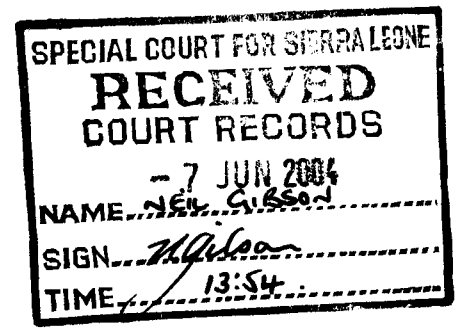


Prosecutor v. Norman, Fofana and Kondewa Case No. SCSL-2004-14-PT

**SPECIAL COURT FOR SIERRA LEONE**

Before: Judge Benjamin Mutanga Itoe, Presiding Judge  
Judge Bankole Thompson  
Judge Pierre Boutet  
Registrar: Robin Vincent  
Date: 7 June 2004



**THE PROSECUTOR**

**Against**

**SAMUEL HINGA NORMAN, MOININA FOFANA and ALLIEU KONDEWA**

CASE NO. SCSL-2004-14-T

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**JOINT REQUEST OF SECOND AND THIRD ACCUSED FOR LEAVE TO  
APPEAL AGAINST DECISION ON PROSECUTION'S MOTION FOR  
JUDICIAL NOTICE**

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Office of the Prosecutor:

Luc Côté  
James C. Johnson  
Charles Caruso

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Michiel Pestman  
Arrow J. Bockarie  
Victor Koppe

Defence Counsel for Allieu Kondewa

Charles F. Margai  
Yada H. Williams  
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Susan Wright

Defence Counsel for Sam Hinga Norman:

James Jenkins-Johnston

Prosecutor v. Norman, Fofana and Kondewa Case No. SCSL-2004-14-PT

## **Introduction**

1. The Defence for Mr. Moinina Fofana (the “Second Accused”) and the Defence for Allieu Kondewa (the “Third Accused”) hereby file this joint Request for Leave to Appeal against Decision on Prosecution’s Motion for Judicial Notice (the “Request”)
2. The Decision on Prosecution’s Motion for Judicial Notice and Admission and Evidence was rendered on 2 June 2004 (the “Decision”). In this Decision, the Trial Chamber took judicial notice of several “facts” listed in Annex I to the Decision, and a number of documents listed in Annex II.
3. Neither Defendant objects to the legal reasoning<sup>1</sup> of the Trial Chamber or the criteria<sup>2</sup> it formulated to identify facts of common knowledge, as mentioned in Rule 94(A) of the Rules of Procedure and Evidence (the “Rules”). According to the Trial Chamber facts can only qualify for judicial notice if they meet all of the following criteria:
  - (a) the facts are relevant to the case against the Accused person;
  - (b) the facts are not subject to reasonable dispute;
  - (c) the facts do not include any legal findings or characterisations; and
  - (d) the facts do not attest to the criminal responsibility of the Accused.
4. The Second Accused and Third Accused (the “Defendants”) respectfully disagree with other aspects of the Decision.
5. The Trial Chamber failed to take into consideration the response of the Second Accused to the Motion for Judicial Notice and Admission of Evidence, which the

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<sup>1</sup> Decision, paras. 15-30.

<sup>2</sup> Decision, para. 32(iv).

Prosecutor v. Norman, Fofana and Kondewa Case No. SCSL-2004-14-PT

Prosecution filed on 2 April (the “Motion”). The Chamber declined to take into consideration the response of the Third Accused, as a result of its late filing.<sup>3</sup>

6. It is further submitted that the Trial Chamber wrongly applied the criteria for the determination of facts of common knowledge. Some of the “facts” in Annex I to the Decision are not of common knowledge. The same is true for the contents of some of the documents included in Annex II (II).
7. The Defendants submit that leave to appeal should be allowed by the Trial Chamber as the conditions set out in Rule 73(B) of the Rules are met. The following will demonstrate that exceptional circumstances exist *and* that the Defendants would be irreparably prejudiced if leave were not granted.

#### **Response of the Defendants to the Motion**

8. The Second Accused did not file a written response to the Motion, but did respond orally at the Pre-Trial Conference, held on 28 April 2004. The transcript of this Conference reads as follows:

“... ”

MR. PRESIDENT

Yeah, nothing. Well, all we can do here is to urge the parties to meet again and see whether there are any agreements on issues of facts and law, and this is very important for us.

The next item is – yes, go ahead, Counsel.

MR. KOPPE

Thank you.

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<sup>3</sup> To be precise, the responses to the Prosecution’s Motion for Judicial Notice were due 28 April 2004, the Third Accused moved the Trial Chamber for an enlargement of time on 22 April 2004 and was orally heard on this request on 29 April 2004. The Chamber declined the Request for Extension by its decision dated 30 April 2004 and the Third Accused filed its Response on 4 May 2004, the next date the Special Court was open for filing. The Chamber rejected the Response, due to its late filing and ordered that it be stricken from the court records by its Order dated 6 May 2004.

Prosecutor v. Norman, Fofana and Kondewa Case No. SCSL-2004-14-PT

We have not formally responded yet to the Prosecution's motion for judicial notice, I agree with that.

MR. PRESIDENT

Yes.

MR. KOPPE

And there are at least three facts which we are willing now at this point to agree to.

...

-- we are willing to agree to at least three facts right now and please consider this as our response to the Prosecution's motion.

We had a discussion yesterday with the Prosecution that there are at least six other facts which, if brief or slightly amended, we might also agree to these facts. They are just one or two words missing, sometimes just a little rephrasing, so we might end up agreeing to at least nine facts.

If you would allow me we could at least agree to the facts of – mentioned under B, P and W.

THE PRESIDENT

Yes.

MR. KOPPE

And on E, Q, F, G, L, U, we would like to speak further to the Prosecution and to request them to amend only a few words and then we might give you – we would agree the facts.

As regards to the reports in Annex B, we are willing to take judicial notice – to accept the existence and authenticities of these documents, referring this matter to the *Semanza* case in the ICTR but, of course, not to the content of the report.

So we are willing to admit that these reports are existing, authentic, but not to the actual content of the reports. So, please consider this response our formal response on the motion.

Prosecutor v. Norman, Fofana and Kondewa Case No. SCSL-2004-14-PT

MR. PRESIDENT

Yes, we certainly consider it a very constructive response from the Defence.”

9. At the Pre-Trial Conference, the Second Accused, therefore, accepted propositions B, P and W as facts of common knowledge. All other propositions of the Prosecution were rejected, at least in part, and were therefore disputed. In addition, the Second Accused clearly stated that it did not accept the contents of any of the documents listed in the Motion; only the existence and authenticity of these documents was recognised.
10. There is no rule obliging one party to respond in writing to motions filed by the other party, and as the oral response of the Second Accused was made within the time limit prescribed by Rule 7(C), it should have been taken into consideration by the Trial Chamber. Indeed, as the above-quoted passage from the Pre-Trial Conference shows, the Second Accused was led to believe that it had been noted by the Trial Chamber.
11. Respectful of the Chamber’s decision to reject the filing, the Third Accused draws the Chamber’s attention to the propositions accepted therein: B, C and E of Annex A accepted as facts of common knowledge; documents 1-33 of Annex B accepted as documents that are what they purport to be; and documents 34-40 accepted.
12. It is submitted that if the Trial Chamber had taken the Second Accused’s response into consideration, along with the Third Accused’s untimely response, it would not have reached the conclusions it did in the Decision.

Prosecutor v. Norman, Fofana and Kondewa Case No. SCSL-2004-14-PT

**Not facts of common knowledge**

13. The Trial Chamber took judicial knowledge of ten “facts” listed in Annex I of the Decision. In addition, it took judicial knowledge of nine Security Council Resolutions (the “Resolutions”).
14. The Defendants submit that the “facts” listed in Annex I under A, D, H, K, L, M and U cannot be accepted as facts of common knowledge, as they do not meet the above listed criteria set out by the Trial Chamber in the Decision.
15. All “facts” mentioned in paragraph 14 are subject to more than reasonable dispute, in particular K, L, M, and U. The Second Accused, for example, rejects the proposition that Mr. Fofana was the National Director of War of the CDF and the Third Accused rejects the proposition that Mr. Kondewa was the High Priest of the CDF. Whether the Second Accused was National Director of War and if so, during what period exactly, should be one of the central issues of the trial. Likewise, whether or when the Third Accused was the High Priest of the CDF, and thus responsible for initiations, is a central issue that could only be adduced through evidence. In the submission of the Defendants, judicial notice cannot be taken of one of the central allegations of the Prosecution case when to do so infringes upon the Defendants right to a fair trial and seriously undermines the presumption of innocence guaranteed by Article 17 of the Statute.
16. “Fact” L is also relevant to the criminal responsibility of Mr. Fofana. Any answer to the question of whether he can be held responsible as a superior or as a co-perpetrator in a joint criminal enterprise for crimes allegedly committed by other CDF members depends, of course, on Mr. Fofana’s position within that group. “Fact” L, as listed in Annex I to the Decision, at least suggests that that position was of authority. Likewise, “fact” M bears directly on the same legal classifications and conclusions relative to the Third Accused.

