



Case No. SCSL-2003-01-T

THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
CHARLES GHANKAY TAYLOR

THURSDAY, 7 MAY 2009  
9.30 A.M.  
TRIAL

TRIAL CHAMBER II

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Before the Judges:

Justice Richard Lussick, Presiding  
Justice Teresa Doherty  
Justice Julia Sebutinde  
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr William Romans  
Mr Simon Meisenberg

For the Registry:

Mr Gregory Townsend  
Ms Advera Kamuzora  
Ms Rachel Irura

For the Prosecution:

Ms Brenda J Hollis  
Mr Mohamed A Bangura  
Ms Maja Dimitrova

For the accused Charles Ghankay  
Taylor:

Mr Morris Anyah  
Ms Salla Moilanen

1 Thursday, 7 May 2009

2 [Open session]

3 [The accused present]

4 [Upon commencing at 9.30 a.m.]

09:32:04 5 PRESIDING JUDGE: Good morning. The parties may have been  
6 advised that we are not going to have the benefit of LiveNote  
7 apparently. Well, as I speak I see LiveNote appearing on my  
8 screen and so I have had contrary advice on that.

9 In any event, we will take appearances first please.

09:32:40 10 MS HOLLIS: Good morning Mr President, your Honours,  
11 opposing counsel. Appearing today for the Prosecution are  
12 Mohamed A Bangura, Maja Dimitrova and myself, Brenda J Hollis.

13 MR ANYAH: Good morning Mr President, good morning your  
14 Honours, good morning counsel opposite. Appearing for the  
09:32:59 15 Defence this morning are myself, Morris Anyah, and our case  
16 manager Ms Salla Moilanen. Thank you, Mr President.

17 PRESIDING JUDGE: Yes, thank you.

18 Well, one preliminary matter. We've had very late notice  
19 from Mr Anyah that he intends to apply orally for the Trial  
09:33:23 20 Chamber to revisit its decision of last Monday in which it set a  
21 hearing date for 29 June.

22 Now, Mr Anyah, before you go into any merits, what we would  
23 like to know is this. Is this application based on new facts  
24 that have arisen since Monday and could not have been put to us  
09:33:52 25 on Monday, or is it simply based on arguments that should have  
26 been put on Monday but for one - should have been put to us on  
27 Monday but for one reason or another were not?

28 MR ANYAH: Thank you, Mr President. Initially I would  
29 indicate that I have confirmed with learned counsel opposite,

1 Ms Brenda Hollis, that they have in fact received the email I  
2 sent last night about this matter.

3 In the first instance I apologise on behalf of our team for  
4 the lateness of the email, but your Honours will appreciate the  
09:34:32 5 fact that Mr Griffiths left The Hague on the 4th, headed back to  
6 Freetown and we crossed en route whilst I was coming to The Hague  
7 and it took some time for us to consult with each other as well  
8 as with Mr Taylor.

9 Having said that, with respect to the matter raised by your  
09:34:55 10 Honour, Mr President, the basis for our application is different  
11 in many respects from issues raised by Mr Griffiths on Monday.  
12 These are not necessarily issues that could not have been raised  
13 on Monday, but because of the manner in which Monday's hearing  
14 evolved and comments made by Her Honour Justice Sebutinde in her  
09:35:23 15 dissenting opinion we gave further reflection to some of those  
16 issues and we had to research some prior Special Court cases to  
17 get indeed the specific date in which certain orders were issued  
18 vis-a-vis when a Defence case ought to commence. So that  
19 research effort, in conjunction with consultation between counsel  
09:35:46 20 and with Mr Taylor, generated what I would propose are four  
21 grounds upon which we seek reconsideration of your Honours'  
22 order.

23 I would just add this. We don't make this request lightly.  
24 We appreciate the fact you gave due consideration to the issues  
09:36:05 25 even before your Honours rendered your decision on Monday, the  
26 4th. In fact, you had indeed indicated on 9 April that you would  
27 in fact proclaim and put forth a date on which the Defence case  
28 ought to start on 4 May.

