground, we have been working, working very, very
10 hard, going to all the provinces trying as much as possible to
11 get our witnesses to together.

12 Your Honours, the past, since the beginning of February, we
13 spent quite a lot of time in the Bombali District, for example.
14 We have been through Bornoya, we have been to Karina a couple of
15 times, we have gone as far as Mandaha.

16 Your Honours, we realised the handicap we faced during the
17 time the Prosecution presented its case. We conducted our
18 cross-examination obviously, but Your Honours, having been on the
19 ground we realised that our cross-examination was very
20 ineffective, ineffective in the sense that most of the areas were
21 inaccessible during the time -- sometime, I think, in April and
22 May and June of last year. Most of the areas were inaccessible
23 because of the rainy season. So, because of that, our
24 investigators were not able to work effectively on the ground to
25 equip us with all the information we need to conduct an effective
26 cross-examination. But interestingly enough, Your Honours,
27 having been on the ground and having gathered enough information,
28 we realised how ineffective our cross-examination was and, Your
29 Honours, in order for us to be able to present an effective

1 defence for the accused persons sitting behind us, we think that
2 we need enough time to be able to do that. The past eight weeks
3 we spent not more than three weeks in Bombali District. Within
4 this period we have been there, all lead counsel and
5 investigators we have all been on the ground. And then, of
6 course, we are getting results. In the Bombali District alone we
7 have been able to get almost about 25 witnesses. The witnesses
8 and victims section, they are moving in this week to follow up
9 and try to consolidate the work that we have done and also to
10 begin to prepare these witnesses to bring them to Freetown.

11 It is a difficult task, Your Honour, it is not easy, it is
12 not easy at all. And also September becomes very critical
13 because the rainy season is about to start very soon and the
14 month of June is very critical. If we happen to find ourselves
15 in this Court in June, what it means is that we are going to
16 lose -- by way of investigations the whole month of June will be
17 lost on us. And Your Honours, as I said, once you get on the
18 ground you realise there are no more practical issues.
19 Accessibility becomes a problem. We also realise that during the
20 rainy season most of these witnesses also resettle to other areas
21 to engage in their farming activities as well and that is one
22 very key consideration.

23 Your Honour, of course, when you look at the indictment,
24 the coverage is very wide. We have to deal with seven districts
25 and in the districts we have the chiefdoms and also the villages.
26 And as per your decision, as I said, all the crime bases stand
27 intact. It means we have a lot of work to do. Indeed, we were
28 in Kono for almost about ten days. We had to come back to
29 Freetown just because of the decision that was due to be

1 delivered under Rule 90. Tomorrow, we are going back again to
2 Kono District for another one week to continue with the work. I
3 am saying that just in terms of pace we have covered Bombali, we
4 have covered hopefully the entire Kono District sometime this
5 week and then we have about five more other districts to go
6 through.

7 Your Honours, our investigators have been doing quite a lot
8 of work. Why was it necessary for lead counsel also to get on
9 ground? Because the response when our investigators go out they
10 always ask, "Who are your leaders? Where are your leaders?" And
11 we had no option but to go on the ground and once we got on the
12 ground we realised that the results were also tremendous. And if
13 we also, in terms of the Prosecution, I mean, Your Honours, I
14 don't think that the Prosecution almost had about two years to
15 prepare for their case. And I must admit that it is also
16 arguable to say that probably we have also had almost another
17 year to prepare for our case. But I will come to that issue, I
18 mean, after I have addressed the issue of the crime bases.

19 So, Your Honour, this is sadly the problem that we have
20 been facing. We have made the trip to Camp Rosos. We walked
21 seven or eight miles down into the forest to get to Camp Rosos.
22 We spoke to the people and, Your Honour, we are saying there is a
23 lot of work for us to do to be able to present an effective
24 defence. The accused persons here are facing a 14-count
25 indictment. Your Honours, if they are found guilty I am sure
26 they are going to spend a lot of time in jail. The least we
27 could do is to have adequate time. I don't think that probably
28 four or eight weeks may probably mean a lot to the Court, but for
29 us as lawyers we believe that if we don't get enough time then

1 our competence and effectiveness will be compromised. And, Your
2 Honours, we feel very, very strongly about this and, as I have
3 said, we have been in there, I mean, probably we have the
4 bragging rights because we have been there, we spent the day
5 through Karina and all the places that we probably never thought
6 six months ago we could have ever been there.