Prosecutor v. Norman, Fofana and Kondewa Case No. SCSL-2004-14-PT

17. Propositions A, D and H include legal findings or characterisations which disqualify them as facts of common knowledge. Whether the CDF was an “organised faction” and whether an “armed conflict” occurred in Sierra Leone are legal questions of paramount importance. Both are necessary requirements for, and elements of, the crimes described in Article 3 of the Statute of the Special Court: Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II.<sup>4</sup>
18. An armed conflict is also a necessary condition for criminal responsibility under Article 4(C) of the Statute: Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.<sup>5</sup> Without the existence of an armed conflict a conviction for this crime is impossible.<sup>6</sup>
19. The Defendants additionally submit that the Security Council Resolutions listed in Annex II cannot be accepted as facts of common knowledge, as they include disputable facts as well as legal findings or characterisations.
20. All Resolutions contain numerous statements of facts, some of a highly contestable nature. It must be noted that while an august body, the Security Council is not a fact-finding body. It is the highest political organ of the United Nations and as a consequence, its Resolutions are often the result of rigorous political compromise and not necessarily a neutral or accurate reflection of the facts.
21. Like the “facts” discussed above, some of the resolutions contain legal findings or characterisations as well.

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<sup>4</sup> See Counts 2, 4, 5, 6, and 7 of the Consolidated Indictment which allege violations of Article 3 common to the Geneva Conventions and of additional Protocol II.

<sup>5</sup> See Count 8 of the Consolidated Indictment.

<sup>6</sup> See: The Rome Statute of the International Criminal Court: A Commentary, Part III: Elements of Crimes, Articles 8(2)(b)(xxvi) & 8(2)(e)(vii), pp. 175 & 182.

Prosecutor v. Norman, Fofana and Kondewa Case No. SCSL-2004-14-PT

22. The Defendants would, for example, draw the Trial Chamber's attention to Resolution 1181, where the Security Council uses the term "armed conflict" when describing the situation in Sierra Leone,<sup>7</sup> and to Resolution 1346, where the Security Council expresses its concern about the "forced recruitment" of children.<sup>8</sup> In the submission of the Defendants, the existence of an armed conflict and whether children were forcibly recruited are elements of crimes and important issues for the Prosecution to establish at trial.

### **Leave to appeal**

23. In view of the above, the Defendants submit that by failing to take into consideration the response of the Second Accused and the untimely response of the Third Accused the necessary exceptional circumstances were created to justify leave to appeal. If this leave were not allowed, it would also be impossible to avoid irreparable prejudice to the Defendants, as the Trial Chamber wrongly applied its own criteria for the determination of facts of common knowledge.

24. The Defendants respectfully submit that they have met the high threshold set by the Trial Chamber in its jurisprudence<sup>9</sup> and humbly pray that the Chamber exercise its discretion to grant leave to appeal.

Done in Freetown, this 7<sup>th</sup> day of June 2004

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<sup>7</sup> Para. 14.

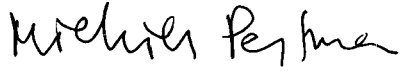
<sup>8</sup> P. 2, para. 6: "Expresses its deep concern at the reports of human rights abuses committed by the evolutionary United Front (RUF) and others, including other military groups, against the civilian population, in particular the harassment and forced recruitment of adults and children for fighting and forced labour, demands that these acts cease immediately".

<sup>9</sup> See e.g. Trial Chamber, *Prosecutor v. Issa Hassan Sesay e.a.*, SCSL-2004-15-PT, Decision on Prosecution's Application for Leave to File an Interlocutory Appeal Against the Decision on the Prosecution Motions for Joinder, 13 February 2004, paras. 8-15.



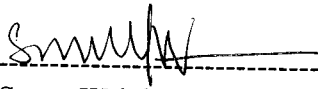
Prosecutor v. Norman, Fofana and Kondewa Case No. SCSL-2004-14-PT

Counsel for the Second Accused,  
MOININA FOFANA



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Michiel Pestman

Counsel for the Third Accused,  
ALLIEU KONDEWA



-----  
Susan Wright

Prosecutor v. Norman, Fofana and Kondewa Case No. SCSL-2004-14-PT

## LIST OF ANNEXES

1. The Rome Statute of the International Criminal Court: A Commentary, Part III: Elements of Crimes, Articles 8(2)(b)(xxvi) & 8(2)(e)(vii), pp. 175 & 182.
2. *The Prosecutor v. Issa Hassan Sesay e.a.*, SCSL-2004-15-PT, Decision on Prosecution's Application for Leave to File an Interlocutory Appeal Against the Decision on the Prosecution Motions for Joinder, 13 February 2004, paras. 8-15.
3. Transcript of Pre-Trial Conference 28 April 2004.

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165

ACC. NO. 7264  
165

# THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY

## MATERIALS

Text of the Rome Statute of the International Criminal Court  
Rules of Procedure and Evidence  
Elements of Crimes

OXFORD  
UNIVERSITY PRESS

## CONTENTS

I	The Text of the Rome Statute of the International Criminal Court	1
II	Rules of Procedure and Evidence	65
III	Elements of Crimes	143

*Elements of Crimes*

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ARTICLE 8 (2) (b) (XXV)

WAR CRIME OF STARVATION AS A METHOD OF WARFARE

**Elements**

1. The perpetrator deprived civilians of objects indispensable to their survival.
2. The perpetrator intended to starve civilians as a method of warfare.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

ARTICLE 8 (2) (b) (XXVI)

WAR CRIME OF USING, CONSCRIPTING OR ENLISTING CHILDREN

**Elements**

1. The perpetrator conscripted or enlisted one or more persons into the national armed forces or used one or more persons to participate actively in hostilities.
2. Such person or persons were under the age of 15 years.
3. The perpetrator knew or should have known that such person or persons were under the age of 15 years.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

ARTICLE 8 (2) (c)

ARTICLE 8 (2) (c) (I)-I

WAR CRIME OF MURDER

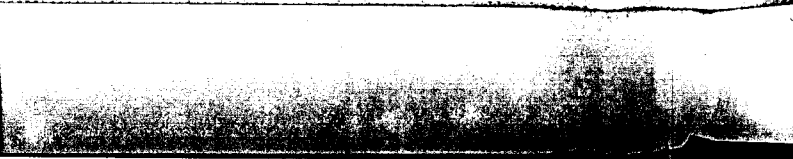
**Elements**

1. The perpetrator killed one or more persons.
2. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel<sup>56</sup> taking no active part in the hostilities.
3. The perpetrator was aware of the factual circumstances that established this status.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

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<sup>56</sup> The term "religious personnel" includes those non-confessional non-combatant military personnel carrying out a similar function.

The International Criminal Court (ICC) officially came into existence in July 2002.



*Materials*

- 3. The conduct took place in the context of and was associated with an armed conflict not of an international character.
- 4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

ARTICLE 8 (2) (e) (VI)-6  
WAR CRIME OF SEXUAL VIOLENCE

**Elements**

- 1. The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
- 2. The conduct was of a gravity comparable to that of a serious violation of article 3 common to the four Geneva Conventions.
- 3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.
- 4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
- 5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

ARTICLE 8 (2) (e) (VII)  
WAR CRIME OF USING, CONSCRIPTING AND ENLISTING CHILDREN

**Elements**

- 1. The perpetrator conscripted or enlisted one or more persons into an armed force or group or used one or more persons to participate actively in hostilities.
- 2. Such person or persons were under the age of 15 years.
- 3. The perpetrator knew or should have known that such person or persons were under the age of 15 years.
- 4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
- 5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

ARTICLE 8 (2) (e) (VIII)  
WAR CRIME OF DISPLACING CIVILIANS

**Elements**

- 1. The perpetrator ordered a displacement of a civilian population.
- 2. Such order was not justified by the security of the civilians involved or by military necessity.
- 3. The perpetrator was in a position to effect such displacement by giving such order.

