

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

FRIDAY, 4 AUGUST 2006  
9.15 A.M.  
TRIAL

TRIAL CHAMBER II

Before the Judges:

Richard Lussick, Presiding  
Teresa Doherty  
Julia Sebutinde

For Chambers:

Mr Simon Meisenberg

For the Registry:

Mr Geoff Walker

For the Prosecution:

Mr Karim Agha  
Mr Charles Hardaway

For the accused Alex Tamba  
Brima:

Mr Kojo Graham

For the accused Brima Bazy  
Kamara:

Mr Andrew William Kodwo Daniels

For the accused Santigie Borbor  
Kanu:

Mr Ajibola E Manly-Spain

1 [AFRC04AUG06A - MD]  
2 Friday, 4 August 2006  
3 [The accused present]  
4 [Open session]  
5 [Upon commencing at 9.15 a.m.]

6 PRESIDING JUDGE: Well, I note, Mr Graham, your  
7 client is not in Court. I've got a note here from the detention  
8 centre saying that he's arranged his absence with his lawyer; is  
9 that right?

10 MR GRAHAM: Yes, that is so, Your Honour. I think he's  
11 waived his right under the relevant -- good morning, Your  
12 Honours, sorry -- he's waived his right under the relevant rule  
13 and he has no objections to him being represented by counsel here  
14 before this Court this morning. Thank you, Your Honours

15 PRESIDING JUDGE: All right. Thank you, Mr Graham. We  
16 will note that the first accused, Brima, has waived his right to  
17 be present and we will proceed pursuant to Rule 60.

18 Well, talking of proceeding, it doesn't look as though  
19 there is much to proceed with though. What was the story on this  
20 witness?

21 MR MANLY-SPAIN: Good morning, Your Honours. Your Honours,  
22 we are sorry, the witness is not here today, this morning. We  
23 were expecting him to arrive yesterday, but the last word we had  
24 was that he left Kono actually with the investigator. On the way  
25 he insisted he had to go to Tongo to say goodbye, or to inform  
26 his relatives, his wife and relatives, that he was coming to  
27 Freetown on this matter but that was the last word yesterday. He  
28 has not arrived. We are sorry, about that, Your Honour. We are  
29 apologising to counsel on the other side.

1           PRESIDING JUDGE: Well, it's obviously something that is  
2 not within your control, Mr Manly-Spain, but, the Defence no  
3 doubt will be looking into his availability for the next session.

4           MR MANLY-SPAIN: Yes, Your Honour. We wish to assure that  
5 we will make extra efforts to work better with WVS in obtaining  
6 the witnesses and seeing that they are ready for Court.

7           PRESIDING JUDGE: Thank you, Mr Manly-Spain.

8           MR MANLY-SPAIN: Thank you, Your Honour.

9           PRESIDING JUDGE: Well, Mr Prosecutor, it looks as though  
10 we may have to adjourn. There doesn't seem to be any business  
11 here this morning?

12           MR AGHA: Well, Your Honour, regarding the witnesses, Your  
13 Honour I think is absolutely right, but the Prosecution would  
14 actually like to make some submissions just to either clarify  
15 some orders that have been given or to request for some new  
16 orders to hopefully to expedite or move along the proceedings  
17 after the recess in hopefully more efficient fashion. It may be  
18 that they are just clarifications.

19           PRESIDING JUDGE: Yes; what is that, Mr Agha?

20           MR AGHA: Now --

21           JUDGE DOHERTY: Mr Agha, do we need copies of the relevant  
22 orders before us?

23           MR AGHA: I don't believe so. I can mention them and if  
24 you feel it necessary we can look at them but they are largely  
25 clarifications which I think flow from the original orders which  
26 were given but I just wanted to be sure and my learned friends on  
27 the other side sure, so that we could move smoothly.

28           Now, the first one concerns the filing of the Defence final  
29 witness list. This Trial Chamber, by its order of 17 May,

1 ordered the Defence to file its final witness list on or before  
2 21 August 2006. This, in effect, was a variation of this Court's  
3 order of 26 April at 1A, which ordered the Defence to file a list  
4 of witnesses which each Defence team intends to call, including  
5 criteria specified in IA(i) to (ix). Such criteria includes the  
6 order of call identifying data, language, a summary of the facts  
7 on which each witness will testify, et cetera.