7 We have been to Camp Rosos, We have been on the ground and,
8 Your Honour, the information and the resources that we are
9 getting we think it is very important, but at the end of the day
10 it is our responsibility to make sure that this Court gets a fair
11 and accurate picture of exactly what is on the ground and that is
12 what we are asking for. We don't have any problem, Your Honours,
13 if we have to start, at some point in time, we may, but what it
14 means is that there is going to be a start and stop because I
15 will tell you in sincerity, Your Honours, that we have covered
16 the Bombali District, we are trying to target the Kono District.
17 We literally have to cover the five districts and my learned
18 friend also reminded me and that is true we have also done quite
19 a lot of work in the Koinadugu District as well. We have been to
20 Kabala, we have been to a lot of places and it is a difficult
21 process, Your Honours, because once you go in there you make
22 first contact, they don't come out and talk to you when you get
23 in there first. You need to follow up, make a couple of visits
24 and then they begin to loosen up and then you begin to get a
25 little bit of headway in what you are doing.

26 But it has been a very -- I mean a difficult process. Camp
27 Rosos, for example, Your Honour, like I said, is a very key
28 element in the Prosecution's case. During the rainy season it
29 becomes an island, there is no way you can access Camp Rosos

1 during the rainy season. The rainy season is fast approaching.
2 We have been there, we need to go back there again with our
3 teams. I am saying that if you have to start this trial of
4 course we will be constrained. So, Your Honours, this is in
5 respect of the crime bases, these are the issues that are coming
6 up. In terms of our commitment, we have been up sometime in
7 February, one of our teams had an accident, you know, in the
8 course of ^ [inaudible] one of the Special Court Land Rovers
9 somersaulted, I think it's even been written off.

10 I am saying that in terms of effort we are putting in all
11 that we can. We have been on the ground, good lead counsel,
12 Mr Fofanah, Mr Daniels, we have been on the ground. My learned
13 friends here also in the Court have also been holding the fort
14 and doing whatever they can in terms of case management, but the
15 challenges are real and I am pleading with Your Honours, and I am
16 saying this in good faith, in sincere good faith, that
17 Your Honours, we need time to be able to prepare and defend our
18 accused persons effectively. It is not easy. It is not easy at
19 all. It is not easy, and we have been trying our best to do as
20 much as we can. Your Honours, I think it is also a very, very
21 reasonable request and my friends on the other side, we had a
22 meeting yesterday trying to get a common ground on when this
23 trial is going to start. I don't think we actually --
24 essentially we agreed to disagree, but I believe at this point in
25 time we have told them where we are coming from and I believe
26 that they would also appreciate very much where we are coming
27 from.

28 As defence lawyers, we believe that there is enough
29 information there, and of course Your Honours we are not asking

1 for an open-ended timetable, definitely not. We are not asking
2 for an open-ended timetable. All that we are asking for is a
3 reasonable period of time to enable us to put up an effective
4 defence.

5 Your Honours, having said that, I would also then again
6 move on to the issues of witnesses generally as one of
7 constraints that we have which is hampering our professional
8 effectiveness. Your Honours, of course, the nature of the AFRC
9 case itself is unique. Our trial is on a day-to-day basis, which
10 means that of course during the time the Prosecution was
11 presenting its case, much of the focus was on trying to respond
12 to the Prosecution case. So to that extent we were limited in
13 terms of our movements outside Freetown and the Western Area. So
14 during that time during the Prosecution case we focused most of
15 our witness activities here in the Freetown area and we did
16 wonderfully well. We got almost about 40 to 50 witnesses here in
17 Freetown alone.

18 Unfortunately, sometime in December of last year we had
19 quite a number of our witnesses coming down from the witness
20 house up the hill, waiting in front of the Special Court for
21 counsel to come out and talk to them. I don't know what
22 happened, somebody probably might have sent some information to
23 the police. They were there, this van just came down full of
24 policemen they got out and just started attacking them. And
25 since December of last year we have had a serious problem trying
26 to get all these witnesses back again on board. You know, so
27 these are just some of the practical problems we are facing, I
28 mean as a defence team. And then of course there is the issue of
29 quality of witnesses and then once you do the follow-up

1 verification issues, Your Honours, these are also very serious
2 problems. You also have to be tracking down these witnesses
3 moving from one place to the other, you know. Just a second,
4 Your Honours.

5 So, Your Honours, in respect of witnesses these are some of
6 the bottlenecks and problems and we are working, we are working
7 very hard. Your Honours, we have a primary and principal
8 interest in ensuring that this trial also conducted in a most
9 expeditious manner.

10 Your Honours, we also do recognise the duty that the Court
11 has to ensure that this trial is conducted without undue delay.
12 But, Your Honour, is also a delicate balancing act and I think
13 that in the process of trying to ensure that this trial is
14 expeditious, due consideration is given to the fact that we also
15 as defence lawyers need to have adequate time to also put up an
16 effective defence.