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**SPECIAL COURT FOR SIERRA LEONE**

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**THE TRIAL CHAMBER**

**Before:** Judge Bankole Thompson, Presiding Judge  
Judge Benjamin Mutanga Itoe  
Judge Pierre Boutet

**Registrar:** Robin Vincent

**Date:** 13 February 2004

**PROSECUTOR** Against Issa Hassan Sesay  
Morris Kallon  
Augustine Gbao  
(Case No.SCSL-2004-15-PT)

**DECISION ON PROSECUTION'S APPLICATION FOR LEAVE TO FILE AN  
INTERLOCUTORY APPEAL AGAINST THE DECISION ON THE PROSECUTION  
MOTIONS FOR JOINDER**

**Office of the Prosecutor:**

Luc Côté  
Robert Petit  
Boi-Tia Stevens

**Defence Counsel for Issa Hassan Sesay:**

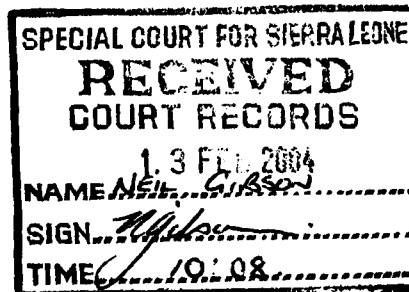
Timothy Clayson  
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Abdul Serry Kamal

**Defence Counsel for Augustine Gbao:**

Girish Thanki  
Andreas O' Shea  
Ken Carr

**Defence Counsel for Morris Kallon:**

James Oury  
Steven Powles  
Melron Nicol-Wilson



24  
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THE TRIAL CHAMBER ("the Chamber") of the Special Court for Sierra Leone ("the Special Court") composed of Judge Bankole Thompson, Presiding Judge, Judge Pierre Boutet and Judge Benjamin Mutanga Itoe;

SEIZED of the Application for Leave to File an Interlocutory Appeal against the Decision on the Prosecution Motions for Joinder filed on 3 February 2004 by the Office of the Prosecutor ("Prosecution") in the case SCSL-2004-15-PT ("the Motion") pursuant to Rule 73(B) of the Rules of Procedure and Evidence of the Special Court ("the Rules");

NOTING the Response filed on behalf of Augustine Gbao on 9 February 2004 ("the Response") to which the Prosecution filed a Reply on 11 February 2004 ("the Reply");

NOTING ALSO that no Response was filed within time on behalf of Issa Hassan Sesay nor Morris Kallon;

CONSIDERING THE SUBMISSIONS AND ARGUMENTS OF THE PARTIES

I. THE MOTION

A. The Prosecution Submissions:

1. Pursuant to Rule 73(B) of the Rules, the Prosecution seeks leave to file an interlocutory appeal in respect of the Decision of the Special Court on the Prosecution's Motion for Joinder, dated 27 January 2004 ("the Joinder Decision"), in which the Chamber ordered the joint trial of Issa Hassan Sesay, Morris Kallon, and Augustine Gbao of the RUF, and a separate joint trial of Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu of the AFRC.<sup>1</sup>
2. The Prosecution submitted as follows:
  - (a) That since it intends to lead essentially the same evidence against each accused person, all Prosecution witnesses, with the possible exception of strictly biographical ones, would be required to testify twice to the exact same events, which might cause some witnesses to refrain from testifying.<sup>2</sup>
  - (b) That Prosecution witnesses with first hand knowledge of the actions of the accused would not be in the position to testify twice because of credible security concerns.<sup>3</sup>
  - (c) That by forcing the appearance of the same witnesses twice, the Chamber's decision means a prolonged stay of the witnesses in the protection program, which will increase the financial costs significantly.<sup>4</sup>
  - (d) That having two separate trials on essentially the same evidence and by the same panel of judges will jeopardize the principle of a fair trial, as the same panel of Judges assess the credibility of witnesses and the weight of their testimony in both trials.<sup>5</sup>

<sup>1</sup> Decision and Order on Prosecution Motions for Joinder, 27 January 2004, SCSL-2003-05-PT; SCSL-2003-06-PT; SCSL-2003-07-PT; SCSL-2003-09-PT; SCSL-2003-10-PT; SCSL-2003-13-PT.

<sup>2</sup> Motion, para. 15.

<sup>3</sup> Motion, para. 16.

<sup>4</sup> Motion, para. 17.



- (e) That in the event of a second Trial Chamber being constituted and a separate bench of Judges sitting on the second trial, the Judges will hear essentially the same trial as the first, but may render contradictory or inconsistent decisions regarding the credibility and weight of the same witnesses in the first trial.<sup>6</sup>
- (f) Furthermore, the Prosecution submitted that two separate trials will compromise the principle of equality of arms, as it will place the Prosecution at a substantial disadvantage vis-à-vis the Defence in whichever trial proceeds second. As the Joinder Decision forces the Prosecution to call its witnesses to testify twice, they are subject to cross-examination twice on the same evidence.<sup>7</sup>

3. In light of the above, the Prosecution submitted that the requirements for granting leave are met as the Joinder Decision, if allowed to stand, would cause "irremediable" prejudice to the Prosecution that could not be cured by the final disposal of the trial, including post-judgment appeal.<sup>8</sup>

**B. The Defence Response:**

4. The Defence submitted that the Prosecution failed to demonstrate both "exceptional circumstances" and "irreparable prejudice".

5. In relation to the first of these two criteria, the Response noted that the question of whether "exceptional circumstances" had been made out was not addressed by the Prosecution in its submissions. The Defence submitted that in determining the existence of exceptional circumstances, relevant considerations included the following:

- (a) the extent to which an appeal would expedite or delay the proceedings;
- (b) whether these circumstances were distinguishable from other situations in order to "be faithful to the principle" contained in Rule 73(B);
- (c) would the appeal raise issues of great public significance to the development of international criminal law and to other trials before the Special Court;
- (d) would an appeal avoid future dispute over similar issues;
- (e) is there a reasonable possibility of wrongful conviction as a result of the alleged error.<sup>9</sup>

6. The Defence further submitted that an appeal on this issue would cause unnecessary delay in the commencement of the trials, since this issue would necessarily require determination before separate trials could begin;<sup>10</sup> that the issue of joinder is "essentially a matter of organisation of a trial"<sup>11</sup>; that the issue was not of particular significance and was not likely to recur, and that there was no demonstration of a reasonable possibility of a wrongful conviction.

<sup>5</sup> Motion, para. 19.

<sup>6</sup> Motion, para. 20.

<sup>7</sup> Motion, para. 21.

<sup>8</sup> See Motion, para. 12.

<sup>9</sup> Response, para. 3.

<sup>10</sup> Response, para. 5.

<sup>11</sup> Response para 8.

*Handwritten initials: P.B.T. C B*

C. The Prosecution Reply:

- 7. The Prosecution noted that the Response was mistakenly addressed to the Appeals Chamber rather than the Trial Chamber. The Prosecution also submitted in its Reply that the considerations raised in the Response are irrelevant to the application of Rule 73(B) and without any basis or authority. Rather, the Prosecution reiterated that exceptional circumstances are present in conjunction with irreparable prejudice. It submitted that the Motion "demonstrates serious prejudice in terms of substantive and procedural law".<sup>12</sup> In addition, the Defence has improperly interpreted the test required under Rule 73(B).

HAVING DELIBERATED THE CHAMBER DECIDES AS FOLLOWS

II. THE TEST UNDER RULE 73(B)

- 8. Rule 73(B) of the Rules states:

*"Decisions rendered on such motions are without interlocutory appeal. However, in exceptional circumstances and to avoid irreparable prejudice to a party, the Trial Chamber may give leave to appeal. Such leave should be sought within 3 days of the decision and shall not operate as a stay of proceedings unless the Trial Chamber so orders."* (Emphasis added)

- 9. In addressing the key aspects of Rule 73(B), the Chamber wishes to emphasise at the outset that the first part of Rule 73(B) contains a clear statement of the general position in relation to interlocutory appeals. The second part of that Rule creates an extremely limited exception to this general position.
- 10. As a general rule, interlocutory decisions are not appealable and consistent with a clear and unambiguous legislative intent, this rule involves a high threshold that must be met before this Chamber can exercise its discretion to grant leave to appeal. The two limbs to the test are clearly conjunctive, not disjunctive; in other words, they must *both* be satisfied.
- 11. This interpretation is unavoidable, given the fact that the second limb of Rule 73(B) was added by way of an amendment adopted at the August 2003 Plenary. This is underscored by the fact that prior to that amendment no possibility of interlocutory appeal existed and the amendment was carefully couched in such terms so as only to allow appeals to proceed in very limited and exceptional situations. In effect, it is a restrictive provision.
- 12. The Chamber also notes that the amendment to Rule 73(B) created a novel test for granting leave to interlocutory appeal, as the requirement of "exceptional circumstances" does not feature in similar provisions in the Rules of the International Criminal Tribunal for the former Yugoslavia ("ICTY") and the International Criminal Tribunal for Rwanda ("ICTR"). The relevant provision in the Rules of those Tribunals states that:

*"Decisions on all motions are without interlocutory appeal save with certification by the Trial Chamber, which may grant such certification if the decision involves an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the*

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<sup>12</sup> Reply para 9.

trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.”<sup>13</sup>

This Chamber must apply an entirely new and considerably more restrictive test than the one applied by the ICTR or the ICTY. Furthermore, the only relevant decision of the Special Court to date applied the earlier version of Rule 73(B).<sup>14</sup> There is therefore the need for an authoritative statement by the Chamber on the implication and effect of the amended rule. Nevertheless, this restriction is in line with the trend and our determination to tighten the test for granting leave in respect of interlocutory appeals in the interests of expeditiousness. The further restriction is appropriate and acceptable in the peculiar circumstances of the Special Court whose mandate, we must observe, is limited in its duration.