29 So we know your Honours gave thoughtful and careful

1 consideration to the issue, but we come in seeking  
2 reconsideration having considered the significant effect that a  
3 start date of 29 June would have on the smooth --

09:36:46 4 PRESIDING JUDGE: Well, Mr Anyah, I am sorry to interrupt  
5 you, but I feel you are starting to go into the merits of your  
6 oral application. Now, the question I asked you was put for this  
7 purpose. Unless there is some reason why we should depart from  
8 the normal practice of a dissatisfied party applying for leave to  
9 appeal, then that is the road down which we are going to go.

09:37:14 10 Now one of the reasons we could depart from that normal  
11 practice is if there were facts that were not known to the  
12 Defence on Monday when our decision was made but have  
13 subsequently become known, but if in fact the basis of your oral  
14 application now is simply because there are arguments that could  
09:37:40 15 have been put on Monday but have not been put, or there are  
16 arguments that arise out of our decision, then that surely is a  
17 matter that should be the subject of an application for leave to  
18 appeal.

19 MR ANYAH: Thank you, Mr President. We appreciate the  
09:37:56 20 distinction. There is one fact that came out in Monday's hearing  
21 that we feel was significant that we had to apply our minds to.  
22 That is the comment by your Honour, Mr President, that the Court  
23 does not intend to have a recess in conjunction with the ICC  
24 recess. Your Honour indicated --

09:38:16 25 PRESIDING JUDGE: Well are you saying, Mr Anyah, that that  
26 is the first time you knew of that?

27 MR ANYAH: Well, that is the first time the Court formally  
28 pronounced on that. We had heard behind the scenes that this was  
29 a strong possibility, but Monday was the first time your Honours

1 formally pronounced in a public setting that this would be the  
2 course adopted by the Court. That came as a surprise of sorts,  
3 in particular the date in October which your Honour suggested  
4 might be the time whereabouts a recess might be taken.

09:38:51 5 PRESIDING JUDGE: I am sorry, but I think you are going off  
6 the track here, Mr Anyah, because I specifically remember stating  
7 that very fact to Mr Griffiths in the midst of his submissions,  
8 he didn't make any arguments as to why that would affect the  
9 hearing date whatsoever and now as an afterthought perhaps you  
09:39:14 10 have come along here today and you have some arguments. Those  
11 arguments should have been put on Monday and, in my view, the  
12 Defence had plenty of time to put those arguments. So, do you  
13 have any other reasons as to why we should go down the road of  
14 reconsidering our decision on Monday?

09:39:38 15 MR ANYAH: Well I will just say this, Mr President. Your  
16 Honours have an extraordinary amount of discretion in this area.  
17 We could proceed as your Honour has suggested by way of an  
18 application for leave to appeal but, given the interests of all  
19 parties to expedite the course of proceedings in this case, that  
09:39:56 20 would only actually have the effect of slowing things down  
21 further.

22 It seems to us - and it's general practice, both  
23 internationally and domestically - that a party may move the  
24 Chamber orally to reconsider a decision that it has rendered.

09:40:17 25 PRESIDING JUDGE: Yes, on proper grounds, that's quite  
26 correct.

27 MR ANYAH: And while it is the case that some of the issues  
28 that we proposed to advance today may have in conjunction with  
29 Monday's hearing been raised by Mr Griffiths, your Honour would

1 appreciate the fact that we needed some time to reflect properly  
2 on all that was said in Court on Monday and we also needed some  
3 time to do some research to have our facts and records factually  
4 correct vis-a-vis the time frames that have been set by other  
09:40:48 5 Chambers, including your Honours, in other cases before the  
6 Special Court.