8 So the Prosecution seeks a clarification or an order to the  
9 effect that the final witness list to be disclosed by the Defence  
10 on or before 24 August will be disclosed according to this  
11 Court's original order of disclosure dated 26 April 2006.  
12 Namely, in accordance with IA (i) to (ix) where applicable.

13 PRESIDING JUDGE: Well, does that need clarifying? My  
14 understanding was we simply extended the date for the filing of  
15 the list that was originally ordered.

16 MR AGHA: So that would also include the summaries et  
17 cetera? This is -- I'm not just --

18 PRESIDING JUDGE: I am going to have to have a look at the  
19 orders again, because I can't quite remember what the terms of  
20 them were, Mr Agha, but I do remember that the latter order was  
21 simply an extension; it didn't alter anything else.

22 MR AGHA: That was also my understanding, Your Honour. I  
23 just wanted that to be clarified so that my learned friends were  
24 aware that it was not just a list of names that needed to be  
25 provided but all the other criteria.

26 PRESIDING JUDGE: That's right, Mr Agha. It was simply an  
27 extension of the date.

28 MR AGHA: Thank you, Your Honour.

29 PRESIDING JUDGE: It didn't alter the nature of the

1 original order.

2 MR AGHA: Thank you, your Honour, I just wanted  
3 confirmation of that. And also to seek confirmation or an order  
4 that the alibi witnesses recently disclosed will also be added to  
5 the witness list and that they will also be subject to the same  
6 criteria.

7 PRESIDING JUDGE: Well, this is going to be -- aren't you  
8 being premature here? If they are not on the final witness list  
9 I think you might have cause to make application then.

10 MR AGHA: Thank you, Your Honour. It was just something to  
11 alert the Court to.

12 Another clarification or variation of an order which the  
13 Prosecution would seek, and this relates to the order of call  
14 after the recess of witnesses. Now the first 15 witnesses in  
15 order of call, which this Trial Chamber, by its order of 26 July,  
16 ordered the Defence to provide to the Prosecution is to be on or  
17 before 21 August. As this learned Trial Chamber is aware,  
18 pursuant to this Court's earlier orders, the Prosecution is  
19 entitled to 21 days rolling disclosure of identities of witnesses  
20 in order to prepare for the Defence witnesses.

21 If the final witness list is filed on 21 August this will  
22 give the Prosecution only 14 days to prepare for the first  
23 witnesses on the list. The Prosecution notes, however, that out  
24 of the provisional 49 witnesses disclosed by the Defence on 10  
25 May about 15 remain to be called.

26 The submission of the Prosecution is that to enable the  
27 Prosecution to have the 21 days which it is entitled to, to  
28 prepare for the Defence witnesses, the order of 26 July be varied  
29 or clarified to provide that the first 15 witnesses, in the order

1 of call, to be called after the recess, should include as many of  
2 the unused witnesses of the first 49. This may, we hope, resolve  
3 the 21 day issue as these witnesses have already been disclosed.  
4 It may be a clarification as opposed to a variation as required,  
5 as the understanding of the Prosecution is that pursuant to this  
6 Court's disclosure order of 26 April the 49 initial Defence  
7 witnesses were in the order of call anyway, but it's just for  
8 clarification purposes or it may be a new order is required,  
9 because we still have 15 or so witnesses to be used and of the  
10 first 15 we would expect those to be within the first 15, rather  
11 than a new batch coming and the latter 15 coming afterwards.

12 PRESIDING JUDGE: Well, I would be very surprised if the  
13 Defence don't have the same interpretation of that; does the  
14 Defence want to say anything in that regard?

15 MR GRAHAM: Thank you, Your Honours. Your Honours, I think  
16 we are very clear as to the terms of the orders that have been  
17 passed by this Court regarding witnesses and I do not think we  
18 need any further clarifications. If my learned friend is seeking  
19 the orders from the Court, that may be a different matter, but,  
20 in respect of existing orders of this Court, we are very much  
21 aware and, indeed, would comply with the orders of the Court  
22 regarding all filings that need to be done.

23 But, indeed, Your Honours, regarding an issue raised by my  
24 learned friend, which I think I do associate with him very well,  
25 is the issue that we would, indeed, also be calling hopefully our  
26 next witnesses from the remaining set that we have out of the 49.  
27 That seems to be a natural order of sequence for the witnesses  
28 that are coming in. So my learned friend can rest assured about  
29 that. And we've also learned from our experiences during this

1 past session regarding issues relating to disclosure and the 21  
2 day ruling period. So we assure him that even though 21st is the  
3 deadline we are working to make sure we get the next order of 15  
4 witnesses prior to the date ordered by this Court. So that is  
5 the 21-day ruling disclosure rule I think will be met at least in  
6 respect of the next 10 to 15 witnesses that we are going to call  
7 before this Court during the next session.

