

1 International Criminal Court

2 Pre-Trial Chamber I - Courtroom 1

3 Judge Cuno Tarfusser

4 Situation in Darfur, Sudan - ICC-02/05-03/09

5 In the case of The Prosecutor v Abdallah Banda

6 Abakaer Nourain and Saleh Mohammed Jerbo Jamus

7 Tuesday, 13 July 2010

8 Status Conference

9 (The hearing starts at 3.00 p.m.)

10 (Open session)

11 THE COURT OFFICER: All rise. The International Criminal
12 Court is now in session. Please be seated.

13 JUDGE TARFUSSER: Good afternoon. As always, for the record,
14 I would like to ask the parties and participants to introduce themselves,
15 starting with the Prosecutor.

16 MR OMOFADE: Good afternoon, your Honour. With respect,
17 the Prosecution this afternoon is represented by Miss Shyamala
18 Alagendra, trial lawyer; Jennifer Schense, international cooperation
19 adviser; Victor Baiesu, associate trial lawyer; Desiree Lurf, associate
20 trial lawyer; and myself, Ade Omofade, trial lawyer.

21 JUDGE TARFUSSER: Thank you. Mr Khan, please.

22 MR KHAN: Good afternoon, your Honours, and everybody in
23 and around the courtroom. Mr Jerbo is represented by Abeer Hasan to
24 my left, legal assistant. And Mr Banda is represented by legal
25 assistant Andrew Burrow, case manager Anand Shah, and both by myself,

1 Karim Khan.

2 JUDGE TARFUSSER: Thank you, Mr. Khan. The Registrar,
3 please.

4 MS DAHURON-JACOBY: (Interpretation) Good afternoon,
5 your Honour. The Registry is represented by Uros Mijuskovic, counsel,
6 and myself, Charlotte Dahuron, chief of CMS.

7 JUDGE TARFUSSER: As you know, I convened this hearing trying
8 to find out if everything is started in the disclosure procedure and
9 if everything is going smoothly. I would like to ask every -- the
10 Prosecutor and the Defence and the Registry if they have some problems
11 to raise and, therefore, I would like to give the floor to the Prosecutor
12 first.

13 MR OMOFADE: Your Honour, I'm grateful. Pursuant to your
14 Honour's order on disclosure, the Prosecution is able to report that,
15 so far, the disclosure process, at least from our point of view, has
16 progressed rather well.

17 On the 8th of this month - on Thursday to be precise - the
18 Prosecution filed, firstly, disclosed to the Defence of Mr Jerbo and
19 Mr Banda, the materials referred to in your Honour's decision.
20 Basically, what those were, were the materials that had already been
21 disclosed in the Abu Garda case.

22 What we had done before that was to review those materials
23 so as to ensure that we were not providing the Defence of Mr Banda
24 and Mr Jerbo with material that we thought was unnecessary. Some of
25 that material happened to be translations that had been provided to

1 Mr Garda in Arabic, which we thought, based on the initial appearance
2 in this case, was unnecessary to be provided to the Defence in this
3 case.

4 We also sifted out a number of excessive summaries that have
5 no bearing on this particular matter. So, the answer to your Honour's
6 question as to whether the disclosure process has progressed, we made
7 that disclosure on the 8th; we filed the corresponding communications
8 to the Registry and to your Honours on the 9th.

9 Now, I understand that sometime today, that there might have
10 been some technical difficulties encountered by the Registry in
11 uploading some of the material that was provided to them by the
12 Prosecution in the form of a DVD.

13 A couple of hours before we walked into the courtroom, I
14 understand, however, that these difficulties might now have been
15 resolved. Subject to what representatives of the Registry might want
16 to add on this, it's my understanding that these matters have been
17 resolved for now. So in answer to your Honour's question, those are
18 our submissions.

19 JUDGE TARFUSSER: Yes, I'm aware about technical problems
20 which have been ongoing until this afternoon, I think, and now I think
21 they should be resolved but we hear about that from the Registry.

22 Could you tell us how you intend to proceed with the disclosure
23 proceeding in the next few days or weeks?

24 MR OMOFADE: Indeed, your Honour, I might be able to provide
25 some guidance. What the Prosecution proposes now to do,

1 having -- having disclosed the material that overlapped with the Abu
2 Garda case, is to now consider certain witness statements in our
3 possession that are subject to protective measures but protective
4 measures that could be dealt with by way of redactions.