7 PRESIDING JUDGE: But we did not use any time frame set in  
8 other cases for our decision, Mr Anyah. That wasn't one of the  
9 things that you could have argued as to why our decision may have  
09:41:05 10 been wrong, or why our decision may need to be revisited. It  
11 wasn't given as any basis for our decision.

12 MR ANYAH: I appreciate that, Mr President, but I would  
13 respectfully suggest that due consideration might be had to the  
14 general practice before the Trial Chambers of this Court and it  
09:41:25 15 is something that properly could be laid for your Honours for  
16 their consideration.

17 PRESIDING JUDGE: Thank you, Mr Anyah. Before we  
18 deliberate, Ms Hollis, did you have anything you wanted to reply  
19 to?

09:41:40 20 MS HOLLIS: Thank you, Mr President. Very briefly, Defence  
21 counsel has raised nothing new that would be a basis for  
22 reconsideration.

23 As to the issue of specific dates in other cases, you may  
24 recall that by the letter dated 26 March of this year on page 3  
09:42:00 25 one of the bullet points that the Defence put forward is that the  
26 delay requested in this case is less than in other cases, so the  
27 Defence must have - or should have - had in mind what those  
28 delays were and so could have argued that on Monday.  
29 Nonetheless, the delay that is to be given in each case is a case

1 by case consideration that doesn't rely on other cases.

2 In terms of considering the significant effect that the  
3 start date would have, again the letter that was presented by the  
4 Defence was an argument about the effect that it would have and  
09:42:40 5 Defence counsel certainly must have had that in mind Monday when  
6 he was making his representations and, if he chose not to expand  
7 on that argument, that doesn't become a new matter.

8 In terms of the comment by the Presiding Judge that the  
9 Trial Chamber had in mind not to take the August recess, the  
09:43:01 10 Prosecution filed or presented a letter in response to the  
11 Defence letter and in that letter the Prosecution stated that it  
12 understood it was possible there would be no August recess and,  
13 in fact, the Prosecution would request there be no August recess.  
14 So again the Defence was on notice of this as a possible issue,  
09:43:22 15 could have taken it up and chose not to do so on Monday and so  
16 it's not a basis for reconsideration today.

17 We suggest they have provided no basis for reconsideration  
18 and should then pursue the leave to appeal, realising of course  
19 they have three days from the decision to file such a leave.

09:43:42 20 Thank you.

21 PRESIDING JUDGE: Thank you. Anything you wish to reply  
22 to, Mr Anyah?

23 MR ANYAH: No, I think I have covered most of the points  
24 raised by learned counsel.

09:47:11 25 [Trial Chamber conferred]

26 PRESIDING JUDGE: The Trial Chamber has considered the  
27 arguments of the Defence in support of its application for the  
28 Trial Chamber to reconsider its decision of last Monday in which  
29 it fixed a hearing date for the commencement of the Defence case

1 as 29 June. The Trial Chamber has also considered the response  
2 by the Prosecution.

3 In the Trial Chamber's opinion the Defence has not  
4 presented any new facts, or any change of situation, which would  
09:47:59 5 justify the Trial Chamber revisiting and/or reconsidering its  
6 opinion of last Monday and we decline the Defence application.

7 However, we do not wish to leave the Defence without access  
8 to a remedy. We note that the time for applying for leave to  
9 appeal expires today, so we now make an order extending that time  
09:48:40 10 to next Monday, which is 11 May, as the limit for the Defence to  
11 file any such application for leave. When I refer to Monday, I  
12 mean close of business next Monday, 11 May.

13 MR ANYAH: We are grateful, Mr President. Thank you, your  
14 Honours.

09:49:07 15 PRESIDING JUDGE: Yes, thank you, Mr Anyah.

16 Now, this status conference is concerned with the  
17 requirements under Rule 73 ter of the Rules of Procedure and  
18 Evidence. Today, after hearing from the parties, we will decide  
19 what must be filed by the Defence prior to the pre-Defence  
09:49:42 20 conference and we will also establish a deadline for the filing  
21 of the information and documents required under Rule 73 ter.