17 Having said that, Your Honours, again I will move up also
18 onto the issue of administrative and, of course, this is not an
19 equality of arms application, but these are, once again, as I
20 said, practical considerations that we face as a defence team
21 which is not -- Your Honours, for example, administratively, of
22 course, it is not an excuse but it is a matter of fact that for
23 the Brima team, for example, we had a change of lead counsel in
24 June of 2004 when the lead counsel passed away. Mr Kevin Metzger
25 also had to withdraw for reasons I think known, very much well
26 known to the Court. And I took over as lead counsel even though
27 I think that I am the oldest member of the team. But then, of
28 course, our functions would mean the context of the team was
29 different. We have tried as much as we can to adjust and I

1 believe we are doing fine, but the constraints are there.

2 So, I can also say the same for the Kamara team as well.

3 The Kamara team for a long time, almost for about a year, had no
4 lead counsel before Mr Wilbert Harris came aboard. For reasons
5 well known us to a withdrawal took place, and I think Mr Daniels
6 came sometime in June of last year. He was here in the Court the
7 next day July. He came in as lead counsel, the next day he was
8 here in court. And we have been working together as a team, but
9 then, of course, the focus changes because if you come in as lead
10 counsel in July, Your Honours, naturally your focus, you have to
11 spend time to go through the pre-trial work, you have to spend
12 time also to maintain, keep with the momentum of the trial, and
13 these are the dynamics and we have been trying very much to work
14 together, but these are the practical constraints that we have.
15 And having said that for lead counsel then, of course, the issue
16 of investigators is also a problem. Some of the obstacles we
17 have been facing, Your Honour, I don't think it is a secret that
18 we have a major problem of getting good quality local
19 investigators here in Freetown.

20 We had a very good investigator sometime in the past and
21 the circumstances I think we are all aware, he had a problem with
22 the Court, a decision was made. We are still trying to work with
23 the Registry to try to get him back. It has been almost five
24 months since the decision was made and we are still having the --
25 Court has not made a decision as to whether he is being
26 reinstated. Sometime in the past we also had a international
27 investigator, Miss Maureen Poole ^ who also came in from the UK
28 to try to come and support our teams, but then, of course, the
29 typical problems with international investigations, the kind of

1 hostility we get from the local populace. They seem to have this
2 kind of fear that anybody who is probably foreign is probably a
3 collaborator, if I may use those words. So it has also been a
4 problem, of course, every team has just one investigator, Your
5 Honours, just one investigator.

6 And then you just by sheer mathematics look at the number
7 of crime bases that we have in the indictment. If you are only
8 going to take one crime base every two days, Your Honours, this
9 is going to take them a couple of months to be able to complete
10 that and that is the reason why we are all down on the ground,
11 but these are the practical constraints. I would have loved to
12 have been in the situation where we could start this trial in a
13 week or two, but, Your Honours, we believe we have to do a good
14 case before you. We don't want to disappoint you. I think it is
15 very important that we come and when we come we come very
16 strongly and I think we also have a responsibility to these
17 accused persons here to make sure that at the end of the day,
18 they would also work hard with the feeling that, yes, my defence
19 lawyers defended as to the best of their abilities. And I think
20 that in the process of ensuring a fair trial these are also key
21 considerations that, Your Honours, I will plead with you not to
22 overlook.

23 And then, of course, Your Honours, there is also the issue
24 of funding. I mean, for us it is a real constraint. Your
25 Honours, I had to drive in a car, in the Special Court car, all
26 the way from Makeni to Gbendembu, Mateboi without air
27 conditioning. You know, and I am saying that these are some of
28 the practical constraints that we face. You know, but then we
29 don't have a choice, we have work to do and that's exactly what

1 we are doing. All that we are asking for is a reasonable period
2 of time to be able to get everything together and then once we
3 come we have continuity. If not, then we will have to do a start
4 and stop and that is just the simple reality of the situation in
5 hand. That is just the simple reality. If we have to start now
6 we obviously probably wouldn't have a choice; you have to start
7 and stop because we don't have all the witnesses in line. And I
8 think that is also a key consideration that I think Your Honours
9 ought to seriously look at.

10 I mean, having said that, I think I will come back again
11 once to our proposed date being September and the reasons why we
12 feel very strongly, and Your Honours, as I have said, I could
13 well come out with a litany of cases on Article 17 all the way
14 from the European Commission of Human -- and all over, but I
15 don't think this is time for legal arguments, this is a time to
16 convey to you very clearly the problems that we are facing and,
17 Your Honours, I believe will have a good ear in this matter
18 because we want to work together as a team; we want continuity in
19 this trial. The earlier we finish the better for us all. Your
20 Honours, some of us our legal practices are suffering in our home
21 jurisdictions and we very much want to do a good work, wrap up
22 and then leave when the time is right.

