

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

WEDNESDAY, 17 MAY 2006
9.16 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:	Mr Geoff Walker
For the Prosecution:	Mr Karim Agha Mr Charles Hardaway Ms Melissa Pack Ms Martine Durocher Ms Maja Dimitrova (Case Manager)
For the Principal Defender:	Ms Claire Carlton-Hanciles
For the accused Alex Tamba Brima:	Mr Kojo Graham Ms Glenna Thompson
For the accused Brima Bazy Kamara:	Mr Andrew William Kodwo Daniels Mr Mohamed Pa-Momo Fofanah
For the accused Santigie Borbor Kanuu:	Mr Ajibola E Manly-Spain Ms Karlijn van der Voort (legal assistant)

1 [AFRC17MAY06 - ED]

2 Wednesday, 17 May 2006

3 [The accused present]

4 [Open session]

09:18:36 5 [Status conference]

6 [Upon commencing at 9.16 a.m.]

7 PRESIDING JUDGE: Good morning. This is a status
8 conference scheduled for today. I must say that to a great
9 extent the conference has been rendered redundant in view of the
09:21:48 10 filings by the Defence. Nevertheless, there may be some matters
11 that either party may wish to raise. If you do, though, I would
12 caution you to remember that the Trial Chamber has not yet ruled
13 on the confidentiality status of the Defence motion, and that
14 has, in view of the response submissions, become something of an
09:22:20 15 issue. So please don't touch that area.

16 Ms Pack, welcome back to the Court.

17 MS PACK: Thank you, Your Honour.

18 PRESIDING JUDGE: I just have one very small question of
19 the Defence. I don't know whether you are in a position to
09:22:40 20 answer it yet or not. If not, then it is a matter that can be
21 brought up later. On 5th June when this case starts, will the
22 Defence be, each one of the counsel for the Defence be making
23 opening statements?

24 MR GRAHAM: Good morning, Your Honours, I believe that will
09:23:14 25 be the case. I believe at this point in time all accused persons
26 will have statements made on their behalf on June 5th.

27 PRESIDING JUDGE: Thank you, Mr Graham.

28 MR GRAHAM: It looks as though, subject to anything you may
29 propose, it looks as though all of those opening statements will

1 need to be made together, in view of the joint defence case does
2 have a lot of common witnesses. I don't think there will be any
3 issue with that.

4 MR GRAHAM: We assume that will be the proper approach.

09:23:52 5 PRESIDING JUDGE: Thank you. Anything else that should be
6 raised? I might add we will be delivering a decision on the
7 Defence motion probably later today or certainly by tomorrow at
8 the latest.

9 MR AGHA: Your Honour, the Prosecution at this point,
09:24:10 10 without speaking about the question of the witness list, would
11 just like to raise the issue of disclosure in that it is a 21-day
12 rolling disclosure, and we would therefore hope to start
13 receiving the identities of the various protected witnesses from
14 today onwards, if not now, since we understand it is only now 20
09:24:35 15 days before the trial is due to commence. We have not as yet
16 actually received any of these identifying details or
17 information.

18 The other issue, if the Court would be prepared to hear me
19 on it, is a question of summaries. Now, with regard to the
09:25:09 20 order, it was ordered that there would be summaries made on the
21 facts of each witness. Now, without going into the issue of the
22 list of witnesses, we actually have summaries in respect of 49
23 witnesses. The Prosecution would like to address the question of
24 the sufficiency of those summaries so that that may be considered
09:25:42 25 at the next status conference. With regard to the summaries
26 which we received, the Prosecution believes it needs to be in a
27 position for those summaries to be sufficiently detailed to
28 enable us to carry out investigations and cross-examine on them.
29 In this instance, it is the reverse equality of arms in that the

1 Prosecution provided witness statements 42 days in advance and
2 some summaries later. In this situation, we are having the
3 summaries 21 days in advance without witness statements. So the
4 ability of the Prosecution to actually investigate and prepare
09:26:40 5 for cross-examination will very much depend on how detailed those
6 summaries are.