- 13. It is clear then from a plain reading of Rule 73(B) that granting leave is an exceptional option. As this is an exclusionary rule, if the two-limb test has been complied with, the Prosecution must demonstrate that there is something to justify the exercise of this discretion by the Chamber in its favour.
- 14. In the Motion before the Chamber, the Prosecution submissions focus primarily on the question of “irreparable prejudice to a party”, which is only the second limb of the test in Rule 73(B) which the Chamber must apply. The Prosecution has failed to make substantive references to “exceptional circumstances”, and the Chamber has no basis to conclude that any exceptional circumstances have been established.
- 15. Based on the foregoing, and having found that no exceptional circumstances have been articulated by the Prosecution to warrant additional comments, it would not be necessary to address the question of irreparable prejudice given that the test is conjunctive. The Chamber, however, notes that the main submissions of the Prosecution on this point relate mostly to questions such as cost and security of witnesses, the order in which the trials commence, and the fairness of the trials if they are heard before a single Trial Chamber. It has been suggested by the Prosecution that there might be some added difficulties in the management of the Prosecution case, some additional work and possibly problems if this application for leave to appeal were turned down, but nothing that has been shown in our view to constitute “irreparable prejudice”.

*Handwritten initials/signature: RBT*

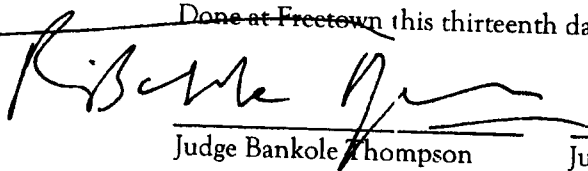
<sup>13</sup> ICTY Rules of Procedure and Evidence, adopted 11 February 1994, as amended 17 July 2003 and ICTR Rules of Procedure and Evidence, adopted 29 June 1995, as amended 27 May 2003, common Rule 73 (B) [Other Motions]. This certification procedure was added in 2002 in the ICTY, (prior to which leave applications were decided by a bench of 3 Appeal Chamber judges on the basis of incurable prejudice or “if the issue in the proposal appeal is of general importance to proceedings before the Tribunal or in international law generally”), and in the ICTR in May 2003 (prior to which there was no interlocutory appeal on Motions).

<sup>14</sup> *Prosecutor v Morris Kalon*, Decision on the Defence Application for Leave to Appeal, 10 Dec. 2003.

FOR THESE REASONS

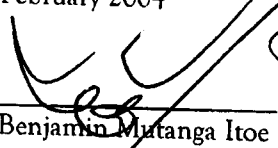
16. The Chamber refuses the Prosecution application for leave to file an interlocutory appeal and accordingly dismisses the Motion.

Done at Freetown this thirteenth day of February 2004

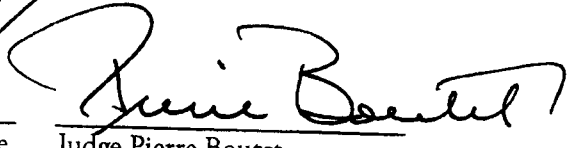


Judge Bankole Thompson

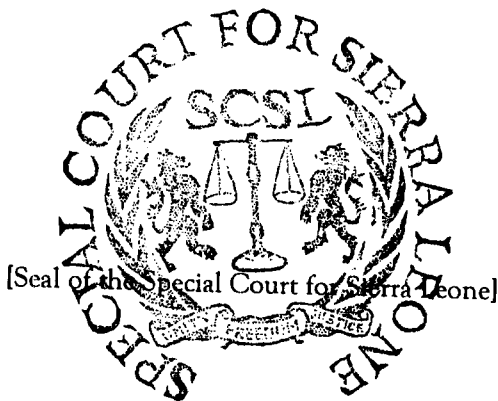
Presiding Judge,  
Trial Chamber



Judge Benjamin Mutanga Itoe



Judge Pierre Boutet



THE SPECIAL COURT FOR SIERRA LEONE

CASE NO.: SCSL-04-14-PT  
CHAMBER I

THE PROSECUTOR  
OF THE SPECIAL COURT  
v.  
SAM HINGA NORMAN  
MOININA FOFANA  
ALLIEU KONDEWA

28 APRIL 2004  
1010H  
PRE-TRIAL CONFERENCE

Before the Judges:

Bankole Thompson, Presiding  
Mutanga Itoe  
Pierre Boutet

For the Registry:

Mr. Geoff Walker

For the Prosecution:

Mr. Luc Côte  
Mr. Jim Johnson  
Mr. Charles Caruso

For the Principal Defender:

Ms. Simone Monasebian  
Ms. Haddijatou Kah-Jallow  
Mr. Ibrahim Yillah

For the Accused Samuel Hinga Norman:

Mr. James Blyden Jenkins-Johnson  
Mr. Sulaiman B. Tejan-Sie

For the Accused Moinina Fofana:

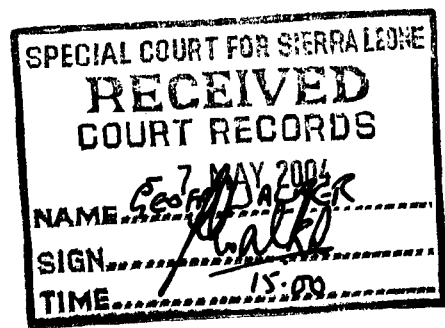
Mr. Victor Koppe  
Mr. Arrow Bockarie

For the Accused Allieu Kondewa:

Mr. Yada Hashim Williams

Court Reporters:

Ms. Susan G. Humphries  
Ms. Gifty C. Harding



1 MR. WALKER:

2 SCSL-2004-15-PT, Norman, Fofana and Kondewa, pre-trial conference. Would the interpreter please  
3 stand and be sworn.

4 *(Interpreters sworn)*

5 MR. PRESIDENT:

6 Who appears for the first accused?

7 JUDGE ITOE:

8 Appearances, appearances.

9 MR. PRESIDENT:

10 The Prosecution.

11 MR. JOHNSON:

12 For the Prosecution, Charles Caruso, Luc Côte, and myself, James Johnson, Your Honour.

13 MR. PRESIDENT:

14 Thank you. The first accused.

15 MR. TEJAN-SIE:

16 For Sam Hinga Norman, S. Tejan-Sie and Adiatu Tejan.

17 MR. KOPPE:

18 Victor Koppe for the Accused Moinina Fofana.

19 MR. WILLIAMS:

20 Yada Hashim Williams for Allieu Kondewa.

21 MR. PRESIDENT:

22 Thank you, Counsel.

23

24 This proceeding is being held pursuant to Rule 73 *bis* of our Rules, which states that, "A. The Trial  
25 Chamber or a judge designated from among its members shall hold a pre-trial conference prior to the  
26 commencement of the trial; B, At the pre-trial conference the Trial Chamber or a judge designated  
27 from among its members may order the Prosecutor within a time limit set by the Trial Chamber, or the  
28 said judge, and before the date set for trial to file the following: 1. A pre-trial brief addressing the  
29 factual and legal issues; 2. Admissions by the parties and a statement of other matters not in dispute;  
30 3. A statement of contested matters of fact and law; 4. A list of witnesses the Prosecutor intends to  
31 call with: (a) the name or pseudonym of each witness; (b) a summary of the facts on which each  
32 witness will testify; (c) the points in the indictment on which each witness will testify; and (d) the  
33 estimated length of time required for each witness; 5. A list of exhibits the Prosecutor intends to offer  
34 stating, where possible, whether or not the Defence has any objection as to authenticity."

35

36 I have decided to read carefully this rule because this is what this proceeding is all about and to  
37 implement this, the directives in the Rule, we have before us an agenda for today's session. We have

1 already gone through the ritual of the first item, "Appearances of the parties." The next item relates to  
2 the Accused persons. Item 3 is general housekeeping matters. Item 4 covers outstanding issues.  
3 Item 5, witnesses. Item 6, exhibits. Item 7, agreed facts. Item 8, trial preparation and logistics. I will  
4 urge both sides to assist the Chamber in covering these items as comprehensively as possible, but  
5 without (sic) due regard for economy of time.