23 Your Honour, these are my humble submissions before you
24 this morning in respect of the proposed date for the commencement
25 of the opening of the Defence case. I am sure my learned friends
26 here will also have one or two additions to make as and when our
27 friends on the other side responds to our submissions this
28 morning. That is all I have to say. Thank you.

29 PRESIDING JUDGE: Yes, thanks, Mr Graham. Just before you

1 sit down just so that I am clear on your position, you are
2 suggesting a start date for the trial sometime in September, the
3 beginning of September.

4 MR GRAHAM: [Microphone not activated]

5 PRESIDING JUDGE: Straight after summer recess. And you
6 are also saying that that start time is based on the rainy
7 season.

8 MR GRAHAM: [Microphone not activated]

9 THE INTERPRETER: Learned counsel's microphone is not on.

10 MR GRAHAM: I am sorry, Your Honours. I am sorry. That is
11 so. That is so.

12 PRESIDING JUDGE: And what particular months do you
13 allocate to the rainy season?

14 MR GRAHAM: Your Honours, I believe June to early July. Of
15 course, the rainy season starts from May, but the peak season is
16 June. But the rainy season I hear starts from May to October.
17 So, Your Honour, the idea is to try to cover the areas which
18 become inaccessible during the rainy season during this period.
19 Any time after that I think we will be able to get along quite
20 well.

21 PRESIDING JUDGE: Yes, thank you, Mr Graham. Who is
22 speaking for the Prosecution? I am sorry, Mr Manly-Spain, I
23 understood Mr Graham to say the rest of the team would have some
24 submissions after the Prosecution. Do you want to say something
25 now.

26 MR MANLY-SPAIN: Not too much, Your Honour. I just wish to
27 refer to the memorandum that we have served. Also to support
28 submissions made by my learned friends. I implore you to
29 consider the points raised in the memorandum. We believe that

1 our case beside the others is a peculiar one because the accused
2 persons are soldiers and they would be relying on witnesses who
3 would come from the army.

4 I would wish to refer Your Honours to paragraphs 2 and 2.3
5 of the memorandum.

6 PRESIDING JUDGE: But bear in mind I am the only one with a
7 copy.

8 MR MANLY-SPAIN: I am sorry, it came through very late this
9 morning before we came to court. We could only -- Yes, in the
10 paragraph I have referred to, Your Honour --

11 PRESIDING JUDGE: Just pause for one moment, please. Yes,
12 go ahead.

13 MR MANLY-SPAIN: It is paragraph 2.1.

14 THE INTERPRETER: Learned counsel's microphone.

15 MR MANLY-SPAIN: Trying to highlight the problems we have
16 been having getting witnesses from the army.

17 PRESIDING JUDGE: Which is this? 2, 3?

18 MR MANLY-SPAIN: 2.2 and 2.3, the paragraphs. I don't wish
19 to read it verbatim, but suffice it to say, Your Honours, that
20 our potential witnesses have been intimidated to the extent that
21 people we spoke to a year, a year and a half ago who were willing
22 to come forward, are now telling us that they are having problems
23 particularly as they are now no longer "AFRC soldiers" but
24 "members of the Republic of Sierra Leone Armed Forces", who have
25 peculiar knowledge about what transpired during the time the AFRC
26 was in the bush. Your Honours, as my learned friend said, it is
27 not a matter of getting witnesses, but a matter of getting
28 quality witnesses who will of be assistance to the Court in
29 coming to the right decision. So, Your Honour, that is all I

1 wish to say at this stage.

2 PRESIDING JUDGE: Yes, thank you, Mr Manly-Spain. Well,
3 before I call on the Prosecution, anybody else from the Defence
4 teams have some submissions that have not already been covered?
5 All right, thank you.

6 MR GRAHAM: I am sorry. Just one last point probably that
7 may be a worthy addition. Your Honour, it is also the level of
8 state co-operation and of course I think my duty here is also
9 just to inform the Court not necessarily this ^ [inaudible] one
10 is an application for the Court to make orders. But, Your
11 Honours, we have not got any form of co-operation at all from the
12 state of Sierra Leone, even for basic primary records relating to
13 ECOMOG positions. I mean, Your Honours, no form of co-operation
14 at all. And I think again that is also one very practical
15 consideration that also ought to be taken into accounting in
16 determining the date for the commencement of the trial. We are
17 working on it. Thank you.

18 PRESIDING JUDGE: Thank you, Mr Graham. Yes, I will hear
19 from the prosecution now.

20 MR AGHA: Yes, it is Mr Karim Agha for the Prosecution
21 accompanied by Mr James Hodes, Mr Jim Johnson and Mr Charles
22 Hardaway and of course our case manager, Miss Dimitrova.

23 I will lay the main arguments on behalf of the Prosecution
24 and Mr Johnson may like to weigh in after I have finished.