7 It is the view of the Prosecution that summaries 1 to 30
8 listed in the disclosure material require more detail. Although
9 these are largely crime base witnesses, the position of the
09:27:12 10 Prosecution is that we only have 21 days, it is as the Defence
11 remind us, the rainy season, so it will be difficult to carry out
12 our investigations, and it may well be that if the summaries are
13 sufficiently detailed, the Prosecution may be able to agree the
14 content of the summary without the need to call the crime base
09:27:35 15 witness, in which case that would save the Court a substantial
16 amount of time.

17 With regard to the summaries in respect of witnesses 30 to
18 49, the Prosecution views these more as insider type witnesses.
19 In which case the Prosecution submits that the summaries in
09:28:02 20 respect of these witnesses are wholly inadequate, in that we need
21 locations, places, times, dates. For example, I will just off my
22 head recall number 49 which refers to Freetown. Now, there is no
23 detail as to what is happening in Freetown, what he is going to
24 give evidence about in Freetown, who he is with. Quite clearly
09:28:31 25 on the basis of that information, the Prosecution would not be in
26 a position to cross-examine that witness. So we would really
27 request that those summaries be in far more detail. Certainly it
28 may allow us to agree and it may also allow us to prepare
29 effectively. Were such an order to be passed, we would hope that

1 the summaries be forwarded to us as soon as possible. The reason
2 being, that as I mentioned, the 21 day -- well, 20 days now only
3 until the trial starts.

4 Also in respect of summaries again, which the Prosecution
09:29:15 5 feels is an extremely important matter, is that in their
6 disclosure materials the Defence have indicated that the first
7 accused will be giving evidence. Now, the Prosecution's position
8 is that the first accused will now become a witness. So on that
9 basis, we would require a detailed summary of the evidence which
09:29:40 10 the first accused would be giving so that we could prepare for
11 cross-examination. Now, in the disclosure material there, in
12 fact, was no summary in respect of the first accused. So we
13 would kindly request this Honourable Court to pass an order that
14 the Prosecution be provided with a detailed summary by the end of
09:30:04 15 this week, of the first accused, since then we will now be into
16 the 17-day mark before he is due to give evidence.

17 Also on a separate point which perhaps ties in with the
18 summaries, it relates to protective measures and I will be very
19 cautious in the manner which I speak. It is really that the
09:30:37 20 Prosecution requires some clarification from the Defence
21 regarding its protective measures motion and the pseudonyms in
22 its disclosure material. For example, the witnesses listed at 15
23 and 9 have the same pseudonym. The witnesses listed at 16 and 17
24 have the same pseudonym, and may even be the same person. In
09:31:13 25 fact, witness 40 on the Court order, according to the protective
26 measures motion, is not a protected witness. So we would be
27 seeking an order for the identity of that witness, so that we may
28 carry out our investigations, be revealed.

29 Another point regarding the compliance to the order, which

1 the Prosecution would like to raise, and I may have not noted the
2 point or missed it. But I believe that the order also required
3 the Defence to file a list of exhibits. Now, that has not been
4 done, or at least I have not seen reference to it or any court
09:32:08 5 order extending any time or modifying that. So the submission of
6 the Prosecution on that issue is that the Defence should not be
7 allowed now to produce any exhibits without showing good cause,
8 and we would seek an order in that respect.

9 To jump back to summaries, I'm afraid - a point I missed -
09:33:01 10 I tended to refer to witnesses 1 to 49 in the table, but
11 Your Honours will also see that there are other witnesses
12 referred to in the annexure to the materials of disclosure and
13 these are found in annexures 3A, B, C and D. The Prosecution
14 would like to seek confirmation from the Defence that the
09:33:33 15 statements which form the annexures are, in fact, the summaries
16 in respect of annexure 3A, B and C. And would also like to point
17 out that in the humble submission of the Prosecution, the
18 summaries in respect of what are referred to as truth and
19 reconciliation witnesses, TRC, in annexure 3D are woefully
09:34:02 20 inadequate and they also, in the submission of the Prosecution,
21 need to be greatly expanded upon.