22 Unless the parties have any particular procedure in mind, I  
23 thought it wise first to call on the Prosecution to indicate to  
24 the Defence what it would be asking to be filed pursuant to Rule  
09:50:17 25 73 ter prior to the pre-Defence conference. Do you have any  
26 objection to that procedure, Mr Anyah?

27 MR ANYAH: Mr President, it would seem to us that perhaps  
28 another way of proceeding would be to have the Defence heard  
29 first vis-a-vis the requirements of the Rule and when in our view



1 we think we would be able to comply with any orders imposed by  
2 your Honours.

3 PRESIDING JUDGE: Well, yes, I'm not saying that is not a  
4 good idea, Mr Anyah, but the fact of the matter is how can you  
09:50:58 5 say when you will be able to comply with an order made by us when  
6 we won't know what order to make unless we know what the Defence  
7 is asking for? I am presuming that the Defence may not stick  
8 strictly to the provisions of Rule 73 ter, but I take it you want  
9 to make a submission on a general basis?

09:51:25 10 MR ANYAH: Not necessarily, your Honour. Your Honour, the  
11 rule states what ought to be produced and there is a significant  
12 element of discretion given to the Trial Chamber vis-a-vis other  
13 specifics not expressly delineated in the rule but, given the  
14 prior discussion leading to this point and a trial date having  
09:51:50 15 been fixed on the 29th, I think we might expedite matters by  
16 explaining what we would be in a position to produce and when we  
17 would be able to do so.

18 PRESIDING JUDGE: All right, thank you. All right, we will  
19 hear first from you, Mr Anyah, then.

09:52:20 20 MR ANYAH: Thank you, Mr President. The rule, as your  
21 Honours are familiar with, requires certain matters that we have  
22 to comply with pursuant to order by the Trial Chamber before the  
23 pre-Defence conference is held.

24 Rule 73 ter (B) (i) calls for a statement of "Admissions by  
09:52:40 25 the parties and a statement of other matters which are not in  
26 dispute". Your Honours will recall that on 26 April 2007 the  
27 parties in this case filed a joint statement of admitted facts  
28 and law. This was in relation to the Prosecution's obligations  
29 under a similar rule leading up to the pre-Prosecution status

1 conference.

2 In this instance I do not think that there will be  
3 additional facts and law that the parties would be in agreement  
4 with, so I don't think there is any need to produce any  
09:53:20 5 additional statement vis-a-vis this particular provision of Rule  
6 73 ter. Yes?

7 PRESIDING JUDGE: Sorry, Mr Anyah, please continue.

8 MR ANYAH: Thank you, Mr President. With respect to (ii),  
9 "A statement of contested matters of fact and law", your Honours  
09:53:46 10 will recall the arguments we made leading up to your ruling on  
11 the Rule 98 submissions. Those submissions made by both sides  
12 illustrate the differing views we have about this case and it is  
13 unlikely that whatever we file will differ significantly from  
14 submissions made vis-a-vis our Rule 98 submissions.

09:54:13 15 With respect to the list of witnesses we intend to call, at  
16 Monday's hearing Mr Griffiths suggested - somewhere in the  
17 transcript I recall reading it - that we might be in a position  
18 to comply by the end of May with this requirement.

19 I think we would be in a position to do so, to give a list  
09:54:33 20 of the witnesses we intend to call by the end of May, with the  
21 caveat that we have filed yesterday a motion before your Honours  
22 seeking protective measures for certain categories of witnesses  
23 and, subject to the outcome of that motion, it is noteworthy that  
24 most of the names on the list of our witnesses might very well be  
09:54:59 25 listed under pseudonyms to the extent that your Honours grant  
26 that application.

27 That brings us to subsection (a) of (iii), "The name or  
28 pseudonym of each witness". I state in this respect again that  
29 we should be able to comply by the end of May.