25 Now, Your Honours, we are looking forward to having a
26 harmonious relationship with both the Defence and the Bench and
27 we did indeed meet defence counsel yesterday. Unfortunately,
28 there was one particular area where we were a little far apart
29 which is in respect of the start date.

1 Now, if I may address the four issues which have actually
2 been raised for this status conference: The first one regarding
3 the number of witnesses and the length of the entire defence case
4 does not really call upon the Prosecution to comment at this
5 stage.

6 Now, the third issue, which is the date of the pre-defence
7 conference, this I will largely leave to my learned colleague
8 Mr Johnson. However, the difficulty in my submission is, as Your
9 Honours have already indicated, Rule 73ter is only the rule which
10 actually allows you to make orders for the Defence conference
11 rather than at today's status conference.

12 Now, as my learned friends on the Defence have graciously
13 conceded, by consent perhaps some orders can be made, but the
14 submission of the Prosecution is that those orders will very much
15 tie in with the commencement of the trial, bearing in mind which
16 date this Honourable Court chooses to start. The reason being if
17 it is at the earlier date which the Prosecution will be looking
18 for then the importance of having the disclosure sufficiently in
19 advance so that we may carry out our own investigations so that
20 we may be in a position to adequately test the evidence of the
21 Defence, we will actually need, let us say, 30 days at least or
22 witness lists and a reasonable amount of time for the witness
23 statement and hard copy of exhibits. So in a way they tie in
24 together. So I appreciate the difficulties of my learned
25 colleagues in not being here tomorrow, but we would request the
26 Chamber that at least some orders may be granted with respect to
27 disclosure once a trial date is fixed so that we can actually
28 move along without any further delay. Now, that is my submission
29 on that issue.

1 Now, coming to the start date, of course, the Prosecution
2 fully accepts that the Defence should have adequate and
3 sufficient time to prepare their defence case and also to ensure
4 that their clients thereby have the right to a fair trial.

5 Now, it is the submission of the Prosecution that we would
6 like the Defence case to start on Monday, 5th June. Now, we
7 submit that this is an entirely fair and reasonable date to start
8 the defence case bearing in mind the provisions of the Statute,
9 the history of this particular case and similar cases, which I
10 will address in turn so that the reasoning behind the date of 6th
11 April -- I beg your pardon, 6th June can be seen. Just so we
12 have not pulled it out of thin air and now demand to start
13 quickly.

14 Now, the first area I touched upon is actually the Statute
15 which under Article 17(4)(c) entitles accused to be tried without
16 undue delay. So that will be our starting point.

17 Now, the second area would actually be the history of this
18 particular case. Now, as has already been alluded to, the
19 Prosecution closed its case on 21st November 2005. Now that is
20 approximately six months from our proposed start date of 5th June
21 which, in our submission, gave the Defence ample time to at least
22 start its preparation for the Defence in the non-rainy season.
23 Thereafter, the Honourable Trial Court rendered its 98 decision
24 on 31st March 2006, which is again two complete months from the
25 proposed start date. So this alone, the Prosecution submits, is
26 sufficient time to at least get the ball rolling, as it were. It
27 is sufficient time for us to get a good six weeks' work in before
28 the recess and that would give my learned colleagues on the
29 Defence ample opportunity for them to carry out some further

1 investigations. When I say a good six weeks to start, for
2 example, at least should any of the accused choose to testify
3 then at least perhaps one of the accused could be dealt with and
4 the issue of common witnesses, if there are to be common
5 witnesses, it may be that the other accused would also need to
6 testify or would like to testify.

7 So, it is our submission that based on the Statute and the
8 case history of this particular case that the Defence have had
9 more than ample time to start by 6th June.

10 Now, just as a comparison of the third limb of my argument,
11 if you like, is just by looking at one other similar case and I
12 have actually chosen a very large case, which was actually tried
13 at the ICTY rather than at this Honourable Court. This is the
14 case of Milosevic. Now the Milosevic case spanned three wars,
15 over three countries, different states, for a period of
16 approximately eight years. The Milosevic indictment was largely
17 similar to this indictment in terms of JCE 6.1 and 6.3 or 7.1
18 and 7.3 under their statute. And the Prosecution in that
19 particular case called over 100 witnesses live, many 92bis
20 through statements, many through transcripts, thousands of
21 documents were tendered and it lasted at least 18 months and 90
22 court days of evidence-in-chief alone, not even including
23 cross-examination time. It was a very, very huge case.

24 Now, notwithstanding the scope of that case, the 98bis, as
25 it is referred to at the ICTY, decision was made on 16th June
26 2004 with the case scheduled to start on 5th July, some three
27 weeks later.