22 If we may briefly address the expert witnesses, who can be
23 found in annexure 2. The Prosecution is aware there are some
24 budgetary constraints regarding which expert the Prosecution is
09:34:32 25 able to call or not. The Defence, I apologise. But in terms of
26 military witnesses, there is one primary international military
27 witness named, and a secondary military witness, I believe Mr ^
28 Koist. You will have to pardon my pronunciation. The
29 Prosecution will be looking for an indication to the Defence

1 when, if at all, he will be giving evidence, a date, and
2 submitting a report, and if he is going to give a report, when
3 the Prosecution can expect to receive it.

4 Likewise with the child soldiers and forced marriage
09:35:16 5 experts, these are either/or experts although it is noted in each
6 case the report will be available 1st October for disclosure.
7 The Prosecution would therefore seek an order that we be informed
8 by a certain date which one of the two experts will, in fact, be
9 giving the evidence, or indeed, it may be the case they may be
09:35:37 10 requiring both experts which they have named, and perhaps the
11 Defence could help us on that.

12 Finally, with regard to experts, the Defence are choosing
13 to call a demographic expert. Now, the Prosecution is not sure
14 of the relevance of a demographic expert to the charges laid in
09:36:02 15 the indictment and would certainly also request the Defence to
16 provide more detail of the nature of that report and as to its
17 relevance, and then perhaps the Trial Chamber would be in a
18 position to determine whether or not it is indeed necessary,
19 bearing in mind the allegations in the indictment.

09:36:31 20 That generally deals with the Prosecution's position on
21 summaries. Turning to a few of the other orders that were made,
22 obviously as this Honourable Court has already mentioned, the
23 question of witnesses still remains to be resolved, and that is
24 an order which we await for in due course, submissions having
09:36:54 25 been made. The other areas, language spoken, has been dealt
26 with, the points in the indictment, estimated length of time and
27 whether the witness will testify in person or not have also all
28 been dealt with, as well as the first accused testifying and the
29 need for common witnesses.

1 However, just as a final point of clarification, we would
2 request that the Defence indicate to us that after their
3 witnesses 1 to 49 which are, in fact, their order of call, that
4 the witnesses they then name in their annexures will be the next
09:37:34 5 witnesses which follow on from 49 onwards and thereafter the
6 experts will follow or what their position may be. So this is a
7 submission of the Prosecution and it largely revolves around the
8 summaries and their adequacy in both our ability to cross-examine
9 and indeed hopefully to agree to some of the facts if they are
09:37:59 10 not contentious, particularly the crime base ones, which the
11 submission of the Prosecution would actually save this Honourable
12 Court quite a considerable amount of time.

13 Thank you.

14 PRESIDING JUDGE: Does anybody from the Defence want to say
09:38:24 15 anything?

16 MR DANIELS: Respectfully, I would wish to address one or
17 two matters raised by counsel for the Prosecution.

18 As I can confirm that indeed, and I am speaking on behalf
19 of the counsel for the first accused, that indeed the first
09:38:50 20 accused will be giving evidence and that we are mindful that
21 perhaps we have 20 days within which to disclose his witness
22 summary. I think there was a problem deciding whether or not he
23 would give evidence. Now he has confirmed his intention to give
24 evidence. I do not see that by the end of this week there would
09:39:19 25 be any problem providing the Prosecution with a detailed summary
26 of his statement.