1 With respect to subsection (b) of (iii), "A summary of the  
2 facts on which each witness will testify", I also think we will  
3 be able to comply with that by the end of May.

09:55:36 4 The same would hold through for subsection (c), "The points  
5 in the indictment as to which each witness will testify", and  
6 likewise subsection (d) as to "The estimated length of time  
7 required for each witness".

09:55:53 8 The area where we will have difficulty would be the list of  
9 exhibits in the sense that the volume of documents we have to  
10 digest and process, in particular those being obtained through  
11 witnesses we are currently speaking to and witnesses we expect to  
12 speak with through 29 May when our team will conclude most of its  
13 work in the field - I am speaking of the lawyers now in Freetown  
14 and elsewhere - it will be very difficult for us to put together  
09:56:20 15 a very comprehensive list of exhibits at any time before some  
16 time in June, almost around the time of the Defence conference,  
17 and so that would be a significant burden on us.

09:56:45 18 I am not speaking of exhibits that necessarily may apply to  
19 the testimony of particular witnesses. I am just talking of a  
20 straight delineation of all the exhibits we intend to introduce.  
21 That poses particular difficulties for us at this point.

22 So those would be my indications about what we can produce  
23 and when we can produce them vis-a-vis the requirements of Rule  
24 73 ter. Thank you.

09:57:05 25 PRESIDING JUDGE: Thank you, Mr Anyah. Ms Hollis?

26 MS HOLLIS: Mr President, we appreciate the information  
27 provided by the Defence and we certainly take no issue with the  
28 comments that have been made by the Defence, including the timing  
29 of the provision of materials pursuant to that sub rule (B).

1 In terms of the list of documents, we also appreciate the  
2 difficulties the Defence are having and the resources they are  
3 expending and we have no issue with that.

09:57:51 4 We would make one request and that is that on Monday lead  
5 Defence counsel spoke to you about taking time with the accused  
6 about his testimony and also about the very numerous exhibits  
7 which would be admitted through the accused. I believe that this  
8 was on page 24212 of the transcript.

09:58:29 9 Given in mind that the Defence we would take from those  
10 comments must have in mind some of the exhibits at least they  
11 will use with their first witness, the accused, we would ask that  
12 notice of those exhibits be given at the very earliest possible  
13 moment so that the Prosecution would be able to prepare for the  
14 first witness whose testimony would begin around 29 June, one  
09:58:49 15 would anticipate.

16 In addition to that the Prosecution would ask that the  
17 Trial Chamber also exercise its discretion, which is provided to  
18 it under sub rule (B), to order the Defence to provide the Trial  
19 Chamber and the Prosecutor - we would ask simply that they  
09:59:10 20 provide the Prosecutor - with copies of the written statements of  
21 each witness the Defence intends to call at the time they would  
22 call the witness for direct examination. We say this keeping in  
23 mind that, in our view, the Defence will act in good faith and  
24 give us a very concise and comprehensive summary of what the  
09:59:31 25 witness will testify to.

26 We do not believe that that would infringe on any rights to  
27 the accused in that the witness is being called to testify, so it  
28 is no longer privileged, and any statements they may have given  
29 would then become relevant in terms of testing the evidence of

1 the witness and weighing the credibility of the witness. So we  
2 would ask for that.

3 In addition, we would ask that at the pre-Defence  
4 conference the Defence indicate what experts it may intend to  
10:00:01 5 call and give information relating to the areas of expertise in  
6 that regard.

7 Those would be the only additional comments that the  
8 Prosecution would have.

9 PRESIDING JUDGE: Yes, thank you, Ms Hollis. Yes,  
10:00:16 10 Mr Anyah?

11 MR ANYAH: It would seem that with leave of Chamber if I  
12 could respond it might expedite matters to the three specific  
13 issues raised by Ms Hollis. With respect to exhibits that may be  
14 used in conjunction with Mr Taylor's testimony, Mr Griffiths has  
10:00:34 15 made public statements - and I believe before your Honours as  
16 well - that Mr Taylor will likely be on the witness stand for  
17 several weeks. Mr Taylor has sat through the proceedings for a  
18 significant length of time and will exercise his right under Rule  
19 85 (C) to be heard. That will take some time.