8 PRESIDING JUDGE: Well the -- what Mr Agha is saying,  
9 Mr Graham, is that the first lot of 15 witnesses to be disclosed  
10 should include those witnesses that are -- have already been  
11 disclosed and have not been called this session. Is that what  
12 you --

13 MR AGHA: Yes, Your Honour. We feel that those who haven't  
14 yet been called should be the first batch to be called after the  
15 next session.

16 PRESIDING JUDGE: Well, that makes sense. Well, what do  
17 you say -- that's your understanding?

18 MR GRAHAM: I probably didn't make my point clear but that  
19 is -- we are on the same wave length in that regard. That is  
20 what we intend to do, so you can rest assured in that regard.

21 PRESIDING JUDGE: All right. Thank you. Does that satisfy  
22 you, Mr Agha or --

23 MR AGHA: Yes, Your Honour, I was just seeking  
24 clarification that in fact would be the case.

25 PRESIDING JUDGE: Well, if it makes things any clearer, the  
26 Court would expect that the first 15 witnesses under that order  
27 would include those already disclosed so as the 21-day period is  
28 complied with.

29 MR AGHA: Thank you, Your Honour. Now, the third matter

1 which I would like to -- I apologise.

2 PRESIDING JUDGE: I have just been reminded apropos to what  
3 we have just been discussing that, needless to say the Court  
4 Management system will be closed from next Monday, and reopening  
5 on 21 August, so the disclosure obligation still obtains. But  
6 that means that the Defence will need to still make a disclosure  
7 to the Prosecution. It's just that anything that has to be filed  
8 can't be filed until 21 August.

9 MR AGHA: Thank you, Your Honour. Now, the third  
10 application is actually an order which the Prosecution seeks.  
11 And it relates to the notice which was filed yesterday by the  
12 first accused pursuant to Rule 67A(ii). The Prosecution would  
13 like to make submissions on that notice, and I can provide Your  
14 Honours with a copy of it, if that would be of assistance and  
15 also -- --

16 PRESIDING JUDGE: Yes.

17 MR AGHA: -- to my learned Defence, if they require.

18 Now this is a, whilst it has been handed around, it's a  
19 confidential filing, so I would choose my words carefully as we  
20 are in open session.

21 PRESIDING JUDGE: Yes, Mr Agha.

22 MR AGHA: Now, Your Honours will see that annex A, we have  
23 a list of names and locations, were filed in respect of two  
24 districts. Seven names were for Kailahun and eight names for  
25 Kono, one of two of which would seem to be the same names. The  
26 location of the witnesses that was given was the area. For  
27 example, you can see Brookfields or Koidu Town.

28 Under Rule 67A(ii) the addresses of the named persons  
29 should have been given, not locations, and I shall briefly read



1 Rule 67A(ii) if that is of assistance.

2 PRESIDING JUDGE: No, no, that is all right. But look,  
3 this is, if you are complaining about the towns being named, I  
4 have two things to say: Firstly, this is West Africa, not  
5 London. A lot of these places don't have street names or mail  
6 addresses that everybody in the town knows everybody else in the  
7 town; and the second thing is that there is case law, I can't  
8 remember the name of the case now, that says that the Defence, in  
9 complying with Rule 67, can only do the best it can. It's not  
10 expected to be running around looking for addresses to help the  
11 Prosecution; it can only give the knowledge that it possesses.

12 MR AGHA: I agree with that, Your Honour, excuse me, but it  
13 would appear, from the Prosecution, and I stand to be corrected,  
14 that at least two of these names on this witness -- on this list  
15 have appeared on the 49 names of witnesses already disclosed, and  
16 for which we have been provided summaries. So the Prosecution  
17 would see that there ought not to be, we submit that there ought  
18 to be no reason why addresses could not be provided in respect of  
19 at least those witnesses.

20 PRESIDING JUDGE: Sorry, could you repeat that?

21 MR AGHA: It would seem to the Prosecution, and I stand to  
22 be corrected, that at least two of the names of the witnesses in  
23 annexure A appear also on the original first 49 witnesses  
24 disclosed by the Defence on 10 May for which summaries have also  
25 been filed. So the submission of the Prosecution is perhaps  
26 there ought to be at least greater detail in respect of those  
27 names, unless I am mistaken.