27 As regards the insufficiency of some of the summaries, we
28 note in accordance with the order of 9 May, in particular I am
29 referring to subsection D, which can be found on Registry page

1 18136, the Court does order that full statements will be revealed
2 to the other side, that is within 21 days. We will comply with
3 the order of the Court by giving full details of the witness
4 statements. But as regards the numbers 30 to 40, which the
09:40:43 5 Prosecution deem to be inadequate, I do not see why the
6 Prosecution and the Defence, cannot get together in respect of
7 those particular statements, and if, indeed, they set out what
8 further information they would require, I see no difficulty in
9 providing more detailed witness statements.

09:41:16 10 As regards the experts, we have said before that the final
11 decision on whether or not some of the experts would be
12 testifying rests at the first instance at the door of the Defence
13 office. So again are financial considerations and we need to
14 know where we stand before we can get confirmation from the
09:41:39 15 potential expert witnesses because we cannot enter into dialogue
16 with them when we do not know whether or not they are going to be
17 paid any remuneration and at what rate. So this becomes a
18 problem.

19 The same applies in particular to the intended military
09:42:14 20 expert, that is Mr Quist ^ . He has been contacted. He is happy
21 to testify. But then we need to have final confirmation from the
22 Defence office as to his terms of reference.

23 Most of the other matters -- that is to do with the -- we
24 await the decision as to whether or not we will be complying with
09:42:50 25 the order of 26th April. So we await that decision and it will
26 be premature to comment on the outcome of that. So we will await
27 the outcome of the Court for your decision.

28 As regards the military witnesses, we can say at this stage
29 that we do not have statements from them and therefore are not in

1 a position to provide the Prosecution with their statements, and
2 therefore, we will be compelled to subpoena them. That is the
3 reason why we will not be able to provide full details of their
4 statements, because trying to cause them to come on their own has
09:44:07 5 not proved successful.

6 MR MANLY-SPAIN: May it please Your Honours. It would
7 appear that from what Your Honour said at the beginning, that the
8 Court is satisfied with the disclosures made by the Defence in
9 compliance to your order of 26th April.

09:44:36 10 PRESIDING JUDGE: Well, I don't recall saying that,
11 Mr Manly-Spain.

12 MR MANLY-SPAIN: It would appear.

13 PRESIDING JUDGE: We haven't ruled on it yet.

14 MR MANLY-SPAIN: You appear to have been satisfied with the
09:44:54 15 disclosures we made.

16 PRESIDING JUDGE: No, I didn't say -- no, I think you
17 misunderstood me, Mr Manly-Spain. There has been some
18 disclosures made by the Defence which to us would seem to be the
19 attempt by the Defence to comply with the order of 26th April.
09:45:13 20 Now, we have to decide whether that is adequate or not. But I
21 simply said that in view of the disclosures by the Defence,
22 meaning in view of their estimate of their compliance with our
23 orders, this sitting is somewhat redundant. But we haven't ruled
24 on the motion at all.

09:45:35 25 MR MANLY-SPAIN: I understand that, Your Honour. I was
26 saying because of what you said, I took it that the compliance
27 was adequate.

28 PRESIDING JUDGE: I can't get your point, Mr Manly-Spain.
29 Even if you took it as that, I only said it about 10 minutes ago.

1 So what is the point?

2 MR MANLY-SPAIN: The point I am trying to make is that the
3 Prosecution appears to be raising so many other points that will
4 put the Defence in a straitjacket, and it appears also that the
09:46:15 5 Prosecution is making new applications which were not in the
6 contemplation of the Defence at the time we were making the
7 disclosures. That is the point I wish to raise.

