

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

FRIDAY, 6 MAY 2005
11.18 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:	Teresa Doherty, Presiding Julia Sebutinde Richard Lussick
For Chambers:	Mr Simon Meisenberg Mr Matthias Reuss
For the Registry:	Mr Geoff Walker
For the Prosecution:	Ms Lesley Taylor Mr Alain Werner Ms Maja Dimitrova (Case Manager)
For the Principal Defender:	Ms Simone Monasebian Ms Claire Carlton-Hanciles
For the accused Alex Tamba Brima:	Mr Kevin Metzger Ms Glenna Thompson Mr Osman K Kamara
For the accused Brima Bazy Kamara:	Mr Wilbert Harris Mr Mohamed Pa-Momo Fofanah
For the accused Santigie Borbor Kanuu:	Mr Abibola Manley-Spaine Ms Karlijn van der Voort

1 Friday, 6 May 2005

2 [The three accused not present]

3 [Open session]

4 [On commencing at 11.18 a.m.]

5 PRESIDING JUDGE: Good morning. I apologise for the late
6 start. There's matters before us this morning arising out of the
7 last hearing date. Before we go into the substance, I wish to
8 clarify one issue. The Trial Chamber issued a document yesterday
9 and we have had the document filed, named: "Joint Response to
10 Order to Show Cause and Scheduling Order". It is noted that that
11 document is signed only by the Principal Defender and we wish to
12 clarify if the Principal Defender has now got instructions to
13 file responses on behalf of Mr Kamara and Mr Brima and to clarify
14 if you have in fact been instructed to appear as a principal
15 counsel for those two named accused.

16 MS MONASEBIAN: If I may, last evening I consulted with
17 Mr Harris and Mr Metzger by phone and indicated to them, because
18 they were, I believe, either off of the premises or attending to
19 other matters - I think the contempt matter - that I would be
20 happy to take their redacted copy and my unredacted copy and
21 serve them on the Prosecution via e-mail and respond to Your
22 Honours' order to show cause. So pursuant to Article 24 I did
23 have a conference over the phone with both counsel and received
24 instructions to file that document last evening and that's why
25 they were unable to sign it and that is why I filed it on their
26 behalf so that it would be done expeditiously rather than waiting
27 until this morning to give it to the Prosecution. Thank you,
28 Your Honour.

29 PRESIDING JUDGE: Thank you, Principal Defender.

1 JUDGE LUSSICK: Just what part of Article 24 are you
2 referring to?

3 MS MONASEBIAN: I'm sorry. It is not Article 24. It's a
4 directive on assignment of counsel, the last paragraph of the
5 directive which indicates that in exceptional circumstances when
6 the lead counsel or the co-counsel is not available, this would
7 contemplate an in court circumstance, but I'm analogising it to
8 an out of court circumstance.

9 JUDGE LUSSICK: No, I'm not asking for any legal argument.
10 I'm just asking for the part of the directive you're referring
11 to.

12 MS MONASEBIAN: Sure. Very well, Your Honour. It is
13 Article 25(E), which deals with appearances, as I said, but I'm
14 analogising it. I would also, if I may submit, in addition to
15 citing --

16 JUDGE LUSSICK: You come under the definition of duty
17 counsel, is that what you say?

18 MS MONASEBIAN: Well, duty counsel would come under the
19 definition of me more so than me coming under the definition of
20 duty counsel. It is not very clearly worded and perhaps --

21 JUDGE SEBUTINDE: Ms Monasebian, do we have a duty counsel
22 for the AFRC case?

23 MS MONASEBIAN: We do. We have Ms Claire Carlton-Hanciles
24 who has not last evening also around when I signed that document.
25 But if I may, just the structure of the office is such that --
26 the structure of the Principal Defender's office is such that we
27 have what are called duty officers/legal advisors who wear both
28 hats and who I -- come under my supervision. The only other
29 thing I could say for Your Honours very briefly is to cite Rule

1 45, which is a vague, of course, rule but nevertheless rule that
2 does support my from time to time submitting on behalf of the
3 accused. And in this instance that would be Rule 45(A) which
4 says that: "The Defence Office shall be headed by the Special
5 Court Principal Defender. The Defence Office shall, in
6 accordance with the statute and rules, provide advice, assistance
7 and representation to accused persons before the Special Court."
8 And so in this instance I was providing assistance, which is
9 contemplated in Rule 45(A). Thank you, Your Honours.