5 We, at the moment, have identified six of such witness
6 statements, two of which I believe my friend, Mr Faal, mentioned on
7 the last occasion. These are statements that were not hitherto
8 disclosed to the Defence in the case of Abu Garda.

9 What we propose to do is to make a discrete filing to your
10 Honours on or before 20 July requesting the necessary redactions,
11 pursuant to Rule 81(2) and 81(4). Now, having hopefully obtained your
12 Honour's consent to those redactions, we hope to be in a position to
13 disclose those six statements, possibly even more, certainly before
14 the end of July.

15 So the answer to your Honour's question is: We will make
16 a discrete filing on or before 20 July and, subject to those redactions
17 being granted, we will be able to disclose imminently
18 after -- thereafter.

19 Might I also add that amongst those statements that we intend
20 to make a discrete filing about there happened to be two individuals
21 whose identity we had sought previously to have redacted. Those
22 individuals are now witnesses for the Prosecution. What we, therefore,
23 propose to do is to also be making an application for redactions
24 concerning those individuals to now be lifted. I mention this because
25 it may well have a bearing on the material already disclosed to my

1 friend for the Defence, in which case we might have to re-disclose
2 with those redactions lifted, subject to, of course, your Honour's
3 decision.

4 So that, in a nutshell, is the next step we propose to take
5 from the Prosecution's point of view.

6 JUDGE TARFUSSER: If I've understood correctly, all the
7 evidence which is common with the Abu Garda case is now disclosed and
8 all -- from now on, all the new -- all the evidence you will disclose
9 is new evidence.

10 MR OMOFADE: That is correct, your Honour.

11 JUDGE TARFUSSER: Okay. Thank you very much, Mr Omofade.
12 Mr Khan.

13 MR KHAN: I'm grateful, your Honour. Perhaps, with
14 your Honour's leave, I do ask that this disclosure hearing be dealt
15 with, with your Honour's permission, by Abeer Hasan. She's a -- on
16 the list of legal assistants before the Court and is a qualified attorney
17 from Canada. Your Honour, I wonder if you can indulge us.

18 JUDGE TARFUSSER: Most grateful.

19 MR KHAN: Great.

20 MS HASAN: Your Honour, we don't take -- the Defence doesn't
21 take any issue with the technical difficulties that we
22 encountered -- that were faced uploading the documents onto Ringtail,
23 and we're satisfied that the Prosecution has disclosed, pursuant to
24 your order of 29 June, those documents that they intend to rely on
25 at this confirmation hearing, those documents that were previously

1 disclosed in the Abu Garda case.

2 There are a few other matters with respect to disclosure
3 from this point onwards and, in particular, relating to the new
4 statements and new witnesses that we pay particular attention to and
5 wish to focus on. There are actually a couple of other categories
6 of documents that would still be disclosable, and we would seek some
7 clear deadlines in regards to those.

8 If I may just start with the deadlines for applications for
9 redactions of documents, and I would separate those into two broad
10 categories: Those statements and transcripts that arise or that were
11 previously disclosed in the Abu Garda case, and then a second category
12 of those statements and/or transcripts that have yet to be disclosed.

13 Within the first category of the Abu Garda
14 statements/transcripts, just to first deal with the transcripts
15 themselves, if there are such transcripts to be disclosed, we would
16 seek clear deadlines in respect to applications for the redactions
17 of those transcripts. We know from a confidential Prosecution
18 application that was filed on 11 August 2009 in the Abu Garda case,
19 the merits of which I'm not going to get into, just simply to say that
20 there were three witness -- interviews of witnesses, those transcripts
21 which seem to have already been provisionally redacted. So the work
22 has been done already in respect to some of the witnesses. It's not
23 clear to the Defence what the status is of the remaining
24 transcripts - interview transcripts - and whether or not the Prosecution
25 is intending to rely on them, in any case, but some work seems to be

1 done.

2 Now, in Abu Garda, the deadline -- the Prosecution was given
3 about a month-and-a-half to make applications for redactions of
4 transcripts and in this case, because some of this work has already
5 been completed, we don't think a month-and-a-half would be necessary
6 but, rather, abridge that time, given that a good amount of that work
7 has been completed.