8 PRESIDING JUDGE: I see.

9 MR GRAHAM: Good morning, Your Honours. Just by way of
09:46:45 10 emphasis, Your Honour, I think I probably always feel that when
11 it comes to issues or talking about issues of deadlines, which I
12 think is the key issue here. Before I proceed I would like to
13 affirm the fact that I think we are ready to commence the trial
14 on June 5th. We also, too, very much recognise the implications
09:47:04 15 of the 21-day rule. But then, of course I would very much want
16 your learned friends to realise some of the practical and
17 pragmatic issues involved in trying to comply with the 21-day
18 rule. If we recall very well, when the Prosecution was
19 presenting their case, the standing order at that time I think
09:47:24 20 was 42 days. But within the context of that rule, we were
21 pragmatic and flexible enough to accommodate disclosures within
22 that period, having in mind the substance of the witness
23 statements and whether the fact that it was disclosed within the
24 42-day period was going to be prejudicial to the Defence. I
09:47:42 25 think we managed to establish a working relationship. In so many
26 instances we had witness statements being disclosed within the
27 42-day period. I'm saying this primarily because I believe as
28 and when we go on there are going to be practical issues that we
29 are going to face in terms of disclosing the witness statements

1 within the 21-day period.

2 PRESIDING JUDGE: If I remember correctly, the Defence
3 asked for a rolling disclosure of 14 days.

4 MR GRAHAM: Yes, Your Honour. I am saying we are confident
09:48:14 5 with the 21-day period and we are going to endeavour to make sure
6 that we disclose all the statements within that time period. I
7 am reminding my learned friends on the other side that when the
8 Prosecution was presenting their case, even though we had a
9 42-day rule, as and when it required we were flexible. I think
09:48:39 10 we met with them and we worked with them. It is important we
11 have that in mind. Your Honour, my learned friend on the other
12 side did mention the issue of reverse equality of arms, which I
13 don't think is the case at all in the circumstances.

14 We are ready to proceed, as I said, and if I may address
09:49:00 15 the issue of the comments made by my learned friend from the
16 other side in respect of some of the limitations regarding the
17 witness summaries from Freetown. I would say that we are working
18 very hard and I think at every point in time we have endeavoured
19 to draw the attention of this Honourable Court to the limitations
09:49:21 20 that we face on a day-to-day basis. I recall I was in this very
21 same court probably eight weeks ago to make this Court aware of
22 some of the problems we are facing with our witnesses in
23 Freetown. We are still working at it and hopefully we will be
24 able to get more witnesses on board. But at least for now, we
09:49:45 25 are committed and we know that definitely from June going we will
26 be having witnesses coming from the Bombali District. So
27 definitely I think we should take it on a case-by-case basis,
28 because of the constraints that we are facing.

29 In regard of the protective measures and the clarifications

1 sought on the pseudonyms, I think can work together and give the
2 necessary clarifications that are required. If there are any
3 corrections to be made, I believe we can do that in respect of
4 the protective measures.

09:50:15 5 Also in terms of the request by the Prosecution for the
6 list of exhibits, once again, Your Honours, I must say that the
7 issue of the list of exhibits is also tied in to the flow of our
8 expert witnesses. Most of these expert witnesses who are coming
9 in, the work is also going to cover some of the exhibits we
09:50:37 10 intend to tender in this Court. So the limitations, in effect,
11 they are tied. If you don't have the witnesses coming in, we
12 can't have a comprehensive list of the exhibits that we need to
13 give to the Prosecution. So in that regard I think that the
14 request or application by my learned friend that we should not be
09:50:52 15 allowed to bring in the list of exhibits without showing good
16 cause is a bit premature at this point in time.

17 As regards the TRC issues as well, and the paucity of the
18 summaries that were given, I think we can work together to
19 provide any additional information as and when it may be needed
09:51:15 20 to enable the Prosecution to also conduct their case effectively.

21 My learned friend has also made some comments already in
22 regard to the difficulty of getting expert witnesses, but I of
23 course would like to set it more also within the practical
24 confines. The issue of the budgetary constraints can certainly
09:51:37 25 not be overlooked. Our own literary research, even within the
26 period 2003 to 2005, in terms of financial data flowing out of
27 the Court is very indicative of the imbalance in terms of
28 financial resources. Your Honours, for the period 2003 to 2005
29 the total budgets for consultants and experts for the OTP was

1 \$398,000. The total budget for the Defence was \$120,000. Once
2 again, if you go on further, we are saying that these are some of
3 the disparities that is actually making it very difficult to keep
4 to some of the timelines we have. I have said it time and time
09:52:19 5 again, that we would also want to have this trial conducted
6 expeditiously, but at the same time the delicate balance of
7 ensuring the trial is fair is also very, very paramount.