10 PRESIDING JUDGE: Thank you.

11 JUDGE LUSSICK: Well, I think the important question is
12 that that document you filed on behalf of the two accused, I take
13 it that's adopted by Defence counsel, Mr Harris and Mr Metzger;
14 is that correct?

15 MR HARRISON: Yes, indeed.

16 MS MONASEBIAN: And just to give Your Honours further
17 clarification, I certainly would not file any document without
18 checking with the lead counsel. And that has been the practice
19 of this office, but I thank Your Honour for insisting for the
20 clarification on the record.

21 JUDGE LUSSICK: No such accusation was ever made.

22 MS MONASEBIAN: I'm sure. Thank you, Your Honour.

23 PRESIDING JUDGE: Ms Taylor, in the light of the
24 clarification and confirmation by Defence counsel, have you been
25 able to read the redacted statements et cetera annexed to the
26 Defence reply?

27 MS TAYLOR: Yes, I have read those in relation to the
28 Principal Defender's unredacted statement and the partially
29 redacted statement of -- filed jointly by Mr Metzger and

1 Mr Harris. I did note that this morning it was filed on behalf
2 of the third accused, that save for an annexure, there was no
3 difficulty with -- or the Defence had no objection to that being
4 served upon the Prosecution. That has not happened yet, so I
5 have not seen the submissions of the third accused.

6 PRESIDING JUDGE: You are aware that the order that was
7 filed yesterday by the Trial Chamber was really to ascertain
8 whether certain documents should be made available to you. In
9 the light of those redacted statements, et cetera, have you any
10 further submission you wish to make?

11 MS TAYLOR: Yes, Your Honour, I do.

12 MR METZGER: Your Honour, might I just at this point -- I
13 don't mean to interrupt, but if we would refer to that section of
14 the matters we rely on as the issue. The purposes of redacting
15 it, I think, becomes clear, certainly to Your Honours, and I
16 would have thought to the Prosecution, as well. If there needs
17 to be any detailed argument about it, we would respectfully
18 respect that that take place in closed session, but only in
19 relation to that issue unless in some way I haven't made myself
20 clear by trying to identify the issue without detailing it.
21 That's what I --

22 PRESIDING JUDGE: I do not intend to refer to anything
23 within the statements, Mr Metzger. However, I will note that
24 according to the record the ex parte element of this application
25 was on the basis of client-counsel privilege and issues raised
26 appear to be a different issue, which I will not say out loud.

27 MR METZGER: Yes, the other issues or the other issue, as I
28 will refer to it, had already reared its head by that time, but
29 obviously it isn't something in the administration of justice and

1 the exercise of our duties that we want to bring to the forefront
2 of this application, as it were, on a public basis.

3 JUDGE LUSSICK: I'm sure, Mr Metzger, you would also
4 appreciate our only purpose in showing the unredacted statement
5 to the Prosecution is out of fairness to give them an opportunity
6 to reply, but we certainly do not wish to cause any complications
7 by having that -- matters that you consider should be kept
8 confidential open to the public. That's why we're looking --
9 we're looking for some method we can exercise fairness to the
10 Prosecution while still protecting your concerns.