28 PRESIDING JUDGE: We will hear from the Defence in a moment  
29 but you are not accepting -- I take it you do not accept what the

1 Defence says in paragraph 2?

2 MR AGHA: Well, with regard to paragraph 2, I noted that  
3 but I believe if we are right about the names being on the 49  
4 there should be further details in respect of at least some of  
5 these witnesses which could be provided to the Prosecution and  
6 there may very well be a reason which my learned friend can give  
7 as to why not.

8 PRESIDING JUDGE: Needless to say, don't mention any names,  
9 but what numbers are you referring to on annexure A?

10 MR AGHA: We, the Prosecution is of the view that under  
11 annexure A, for Kailahun, at number 2, we believe that appears as  
12 witness 39 on the list under DAB-005. We also believe that  
13 number 7 for Kailahun is witness number 34 on the list appearing  
14 as DAB-028 and, again, we stand to be corrected, but it may be  
15 that for the Kono District witness number 8 is witness number 32,  
16 being DAB-014.

17 And the other point we'd also like to, or submission we  
18 would like to make, regarding this notice, is that the  
19 Prosecution considers that it is still not in compliance with the  
20 rule, in terms of specificity because, as you can see from the  
21 filing, it simply says "1, Kailahun District. The other Kono  
22 District." It's the position of the Prosecution is that this  
23 notice should set out the period in which the accused claims to  
24 have been in Kailahun, including the village because I understand  
25 in this case he alleges to have been there for a number of  
26 months, rather than days. Was he in one village the whole time  
27 or did he move from village to village and what time periods did  
28 he stay there, in respect of each?

29 And likewise for Kono. What areas is this covering of his

1 alibi? Is he saying he was in one village at one particular time  
2 and that Mr X will say, yes, that is true, or did he move to two  
3 or three different villages and which witness will say for each  
4 village?

5 PRESIDING JUDGE: But what I can't understand, Mr Agha, is  
6 why do you jump to those conclusions? If you read Rule 67 the  
7 notification is obliged to specify the place or places at which  
8 the accused claims to have been present at the time of the  
9 alleged crime.

10 Well, if we look, for instance, at the first entry, that  
11 would be Lumley. And the names and addresses of witnesses and  
12 any other evidence.

13 MR AGHA: I may be wrong, Your Honour, and my learned  
14 friends could perhaps guide me, is that I think the first name,  
15 number 1, it gives the name of the person and the location is  
16 where he can be found. That is of the individual, rather than  
17 the place where the accused was at the time, and I stand to be  
18 corrected.

19 PRESIDING JUDGE: We will hear from the Defence on that.

20 MR AGHA: So, essentially, we are saying in terms of  
21 specificity, since we are not talking of a situation where the  
22 accused alleges he was in a place for three days while a crime  
23 was committed, in order for the Prosecution to effectively carry  
24 out its investigations, it really needs more detail as, for  
25 example, where I believe the accused claims to have been during  
26 his alleged I believe four month or so alibi in Kailahun. Was he  
27 just in one place or a number of places?

28 PRESIDING JUDGE: Well, I would imagine the accused are  
29 relying on the sworn evidence of the first accused -- I beg your

1 pardon, the Defence is relying on the sworn evidence of the first  
2 accused, Mr Brima, and I am sure you can get most of those dates  
3 and places and details from that sworn evidence.

4 MR AGHA: Well, if that is the case, then I would like to  
5 hear from my learned friends.

6 PRESIDING JUDGE: I thought that is what this disclosure  
7 was all about; the alibi established in the sworn evidence.

8 MR AGHA: Well, in the sworn evidence there is -- it goes  
9 beyond him being just in Kailahun. It gives details of where he  
10 may have been and at what period.

11 PRESIDING JUDGE: Well, if it gives those details what more  
12 do you want?

13 MR AGHA: But not in the specificity which the Prosecution  
14 is looking for.

15 PRESIDING JUDGE: Well, aren't you bound by the evidence he  
16 set up in his alibi testimony?

17 MR AGHA: Well, I stand guided by Your Honours.

18 PRESIDING JUDGE: Well, let's hear from the Defence.

19 MR GRAHAM: Thank you, Your Honours. Your Honours, in  
20 respect of the specificity of the information required by my  
21 learned friend, I believe Your Honours has said it -- put it  
22 quite rightly because I believe the first accused's own sworn  
23 testimony before this Court contains very clear accounts as to  
24 where he was in Kono District, when he was in Yarya, where he was  
25 and for how long, and I believe from his sworn testimony in  
26 Kailahun it still holds the same.