8 In addition, it seems, from the Prosecution's submissions
9 at the last status conference, that, in fact - and this applies to
10 both transcripts and statements arising out of the Abu Garda case - that
11 they have gone beyond the stage of provisionally redacting them and
12 are now determining the appropriateness of the redactions in
13 consultation with the victims' unit. So it looks like the Prosecution
14 has already come a long way and there's really not much standing in
15 the way of these applications, aside from, I can only assume, completing
16 the discussions with victims' unit and then just right away bringing
17 those applications. So in that case we would seek that in respect
18 to any statements or transcripts arising from the Abu Garda case, that
19 early deadlines be set, that there's no need to wait for those.

20 As regards the new statements that the Prosecution has just
21 referred to, the 20 July deadline that the Prosecution suggests seems
22 to be appropriate, in our view. However, we have some question about
23 the Prosecution suggests that there's a minimum of six statements and
24 it would certainly be helpful to know, well, how many more are we talking
25 about?

1 Okay. And then there is also the question of applications
2 for redactions or, may I say, amendments or changes to already previously
3 approved redactions, and perhaps a deadline in respect of those
4 applications should be set.

5 Just a couple of other matters that we want to raise. There
6 were approximately six documents that the Prosecution has received
7 under Article 54(3)(d) that they submitted at the last status conference,
8 that they're endeavouring to lift the confidentiality that applies
9 to them, and we submit that it may be helpful to get some sense of
10 what progress has been done in that respect. What's the status of
11 those documents?

12 In addition to the Rule 77 documents, there is -- there are
13 some limited use agreements that were entered into by the Prosecution
14 and some or all of the witnesses in the Abu Garda case that we have
15 now formally requested from the Prosecution. We have been advised
16 that those statements of limited use, or agreements of limited use,
17 will be provided to us when the transcripts of the interviews are
18 disclosed. Having thought about that, the rationale for delaying the
19 provision of these limited use statements until that time is not clear.
20 Perhaps we can get some clarification on why there needs to be this
21 delay and, if there is no basis for the delay, then we would suggest
22 that they be provided forthwith.

23 Then in respect of -- right. Just to return to that matter
24 on limited use agreements, just to refer back to the Abu Garda case,
25 the reason we've actually requested these statements, and we expected

1 to -- we expect to receive them without any difficulty from the
2 Prosecution, is that in Abu Garda they, the Prosecution, submitted
3 that they're willing to do so should the Defence request their disclosure.
4 And if I can just provide the reference.

5 This was made in the Prosecution's final observations dated
6 16 November 2009, document ICC 02/05-02/09 at paragraph 82, and it
7 is there that the Prosecution agreed to provide the agreements of limited
8 use upon the request of the Defence.

9 And then just one final matter which relates to the
10 Prosecution's obligations under Article 67(2) and Rule 77. Whereas
11 we're not -- we have no issue at the moment with any of the disclosure
12 made by the Prosecution pursuant to your order, there are continuing
13 obligations that perhaps may not be -- that were not encompassed by
14 the order that continue to apply, and these are the Article 6 exculpatory
15 evidence and the Rule 77 materials. And the reason that we raise these
16 continuing obligations is that -- and it may be that the Prosecution
17 intends to imminently disclose such documents, but we know from the
18 Abu Garda case, for instance, that there are some victims' applications
19 that ask questions about whom the victim considers is responsible for
20 the attack on Haskanita. Now, such a question would elicit an answer
21 that would certainly be relevant to the preparation of Defence under
22 Rule 77 at least in accordance with the Appeals Chamber's understanding
23 of that provision, pronouncement, on what that provision means, or
24 at least under Article 67(2) as exculpatory.

25 So it's just that there are such materials that would fall

1 within the scope of Rule 77 or 67(2) that have not been disclosed yet,
2 we expect that they will be, and just raise that to get -- perhaps
3 get the Court to enjoin the Chamber -- enjoin the Prosecution to do
4 so. Those will be all the matters, your Honour. Thank you.

5 JUDGE TARFUSSER: Thank you very much. Just to say that
6 I think the Chamber set quite, until now, quite strict and early deadlines
7 to the Prosecution. So I think we will continue trying to get a very
8 smooth disclosure procedure, and then I will give the floor to the
9 Prosecutor to follow up these questions you raise. But before that,
10 I would like just -- give the floor to the Registrar for the details
11 on technical issues and whatever the Registrar has to say about it.
12 Thank you.