11 MR METZGER: I'm very much obliged.

12 JUDGE SEBUTINDE: I do have a question for the Principal
13 Defender. We note from your answer, paragraph 1 where you say
14 that -- you refer to the document -- the redacted document and
15 you say that later in the day - that's yesterday - you sent it to
16 the Prosecution in a redacted form via e-mail. Now the question
17 is this predominantly is an ex parte proceeding, thus far and our
18 orders at the request of yourselves and the Defence counsel was
19 that it remain an ex parte proceeding for the reasons that you
20 yourselves gave until the Court is satisfied that we can lift the
21 ex parte order and the confidentiality before the Prosecution.
22 Why did you feel a need yesterday without the intervening court
23 permission to do so? To - let me finish the question - to
24 actually e-mail this document to the Prosecution while knowing
25 that the Prosecution had already filed their submissions, so to
26 speak, and we have a difference of opinion here regarding those
27 submissions. But this basically is an ex parte proceeding and
28 the purpose of our convening today is for us to make precisely
29 that value judgment, whether we should lift the ex parte

1 proceeding and allow the other side to have a response -- an
2 opportunity to respond and how far we should allow them to have
3 an opportunity to respond and to what it is that they're
4 responding. So I will really solicit an explanation from your
5 office of what it is that prompted you to preempt what the Court
6 is about to do now?

7 MS MONASEBIAN: Thank you for asking me that question, Your
8 Honour. I certainly had no intention of preempting and I'm sorry
9 if that's the impression I've given. What I sought to do merely
10 was in response to do Your Honours' indication that we show cause
11 why this should be lifted. I telephoned both Defence counsel
12 who -- one of which, Mr Harris, was very busy with the contempt
13 matter and I felt would not even have the opportunity to see Your
14 Honour's order to show cause and Mr Metzger who was also working
15 on other issues and I felt that myself, being the only person who
16 had the opportunity to see the service of that order to show
17 cause, had a responsibility to make a best effort to find both of
18 those counsel and to also save, what I thought - and maybe this
19 is presumptuous of me - the Prosecution from asking for extra
20 time later on and I know that Mr Metzger is leaving today.

21 And so I would like this matter to be finalised today, if
22 possible, rather than the Prosecution saying: Well, now that
23 we've been given this by Your Honours, we need more time. So I
24 thought it was out of fairness to the Prosecution to give them
25 time based on your Honours' findings that there appeared to be no
26 attorney-client privilege. And I should also say that it was
27 only after I spoke with counsel, both counsel - and we came up
28 with that joint agreement that we were the ones who asked for
29 this to be on an ex parte basis - that Your Honours have now come

1 back to us and said this is not a matter of attorney-client
2 privilege. And so I wanted to show to Your Honours that this is,
3 in my view -- it may be in counsels' view still attorney-client
4 privilege, but in my view I refer to it as a sensitive issue that
5 need not be communicated and so I simply redacted those areas in
6 my submission and sent my submission to the Prosecution. I then
7 later, when I saw what counsel redacted, sent along theirs and
8 then asked counsel again on the telephone could I send the
9 entirety of my submission unredacted noting that the redactions
10 they made would be consistent with me completely unredacting
11 mine. What I tried to do was first give it redacted to the
12 Prosecution before I knew what the substance of the redactions
13 the other counsel were and then, secondly, when I saw what their
14 redactions were, speak with counsel again to entirely redact it.

15 I will in the future not be presumptuous - and my office
16 will not - and wait next time for an order from Your Honour, but
17 I thought that, in my view - and I may have been wrong, and if I
18 am, I apologise for that - that it would have been more efficient
19 to get that over to the Prosecution.

20 JUDGE SEBUTINDE: Thank you. I'm not in any way suggesting
21 that you were presumptuous, but it goes more to saving time, as
22 you said, because the way I see it, this Court made an order
23 based on certain documents that were before us. The unredacted
24 version was not -- the redacted version was not before us at the
25 time we made this order and if it had been, we wouldn't be having
26 this conversation now. All I'm saying is we went ahead and made
27 an order for you to show cause, without the benefit, as a Trial
28 Chamber, of looking at this angle or the possibility of you
29 having exchanged this with the Prosecution. And we feel it is

1 not saving time. It is actually wasting time. You see what I
2 mean?