27 PRESIDING JUDGE: Well, Mr Graham, just so that we make it  
28 clear for the Prosecution, regarding the obligations under Rule  
29 67, to specify, for the Defence to specify the place or places at

1 which the caused claims to have been present at the time of the  
2 alleged crime, you say that you rely on the sworn evidence of --

3 MR GRAHAM: That is so, Your Honour.

4 PRESIDING JUDGE: -- Mr Brima, the first accused.

5 MR GRAHAM: That is so. And, Your Honours, if I may add on  
6 another note in respect of the information my learned friend has  
7 requested regarding the location of the witnesses, I can almost  
8 certainly assure him and, Your Honours, I will be addressing an  
9 issue my learned friend Mr Daniels informed the Court about  
10 yesterday regarding contact with some of our witnesses.

11 We got more information in that regard and I can assure my  
12 learned friend that from the information that we have, it's clear  
13 to us that the Prosecution has no problem at all, in locating  
14 these witnesses who are on the first 49 with the information we  
15 give them, as information coming to us has made very clear.

16 So I think it shouldn't be difficult to locate these  
17 individuals with the information that we've provided the  
18 Prosecution, as indeed on the ground they have located all if not  
19 most of these witnesses. Thank you, Your Honours.

20 PRESIDING JUDGE: All right. Well, there is some more that  
21 you should answer, Mr Graham. I think you've clarified the  
22 concern, the second concern of the Prosecution, but what about  
23 the first matter, where Mr Agha has mentioned three witnesses on  
24 this list who are already on the list of 49, and Mr Agha is  
25 saying you should have a more specific address for at least those  
26 three witnesses.

27 MR GRAHAM: Your Honours, we have no objections to  
28 providing any additional information that assists our learned  
29 friends on the other side in respect of these three witnesses who

1 are already on the summary list of 49 witnesses. We would talk  
2 to our investigators and we would provide them with any  
3 additional information that may assist them. We have no  
4 objections to that, Your Honours.

5 JUDGE DOHERTY: Mr Graham, are you saying that Mr Agha is  
6 indeed correct, that these are already --

7 MR GRAHAM: Yes. Number 2 on annex A for the Kailahun  
8 District, I do confirm is on the list and so is the other names  
9 referred to by my learned friend. I can indeed confirm that.

10 JUDGE SEBUTINDE: I just wanted another clarification:  
11 Under Kailahun District is number 4, witness number 4, the same  
12 as witness number 6 in Kono? Is that one and the same person?

13 MR GRAHAM: I believe so, Your Honours.

14 JUDGE SEBUTINDE: It is one and the same person?

15 MR GRAHAM: Yes, I believe so. I believe so.

16 JUDGE DOHERTY: And 7 and 5?

17 MR GRAHAM: Yes, that is so. I do confirm that, Your  
18 Honours.

19 PRESIDING JUDGE: Well, Mr Graham, regarding those three  
20 particular witnesses, are you saying that at present you cannot  
21 supply an address?

22 MR GRAHAM: I am saying that we can -- our investigators  
23 normally handled that. Since we've had some contact with them, I  
24 believe we should be able to provide some additional information  
25 for them and we will do that. We have no objections at all to  
26 that.

27 PRESIDING JUDGE: Well, when will you do that?

28 MR GRAHAM: Your Honours, all our investigators are out,  
29 every single one, in the Kono District. We will call them and I

1 can't say, hopefully by the end of the day, before 5.00, we  
2 should be able to give them some idea. That shouldn't take long.  
3 We should give them that before 5.00 today.

4 PRESIDING JUDGE: All right. Well, in that vein, paragraph  
5 2 of your notice says investigations are ongoing and we will file  
6 further details of the witnesses provided in annex A as soon as  
7 we've obtained the information.

8 MR GRAHAM: We really do mean that.

9 PRESIDING JUDGE: Well, what other information were you  
10 referring to?

11 MR GRAHAM: Your Honours, I think this is information that,  
12 apart from those whom we have already on our list of 49 persons,  
13 these are additional names that have been given to us by the  
14 first accused in Defence of his case. We got this information  
15 yesterday which we filed and so from our own point of view we are  
16 going to follow up with the new names that have come up to see  
17 whether we can get any additional information in respect of their  
18 specific locations that may assist our learned friends on the  
19 other side. That is what we mean by -- that is what we have  
20 stated in paragraph 2.