13 MS DAHURON-JACOBY: Yes, your Honour. (Interpretation)
14 Thank you, your Honour. (No interpretation) I wish to first confirm
15 the summary made by the Prosecutor relating to the technical issues
16 that were encountered.

17 Today all has been resolved thanks to both greater activity
18 from the Prosecutor in providing new CDs and also the great work from
19 the technical services themselves. And everything is ready for release,
20 so it's in fact only pending release by the Office of the Prosecutor.

21 So at the latest I expect today COB or tomorrow morning all
22 the material should be accessible via Ringtail to the Chamber as well
23 as to the Defence. This is all.

24 JUDGE TARFUSSER: Thank you very much. And now I give the
25 floor back to the Prosecutor.

1 MR OMOFADE: Your Honour, I'm grateful. I note the issues
2 raised by my friend for the Defence, and might I start by referring
3 to what your Honour just said, that strict deadlines have been -- strict
4 and rather tight deadlines have been imposed on the Prosecution so
5 far.

6 The first of those deadlines, there appears to be no
7 difficulty with us having met it. I note that my friend then refers
8 to a number of other matters, the first of which appears to be the
9 issue of transcripts, an issue in a deadline within which we should
10 disclose transcripts to the Defence.

11 As my friend and indeed your Honour will recall from the
12 last hearing, the Prosecution's position was that it may well be that
13 we will seek to rely on transcripts of certain witnesses for the
14 confirmation hearing. The position as it is now is that the protective
15 measures that are sought for the witnesses who provided those
16 transcripts go well beyond mere redactions. These are issues that
17 are being discussed in conjunction with the Victims and Witnesses Unit.
18 Some of them are making what we consider to be quite good progress;
19 some of them are slightly beyond.

20 The position is, and we did mention this to your Honour,
21 that the Prosecution intends at some point to seek a discrete and ex
22 parte hearing in which we'll provide your Honour with an update on
23 the progress as regards those witnesses, and subsequently of course
24 the transcripts. So the simple response is: The use and therefore
25 the disclosure of any transcripts is entirely contingent on whether

1 or not sufficient protective measures can be put in place. So the
2 question as to whether or not we provide transcripts and a deadline
3 for that, we suggest will be quite pointless.

4 The other issue that my friend appeared to raise is the issue
5 of the further statements that we have now said we will be making an
6 application to your Honour for, for redactions. I believe the point
7 that my friend raised was that beyond those six statements that I've
8 referred to - and I did indicate it could well be more - that beyond
9 that, they want to know how many more statements.

10 Well, the response is we continue our investigations.
11 Article 61(4) permits us to do so. I cannot well give -- project ahead
12 as to how many more statements will be collected. What we can undertake
13 to do is - for all the statements that we've obtained so far that do
14 not require protective measures other than redactions - to make
15 applications to your Honour within a certain timeframe, which we have
16 given, and to disclose to the Defence. And there'll be no reason
17 obviously for us to hold onto them, once we have obtained your Honour's
18 sanction as to what redactions may apply.

19 As regards the issue of the Article 54(3) -- I believe my
20 friend said 54(3)(d); I do believe she was referring to 54(3)(e) material.
21 It is true that in the Abu Garda case an application -- rather, a
22 notification I believe was filed indicating that certain Article
23 54(3)(e) material was collected and was sought to be replied upon.

24 What we also did in that case, however, is that we provided
25 analogous material to the Defence, and my recollection is that we did

1 so in a chart identifying the material collected and the relevant
2 alternatively material. A similar filing, I believe, was made to the
3 Chamber.

4 The position as it was then is as is now, the Article 54(3)(e)
5 material remains. The alternative material that we suggested in the
6 Abu Garda case has already been disclosed to my friends as part of
7 the bundle that they have received. The Prosecution as always continues
8 its efforts with the various providers to seek a lifting of these
9 restrictions, and we continue to do so. Should that happen, we will
10 obviously provide the necessary material to the Defence and to the
11 Chamber. That hasn't occurred now. We're unable to provide the
12 material.