8 THE INTERPRETER: Your Honour, the counsel is too fast for
9 the interpreters to cope with him.

09:52:38 10 PRESIDING JUDGE: Mr Graham, did you hear the interpreter?
11 He said you are going too fast for him.

12 MR GRAHAM: I'm sorry, I didn't hear him. I'm sorry.

13 If I might also comment on the observation by my learned
14 friend regarding the issue of the demographer and whether it
09:53:02 15 would be relevant. I am sure my learned friends do recognise the
16 essence of the term "widespread and systematic". I wouldn't want
17 to go into details, but this very expert is not only coming to do
18 demographic, but he is also going to do some level of
19 cartography. I think we are also going to expand that to give
09:53:23 20 enough information -- sorry. I think I am a bit too anxious to
21 let you know what happened. I will take my time.

22 PRESIDING JUDGE: You are doing a good job, Mr Graham.
23 What I can anticipate you are going to say is something
24 Mr Daniels said. That a lot of the matters raised by the
09:53:51 25 Prosecution can be solved simply by asking the Defence. If there
26 is a witness they are not satisfied with the facts given so far,
27 why not ask? I am sure that none of the Defence are in any
28 position to know, regarding 49 witnesses, exactly in what respect
29 are the facts not sufficient. I would have thought this is a

1 matter between the parties instead of using the Court as a
2 conduit pipe to transfer correspondence from one party to the
3 other.

4 In any event, I am sorry to interrupt, but that is the way
09:54:28 5 I for one am looking at a lot of these matters raised so far. We
6 are talking about saving time here, too, by discussions between
7 the parties so the case can get off, as scheduled, on 5th June.
8 I'm sorry to interrupt, Mr Graham.

9 MR GRAHAM: I think I agree with Your Lord. I believe that
09:54:50 10 is the esprit de corps within which we should all work together.
11 We have done that before and I believe we can do that again.

12 Just by way of further clarification, so the expert witness
13 who has been listed as coming as a demographer will also be doing
14 some work as a cartographer, essentially mapping out relevant
09:55:13 15 crime bases. That is about all we can say about that so far.

16 Further back as an additional comment in respect of the
17 submission by our learned friends that we should not be allowed
18 to tender any exhibits without showing good cause, I repeat my
19 previous submission that this is premature. These experts will
09:55:33 20 tender the exhibits as and when they are called in as expert
21 witnesses. That will be an issue I believe will be addressed at
22 that point in time.

23 At this point in time I don't think I have any further
24 submissions to make in respect of this matter but I believe we
09:55:49 25 can work together.

26 PRESIDING JUDGE: Thank you, Mr Graham.

27 MS CARLTON-HANCILES: Your Honours, if I may be heard on
28 behalf of the Defence office on the issue of the expert witnesses
29 and the number and the budgetary constraints. The lead counsel

1 for the first accused actually held a meeting with the
2 Principal Defender on the issue. Quite frankly, the number of
3 expert witnesses which this trial is calling for is quite a
4 number vis-a-vis the budgets which is to be allocated to expert
09:56:25 5 witnesses. After the meeting the Principal Defender has implored
6 the entire team, because they are calling common expert
7 witnesses, to do a comprehensive document for the purposes of
8 consideration which may be forwarded to the Registry. We are now
9 at that point. Of course we are waiting for the document. But
09:56:51 10 because they had been all over the country as a team, they were
11 waiting for each other to come so they can actually sit together
12 and come to us in the proper manner. Hopefully this should not
13 be a problem which will drag on; it will be solved in the near
14 future. Thank you.

09:57:08 15 PRESIDING JUDGE: I see. Thank you. Yes, Mr Agha?