6  
7 By way of background, let me briefly mention that the most important document for this proceeding, or  
8 if we may designate it as the controlling document, or rather loosely in Kelsenian language, the good  
9 norm, is the order of the Trial Chamber entitled, "Order to the Prosecution to file disclosure materials  
10 and other materials in preparation for the commencement of trial." It is dated 1 April 2004. Learned  
11 counsel on both sides will observe that the procedural thrust of that document is to establish the  
12 nexus between the status conference proceeding, which we held here some time ago, and this pre-  
13 trial conference.

14  
15 At page 6 of the said document the Prosecution was specifically ordered to file by 26 April 2004 the  
16 following materials. For the sake of completeness I will read the orders out: "1. A witness list for all  
17 the witnesses the Prosecution intends to call at trial with the name or the pseudonym of each witness  
18 and should the Prosecution seek to add any witnesses to this list after April 26, 2004, it shall be  
19 permitted only to do so upon good cause being shown; the second material is a compliance report  
20 indicating the number of witnesses for whom witness statements or summaries have been disclosed  
21 to the Defence. The date upon which each statement or summary was disclosed; and the total  
22 number of pages of each statement or summary; 3. A summary for each witness on the witness list  
23 specified in (1) indicating the exact paragraph and/or count in the indictment to which the witness will  
24 testify, as well as an estimated length of time required for each witness; 4. A list of exhibits the  
25 Prosecution intends to tender in evidence at the trial." And again, "Should the Prosecution seek to  
26 add to that list after 26 April 2004, it will only be permitted to do so upon good cause being shown;"  
27 and 5. "A copy of each exhibit which appears on the list as indicated in (4)."

28  
29 Well I have decided to read out these orders because, as I said earlier, today's proceeding revolves  
30 around those orders in order to determine how far they can take us towards the commencement of  
31 the trial.

32  
33 So let us get through some preliminaries at this stage before we come to the crux of the matter.  
34 Before I proceed can we have a confirmation that the hearing is being translated for the benefit of  
35 those who want translation from English to Mende? Shall I have confirmation? Thank you.

36  
37 Now we'd probably just invite a couple of comments on the health of the Accused persons and I invite

1 counsel for the respective accused to give us some very short report.

2

3 Counsel for the first Accused.

4 MR. TEJAN SIE:

5 May it please Your Honour, the accused Sam Hinga Norman is in fine health. Apart from that we do  
6 not have any further complaints to add to those we made known to Your Honour at the last status  
7 conference. We still await those concerns to be addressed, Your Honour. Apart from that our client is  
8 in fine condition, My Lord.

9 MR. PRESIDENT:

10 Thank you, Learned Counsel. Learned counsel for the second Accused.

11 MR. KOPPE:

12 Thank you, Your Honour. At this point in time we also have no comments to make. There are several  
13 issues we would like to raise, but they are all down there in the agenda and we will come to that.

14 Thank you.

15 MR. PRESIDENT:

16 Very much appreciated, Learned Counsel. And counsel for the third Accused.

17 MR. WILLIAMS:

18 May it please Your Lordships, the third Accused is physically and mentally fine.

19 MR. PRESIDENT:

20 Thank you very much. Well, let us move on to item No. 3; general housekeeping matters. The first  
21 item here is the position of the trial teams and the enquiry here is that are the Defence teams fully  
22 formed? Shall we have a response?

23 MR. TEJAN-SIE:

24 The legal team for Sam Hinga Norman, My Lord, is complete.

25 MR. PRESIDENT:

26 Thank you. Second Accused.

27 MR. KOPPE:

28 The same holds for the defence of Fofana.

29 MR. PRESIDENT:

30 Thank you. What about the team for the third Accused, Mr. Kondewa?

31 MR. WILLIAMS:

32 Your Lordships, the team for Kondewa is not yet fully --

33 MR. PRESIDENT:

34 Formed.

35 MR. WILLIAMS:

36 Formed, yes. Lead counsel, Charles Margai, only took over in February and was still putting -- is still  
37 trying to put together a team. In fact, we expect a lady from Yugoslavia to arrive tomorrow. We've not



1            --we're just still in preliminary stages with the discussions with her, so we are still forming the team.

2 MR. PRESIDENT:

3            All we can advise from the Chamber here is expedition.

4 MR. WILLIAMS:

5            As it pleases Your Lordship.

6 MR. PRESIDENT:

7            Thank you. So the list is on record with the Chamber, all its members except for Kondewa as ordered  
8            by the Trial Chamber. Learned counsel for the Prosecution, what's the status that you want to report  
9            in terms of your team?

10 MR. JOHNSON:

11            Excuse me just a minute.

12 JUDGE ITOE:

13            Counsel for the third Accused. You say the defence team of the third Accused is not complete?

14 MR. WILLIAMS:

15            Yes, My Lord.

16 JUDGE ITOE:

17            When do you expect -- when do you expect that it will be completed?

18 MR. WILLIAMS:

19            In the next two weeks, My Lord.

20 JUDGE ITOE:

21            In the next two weeks?

22 MR. WILLIAMS:

23            Yes, My Lord.

24 JUDGE BOUTET:

25            I do have a question on that. Please stay there. Will that have any impact upon your ability to start a  
26            trial?

27 MR. WILLIAMS:

28            Well, if we have an indication as to when trials will start, then we will be in a position to say, My Lord.

29            I mean, now it's kind of not fixed.

30 JUDGE BOUTET:

31            Well, we have already indicated we would like to start as soon as possible, likely -- likely end of May,  
32            early June. So, I mean, indication -- we have already given indication that's what we were aiming at.

33 MR. WILLIAMS:

34            If we're able to fix the team, which we hope to fix by -- in the next fortnight -- within the next two  
35            weeks, we would be prepared -- we will be ready to commence trial late May, early June, My Lord.

36 JUDGE BOUTET:

37            Thank you.

1

2 MR. PRESIDENT:

3 The Prosecution.

4 MR. JOHNSON:

5 The Prosecution team is formed, Your Honour.

6 MR. PRESIDENT:

7 Thank you, Counsel. Are there any other matters of a housekeeping nature that we need to -- Well, if  
8 there are none we will move on to the fourth item on the agenda; outstanding issues.

9

10 The first segment of that is filings received from the parties pursuant to Trial Chamber orders after the  
11 status conference. I have just adverted to the specific orders and we would like to hear some  
12 statement from the Prosecution on that.

13 MR. JOHNSON:

14 Yes, Your Honour, thank you. On the 26<sup>th</sup>. on Monday, the Prosecution filed its submissions in  
15 accordance with your 1 April 2004 order to the Prosecution to file disclosure materials. We have met  
16 our obligations under that in what was needed to be filed by 26th April, as well as the disclosure in  
17 paragraph 7 of your orders.

18 MR. PRESIDENT:

19 Judge Boutet wants to --

20 JUDGE BOUTET:

21 We have some questions on that. I note from the list of witnesses that you have produced that it  
22 appears to me that all the witnesses -- I don't know why -- all the witnesses the Prosecution intends to  
23 call have pseudonyms; in other words all the witnesses, regardless whether they are expert or not,  
24 are not identifiable at this particular time.

25 MR. JOHNSON:

26 That's correct, Your Honour, we have only listed pseudonyms at this time.

27 JUDGE BOUTET:

28 I do understand you have only listed pseudonyms, but I am asking you, is it the intent of the  
29 Prosecution to call only witnesses that have at this particular time pseudonyms and that goes for  
30 experts? So presumably experts -- if you are intending to call any experts, I don't know.

31 MR. JOHNSON:

32 Well, yes. Well, then let me caveat that with the experts. We are looking at calling some experts.  
33 The experts that we are looking at are not on this list at this time, this is purely witnesses, not expert  
34 witnesses. We are still working out some co-ordinating with experts. We hope to have that finished in  
35 the very near future and we will file experts as well as expert reports in accordance with -- I believe it  
36 is Rule 94 -- in accordance with Rule 94, Your Honour.

37

1 MR. PRESIDENT:

2 I would like to give the Defence a chance to respond briefly to the statement before the further  
3 interventions by the Chamber.

4  
5 Counsel on the other side, what are your respective responses to the Prosecution's statement?  
6 Counsel for the first Accused.