21 PRESIDING JUDGE: But at the moment, is this the position:  
22 That you've supplied names and the locations that you presently  
23 have for these people?

24 MR GRAHAM: Yes, Your Honours, that is all we have now.

25 PRESIDING JUDGE: And as far as the place, or places  
26 present at the time of the alibi period, you say that that's to  
27 be found in the sworn evidence of --

28 MR GRAHAM: That is so, Your Honour.

29 PRESIDING JUDGE: All right. Well, does that satisfy you,

1 Mr Agha?

2 MR AGHA: I only have one further comment, Your Honour, and  
3 that is I appreciate the clarification regarding where the  
4 accused were during the period can be found in his sworn  
5 evidence, but the Prosecution would submit that a witness to be  
6 for the given area, should be provided. For example, in  
7 Kailahun, the first accused, I believe, is in Buedu at one  
8 period. He was arrested on the border at one period. He was  
9 then taken to Mike Lamin's house at one period and he was then  
10 with other captured SLAs in the town.

11 So it's the submission of the Prosecution that the name  
12 given should be to which part of his alibi the evidence will be  
13 given, because this is a four month stretch in period, and we  
14 need to investigate whether that person was, indeed, in Kailahun  
15 at that particular time.

16 It may be that he was there for one month but not the one  
17 month in the area we are talking about.

18 PRESIDING JUDGE: I see. So what you are saying is that  
19 these names are not necessarily identifiable from the sworn  
20 testimony?

21 MR AGHA: No. Only one I think has been named in the sworn  
22 testimony, that is as far as I am aware, so we are able to  
23 pinpoint that one, or at least have knowledge of that one, as to  
24 which area of his sworn testimony she will be able to support the  
25 alibi but, with regard to the others, I don't believe, as far as  
26 I'm aware, their names came out in his sworn testimony, so we  
27 wouldn't know to which part of his alibi they would be  
28 supporting.

29 So, for example, I would just give example for Kono. There



1 was a part where he was making his escape with Morris Kallon's  
2 assistant, so, assistance, which is the witness who will give  
3 alibi evidence on that for Kono. On another case in Kailahun, he  
4 said that after he left Buedu Town, I believe, he went into the  
5 town where he was put with other captured SLAs who would be the  
6 witness in Kailahun to say yes, he was there with us other  
7 captured SLAs.

8 PRESIDING JUDGE: I see. I see. Mr Graham, what the  
9 Prosecution is saying, obviously, is that you don't specify on  
10 this witness list which areas or time periods of the alibi these  
11 witnesses can attest to.

12 MR GRAHAM: Your Honours, I must admit I believe these are  
13 fair comments from my learned friend on the other side. As I  
14 said, it's the case of the first accused he gave us this  
15 information yesterday. We are going to move further to request  
16 from the first accused any information that he has in respect of  
17 what my learned friend has just put before the Court. As I said,  
18 I think it's a fair request, and then we would work with the  
19 first accused to see what information we can get from him today,  
20 Your Honours, so that if need be we have any information we will  
21 file that with the Court before 5.00, as I believe this session  
22 today is not going to be long, we should have enough time on our  
23 hands to be able to meet with him in detention, get the relevant  
24 information, and file it before 4.00 today.

25 PRESIDING JUDGE: Well, bear in mind that even if you have  
26 information coming to you after 4.00 or 5.00 it's to be supplied  
27 to the Prosecution. You may not be able to file it until some  
28 time later but the important thing is to get it to the  
29 Prosecution.

1 MR GRAHAM: Thank you, Your Honours, I have taken due note  
2 of that; to be done accordingly.

3 PRESIDING JUDGE: What do you say, Mr Agha? You are happy  
4 with Mr Graham's undertaking?

5 MR AGHA: I am happy with that but I prefer an order that  
6 it be given within a particular period of time because our  
7 investigators now will have to go out into the field and on the  
8 basis of what they have got it makes it very difficult for them  
9 to actually check out the alibi because they don't know which  
10 witness relates to which area, so they will come back to me and  
11 say: Well, what do you expect me to do with this?