28 Now, the Prosecution is suggesting a period of time which
29 is two months from the 98 decision, as opposed to three weeks,

1 also considering that the Prosecution did, in fact, close its
2 case at the end of November. And if we actually are to assess
3 the two, one would feel on this basis that there is more than
4 reasonable time if the 6th June was given as a start date for The
5 Defence to have at least initially started off its case. So it
6 is the submission of the Prosecution that with regard to the
7 start date we would firmly push for the 6th June at the latest.

8 Now that is my submission on the start date. And I am
9 wondering if Mr Johnson would like to add on the [indiscernible]
10 conference. Thank you, Your Honour.

11 PRESIDING JUDGE: Yes, thank you, Mr Agha.

12 MR JOHNSON: Yes, Your Honour. Thank you very much for
13 hearing from two parties for the Prosecution, I appreciate it.
14 Possibly first just to reinforce where the Prosecution is coming
15 from on an early June start date and submitting that that would
16 be ample time for The Defence to prepare in light of the close of
17 the prosecution case. That would actually be six and half months
18 from the close of the prosecution case, all during the dry season
19 as Mr Agha has pointed out. We're -- when we look at that date,
20 of course, one of the things that we are looking at is some
21 minimal time for the Prosecution to prepare for the start. Of
22 course, one of the things we would ask you, in one of your next
23 orders or certainly at the pre-defence conference as we go along,
24 is to ask the Defence to identify whether or not the accused will
25 indeed be testifying. Because of course that is certainly a
26 consideration in our preparation to start the Defence case, as
27 well as, I'm sure, in their preparation to start the Defence
28 case. So we would ask that that be included in whatever orders
29 or when there comes a time for orders.

1 But at any rate, I am sorry I digressed a little bit. The
2 Defence before the start asked us if we would consider 11th May
3 as an appropriate date for a pre-defence conference. At that
4 time I said that we didn't necessarily have an objection in 1 May
5 in theory, however, that was under the consideration that you
6 might be willing to issue orders before a pre-defence conference
7 as far as for the Defence to disclose to the Prosecution witness
8 lists, exhibit lists, witness statements and copies of exhibits
9 and such.

10 In light of what you have said at the very start of our
11 conference here this afternoon in that these order must come at
12 the pre-defence conference, given that, then the Prosecution
13 certainly supports and agrees that the pre-defence conference to
14 be held this week as you suggested earlier. In other words it is
15 the Prosecution's position that the sooner the pre-defence
16 conference is held the sooner these orders can be issued.

17 And again we would very much like to have witness lists;
18 witness statements, if you see so fit to order witness
19 statements; and exhibit lists and copies of the exhibits a month
20 before the trial would start. And that is why we felt that to
21 have those be provided to us again at a date, a time that you
22 suggested earlier, three weeks from a pre-defence conference
23 being held this week would work very well for the Prosecution.
24 That way we would have these lists and these materials by the end
25 of April or very early May and again then we would be in a very
26 good position to start to prepare during the month of May and to
27 start the Defence case.

28 PRESIDING JUDGE: I am sorry to interrupt you there, but
29 while we're on this point, Mr Johnson, my understanding from

1 listening to counsel for the Defence was, firstly, that if we
2 were to hold a pre-defence conference this week, it is going to
3 interfere with some plans that they have already made to go
4 upcountry for investigations. Now, the second thing and this is
5 perhaps something that you can talk to the Defence about when we
6 have a break, is that the Defence have already indicated that
7 they are prepared to make some disclosures and I think that
8 include exhibits as well as witness details. If that is possible
9 then it may also be possible that we could make consent orders
10 along those lines and then instead of fixing an early pre-defence
11 conference we could simply schedule another status conference to
12 see how far along the road they have gone to making those
13 disclosures, and make further orders from there. Which would
14 mean taking into account the Easter recess that May 1st would not
15 be unrealistic for a pre-defence conference.

16 We have to deliberate on this and we will when we have
17 heard all the submissions here today, we will, of course, go out
18 to talk about it and we'll come back with some orders. And
19 perhaps during the break, you could speak with the Defence and
20 see exactly what type of disclosures they had in mind, and
21 whether that would satisfy you up until the date of the next
22 status conference. They are just thoughts that you should keep
23 in mind, Mr Johnson, bearing in mind that we may not now be able
24 to schedule a pre-trial conference this week in view of previous
25 commitments that the Defence have indicated.

26 MR JOHNSON: Well, Your Honour, you said the one word in
27 there that was very appealing to me, and we would certainly be
28 willing to go along those lines. And that was an order, a
29 consent order would be fine. But in other words that we do have

1 some orders along those lines of disclosing of certain materials.
2 And so that will be very -- we would certainly be willing to work
3 along those lines in a way.