3 MR METZGER: Can I add my tuppence worth, as they say. It
4 was a decision in face of the order that the Trial Chamber had
5 made that we had to take and that we had to take in very short
6 shrift. Your Honours will by now, having seen the unredacted
7 document, know that we had to wrestle with our consciences,
8 bearing in mind that we knew we had made full submission to the
9 Court. In terms of the decision that certainly I made and I
10 believe Mr Harris made to let the Prosecution have the document
11 in the redacted form that it is now, we thought that if we made
12 them aware of what the sensitive issues were, but protected the
13 identity or the possibility of the source of some of those
14 sensitive matters, that it would inevitably save time because the
15 Prosecution would know exactly the position rather than the
16 overall position that counsel finds themselves in.

17 PRESIDING JUDGE: Thank you, Mr Metzger. We fully
18 accept -- excuse me, I fully accept the explanation given by the
19 Principal Defender and I bear in mind too the fact that I for one
20 have urged counsel to be in better communication, so I should not
21 criticise on two scores. It is misleading.

22 And Ms Taylor was interrupted in the course of her reply to
23 a question that I posed and I would therefore ask Ms Taylor --
24 allow Ms Taylor to please proceed. You were not able to answer
25 the question I made, Ms Taylor.

26 MS TAYLOR: Thank you, Your Honour. Your Honour was asking
27 me whether the Prosecution has had an opportunity to look at
28 those documents. The Prosecution has the, as I said, the
29 unredacted submission of the Principal Defender and the redacted

1 joint submission of Mr Metzger and Mr Harris, but not any
2 document relating to the submission made on behalf of the third
3 accused.

4 PRESIDING JUDGE: We understand. If you wish, I can let
5 you have a copy right now or do you wish to continue saying --
6 you I may require to see that before we proceed.

7 JUDGE LUSSICK: I could just for your information,
8 Ms Taylor, we have had a response from the third accused who has
9 no objection to making his document available to the Prosecution,
10 with the exception of an annexure which deals with
11 solicitor/client -- or lawyer/client matters.

12 MS TAYLOR: Yes, Your Honour, I received -- served by the
13 Registry that document shortly before coming to court. In
14 relation to those issues, Your Honours, obviously the response on
15 behalf of the accused Kanu refers explicitly to the issue of
16 lawyer-client confidentiality. The response filed by the
17 Principal Defender and adopted this morning by Mr Harris and
18 Mr Metzger does not. It refers only to sensitive information
19 that need not be communicated to the Prosecution or others. Your
20 Honour, the Presiding Judge, has already indicated that the
21 reason for the ex parte nature of these applications was put
22 squarely on the basis of lawyer-client communication. The
23 Prosecution would submit that unless there is any material in the
24 joint submission of Mr Metzger and Mr Harris that can properly be
25 said to be protected by lawyer-client confidentiality, then it
26 should be disclosed to the Prosecution.

27 The issue of sensitive information, as it is phrased, that
28 is the reason why documents may be filed confidentially in this
29 Court and it is the reason why everyone who is a party to the

1 proceeding gets those confidential documents, because we all have
2 professional obligations to protect that information.

3 There are some matters arising from the material that I
4 have seen that the Prosecution would like to be in a position to
5 respond to, very limited to the new information that we were not
6 in possession of. In many ways I think it would probably be
7 preferable if the Prosecution could also see the Kanu material
8 prior to making any submission in response, because obviously
9 we're still in the dark as to what is contained therein. If
10 Your Honours want me to do that orally, I would be in a position
11 do to that later today. If Your Honours would like that in
12 writing, the Prosecution would be in a position to file that by
13 5.00 p.m. today.

14 PRESIDING JUDGE: Just to let me clarify before consulting
15 with my learned brother and sister, you note Kanu. The document
16 filed number 255 is two pages -- is one page and is a privileged
17 document. That is what the Bench has. Are you referring to
18 something else?