7 JUDGE ITOE:

8 Or observations.

9 MR. PRESIDENT:

10 Observations, statements, comments, observations.

11 MR. TEJAN-SIE:

12 Yes, Your Honour, we are in receipt of disclosure material that we had served on us on the 26<sup>th</sup>. We  
13 also find that we are still in the same position, My Lord, the statements are so redacted that, as we  
14 reported at the last status conference, it is very difficult for us to make any sense out of them and it is  
15 still stalling our investigations and our preparation for trial. The situation is still the same, My Lord,  
16 and we are still awaiting their expert reports as well as the list of experts that they might be calling  
17 because we would need to have experts to rebut whatever they are coming with. So, My Lord, we are  
18 still in the same position.

19 MR. PRESIDENT:

20 Thank you, Learned Counsel. Counsel for the second Accused.

21 MR. KOPPE:

22 Yes, Your Honour, we also confirm receipt of all these documents mentioned by the Prosecutor.  
23 However, it was quite an amount of documents so of course you will have understanding for the fact  
24 that we were unable to read them all.

25  
26 In addition to that, I would like to comment or to make the statement in respect of the supplemental  
27 pre-trial brief. It seems to us that there are quite some new details incorporated in that brief, even  
28 new facts are admitted in this pre-trial brief, so of course we will start very quickly and rapidly to  
29 prepare. However, to get these new materials at such possible short notice before trial seriously  
30 hinders, of course, good preparation for a trial. So, yes, we received all these new documents, but we  
31 have serious objections to the fact that there are all kinds of new elements, so it seems, in these  
32 documents.

33 JUDGE ITOE:

34 Can you be specific on the objections you are raising?

35 MR. KOPPE:

36 My --

37 JUDGE ITOE:

1 Because we want to get into specifics since we are going to trial --

2 MR. KOPPE:

3 Of course, of course, of course.

4 JUDGE ITOE:

5 -- so we want to place our view or equal, you know, in these proceedings.

6 MR. KOPPE:

7 Yes, yes.

8 JUDGE ITOE:

9 We want to know -- I mean, it is good for them to know the objections which you might be raising on  
10 the documents which have been served on you.

11 MR. PRESIDENT:

12 Let me quote my learned brother, that if you give us specifics we would feel able to make any  
13 necessary directions, but if we are asked to just look at things on the level of generalities, then our  
14 hands are tied, so to speak.

15 MR. KOPPE:

16 That is correct. I mean, I have limited myself to a general observation being unable to give you  
17 specific observation because we only have these new documents only for a few days. But to give you  
18 an example --

19 MR. PRESIDENT:

20 Do you want to undertake that you will submit something in writing?

21 MR. KOPPE:

22 Well, it really all depends on whether there is actually going to be a trial starting at the end of May.

23 MR. PRESIDENT:

24 Exactly.

25 MR. KOPPE:

26 It's all -- you know, if the trial is --

27 JUDGE ITOE:

28 We will want you to get it clear. It may start, but it would start in May or thereabout. Don't speculate  
29 as to whether it will start or not, we want --

30 MR. KOPPE:

31 I am not speculating at all, but of course whatever we are saying as a general observation on these  
32 new materials is related to when a possible trial might start. If we have -- if the trial were to start, let  
33 us say, a few weeks later, of course we would have more time to prepare accurately --

34 JUDGE ITOE:

35 My colleague did indicate that it could be maybe by the first week of June.

36 MR. KOPPE:

37 Yes, so --

1 JUDGE ITOE:

2 Is that all right by you? Would you be set, you know?

3 MR. KOPPE:

4 Not by the beginning of June, no. No, no, no. If it were facts and material already known to us of  
5 course we might be set, but if there is all kinds of new materials, new facts added, especially in this  
6 supplemental pre-trial brief, then of course four weeks or five weeks, as we are talking about, is quite  
7 a short amount of time to prepare properly. Especially, of course, if we are still not aware of the  
8 real -- of the names of all the witnesses, we only have to deal with their pseudonyms. And my point  
9 really is that of course I have all the -- I understand very well that expeditious trial and speedy trial is  
10 necessary to both parties and to the Court, but of course to be here preparing in only a few weeks  
11 before the actual trial starts is quite something to ask for the Defence.

12  
13 Let me just make it more specific. If we take this supplemental pre-trial brief, we now see that the  
14 Prosecution is alleging that my client was present at actual factual happenings rather -- as till now it  
15 was more general proposition or general allegation that he was having certain type of command  
16 control. However, now we see that the Prosecution is actually alleging that he was present at certain  
17 factual matters. That's all new to us and, of course, we have to be able to prepare our defence on  
18 these new issues and that was really my general observation and I am now specifying it to a certain  
19 amount.

20 JUDGE BOUTET:

21 I still don't understand what you are saying because you are complaining now that you are giving --  
22 you are being given too much accurate information. Is it essentially what I hear you to say now?

23 MR. KOPPE:

24 No, no, what I am saying is that if a trial were really to start -- of course this is all hypothetical -- but if a  
25 trial really were to start --

26 JUDGE BOUTET:

27 Let me --

28 MR. KOPPE:

29 -- that is all my point.

30 JUDGE BOUTET:

31 Starting the trial, as you know, will not mean that all witnesses will be called the very first day. I mean,  
32 it goes on over a period of time and presumably during that period of time you will have time as well to  
33 carry on your investigation, whatever you need to do. And to add to this, we have issued protective  
34 measures, but protective measures are clearly that -- the information about these witnesses have to  
35 be disclosed 42 days before these witnesses are to be heard. So, I mean, you are saying we don't  
36 know how much time, we are telling you, you know the team because a minimum -- a minimum of 42  
37 days before these witnesses are to be called their names or identity have to be disclosed to you.

1 MR. KOPPE:

2 That's true, but of course we are also conducting our own investigations.

3 JUDGE BOUTET:

4 But in conducting your investigations if you are being told now that your Accused (*sic*) was at this very  
5 specific place rather than all over the place, I would think it does give you some indication, much more  
6 precise information, as to what it is and what it is not.

7 MR. KOPPE:

8 Yes, but knowing that this is not the situation we would of course have to, in the next few weeks,  
9 rapidly start our own investigations on these specific points. My point really is only that if a trial were  
10 really to start end of May, beginning of June, the Defence would have a problem.

11 JUDGE BOUTET:

12 Thank you.

13 MR. PRESIDENT:

14 Thank you, Counsel. Counsel for Kondewa.

15 MR. WILLIAMS:

16 May it please Your Lordships, we are in receipt of the documents ordered by Your Lordships to be  
17 filed by 26th April. We received them last night, My Lord and, as your Lordships mentioned, all of the  
18 witnesses -- the Prosecution only provided pseudonyms for all of the witnesses that they intend to  
19 call. We find this quite interesting because even for witnesses, I mean, whose statements are  
20 exculpatory or to some extent -- I mean, amounts to a mitigation of the offences, alleged offences,  
21 redacted or only pseudonyms are provided for those witnesses. Your Lordship --

22 MR. PRESIDENT:

23 We only really allowed that latitude.

24 MR. WILLIAMS:

25 Yes, I agree, My Lord. I just -- a point of observation.

26 MR. PRESIDENT:

27 Thank you.

28 MR. WILLIAMS:

29 The summaries -- Your Lordship did order that summaries of each witness be provided. That was  
30 done, but we find some of those summaries very, very brief.

31 MR. PRESIDENT:

32 They were abbreviated.

33 MR. WILLIAMS:

34 Very much, My Lord. And for most of them dates and names and names of places are not provided  
35 so, I mean, we could make very little out of some of those summaries. That is all I intend to say at  
36 this stage, My Lord.

37

1 MR. PRESIDENT:

2 Yes. It is again a question of summaries. I remember when we were being asked to paraphrase and  
3 summarise during school days, it is so much a subjective perspective of what you think you can  
4 reduce a ten page document into. But I don't want to engage in that kind of exercise, but I think it's --  
5 I browsed through some of them and I am not sure whether the fact that some are abbreviated is a  
6 negative because perhaps the material from which they are abbreviated may probably be about a  
7 paragraph.

8 MR. WILLIAMS:

9 Well, I mean, for -- Your Lordships did order that they provide the number of pages of each statement.

10 MR. PRESIDENT:

11 Yes, yes.

12 MR. WILLIAMS:

13 And for some -- I mean most -- a good number of them were 11, nine, ten pages, and for some reason  
14 they were just like three lines.

15 MR. PRESIDENT:

16 Yes, as I said, it is a question of subjective perspective, you know, it's too controversial. That's okay,  
17 let us move on to the next item. The Chamber, just out of curiosity -- and I am not sure whether my  
18 colleagues, learned colleagues, are keen on pressing it -- is that this supplemental brief, pre-trial brief,  
19 became extremely voluminous and running into about 216 pages because there is no prescribed limit  
20 for supplemental briefs because I know that ordinarily pre-trial briefs are limited to 50 pages. I am not  
21 holding this against the Prosecution, but it is quite a lot of reading material. Or was this again an  
22 attempt to give as much or did it depend on the fact that -- because I recall at the status conference  
23 we did identify some deficiencies in the pre-trial brief. So it may well be that this was an attempt to  
24 deal with those deficiencies. What is your response?