4 PRESIDING JUDGE: Yes, well, I would emphasise to the
5 Defence that unless consent orders are made -- and there is no
6 reason for us to think that they won't be made because the
7 Defence have already indicated they are quite willing to make
8 some disclosure, but I will just emphasise in any event that if
9 consent orders are not made then we will have to move up the
10 pre-defence conference fairly close to this one we are having
11 now.

12 MR JOHNSON: Yes, Your Honour, thank you. And possibly if
13 I could then just add two other comments, Your Honour, please,
14 and the first one is - of course, and we'll be discussing that
15 with Defence as you have suggested - and that would be a witness
16 order. Because of course, a witness order is very helpful as we
17 would prioritise investigations and such, but then the other
18 thing and I apologise, I don't know if these came up in
19 discussions, I wasn't at the meeting with defence counsel
20 yesterday, but one issue I would like to bring to the attention
21 now, we are not sure -- or at least I'm not sure if Defence is
22 intending to go forward with some motions on witness protection.
23 Because then again this could have a significant impact on how we
24 go along on if they are going to be seeking witness protection
25 measures. They have certainly indicated in their submissions
26 that some of their witnesses, they have made claims of some of
27 their witnesses and I am not -- they have made claims that they
28 have been subject to intimidation and such like that. So an
29 indication on do they plan to proceed with filing for witness

1 protection motion measures, and of course that certainly may have
2 an impact on how we go down the road here in the next couple of
3 weeks to a month for some of these disclosures that we are
4 seeking. Thank you very much, Your Honour.

5 PRESIDING JUDGE: Yes, thank you, Mr Johnson.

6 Well I don't know if anything arose there that any member
7 of the defence team would wish to reply to.

8 MS THOMPSON: Your Honour, just that my learned friend
9 Mr Khan made comparisons with the Milosevic case, and I am not
10 sure whether it should be necessary but Mr Graham did give a
11 history as to why we are asking for the September date.

12 And with the greatest respect to my learned friend, the
13 Milosevic case is not comparable to this case. We have a very
14 fluid witness list. It's not to say that we have not had
15 witnesses before now. One of constraints we face is that when
16 you go back to the place where you found the witness, the witness
17 is no longer living there. Witnesses change their minds. This
18 is a case which is very sensitive and there are those issues to
19 consider, and that is one of the reasons why we have had a lot of
20 difficulty. And that goes hand in hand with threats and all the
21 other problems that we have had with witnesses, and my learned
22 friend has talked about building up confidence with witness and
23 that is why it necessitated counsel actually going to meet
24 witnesses. Which is obviously something that we did not
25 ordinarily do.

26 Once you have done that then they hand it back to the
27 investigators. I think, Your Honour, that's what I needed to
28 add. Just a minute, Your Honour. I beg your pardon. We will,
29 of course, yes, be seeking witness protection for some of our

1 witnesses, I forgot to add that. That's one of the reasons I
2 stood up. So at least for some of our witnesses, we will be
3 seeking witness protection. And there is a provisional list
4 which we can actually give to our learned friends on the other
5 side of some of the witnesses, because Koinadugu, we have got
6 some and we can actually make a list now for Koinadugu.

7 And whilst we're on that, a lot has been said actually
8 about inaccessibility during the rainy season. Koinadugu is one
9 district which is even inaccessible during the dry season, and
10 that has -- it has created a lot of difficulties for the teams
11 which have gone up to Koinadugu, and they need to go back there
12 and get further statements for the clarifications and to do the
13 witnesses down. That is all, I presume, unless Your Honour has
14 anything that you wish me to address.

15 PRESIDING JUDGE: Yes, thank you, Miss Thompson. Yes,
16 Mr Daniels.

17 MR DANIELS: Respectfully, I just wanted to comment on what
18 was said by counsel, Mr Khan, on the Prosecution side that the
19 clients have a right to start or have a right for their trial to
20 be started without undue delay. And we are saying our clients
21 are not complaining, they are definitely not complaining. And
22 rather they are emphasising that they must have adequate time and
23 facilities for preparation. So this is -- Mr Agha, I beg your
24 pardon.

25 PRESIDING JUDGE: Well, look, we are going to have an
26 adjournment to consider the matters raised. In the period that
27 we will be taking, we are looking possibly 15 - 20 minutes or
28 more if counsel need more, just send word through one of the
29 court officials. But what I would suggest is we are discussing

1 consent orders. Well, obviously the consent orders would need to
2 be in terms acceptable to both sides, so if you could come to
3 some agreement on those terms, we will certainly come back and
4 make those consent orders. And as I say that would then mean
5 that our next conference would not be this week, I would mean
6 that we would fix a further status conference to ascertain the
7 degree of disclosure.