19 MS TAYLOR: No, that is exactly the document I have. It is
20 entitled Kanu Defence Response to Order to Show Cause and
21 Scheduling Order, and the second page has three paragraphs, but
22 it's the document referred to in that document that the
23 Prosecution has not yet been served with.

24 JUDGE LUSSICK: Well, that is the document I was referring
25 to.

26 MS TAYLOR: Oh, I beg your pardon, Your Honour. I
27 misunderstood you. I thought you were referring to the response.

28 [Trial Chamber confers]

29 PRESIDING JUDGE: Ms Taylor, the counter document, Exhibit

1 1 referred to, the annexure referred to, is a matter of
2 privilege.

3 MS TAYLOR: Your Honour, I still think we're still talking
4 at cross-purposes. If I can just turn to --

5 PRESIDING JUDGE: Are we talking about document 255?

6 JUDGE LUSSICK: We're talking about a document you do not
7 have, I understand.

8 MS TAYLOR: We're talking about a document that the
9 Prosecution is not in receipt of. If I can turn to Your Honours'
10 order of yesterday to show cause, Your Honour referred in that
11 document in paragraph 4(2) to the confidential ex parte and under
12 seal Kanu Defence motion to inform the Trial Chamber on the legal
13 position of the Defence in view of contempt of court developments
14 filed on 4 May 2005. It is that document that the Prosecution
15 does not have.

16 PRESIDING JUDGE: Now I'm very clear. Thank you. Could
17 you just pause for one moment, Principal Defender. I just want
18 to make sure I have the head notes on -- you are seeking a
19 document from Kanu and you are saying sensitive -- unless it is
20 privileged there should be no ex parte; is that a correct
21 synopsis?

22 MS TAYLOR: That is correct, Your Honour. Yes, it is,
23 Your Honour.

24 PRESIDING JUDGE: You do not -- I note, you do not
25 challenge Mr Metzger's note referring to confidentiality.

26 MS TAYLOR: I'm sorry, Your Honour.

27 PRESIDING JUDGE: [Microphone not activated] your submission
28 that it should remain confidential by implication.

29 MS TAYLOR: Yes, exactly so.

1 [Trial Chamber confers]

2 PRESIDING JUDGE: There are -- there are a few issues. One
3 is the issue that Mr Metzger put about a closed session which
4 Prosecution has not responded to. There is the issue of Kanu and
5 there is your application, Ms Taylor, that it should be made
6 not -- the confidentiality should remain, but the ex parte should
7 be lifted, so there is basically three issues before the Court.

8 MS TAYLOR: Sorry, I didn't realise that Your Honours
9 wanted me to respond to the issue of the closed session.

10 PRESIDING JUDGE: It appeared to be an application, that is
11 the way I heard it. Was it? Mr Metzger, maybe I misunderstood.

12 MR METZGER: No, I don't think that Your Honour
13 misunderstood it. It was an application that insofar as we were
14 going to deal with any of the sensitive matters, that that
15 particular part of it be in closed session.

16 PRESIDING JUDGE: Yes, that is my understanding.

17 MS TAYLOR: I misunderstood. I heard my learned friend say
18 it would be referred to as "the issue". If that is the case, the
19 Prosecution has no objection to that.

20 PRESIDING JUDGE: Thank you.

21 Mr Court attendant, just a brief adjournment, please.

22 MR WALKER: Court rise.

23 PRESIDING JUDGE: My learned brother has indicated
24 Mr Manley-Spaine wished to say something and I did not intend to
25 ignore you. I apologise, Mr Manley-Spaine.

26 MR MANLEY-SPAIN: Yes, Your Honour. Your Honour, I just
27 wish to refer to a document the Kanu team filed this morning in
28 response to the order to show cause. By paragraph 3 we are
29 asking for an order.

1 PRESIDING JUDGE: Yes, we understood that and I [microphone
2 not activated] -- my understanding is Ms Taylor has not
3 challenged that application and therefore since it has not been
4 challenged, it is on record.