25 MR. JOHNSON:

26 Your Honour, first to that point to the supplemental pre-trial brief, we were under the impression that  
27 there was not a page limit, that certainly we could not do everything we felt we needed to do in the  
28 initial pre-trial brief within the 50 pages.

29 MR. PRESIDENT:

30 No, actually what we were thinking where you do not have those prescribed limits, the concept of  
31 reasonableness is the guide, is it not? As lawyers we know that.

32 MR. JOHNSON:

33 Yes, Your Honour.

34 MR. PRESIDENT:

35 The anthropomorphic conception. Go ahead.

36 MR. JOHNSON:

37 Okay. Just with that, with the supplemental, we did not feel we were bound by a page limit. We of

1 course held it down to a point where we felt we could and still adequately submit the pre-trial brief you  
2 requested.

3  
4 I would like to make one comment to counsel. When he was referring to the summaries and talking  
5 about the summaries and possibly for a point of clarification or I was not understanding which  
6 summaries he was talking about. And I appreciate that he has received a whole lot of material in a  
7 very short period of time and probably has not had the chance to get through all of that. In our initial  
8 disclosure of statements and summaries, we did provide, of course, statements and in many  
9 instances one-page summaries and statements we felt we could not redact. In the supplemental  
10 disclosure that we provided this week, we provided -- in every case where we had provided a  
11 summary in the past, we had not provided the redacted statements. So in every case where they had  
12 a summary before they now have or should have a redacted statement in place of that summary. I  
13 will admit in some cases there's a lot of redaction in some of those statements. Again, we tried very  
14 hard to only redact what we felt was absolutely necessary to ensure that the identity of the witness  
15 would not be revealed.

16 MR. PRESIDENT:

17 Thank you. Do the Prosecution feel able to provide some indication of the total number of witnesses  
18 that they intend to call? Did you provide that?

19 MR. JOHNSON:

20 In the -- Yes, we provided you with a witness -- a list of witnesses. I believe that list contains --

21 MR. PRESIDENT:

22 *(inaudible)*

23 MR. JOHNSON:

24 -- around 130 witnesses.

25 MR. PRESIDENT:

26 One hundred and thirty-three.

27 MR. JOHNSON:

28 Pardon?

29 MR. PRESIDENT:

30 Is it 155 or 133?

31 MR. JOHNSON:

32 I am -- excuse me, I misspoke. The witness list that we provided has 148 names on that list. Now I  
33 must say that that witness list may very well and will probably be reduced by some number. I couldn't  
34 speculate how much yet --

35 MR. PRESIDENT:

36 Yes.

37



1 MR. JOHNSON:

2 -- depending on judicial notice, admissions, agreed upon facts that we come to down the line.

3 MR. PRESIDENT:

4 Would you agree that there may well have been a discrepancy, probably of 20 per cent, between what  
5 was indicated at the status conference?

6 MR. JOHNSON:

7 Yes, I would, Your Honour. At the status conference I believe I was saying round 125.

8 MR. PRESIDENT:

9 Yes.

10 MR. JOHNSON:

11 And the witness list now is, as I said, about 148.

12 JUDGE ITOE:

13 Can you tell us why it has moved from about 125 to this number?

14 MR. JOHNSON:

15 I may have been too imprecise the first time as we reviewed very carefully the witnesses and the  
16 witnesses that we felt it would be necessary to call if there were indeed no admissions of fact.

17 Nothing was admitted -- nothing was taken as judicially notice and I understated it -- I understated  
18 what it came to.

19 JUDGE BOUTET:

20 You have indicated that the list contains 148 witnesses, we have counted 155, so either my calculator  
21 is wrong or there is a *(inaudible)* --

22 JUDGE ITOE:

23 And again to follow up, you know, you see, when you are giving the list it is good to number them, you  
24 know, not giving them the numbers, but the pseudonyms, you know. 1, 2, 3, in numerical -- so that  
25 we know that this is the number of witnesses you have.

26 MR. PRESIDENT:

27 And to complicate the matter a little, there's an earlier count which came to 133.

28 JUDGE ITOE:

29 One hundred and thirty-three. Then we went further.

30 MR. JOHNSON:

31 I apologise for that, I'll try to get it right.

32 JUDGE ITOE:

33 Okay, all right.

34 MR. PRESIDENT:

35 Thank you.

36

37 We ordered, Mr. Prosecutor --

1 JUDGE ITOE:

2 Mr. Johnson can you -- you see, I am coming back to this question -- I am revisiting this question, and  
3 that is the issue of you having redacted all the witnesses. Are you saying that you do not have some  
4 witnesses who are unprotected and who would be testifying in this trial? Are all your witnesses  
5 protected, including those who should ordinarily not be entitled to any protection?

6 MR. JOHNSON:

7 Well none of our witnesses at this time have waived protection, Your Honour. And the way that they  
8 are protected witnesses at this particular time is that their identities have not been revealed. In the  
9 case of the disclosure that we provided on Monday, we had two witnesses that are in a greater  
10 degree of protection and in that case we revealed their statements to the Defence in an unredacted  
11 fashion and the identities of those witnesses. And so in the sense that all of our witnesses are now in  
12 a protected status, we feel they are in a protected status and that is because their identities have not  
13 been released. As we come down the line and are required to start releasing full unredacted  
14 statements and the identities of those witnesses, then decisions will be made. We will discuss with  
15 the witnesses all on an individual basis to find out if they waive greater protections or if there is a  
16 requirement that we need to bring those witnesses into some kind of higher degree of protection and  
17 that may include bringing the witnesses in -- bringing the witnesses' families in, putting them in an  
18 undisclosed hidden location -- it could go beyond that -- to an undisclosed location with some kind of  
19 guards or protection on a 24 hour basis. So all of our witnesses are certainly in a protect -- we  
20 consider them to be in a protected status now and that is because their names have not been  
21 revealed, their identities have not been revealed.

22 JUDGE BOUTET:

23 I understand that the identity may not have been revealed, but is it required that all of your witnesses  
24 be protected to that extent, I mean whether it is just identity or more? I am troubled by the fact that all  
25 the witnesses the Prosecution intend to call have this level of sensitivity where their identity or more  
26 needs to be protected at this time.

27 MR. JOHNSON:

28 We believe that that is the case, Your Honour. We believe that all of our witnesses do need to be  
29 protected. We have been directed by the Chamber to file an additional witness protection measure on  
30 the 3<sup>rd</sup>, this coming Monday, and at that time when we file that motion we will break down more  
31 completely for you the reasons that we feel that way and why we think that that is necessary.

32 JUDGE ITOE:

33 You are not prepared at any stage to concede to the meaninglessness of protecting all the witnesses?  
34 I mean, I am saying -- I mean, do you think it is meaningful to say that in a trial like this all witnesses  
35 have to be protected?

36 MR. JOHNSON:

37 Yes, I think it is, Your Honour.

1 MR. PRESIDENT:

2 You think so?

3 MR. JOHNSON:

4 I think it is. I think the danger is there, I think the danger exists in this case for the witnesses, and I  
5 mean I can certainly go into it a little bit more, but we will certainly be providing that with our motion on  
6 Monday.

7 MR. COTE:

8 With your permission.

9 MR. PRESIDENT:

10 Right.

11 MR. COTE:

12 If you recall the way that the witness protection motion and order are designed is that every single  
13 witness who lives here or whose family is here in Sierra Leone is entitled to protection following your  
14 order.

15 MR. PRESIDENT:

16 Yes.

17 MR. COTE:

18 About 99 per cent -- if there is one witness that is from outside, it may be an expert witness for which  
19 we don't have a report yet and no decision was taken. Of course we will not protect the identity of  
20 someone who lives outside and is not living in Sierra Leone. And to answer your concern, Judge Itoe,  
21 I would just also ask this Court to look carefully at the way that those protection orders were crafted  
22 and designed which is based on the similarity as in Rwanda. And if you look at the Rwandan cases,  
23 in most of the cases all the witnesses that have testified in front of the Court testified under  
24 pseudonyms. I am talking about witnesses that live in Rwanda, I'm not talking about witnesses  
25 coming from abroad. This case will be based nearly exclusively on witnesses who still live in this  
26 country with perpetrators still around them and therefore we will ask for their identity to be protected  
27 during trial, not from the Defence, of course, but from everybody else. So, yes, they will testify without  
28 their identity being -- I mean, if the Court agreed with us they will testify with their identity protected  
29 from the public and they will testify under pseudonyms.