8 But you have heard the Prosecution is concerned with
9 questions such as do the accused intend to give evidence, and
10 also some disclosure provisions. So there's something you may
11 discuss in coming to consent orders. I will leave that entirely
12 to the parties. We are going to adjourn. If we don't hear
13 anything from counsel we will reconvene, say, at 11.30.

14 [Break taken at 11.07 a.m.]

15 [AFRC4APR06B - CR]

16 [Upon resuming at 11.34 a.m.]

17 PRESIDING JUDGE: How did we go with the consent orders?
18 Are there any orders you want us to make by consent?

19 MR JOHNSON: Your Honour, unfortunately we seem to have run
20 into a roadblock. I'm sure that if I get it wrong I'll be
21 corrected, but that roadblock does focus around the issue of
22 witness protection and the potential for witness protection
23 orders. Of course, what we're seeking is the full witness list,
24 including names and so on. We're not willing to accept only
25 pseudonyms and such unless there is a witness protection order in
26 place and, of course, in theory, we are not opposed to witness
27 protection orders, because we had them for all of our witnesses.
28 We fully understand that. We want to see a motion and support
29 for such orders. That seems to be where we've come to the

1 roadblock on the issue of witness protection and orders.

2 Therefore, we would seek that a pre-defence conference be
3 scheduled as soon as possible.

4 PRESIDING JUDGE: Do the Defence want to add anything to
5 that?

6 MS THOMPSON: My friend is quite right. That's where the
7 stumbling block is. What we propose was not to have a
8 pre-defence conference for the reasons we gave earlier. We have
9 conferred amongst ourselves and we have communicated this to
10 them: to file a protect measures motion before this Easter
11 recess. That we can do. Your Honour didn't quite get me, to
12 file a protective measures motion before the Easter recess. We
13 do not want to take the liberty of just giving names and
14 identifying details of these witnesses without their consent.
15 Something has already happened to one lay witness in the
16 provinces and we don't want to take that risk again. We'll come
17 with the motion if that's what the Prosecution want. We are
18 prepared to come with a list, but they don't want a list of
19 pseudonyms. Therefore, we will come with our motion before the
20 Easter recess.

21 That being the case, Your Honour, we don't think, because
22 of the practicalities of teams going to the provinces, there is
23 the return trip to Kono tomorrow morning, that a pre-defence
24 conference is practical before the recess. I'm not sure,
25 actually, what my learned friend hopes to achieve by having a
26 pre-defence conference. We've given our word by Monday, which is
27 10 April, which is the date of recess, we will have a motion in
28 place, served on all.

29 [Trial Chamber conferred]

1 PRESIDING JUDGE: We'll have to make some disclosure orders
2 to get this case moving. We don't have any option now but to
3 order a pre-defence conference. We won't interfere with the
4 Defence's investigative trip this week. We will be ordering the
5 pre-defence conference for Wednesday, 26 April. That will be a
6 pre-defence conference and disclosure orders will be made on the
7 Defence at that time. The Defence will not be surprised to know
8 that the disclosure orders will be along the lines indicated in
9 Rule 73ter.

10 As regards fixing a date for hearing, I think we should do
11 that today so that we'll have some definite objective to work
12 towards. In that regard, we've considered the submissions of the
13 parties regarding a date for the commencement of the Defence
14 case. We take the following facts into account: Firstly, that
15 the Prosecution closed its case on 21 November 2005; secondly,
16 the pleadings on the Rule 98 motions were completed on 31 January
17 2006; thirdly, the decision of the Trial Chamber on the Rule 98
18 motions was delivered on 31 March 2006.

19 The Defence have suggested, for the reasons given orally
20 this morning, that the Defence case start after the summer
21 recess, which would mean around early September. The
22 Prosecution, on the other hand, suggest that 5 June would be more
23 appropriate, and they gave reasons to support that date. Both
24 dates are much later than the date that the Trial Chamber had in
25 mind. However, we are persuaded by the Prosecution that 5 June
26 would be a reasonable date. We would expect that the Defence
27 could have some witnesses who would be ready to give evidence by
28 that date, particularly if any of the accused decide to give
29 evidence. The Defence would therefore have sufficient evidence

1 to take their case to the summer recess and would thus be able to
2 utilise the extra time that the summer recess would involve.

3 We have considered the statutory rights of the accused
4 under Article 17(4)(b) to have adequate time and preparation for
5 their defences and under Article 4(c) to be tried without undue
6 delay. We consider that these rights would not be contravened if
7 we order that the Defence case commenced on Monday, 5 June 2006,
8 and we so order.

9 As I say, we're going to have a pre-defence conference on
10 26 April 2006. We'll adjourn the Court until that date.

11 [Whereupon the hearing adjourned at 11.43 a.m.,
12 to be reconvened on Wednesday, the 26th day of
13 April 2006, at 9.15 a.m.]

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