16 MR AGHA: Yes, Your Honours. The Prosecution would just
17 like to make a brief reply to the points raised by the learned
18 defence counsel.

19 The first point is that various of the issues regarding
09:57:35 20 ability to produce exhibits, put forward witnesses, et cetera,
21 were raised and addressed quite thoroughly on the 4th April
22 status conference where Mr Knoops' note, if you recall, was
23 produced and now seems to find its way into every filing for one
24 reason or another, and an order was given on 26th April whereby
09:57:58 25 the Defence were obliged to make certain disclosures. Initially
26 in reply to Mr Manly-Spain's question, whether we are putting the
27 Defence into a straitjacket, I believe all the issues which I
28 addressed this morning were only issues which arose directly out
29 of this learned Chamber's order of 26th April, and we are not

1 asking for anything additional. Indeed, it would seem that the
2 learned defence counsel may be said to be doing that by their
3 filing at 3.29 p.m. on 9th May regarding the witness list.

4 With regard to the particular issues raised by Mr Daniels,
09:58:42 5 the Prosecution is pleased to see that a summary will be given by
6 the end of the week by the first accused, Gullit. We, simply
7 because there has been some misunderstandings in the transcripts
8 before, would actually request an order that that in fact be
9 given by the end of the week in a detailed form so we can prepare
09:59:08 10 for our cross-examination.

11 Further, Mr Daniels has also indicated that subpoenas will
12 be required now. So in order to save delay and the time of this
13 honourable Court, since the Defence has recognised this position,
14 we would request that this honourable Chamber order the Defence
09:59:29 15 to make whatever applications for subpoenas which it believes are
16 necessary now, because that in itself can be a long process, so
17 it can be dealt with quite expeditiously.

18 With regard to the summaries, as this learned Court has
19 mentioned, this is indeed a matter where the parties can get
09:59:53 20 together and try and come to some agreement on the sufficiency of
21 those summaries. However, we would request this honourable Court
22 to set a deadline for that to see if sufficient agreement can be
23 made and then take it from there, because, as Your Honours are
24 aware, the clock is on. We have now 20 days and if, let us say,
10:00:20 25 we cannot for the first seven or eight witnesses which are listed
26 reach any agreement, we will be down to maybe 10 days and that
27 will make our job even harder in terms of cross-examination, let
28 alone an ability to agree on any facts which may be not in
29 dispute.

1 With regard to Mr Graham, he mentioned that we had 42 days.
2 I am informed by Ms Pack that the Prosecution did indeed meet its
3 disclosure deadline within 42 days, bar providing some additional
4 information which arose from time to time. I would also like to
10:01:06 5 draw this honourable Court's attention to the fact that the
6 disclosure obligations on the Prosecution are far more onerous
7 than that on the Defence. Firstly, there was 42 days; secondly,
8 it was statements; and in our case, we have bare summaries and we
9 only have 21 days. And even now, of today, with 21 days to go,
10:01:35 10 we have not received the name of even the first listed witness.
11 So we would seek an order today, from this learned Court, that
12 the rolling disclosure does, in fact, take effect from today and
13 order the disclosure of at least the first two or three witnesses
14 on the list.

10:01:59 15 Turning finally to the point on exhibits, my learned friend
16 mentioned that these are very much tied to their military, and
17 expert witnesses and suggests that they may not be relevant if
18 that particular witness is called. The Prosecution takes the
19 view that there is no reason why those exhibits cannot be listed
10:02:20 20 at this point because they may not be tendered in any event.
21 Very often witnesses or exhibits are placed on the lists and the
22 witness is not called or the exhibit is not tendered. So whether
23 or not it is to come through a particular witness, the
24 Prosecution does not see that that bears any relevance.