13 Your Honour, I believe my friend also referred to the
14 statements of limited use. What I do recall my friend saying, though,
15 is that the Prosecution undertook in the Abu Garda case that upon request
16 of the Defence -- and I believe I'm quoting what she quoted, upon the
17 request of the Defence, the Prosecution will provide such material.
18 This is an entirely different case. There has been no such request
19 from the Defence, to my knowledge, in the Banda/Jerbo case. If there
20 has been, it's not to my knowledge.

21 Indeed, if such a request is made, we are in a position to
22 provide the material. There appears to be no difficulty with it as
23 it was then, and we have no difficulty with it now. So it may well
24 be a matter that can be resolved between both Prosecution and the Defence.

25 The final matter that I think is a brief one, that my friend

1 raised, is the disclosure -- is the disclosure of -- I beg your Honour's
2 pardon. The disclosure of victims' applications. And I agree with
3 my friend, there may well be relevant information that could well assist
4 the Defence in such applications. However, it's not entirely for the
5 Prosecution to disclose victims' applications to the Defence.
6 Obviously, it will have to be subject to an application to your Honours,
7 which your Honours will look at in the light of protective measures
8 and the safety and security of those victims.

9 So your Honours, once such an application is made, we may
10 or may not well have a view on whether it's disclosed, but I really
11 advise that first the application ought to be made and we'll take matters
12 from there.

13 Subject to any questions from your Honour, those are our
14 submissions.

15 JUDGE TARFUSSER: Thank you very much. I just want to ask
16 the Defence if they're satisfied or if they've something else to add?

17 MR KHAN: Your Honours, we are a very easily satisfied Defence
18 team. We always try to be amenable, but there are a few observations
19 perhaps that I would ask to make.

20 The first arises out of the initial submission by my learned
21 friend when he referred to the fact that deadlines have been issued
22 by your Honour and those deadlines have been honoured and have been
23 respected. Your Honour, that simply states that they have fulfilled
24 their purpose; they have focused their minds so far in relation to
25 the first tranche of disclosure.

1 And what we're asking is that similar clearly identifiable
2 deadlines be issued for the future. The fact that the last deadline
3 has been so properly met and easily met by my learned friends opposite
4 gives us great confidence that future deadlines set by your Honour
5 will be similarly met and allow us to proceed properly. So your Honour,
6 deadlines are helpful.

7 Your Honour, on 24 June - going to one of the last points - a
8 formal request was made of the Prosecution for full disclosure of any
9 and all agreements pertaining to statements of limited use. And the
10 only reason why the referenced Abu Garda is relevant is the response,
11 as I understand it - I wasn't at that meeting - but the response was
12 that we will get those statements once the Prosecution gives us the
13 transcripts.

14 Well, your Honours, there's no merit in my respectful
15 submission for linkage. If they were able in Abu Garda to give us
16 those statements of limited use and they deal with the same witnesses,
17 I would ask that a deadline be issued that those statements of limited
18 use be provided with due dispatch and without delay. There's no reason
19 to make it contingent upon receipt of transcripts.

20 Your Honour, I do hear what my learned friend says in relation
21 to the protective issues and full transcripts. Of course one is
22 sympathetic and alive to the realities in the field and any difficulties
23 that a witness may have, but, your Honour, the Prosecution is presumably
24 aware at this point of the witnesses and the evidence that it is intending
25 to rely upon in this case.

1 We have, in my respectful submission, an overriding right
2 to get that at the soonest possible moment, to allow us to effectively
3 prepare. So your Honours, if for example -- and my focus throughout
4 in these proceedings, as intimated on the last status conference, was
5 particular focus on the new evidence, the new witnesses, the new
6 statements or the new summaries or the new transcripts of witnesses
7 that we know nothing about.

8 So if in relation to one of those in particular the Prosecution
9 have concerns about redactions to the transcript and wider witness
10 protection issues, I would ask that at the very least they provide
11 us summaries without delay at an early specified deadline.

12 Of course, they can be enhanced, they can be supplemented
13 by full transcript once proper witness protection measures are in place,
14 but the witness protection issue cannot be used as a device, as an
15 argument to prevent disclosure which is necessary for the effective
16 preparation of a defence.