5 MR MANLEY-SPAINE: As Your Honour please.

6 PRESIDING JUDGE: Yes, Principal Defender.

7 MS MONASEBIAN: Yes, Your Honour, if I may, there is just
8 one point before Your Honour's retire with respect to that
9 deliberation over the sensitive material. The only thing I would
10 ask Your Honours to consider is under Rule 70 there is another
11 basis for nondisclosure. It is not simply attorney-client
12 privilege which is a universal basis. Rule 70 allows disclosure
13 not to be made for other reasons. The only problem with Rule 70
14 that I can cite to Your Honours is that in the International
15 Criminal Tribunal for Rwanda where I was prosecuting, the Defence
16 came and said Rule 70 only applies to the Prosecution in the
17 Rule, but should, by the spirit of due process and equality of
18 arms also apply to the Defence and Trial Chamber I in the
19 international Criminal Tribunal in the matter of Prosecutor v.
20 Barayagwiza, Nahimana and Ngeze also allows Rule 70 to be applied
21 to the Defence. So Rule 70(B) which says if the prosecutor is in
22 possession of information which has been provided to him on a
23 confidential basis, it may not have to be disclosed and there are
24 a number of provisions under Rule 70 --

25 JUDGE LUSSICK: I'm sorry to interrupt, but isn't this a
26 little premature. We haven't made any orders about disclosure.

27 MS MONASEBIAN: Okay, thank you. I just wanted to be sure
28 that that provision would also be considered. Thank you, Your
29 Honour.

1 PRESIDING JUDGE: Thank you. Adjourn the Court
2 temporarily, please.

3 MR WALKER: Court rise.

4 [Recess taken at 11.50 a.m.]

5 [On resuming at 12.35 p.m.]

6 PRESIDING JUDGE: We have considered the submissions before
7 us this morning. The Court is conscious of the delay that has
8 taken place and its duty to ensure an expeditious trial. In
9 regard to the matters before us we consider that they are most
10 important and that they must be resolved before we can continue
11 with the trial. We make the following orders: One, Kanu
12 document number 244, entitled Defence Motion to Inform, be
13 disclosed to the Prosecution, with the exception of Exhibit 1
14 which is page 8442. The ex parte order in respect of documents
15 248, the Joint Defence Submission, and document 249, the
16 Principal Defender's Ex Parte Submission are lifted and the
17 documents are to be disclosed to the Prosecution in their
18 unredacted form. All documents are to remain confidential. Oral
19 submissions, if any, relating to matters of a sensitive nature
20 shall be in closed session. The Prosecution is allowed to file a
21 formal written response by Monday, the 9th of May 2005 at 9.00
22 a.m. The Defence may file an expedited reply by close of
23 business on Tuesday, the 10th of May 2005. The Court will give
24 its ruling on the motion at 2.00 p.m. on Thursday, the 12th of
25 May 2005. Those are the orders of the court. However,
26 Ms Taylor, for purposes of clarification and record, we would ask
27 if we have missed any documents to your knowledge?

28 MS TAYLOR: Not to my knowledge.

29 PRESIDING JUDGE: Thank you.

1 JUDGE LUSSICK: And, Ms Taylor, just for your own
2 convenience, the only thing we will be doing on Thursday
3 afternoon is handing down that decision.

4 MS TAYLOR: I'm very grateful.

5 PRESIDING JUDGE: We understand, Mr Metzger, you've already
6 informed us of your personal commitments. Thank you.

7 MR METZGER: I have, yes. I'm just considering one of the
8 orders that you've made for the unredacted disclosure which does
9 reveal personal information. Can we, in the circumstances,
10 re-file removing personal data. We're very concerned about --
11 particularly in the light of what has happened in this case. If
12 we were required to file that matter unredacted, we would
13 withdraw the sensitive issue and we do not feel that we would be
14 in a position to continue.