10:00:55 20 Your Honours will appreciate the fact that at the beginning  
21 of this case when the new Defence team was appointed we were in  
22 possession of several boxes of documents, specifically the  
23 documental archives of Mr Taylor, and at the time the figure of  
24 boxes we had was somewhere about 18 to 20.

10:01:13 25 Even if, your Honours, we were to eliminate some of those  
26 documents, the bulk of the exhibits in our case will actually  
27 come through the accused and it's a significant number, so asking  
28 us to delineate the specific exhibits that we will use in  
29 conjunction with Mr Taylor's testimony we submit is the same as

1 asking us to give you a comprehensive list of our exhibits. In  
2 sum and substance, that is the effect that doing so would have.

3 As I have said previously, this is one particular aspect of  
4 Rule 73 ter that poses a significant problem for us. I cannot in  
10:01:53 5 good faith say when exactly we will be able to comply. Of course  
6 we would be subject to any orders your Honours pronounce.

7 With respect to the second issue about copies of written  
8 statements, the law of the Special Court controls this issue I  
9 would submit. It is in the rare case that the Prosecution is  
10:02:14 10 entitled to receive the statements of witnesses. It is not in  
11 Rule 73 ter. It gives your Honours discretionary authority to  
12 order it, but the presumption is that they will receive summaries  
13 of a witness's statement.

14 The principal case on this issue is the Norman et al case  
10:02:32 15 and the standard enunciated there is a twofold standard. The  
16 Prosecution actually has to demonstrate by a prima facie standard  
17 that it would either face undue or irreparable prejudice should  
18 it not receive statements made by Defence witnesses. The  
19 decision on that case was given on 21 February 2006, Prosecutor v  
10:02:58 20 Norman et al, the case number SCSL-0114T.

21 It is not a matter of right that enures the Prosecution to  
22 receive Defence witness statements. There is no correlative rule  
23 vis-a-vis the reciprocal disclosure provisions calling for the  
24 Prosecution to disclose witness statements to the Defence. There  
10:03:20 25 is no correlative rule asking the Defence to do the same with  
26 respect to the Prosecution. So in order for them to receive the  
27 statements, your Honours, they have to make the showing. It is  
28 not for us to disclose those statements without them making the  
29 appropriate showing.

1 With respect to the last point raised by counsel I think in  
2 conjunction with the pre-Defence conference and the list of  
3 expert witnesses, Rule 94 bis lays the bare minimum of 21 days  
4 within which we are to tender the statement of experts and the  
10:03:58 5 matter or field of expertise that they will be testifying about.  
6 That is the barest minimum.

7 The rule does say the earliest as is possible, your Honours  
8 have to presume we are acting in good faith and to the extent we  
9 are able to do so we will do so in the earliest possible manner  
10:04:17 10 as called for by the rule, but there is a floor in that rule - I  
11 mean as in F-L-0-0-R - vis-a-vis the deadline when we are to  
12 comply with its requirements and that is 21 days before the  
13 witness is called to give evidence. It doesn't have to be at the  
14 pre-Defence conference. It could very well be in the middle of  
10:04:40 15 the Defence case. So that is my submission in respect to that  
16 request by learned counsel opposite.

17 PRESIDING JUDGE: All right, thank you.

18 MS HOLLIS: Mr President, may I just clarify one matter?  
19 It does relate to the rule itself.

10:04:51 20 PRESIDING JUDGE: Yes, go ahead

21 MS HOLLIS: Rule 94 bis, talking about expert witnesses,  
22 doesn't say they don't have to give the name of the expert  
23 witness. It says the statement of the expert witness should be  
24 given 21 days before they would testify. There is nothing in  
10:05:08 25 there to indicate that the name doesn't have to be given before  
26 that date. Thank you, Mr President.