17 Your Honours, in my respectful submission, the compromise
18 put forward that the Prosecution be ordered to give us summaries of,
19 for example, witness transcripts or witness statement, whilst
20 simultaneously they are trying to put in effective witness protection
21 measures, is one that should cause the Prosecution no real difficulties,
22 nothing that is insurmountable, and it would be consistent with our
23 right to get the evidence at an early and timeous moment.

24 Your Honour, my learned friend has repeated today what was
25 said on the last occasion, that at some point the Prosecution will

1 seek to make an ex parte hearing and make some discrete and ex parte
2 submissions. Your Honours, again I would ask that perhaps a deadline
3 be put in relation to that or, if not a deadline, if that's perhaps
4 asking too much, at least a period of time is given and the Prosecution
5 are told by this date any ex partes that can be readily anticipated
6 at this moment, the one for example that he has in mind, those matters
7 can be brought before the Bench, and your Honour can decide those and
8 so we get a ruling.

9 But again there, at some point in the fullness of time, as
10 soon as possible, and ever as effective as a specific date and so,
11 your Honour, I would ask that perhaps a specific date would help guide
12 the Prosecution in its endeavour to fulfil its disclosure obligations.
13 Your Honour, that's all I have to say. I'm grateful.

14 JUDGE TARFUSSER: I don't know if the Prosecution wants to
15 reply, as I think.

16 MR OMOFADE: Your Honour, it's a brief matter. If it assists
17 my friend - and I see that there's some insistence on the disclosure
18 of transcripts - if it assists my friends, all of the transcripts that
19 the Prosecution is unable to disclose at this point have protective
20 measures related to them that go well beyond redactions. Of the six
21 statements that I mentioned we intend to file before the Chamber on
22 or before 20 July one of them, in fact, happens to be in transcript
23 form.

24 Incidentally, that one transcript happens to be the
25 transcript of a summary that was already disclosed to my friend in

1 the Abu Garda case. So what we propose to do -- and we are constantly
2 reviewing matters within the Office of the Prosecutor, and so the
3 suggestion that to gain some tactical advantage the Prosecution is
4 holding back on disclosing transcripts at this stage, is quite misplaced.
5 So that's the only matter I think I ought to respond to, your Honour.

6 MR KHAN: And, your Honour, with your leave, the only point
7 I must record is there's no suggestion, I haven't made any suggestion
8 at all that there's any impropriety involved on the part of the
9 Prosecution. I'm not saying at this moment at all that there's any
10 endeavour to use the disclosure -- the flexible disclosure regime for
11 tactical advantage.

12 My submission was quite clear, I thought. The real interest
13 of the Defence is getting the new information in particular at the
14 earliest possible moment and I am flexible, your Honour, and I would
15 be grateful to receive it in any form. If my learned friend states
16 that there are witness protective issues that require logistical
17 implementation from the Victims and Witnesses Unit, I understand that.
18 My primary submission was simply this: That in relation for those
19 witnesses for whom redaction does not afford sufficient protection,
20 the Prosecution can provide us summaries so at least we get a flavour
21 of the new evidence that may inform our investigations and our response
22 and so that we do not waste time. That, to me, seems a proportionate,
23 reasonable and quite achievable imposition on the Prosecution.

24 JUDGE TARFUSSER: Well, I think that the Prosecution has
25 the right and the obligation to continue investigations, to do its

1 job, and I think that the Defence has the right and the obligation
2 to prepare properly the Defence and I think that, further, that the
3 obligation of the Chamber and the Judges to try to find the compromise
4 between those two rights and obligations which sometimes may also
5 conflict, of course, and that's what we are going to do and that's
6 what the status conferences are made for.

7 So, I think -- I really invite the OTP to try to put forward
8 the procedure of disclosure of evidence all the time when there is
9 something prepared to be disclosed and can be disclosed, to disclose
10 it, so that we don't arrive on the deadline, which is 30 -- or 22 October,
11 or 20 October, as it was quite in the Abu Garda case.

12 So I just try to push both parties to find the right way
13 to do it smoothly in respect of the rights and the obligations both
14 of you have.

15 If there is nothing else, you know that any time you can
16 come to the Chamber, to the Single Judge, to ask for a status conference,
17 in ex parte or not.

18 Mr Omofade, do you want to add something?

19 MR OMOFADE: Your Honour, the only reason I rise is the one
20 outstanding matter from the last hearing is one that was raised by
21 the Prosecution and is relating to the issue of language.