15 JUDGE SEBUTINDE: Mr Metzger, it would help, perhaps if you
16 referred to the particular text, in particular. Which document
17 are we talking about and which part of the document?

18 PRESIDING JUDGE: Since we're in open session, please refer
19 to them by page and paragraph.

20 MR METZGER: Yes, we're referring to document number 248.
21 The redaction that we thought that we could get away with remains
22 only in terms of what we would submit is very personal
23 information at page 8508, for example, paragraph 18, there is a
24 redaction that relates personally in terms of the material in the
25 penultimate sentence there.

26 JUDGE SEBUTINDE: Is there a redacted form of this before
27 us?

28 MR METZGER: Yes.

29 JUDGE SEBUTINDE: Which document would that be?

1 JUDGE LUSSICK: 254.

2 MR METZGER: I'm very much obliged. So Your Honours can
3 compare the redactions with the unredacted. It has only been
4 redacted to protect the privacy, in our respectful submission, of
5 individuals, but so that the force of what it is that is being
6 submitted can be clear. We are very concerned about having to,
7 as it were, lift the redaction on that private data to the
8 Prosecution.

9 PRESIDING JUDGE: Ms Taylor, you have received the redacted
10 version? You therefore have some indication of what counsel is
11 referring to? Have you any reply to counsel for the Defence.

12 MS TAYLOR: Yes, I do, Your Honour. My learned friend is
13 seeking to argue with the ruling that Your Honours have just made
14 in relation to the material that is to be disclosed and for my
15 learned friend's submission to have force, there would have to be
16 some belief that the Prosecution is somehow going to mishandle
17 that information. The Prosecution will respect the
18 confidentiality of the document, as it does with all documents
19 filed confidentially in this Court.

20 MR METZGER: There is a belief. I didn't want to have to
21 say this in the open court, but we're of the understanding that
22 there is a particular picture of a rather demeaning nature that
23 is in the Prosecution office on one of their walls and we're very
24 concerned about personal data. It may be that the Prosecutor
25 knows what I'm talking about and I really don't think it is my
26 place to say this in open court, but we do have concerns. We do
27 not want private data to go to the hands of the Prosecution if
28 there's no need for it. If my learned friend for the Prosecution
29 is saying that she is unable to see the force of the submissions

1 that we're putting forward, then, to a certain extent, I
2 understand that and I shall do my best to explain such that it
3 will become clear. What I am saying, for the benefit of my
4 learned friend for the Prosecution, is that that which -- those
5 small areas which have been redacted from that particular
6 document contain personal data or private data that will lead to
7 the identification of the specific persons that are referred to
8 within the course of that sensitive area. Now, I may be wrong,
9 but I don't see how that assists the Prosecution if they have a
10 general idea as to what it is that is being complained of here.

11 PRESIDING JUDGE: Thank you, Mr Metzger.

12 [Trial Chamber confers]

13 JUDGE LUSSICK: Mr Metzger, the material you want redacted
14 would be, I imagine, in document 254, that is by Ms Monasebian
15 and she attaches the confidential joint submissions in a redacted
16 form and they are the only redactions you're asking for, I take
17 it?

18 MR METZGER: That's correct. We're content for that to
19 go the -- indeed, we believe they already have that.

20 JUDGE LUSSICK: Well, Ms Taylor, they don't seem to be
21 substantial deletions to us and we don't think they detract from
22 the sense of the argument expressed therein that there is some
23 concern -- I don't know how much further I should go in open
24 court, but there are some serious concerns on behalf of the two
25 counsel concerned. What objection would you have to those minor
26 details - they're only names and addresses - being obliterated.