27 PRESIDING JUDGE: Thank you. Just so that I've got the  
28 present position of the parties clear, the bulk of the Rule 73  
29 ter requirements mentioned by Mr Anyah - and there were a few

1 exceptions, but the bulk mentioned by Mr Anyah - the Defence  
2 anticipates it could produce by the end of May. Is that correct?

3 MR ANYAH: That is what Mr Griffiths indicated on Monday  
4 and it is what I indicate today. That's correct.

10:06:05 5 PRESIDING JUDGE: And while you are on your feet, Mr Anyah,  
6 Mr Griffiths also indicated on Monday that he would be quite  
7 happy with a pre-Defence conference taking place on or about 8  
8 June and I gather that is still the Defence position, is it?

9 MR ANYAH: It is, Mr President, subject to the reservations  
10:06:27 10 I attempted to make this morning that we have reflected on things  
11 and we have consulted with Mr Taylor. If we were to make that  
12 submission today I doubt that Mr Griffiths would request 8 June,  
13 but logically counting backwards from 29 June, when your Honours  
14 have set for our case to commence, our hands are essentially tied  
10:06:53 15 because that leaves only about three weeks before our case  
16 commences. Perhaps an ideal point might be two weeks before the  
17 commencement of our case. That has given us an additional extra  
18 week from 8 June to have the pre-Defence conference.

19 PRESIDING JUDGE: All right. Just before we deliberate,  
10:07:16 20 Ms Hollis, the production of the matters mentioned by Mr Anyah,  
21 or most of them - we are not talking about the list of exhibits  
22 now, but most of them - he anticipates the end of May. Would  
23 that be a suitable date for you?

24 MS HOLLIS: Yes, Mr President, it certainly would. We  
10:07:37 25 would also note that in relation to exhibits he said that the  
26 Defence would not be able to put together - it would be difficult  
27 for them to put together a very comprehensive list of exhibits at  
28 any time before some time in June, almost around the time of the  
29 Defence conference, and so he has also addressed that timing



1 issue.

2 PRESIDING JUDGE: Well, we need to deliberate and I had in  
3 mind, but I will discuss this with my colleagues, that perhaps  
4 the production of a list of exhibits could be scheduled for later  
10:08:13 5 than production of the other matters; for instance scheduled for  
6 the pre-Defence conference itself.

7 I might add here that the Trial Chamber is quite aware that  
8 the Defence have filed a protective measures motion and obviously  
9 that motion is going to need to be decided before other items are  
10:08:41 10 ordered to be produced by the Defence, because obviously the  
11 Defence will need to know whether it has to produce the names or  
12 just the pseudonyms of the witnesses and so that is a matter we  
13 will take into account as well. Just pardon me for one moment.

14 [The Trial Chamber conferred]

10:10:07 15 Mr Anyah, I'm sorry, if you are taking essential  
16 instructions now I will not interrupt and I will give you time,  
17 but if those instructions can wait for a few moments. We are  
18 just about to adjourn and draft up some orders, but before we do  
19 there are just two questions we need you to answer, if you can.  
10:10:33 20 The first one is what is the anticipated length of the Defence  
21 case?

22 MR ANYAH: Initially, before the core members of our team  
23 went to West Africa to actually undertake some field work, we  
24 thought our case would be quite expedited.

10:10:57 25 Now that we have been on the ground, and bearing in mind  
26 the recent decision by the Appeals Chamber on 1 May 2009 in  
27 respect of the joint criminal enterprise issue, the number of  
28 witnesses that we anticipated calling has grown significantly.  
29 Mr Griffiths I believe in public statements and elsewhere had

1 suggested that we were considering somewhere in the vicinity of  
2 75 or so witnesses, but as I stand before your Honours I can say  
3 that that number has perhaps grown by as much as 50 per cent and  
4 so we are looking at the vicinity of 100 or so witnesses that we  
10:11:39 5 are considering. So the length of our case if you extrapolate  
6 from that and given the previous estimate of somewhere around  
7 nine months, or six to nine months, the length of our case may  
8 very well extend up to a year.