22 My friend did promise to obtain instructions from his clients
23 as to the appropriateness of at least the proposals we made. I don't
24 know if he was also minded to come up with proposals of his own. This,
25 for obvious reasons, has a bearing on the disclosure process. So while

1 at the moment we are disclosing in English, we could well encounter
2 a further obstacle further down the line.

3 So my concern is that at least this issue be considered by
4 my friend and, even if not today, at least some response be made either
5 to the Chamber or to the Prosecution.

6 I'm grateful, your Honour.

7 JUDGE TARFUSSER: That was a point I had appointed but had
8 forgot to raise, but this is really a very important point. We should
9 deal with it very soon because it makes, creates some problems. It
10 could create some problems.

11 MR KHAN: Indeed, your Honour. In fact, it was on our list
12 as well, so we all overlooked it.

13 Your Honour, we have considered the matter and we are prepared,
14 in principle, to be as flexible as we can. What does that mean?

15 What we will definitely require translations of are all the
16 statements of witnesses that the Prosecution wishes to call, either
17 viva voce or by way of statement or summary. That's where they should
18 focus their attention, and there's no reason for any delay. They do
19 not need at this moment to focus their attention on external reports,
20 international monitoring reports, Human Rights Watch reports, open
21 source material. They can for the moment focus simply on the witnesses
22 they are intending to put forward to the Bench in their bid to get
23 these cases confirmed. Once we have got -- and I think that's enough
24 for them to be going on with. Once we've got the full disclosure,
25 we'll be in a better position to say whether or not we need more, but

1 I don't anticipate we will need more than that. I hope that's
2 the limit of it. We don't need other reports, other newspaper articles
3 and the like. It's simply the witnesses that they are seeking to call.
4 Of course, that's without prejudice to my right if, in the course of
5 my preparation, I take the view that more is needed, I do maintain
6 the right to require the Prosecution to discharge its obligations under
7 the Statute in a strict manner, if the Bench is minded to rule that
8 way, but at the moment I don't envisage that a very work-to-rule process
9 by the Defence is the order of the day, is going to be necessary, and
10 we can be flexible.

11 Your Honour, as far as the logistics are concerned, I put
12 forward -- think I put forward - at least, it was discussed at the
13 last hearing - a proposal that the Prosecution use their interpreters
14 and prepare digital files of those statements or those interviews.
15 Some of those interviews in fact, I don't know, some of those transcripts
16 may, in fact, have been in Zaghawa, may originally have been in Zaghawa;
17 I know not. And if that's the case, then the only possible issue would
18 be one of voice identification for witnesses for whom the Prosecution
19 has sought protective measures, but at least the translation would
20 have been done. And in relation to those witnesses - of course it's
21 a matter for my friends, not for me - perhaps an easy way of doing
22 it is simply to get somebody to do a voice-over of what is said and
23 we can start with those. They will be not final translations, they
24 will not be Court-approved translations, as it were; they are
25 translations done in the field. But they may be sufficient for our

1 purposes. So I think let's start in a spirit of cooperation, in a
2 spirit of reasonableness. Hopefully, it will take us all the way.
3 But I can really do no more than that.

4 Your Honour, I hope I have been clear.

5 JUDGE TARFUSSER: I think so. I think, if I've understood,
6 that all the statements must be translated in Zaghawa, and for all
7 the other evidence or documents could be -- but you reserve your right
8 at the end of the -- when you have the list of evidence.

9 MR KHAN: Yes. And, at the moment, I don't foresee that
10 I will require, or the clients will require, those documents. So,
11 hopefully, what I'm asking for at the moment will see us all the way
12 through to the end of the confirmation hearing.

13 JUDGE TARFUSSER: Yes. Can I just add something. From the
14 statements, and I'm speaking about the Abu Garda statements, it is
15 not clear, it doesn't emerge clearly, if any and how many, if any,
16 statements are original in Zaghawa. It seems to be three of them,
17 probably, interpreting the statement, three of them that are original
18 in Zaghawa, so there shouldn't be big problems at least for the three.