27 MS TAYLOR: Your Honour, my understanding of the reason why
28 these documents were filed ex parte was that they concerned
29 issues of lawyer-client privilege. These obviously do not

1 concern lawyer-client privilege. If the Defence wished to put
2 material before Your Honours in relation to an application that
3 they make that is sensitive, they have the option to file that
4 confidentially. The Prosecution does not object to that. What
5 the Prosecution does object to is an unfounded allegation that
6 the Prosecution is somehow going to mistreat this information.
7 There is multiple jurisprudence that shows when any allegation of
8 male fides is made, it must be done on proper foundation. No
9 such foundation has been laid. In those circumstances, the
10 Prosecution would submit that the ruling that Your Honours gave
11 when you came back on to the bench is the one that should stand
12 and that the Prosecution should receive the material that the
13 Defence has put before the Court in support of its application in
14 its entirety. That is how the Prosecution puts this matter.

15 [Trial Chamber confers]

16 PRESIDING JUDGE: We've considered the submission by
17 Defence counsel and whilst we can fully understand the concerns
18 aired therein, we cannot entertain any suggestion that the
19 Prosecution will make use or misuse of a confidential document,
20 as to do so would be a serious breach of a court order and misuse
21 of a court order and therefore the ruling as read will stand.

22 MR HARRIS: Thank you for that. May I just say on behalf
23 of the -- of Mr Metzger and I that we will then have no other
24 alternative but to withdraw the document before the Court.

25 PRESIDING JUDGE: There is a procedure that will be
26 followed.

27 MR HARRIS: I'm certain that we will do that, but we will
28 withdraw it.

29 JUDGE LUSSICK: Under -- what Rule are you relying on,

1 Mr Harris?

2 MR HARRIS: Your Honour, I'm not at this stage familiar
3 with the particular Rule, but I will find it and refer to it when
4 we make the application to withdraw.

5 JUDGE LUSSICK: Well, it seems to me -- are you really in
6 effect shooting yourself in the foot? Because I would have
7 thought that the document you're talking about would be relied
8 upon you as to establish most exceptional circumstances, and if
9 you withdraw the document, you're putting the Court in the
10 position of having to make a decision on the material before it
11 and that would seem to be just a foregone conclusion.

12 MR HARRIS: Your Honour, if we look at Rule 54 -- may I say
13 thank you for that observation. But if we now look at Rule 54,
14 "at the request of either party," the last three or four words
15 "or conduct of the trial" becomes relevant to the observations I
16 have just made. I bear in mind the strength of the observations
17 which you have so ably made, if I may say so. However, the --

18 PRESIDING JUDGE: Perhaps in the circumstances, Mr Harris,
19 if you have some form of application, you would wish to formulate
20 it.

21 JUDGE LUSSICK: As I take it -- one moment, please,
22 Mr Metzger. As I take it, you're simply saying that your only
23 objection to the use of that document is you don't trust the
24 Prosecution.

25 MR HARRIS: No, no, no. I'm not saying that at all.
26 Your Honour, the word "trust" is perhaps a little too high. I
27 wouldn't go so far as to say I don't trust those that prosecute
28 this case. I go as far to say I have reservations, serious
29 reservations, serious concerns and they are factors which enable

1 me to reach that conclusion. It may not nestle within your
2 province, but there are factors. But to say I don't trust them,
3 I think that word is a little bit strong. I wouldn't use that
4 word. Yes. I just hand you over to Mr Metzger for a moment or
5 two.

6 MR METZGER: I echo the comments made by Mr Harris, but I
7 would go one stage further. Whilst I have reservations I would
8 not trust the Prosecution or certainly all that those goes within
9 the Prosecution with my life. That is my submission here. And
10 it seems to me -- particularly I had made mention of a photograph
11 being on the wall of the Prosecution. If that is the regard with
12 which they hold counsel in -- in here, then I'm sorry, I do not
13 trust the Prosecution with the life of any of my -- my-- my
14 colleagues.

15 [Trial Chamber confers]

16 PRESIDING JUDGE: Court is adjourned. Please adjourn the
17 Court, Mr Court attendant.

18 MR WALKER: Court rise.

19 [Whereupon the hearing adjourned at 12.56 p.m.
20 to be reconvened on Thursday, the 12th day of
21 May, 2005, at 2.00 p.m.]

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