12 [The Bench conferred]

13 PRESIDING JUDGE: All right. Mr Graham, we'll -- firstly,  
14 we appreciate what you've said and your efforts to comply as  
15 fully as you can. We were thinking of an order to provide those  
16 details by 4 p.m. Monday, which would give you the weekend to  
17 work on it.

18 MR GRAHAM: Your Honour, we believe that is fair. We have  
19 no objections.

20 PRESIDING JUDGE: All right. Well, do you want it spelt  
21 out chapter and verse, Mr Agha?

22 MR AGHA: If you could just make a brief order, Your  
23 Honour, that would be fine.

24 PRESIDING JUDGE: Well, correct me if it's not in the terms  
25 you want it, but the details of the -- relating to annex A of the  
26 confidential Brima Defence alibi notice, pursuant to Article  
27 67A(ii), which was filed on 3 August 2006, further details as to  
28 the place or places which each of these proposed witnesses can  
29 attest to, in relation to the alibi, is to be provided by the

1 Defence to the Prosecution by 4 p.m. on Monday, 7 August; does  
2 that cover it, Mr Agha?

3 MR AGHA: Yes, I believe so, Your Honour. Perhaps we could  
4 put in in near as possible to the time periods in which they were  
5 with him.

6 PRESIDING JUDGE: And as near as possible to the time  
7 periods, if you can.

8 JUDGE SEBUTINDE: Mr Agha, isn't that in the sworn  
9 evidence?

10 MR AGHA: No, Your Honour, I actually think the one name I  
11 mentioned came out in cross-examination. There are -- I don't  
12 believe any names of who he was with was in the sworn evidence.

13 PRESIDING JUDGE: Well, the second prong of that order,  
14 Mr Graham, is the time periods as near as possible. If it's not  
15 possible, of course, then your --

16 MR GRAHAM: We believe that will be --

17 PRESIDING JUDGE: -- you can only do the best you can.

18 MR GRAHAM: I believe that would be stretching the bow a  
19 little bit longer. Your Honours, I believe that information is  
20 sufficient. We may probably risk having to get the accused to  
21 essentially also give new evidence, I don't know, but I  
22 believe this is adequate.

23 PRESIDING JUDGE: No, I see your point there, but I'm  
24 assuming Mr Agha is only referring to time periods as already  
25 sworn in the evidence, and if there is no time period sworn, you  
26 can't file documents giving evidence that has never been sworn in  
27 the alibi.

28 MR GRAHAM: Yes. Your Honours, we will try our best to  
29 provide the information requested, having in mind what my learned

1 friend has also submitted before the Court. But to have it set  
2 in an order I think would be probably asking too much of us at  
3 this point in time. I believe giving the place or places each  
4 witness plans to attest in relation to the alibi, I think that  
5 will contain sufficient information to assist our learned friends  
6 in their undertakings.

7 PRESIDING JUDGE: Mr Agha, we find that order, if you are  
8 going to name specific times, because of the nature of the  
9 evidence given by Mr Brima, that is almost impossible to put into  
10 words or in force. So I think the original order will be that  
11 the Defence provide the Prosecution with the place, or places,  
12 that each of these witnesses in annex A can attest to regarding  
13 the alibi Defence before 4 p.m. on Monday, 7 August.

14 Now, once you get those, Mr Agha, it's a matter for you to  
15 identify those, if you can, from the sworn evidence, and it may  
16 be a matter of asking for further details, but I would suggest to  
17 you that if you can't identify the times from the sworn evidence,  
18 having been given the places that these witnesses will attest to,  
19 then the Defence won't be able to do so either, without calling  
20 further evidence.

21 MR AGHA: My only initial point, Your Honour, is where,  
22 let's say the accused says he was in let's say Buedu, that we  
23 would want to know whether the witness would say yes, I was there  
24 with him the whole time or I was only in Buedu for one day,  
25 because it makes a difference.

26 PRESIDING JUDGE: Well, I think you have to be guided by  
27 the testimony there.

28 MR AGHA: Yes.

29 PRESIDING JUDGE: I see. You're saying that you can't tell

1 that from Mr Brima's testimony?

2 MR AGHA: No. Well, he may indicate he himself was in a  
3 certain place for roughly two months but will the witness who is  
4 going to back him up on that say that he can confirm he was there  
5 for two months or will the witness just say I saw him there for  
6 one week?