19 MR OMOFADE: Your Honour, I note my friend's observation
20 and it would in reality make matters somewhat quicker. The difficulty
21 is, and I'm consulting as I speak to you, my understanding is none
22 of them were in Zaghawa, but I go well beyond that and say, even if
23 they were in Zaghawa, the ones that my friend seems still to be focusing
24 on are those that were obtained pursuant to Article 55(2). These are
25 the same transcripts that we are having difficulties with as regards

1 redactions. So the slight difficulty appears to be, we haven't sought
2 at the moment to rely on the transcripts themselves because of the
3 protective issues that are involved.

4 What my friend has, of those particular statements, is the
5 summaries. So if anything were to be done at this stage anyway, what
6 would need to be read digitally in Zaghawa would actually be the summaries
7 rather than the transcripts themselves. But I have to say it does
8 help that my friend has given us a heads-up on at least the genre of
9 material that he thinks might be helpful to have translated. It may
10 well be that we have to work our way through those witness statements
11 that do not have all the difficulties regarding protection attached
12 to them, but it's just to at least alert everyone that it may well
13 be that the actual transcript statements will be the last in line in
14 the scheme of things, because of the protective issues and whether
15 or not redactions are involved.

16 Those are the submissions.

17 JUDGE TARFUSSER: But of course, if, at the end of the day,
18 I mean, the statements must be handed out, translated in Zaghawa, that's
19 the right of the Defence. I mean, there's no doubt about that.

20 MR OMOFADE: That's correct, your Honour, yes.

21 JUDGE TARFUSSER: Right.

22 MR KHAN: Your Honour, we are trying to assist as much as
23 we can and it may be at some point of course there's friction between
24 us. But I hope it would assist the Prosecution even further.

25 If it is more onerous, if it requires more work for the

1 Prosecution to give us full transcripts that they are relying
2 upon in Zaghawa, perhaps this will help: That the Prosecution perhaps
3 can simply give summaries of all the witnesses, summaries in Zaghawa,
4 of all the witnesses and, your Honour, if they make a conscience and
5 good faith attempt to reproduce the important elements for example
6 in a transcript that will be sufficient.

7 I may take the view that that is sufficient for the discharge
8 of their obligations under the Statute. So, your Honours, instead
9 of a full transcript line-by-line, perhaps in relation to all the
10 witnesses, if the Prosecution can simply try to get us a summary, in
11 Zaghawa, of all the witnesses.

12 The key point: My clients are simple people. The real point
13 is they have a right to know what's being alleged against them and
14 the nuances of that, I am very prepared to sit down and speak to them
15 about but at the very least the Prosecution should give us, by Dictaphone,
16 a summary in Zaghawan of all the witnesses that they are calling and
17 in summary form perhaps it's an easier and more achievable way of
18 proceeding.

19 Your Honour, I hope that is helpful.

20 JUDGE TARFUSSER: I think that is very fair, I would say.

21 MR OMOFADE: Your Honour probably noted me nodding. And
22 it does seem a fair suggestion by my friend. What might also assist
23 is for us to liaise with Mr Khan outside the Court and see where, how,
24 what progress can be made in this regard as well. I'm grateful, your
25 Honour.

1 JUDGE TARFUSSER: Do so but more progress than this I think
2 it's not very possible, I would say.

3 So, if there are no other issues, I think we could stop here
4 this status conference. I don't know if there is a need for another
5 status conference before the recess. We could, if you want already,
6 schedule a status conference for the end of August, if you think so,
7 if you agree, and I would say -- but we have not the schedule of the -- on
8 26 August, in the afternoon, is this okay?

9 So, I'll get the okay from the court officer. So we, from
10 now on we fix the next status conference for 26 August at 3 o'clock
11 in the afternoon, p.m., if that is okay for you, with the same calendar
12 as this one, just to find out if everything is going smoothly and has
13 improved, and if there is something in the meantime you come up to
14 the Chamber, the Single Judge with written submissions. Is that okay?

15 MROMOFADE: With the Prosecution, that is okay, your Honour.

16 JUDGE TARFUSSER: Okay. Thank you very much.

17 MR KAHN: Indeed it is, thank you.

18 JUDGE TARFUSSER: Thank you very much. So therefore, this
19 status conference is closed. Thank you very much. Thank you to
20 everybody.

21 THE COURT OFFICER: All rise.

22 (The hearing ends at 3.56 p.m.)