9 PRESIDING JUDGE: Yes, all right, thank you. The second  
10:12:07 10 question is I am quite sure you are aware of Rule 84 under which  
11 each party may make an opening statement. It's not obligatory on  
12 the Defence, but are you able to indicate at this stage that when  
13 the Defence case does open there will in fact be a Defence  
14 opening statement?

10:12:28 15 MR ANYAH: May I consult with Mr Taylor about that?

16 PRESIDING JUDGE: Certainly.

17 MR ANYAH: Thank you for accommodating my request to  
18 consult with our client. Yes, I am in a position to say that we  
19 will be giving an opening statement prior to the opening of the  
10:13:55 20 Defence case.

21 PRESIDING JUDGE: All right, thank you, Mr Anyah. Well, we  
22 are going to just briefly adjourn and we will come back with some  
23 orders.

24 [Break taken at 10.15 a.m.]

11:15:42 25 [Upon resuming at 11.15 a.m.]

26 PRESIDING JUDGE: Having heard the oral submissions of the  
27 parties and considering Articles 17(4) (b) and (c) of the Statute  
28 and Rule 73 ter of the Rules of Procedure and Evidence, the Trial  
29 Chamber orders as follows:

1           1. Order for expedited filing. The Prosecution must file  
2 a response, if any, to the Defence's urgent Defence application  
3 for protective measures for witnesses and non-public materials  
4 which was filed on 6 May on or before close of business on  
11:16:52 5 Tuesday, 12 May 2009. The Defence must file a reply, if any, by  
6 close of business on Friday, 15 May 2009.

7           2. The Defence shall file the following materials on or  
8 before close of business on Friday, 29 May 2009:

9           (1) A list of witnesses the Defence intends to call,  
11:17:27 10 including the names or pseudonyms of each witness;

11           (2) A summary of facts on which each witness will testify;

12           (3) The points in the indictment as to which each witness  
13 will testify;

14           (4) The estimated length of time required for each  
11:17:57 15 witness;

16           (5) A list of the names of any expert witnesses and their  
17 areas of expertise.

18           Order 3. The pre-Defence conference pursuant to Rule 73  
19 ter is set down for 9.30 a.m. on Monday, 8 June 2009.

11:18:33 20           Order 4. The Defence shall file a list of exhibits the  
21 Defence intends to tender, stating where possible whether or not  
22 the Prosecution has any objections as to authenticity, on or  
23 before the pre-Defence conference on 8 June 2009.

24           It can be seen from these orders that the Trial Chamber has  
11:19:08 25 rejected the Prosecution's request for the Defence to provide the  
26 Prosecution with copies of each statement of the witness the  
27 Defence intends to call at the time the Defence calls the witness  
28 on direct examination.

29           The basis for this decision is the Trial Chamber's decision

1 in the AFRC case on 11 July 2006 at pages 115 and pages 116,  
2 where the Trial Chamber held that there is no blanket right for  
3 the Prosecution to see the Defence statement of a Defence  
4 witness. The Prosecution has the power only to apply for  
11:19:58 5 disclosure of a statement after the witness has testified with  
6 the Trial Chamber retaining the discretion to make a decision  
7 based on the particular circumstances of the case at hand.

8 Well having found that, unless the parties have any further  
9 matters to raise we adjourn this case to the pre-Defence  
11:20:26 10 conference on Monday, 8 June 2009 at 9.30 a.m.

11 [Whereupon the hearing adjourned at 11.20 a.m.  
12 to be reconvened on Monday, 8 June 2009 at 9.30  
13 a.m.]

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