7 PRESIDING JUDGE: Well, I think you are going to be bound  
8 by the witness's evidence, aren't you?

9 MR AGHA: I stand guided by the Court, Your Honour.

10 PRESIDING JUDGE: Yes. The order is limited to providing  
11 the places in respect of these, in respect of which these  
12 witnesses will attest to the alibi of the accused Brima. We will  
13 make an order that that be supplied to the Prosecution by 4 p.m.  
14 Monday, 7 August. I understand from you, Mr Graham, that that  
15 won't present much difficulty for you?

16 MR GRAHAM: That is so, Your Honours.

17 PRESIDING JUDGE: All right. Thank you. Is that the close  
18 of business or did you indicate you had one more thing to bring  
19 up, Mr Graham?

20 MR GRAHAM: Yes, Your Honours, without not actually  
21 requesting any order or application for this Court but just to  
22 update you on what my learned friend told you, informed the Court  
23 yesterday, regarding contact that had been made by the OTP with  
24 our witnesses in Kono. Indeed, we've got further information,  
25 we've confirmed. We've got names of the OTP investigators and  
26 the persons with whom he came with and we will be filing a proper  
27 report before this Court. Our investigators are coming in on  
28 Saturday and we hope to get all the information that we need in  
29 respect of this matter and then we will act accordingly, in that

1 respect. That is what I have to say.

2 PRESIDING JUDGE: Well, we don't have any particular  
3 specific information, but if I could just pass this comment:  
4 From what Mr Daniels said yesterday it seems to me that some  
5 criminal offences have been committed. If that is the case they  
6 should be put in the hands of the local authorities to  
7 investigate and if necessary bring charges.

8 MR GRAHAM: Yes. And, indeed, we did ask them to file a  
9 formal complaint with the police in the district where this  
10 happened but, because of the nature of the matters, I am saying  
11 we want to be cautious. I want to be cautious and get all the  
12 information before we move beyond that point. We just wanted to  
13 apprise the Court of the latest development.

14 PRESIDING JUDGE: Well, I understand that, Mr Graham. I  
15 should emphasise that what I just said is predicated on the facts  
16 that Mr Daniels has told the Court being established first, of  
17 course.

18 MR GRAHAM: Your Honours, thank you.

19 MR AGHA: Your Honours, if I may kindly ask that we be  
20 provided with some details of the persons involved so that we can  
21 also look into it from our end. If I can request my learned  
22 friend Mr Graham?

23 PRESIDING JUDGE: Well, I am sure, Mr Graham, you realise  
24 the Prosecution would be very concerned about this matter  
25 themselves, and would like to look into it. So could you kindly  
26 supply them with copies of details that are given to you?

27 MR GRAHAM: Yes, Your Honours, we will do so.

28 PRESIDING JUDGE: I think we will wait for the report. I  
29 would presume that there will be some complaints about breaching

1 the protective measure orders as well, but we will wait until you  
2 get full details and leave the matter in your hands. When I say  
3 your hands, I mean the Defence hands, as to what specific action  
4 you are going to bring.

5 MR GRAHAM: Your Honours, I also wanted to inform my  
6 learned friends on the other side, I believe our expert military  
7 report will be filed some time today. I am just informing them  
8 as a follow-up to the commitments we made the day before  
9 yesterday. We would be filing the latest expert report today.

10 PRESIDING JUDGE: All right. Thank you, Mr Graham. All  
11 right. We are going to adjourn now. I know you will be working  
12 over the recess but we wish you a happy recess anyway and we will  
13 be adjourning until 9.15 a.m. on Monday, 4 September.

14 MR MANLY-SPAIN: Yes. Before Your Honours leave, we, on  
15 this side the accused and ourselves, Defence counsel, wish you  
16 have a happy and restful vacation. That is not only the Bench  
17 but our colleagues on the other side and the Court staff. We  
18 hope that when we come back we will continue in the manner in  
19 which we have been going. Expect we will hope for lesser and  
20 lesser applications for orders by Mr Agha. Thank you.

21 MR AGHA: I also wish to express the same sentiments as my  
22 learned friend on the other side to the Bench and the learned  
23 Defence counsel and all Court members, of course.

24 PRESIDING JUDGE: Well, thank you. We give our thanks for  
25 the very kind words of counsel and our appreciation of the spirit  
26 in which this trial is being conducted. We will adjourn now  
27 until 4 September.

28 [Whereupon the hearing adjourned at 10.07 a.m.,  
29 to be reconvened on Monday, the 4th day of

1                                   September 2006, at 9.15 a.m.]  
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