10:02:41 25 It is the view of the Prosecution, therefore, that if any
26 exhibit wishes to be tendered good cause needs to be shown. An
27 example being if, indeed, military witnesses are not able to
28 come, the Defence may very well wish to put the exhibits through
29 other witnesses, which could have been disclosed pursuant to this

1 honourable Court's order on 26th April. So we would still be
2 looking for an order that exhibits only be admitted on showing of
3 good cause.

4 Just to sum up, the Prosecution would seek orders in
10:03:21 5 respect of these issues with close deadlines, to be followed
6 closely by a status conference after the date of the deadline so
7 we can very much keep track on the progress of the disclosure,
8 bearing in mind, and as I have mentioned before, we are at day 20
9 now and the time is just going to become less and less and less.

10:03:50 10 Thank you, Your Honours.

11 PRESIDING JUDGE: Thank you.

12 MR DANIELS: With your leave, if I could just make a quick
13 remark on a point of law. A quick reply on the point of law on a
14 point raised by my learned friend for the Prosecution.

10:04:07 15 PRESIDING JUDGE: What point of law?

16 MR DANIELS: We are just saying that, as regards this issue
17 of subpoenas, we are saying that matter has been adequately dealt
18 with in our reply filed yesterday.

19 PRESIDING JUDGE: I would rather you not touch on that,
10:04:22 20 Mr Daniels. As you know, we are still in the course of deciding
21 on that particular motion.

22 MR DANIELS: Very well, Your Honour.

23 PRESIDING JUDGE: We are going to adjourn hopefully for
24 only half an hour to 10.30 and we will come back with some
10:04:59 25 orders.

26 [Break taken at 10.00 a.m.]

27 [Upon resuming at 11.00 a.m.]

28 PRESIDING JUDGE: We have taken into account the
29 submissions made by both the counsel for the Prosecution and

1 Defence. We also recall our order for disclosure pursuant to
2 Rule 73ter and the start of the Defence case made on 26th April
3 2006, and our Decision on Joint Defence Application For
4 Protective Measures For Defence Witnesses made on 9th May 2006,
11:04:19 5 and we order as follows:

6 Firstly, with regard to a summary of facts of the evidence
7 to which the first accused Brima will testify, we note that the
8 Defence is already out of time. We note, also, that the Defence
9 is prepared to file such a summary of facts by the end of this
11:04:56 10 week and that the Prosecution requests that an order to that
11 effect be made by the Trial Chamber. Consequently, we order that
12 the Defence file a summary of facts to which the first accused
13 Brima will testify on or before 4 p.m. on Friday, 19th May 2006.

14 Secondly, we order that the identifying data for the first
11:05:34 15 three protected witnesses be disclosed to the Prosecution
16 pursuant to paragraph D of the Trial Chamber's order of 9th May
17 2006 before 4 p.m. today.

18 Thirdly, with respect to the Prosecution submissions
19 regarding defence subpoenas, the issue was raised in the
11:06:10 20 Confidential Joint Defence Motion currently before the Trial
21 Chamber for decision. Consequently, we will not deal with that
22 matter here.

23 Fourthly, as regards the Prosecution submission that the
24 Defence have not filed a list of exhibits, and therefore the
11:06:36 25 Trial Chamber should order the Defence to show good cause before
26 any exhibits may be admitted, we consider that such an order
27 would be premature. If and when the Defence has an exhibit it
28 wishes to tender, it would need to apply at that time for leave
29 to do so, in view of the fact that it is in breach of our order

1 of 26th April 2006.

2 Fifthly, the Prosecution complains that the summaries of
3 facts provided by the Defence in regard to 49 witnesses were
4 inadequate. We note that the parties will discuss this issue in
11:07:28 5 the hope that some agreement can be reached. The same applies to
6 the Prosecution complaints in relation to the pseudonyms used by
7 certain protected witnesses and to witness 40.

8 Sixthly, we will adjourn the Trial Chamber to 5th June 2006
9 for the opening of the Defence case.

11:08:03 10 We will adjourn now.

11 [Whereupon the Status Conference adjourned at
12 11.05 a.m.]

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