30 MR. PRESIDENT:

31 So you are inviting the Court to defer to your prosecutorial judgment on a matter of peculiar  
32 sensitivity?

33 MR. COTE:

34 At this point in time I ask the Court to defer to its own order which says, yes, protect their identity and  
35 then you ask --

36 MR. PRESIDENT:

37 Yes. Plus the Court also relies upon your prosecutorial judgment, based on the affidavit evidence

1 and on that -- In other words, you are suggesting to us that nothing has changed since then to justify  
2 any kind of relaxation of that position.

3 MR. COTE:

4 I would say -- I would say, Your Honour, that nothing has changed. I would say the situation is kind of  
5 worse than it was when you re-issued your order and I believe that Your Honours, by asking us for a  
6 renewed witness protection motion for next Monday, wanted us to prove that to you and to give you  
7 new refreshed, let us say, evidence upon which we base -- on which we are basing our request to  
8 protect witnesses. You will have that, Your Honour, and on Monday or afterwards with the response  
9 and the reply we are able to argue in front of you that the situation right now is even worse than it was  
10 a year ago. I am talking about witness protection.

11 MR. PRESIDENT:

12 Well, I want to assure you that we consider it our obligation to make these enquiries. Thank you.

13 MR. COTE:

14 Thank you.

15 JUDGE BOUTET:

16 But before -- Mr. Côte, before you -- I come back again to this witness list. I don't know -- I assume at  
17 some given time you may be calling, for example, some police investigators and if you are not, maybe  
18 that is not the case; I don't know the case for the Prosecution, though I take it from the witness list that  
19 every single witness that you are calling at this particular moment is to be protected.

20 MR. COTE:

21 Every witness that is on that list from my understanding live in Sierra Leone right now and they are not  
22 police officers from our organisation, like ex patriot or people like that, no. That's the reason why they  
23 are protected.

24 JUDGE BOUTET:

25 You see, all witnesses on that witness list, I thought the witness list did contain the list of all witnesses.

26 MR. COTE:

27 Yes, that's why -- well, all witnesses that are on the list which is the list is all witnesses, yes, yes.

28 JUDGE BOUTET:

29 Okay.

30 MR. JOHNSON:

31 Like I say, we may -- I mean, we did seek some experts for which we are waiting to see the report and  
32 if our intention is to call them we will have to come in front of you and say we have to wait for the  
33 report to know if yes or no they would be useful for this Court, and then we're going to have to show  
34 good cause and ask permission to add those persons which will certainly not be protected.

35 JUDGE BOUTET:

36 So at this time you are still looking for these experts, you don't know if you will be calling them or not?

37

1 MR. JOHNSON:

2 We approached them, we are waiting for the report.

3 JUDGE BOUTET:

4 Okay, thank you.

5 MR. PRESIDENT:

6 Thank you, Learned Counsel. We would move on to the second order; the compliance report on  
7 disclosure.

8

9 According to our order, that report should include the number of witnesses for whom statements or  
10 summaries have been disclosed, the date of disclosure, the total number of pages for each summary  
11 or statement. What is the position from your perspective, learned counsel?

12 MR. JOHNSON:

13 Yes, Your Honour, we have included the compliance report. We have filed the compliance report we  
14 believe -- we believe it contains the information that you have asked. It contains the pseudonyms of  
15 witnesses that you will find that are not on the witness list because, of course, statements were  
16 disclosed early on from these potential witnesses and at a later point we decided that we would not be  
17 calling that witness. But the report is filed, Your Honour.

18 MR. PRESIDENT:

19 Yes, but the Chamber wishes to observe, before I let the Defence respond, that the report does not  
20 distinguish between disclosure, summaries and statements and --

21 MR. JOHNSON:

22 Yes, Your Honour.

23 MR. PRESIDENT:

24 And it is possible to argue that the absence of such a distinction may well affect the Trial Chamber's  
25 ability to evaluate the quality of the Prosecution's compliance with their disclosure obligations. So  
26 suppose that point were made, how would you respond to it?

27 MR. JOHNSON:

28 I can certainly re-file a report, Your Honour, and distinguish what kind of -- whether we are talking  
29 about a statement or a summary, distinguish -- put some kind of notation on the compliance report to  
30 indicate that.

31 MR. PRESIDENT:

32 Yes, we do make that observation because we do not think that you are giving, so to speak, a non-  
33 constructive interpretation of the Rules.

34 MR. JOHNSON:

35 I understand, and possibly, to go one step further, Your Honour, when it is a summary when the report  
36 in my -- report that I will re-file for you where I am showing a summary was filed, I go farther to show  
37 what witness's statement that summary may have been based on, so you can see that farther down

1 the report when the statement was eventually disclosed.

2 MR. PRESIDENT:

3 Yes. And so such a summary will include the exact paragraph or count to which a witness will testify.

4 Will that also be part of your --

5

6 MR. JOHNSON:

7 That is included. That is also -- we already have included that.

8 MR. PRESIDENT:

9 Are you sure you have looked at that very carefully to see whether you have actually complied with  
10 that, in other words indicate the exact paragraph or count to which the witnesses will testify, or did you  
11 do an aggregation of the number of counts and the relevance of a witness? Something like -- if you  
12 look at your chart again perhaps you might disabuse my mind on that issue.

13 MR. JOHNSON:

14 Okay. Of course attached to our submissions on Monday, Your Honour, was the compliance report  
15 and also attached to it was a witness list with the summary of the witness testimony.

16 MR. PRESIDENT:

17 Yes, good.

18 MR. JOHNSON:

19 And on that witness list I have --

20 MR. PRESIDENT:

21 Yes, cover sheet 3?

22 MR. JOHNSON:

23 Pardon?

24 MR. PRESIDENT:

25 Cover sheet 3, is that it, witness summary?

26 MR. JOHNSON:

27 Yes, Your Honour, cover sheet 3.

28 MR. PRESIDENT:

29 Okay, yes.

30 MR. JOHNSON:

31 And under that I have included the counts to which that witness will testify to.

32

33 I believe you have me breaking down for a submission this coming Monday to where I am breaking it  
34 down in that instance by paragraph of the indictment.

35 MR. PRESIDENT:

36 Quite right, yes.

37

1 MR. JOHNSON:

2 And that is due, I believe, on Monday.

3 JUDGE BOUTET:

4 But we would also like to have a breakdown by, if I take your example, the very first page of your  
5 witness summary, TF2-001. Looking at that, it says that witness will essentially testify as to Counts 1  
6 and 2, 5, 6 and 7.

7 MR. JOHNSON:

8 Yes, Your Honour.

9 JUDGE BOUTET:

10 But we would like to know how many witnesses -- this is the kind of picture we would like to have. In  
11 other words, as to Count 1, do we have 25 witnesses; is it two witnesses? That is the kind of  
12 information we would like to have.

13 MR. PRESIDENT:

14 In other words, we are asking you to fine tune the audio visual presentation of this kind of thing.

15 MR. JOHNSON:

16 In the report I am preparing for you for Monday --

17 MR. PRESIDENT:

18 Okay.

19 MR. JOHNSON:

20 -- down the left column I have paragraph number. Now to the right of that I have the witnesses that  
21 are testifying to that paragraph number and the documents that go to that paragraph number. So  
22 then of course you will be able to tell the number of witnesses or the number of documents that go to  
23 that particular count.

24 MR. PRESIDENT:

25 Counsel, you have anticipated us well. Thanks.

26 MR. JOHNSON:

27 Okay. One last note I would like to say, Your Honour, that you asked for an estimated time of how  
28 long we expected the witness to testify to and we have put that on here and I must say that although  
29 we have tried to speculate, there are so many variables into that, including such things as  
30 interpretation and --

31 JUDGE ITOE:

32 That we understand.

33 MR. PRESIDENT:

34 Yes, we --

35 JUDGE ITOE:

36 What you are telling us -- what you are giving us on paper is fairly indicated -- it is indicated just  
37 because we want to provide an agenda and we just want you to give us an indication. It doesn't

1 mean, of course, that you are limited to that time.

2 MR. JOHNSON:

3 Thank you, Your Honour.

4 MR. PRESIDENT:

5 Thank you.

6 JUDGE BOUTET:

7 This type of information you have obviously applies only to the Prosecution's aspect of the witness.

8 MR. JOHNSON:

9 Oh yes, Your Honour.

10 JUDGE BOUTET:

11 It doesn't take into account cross-examination.

12 MR. JOHNSON:

13 Yes, Your Honour.

14 JUDGE BOUTET:

15 I just want that to be clear. Thank you.

16 MR. PRESIDENT:

17 Well, we have covered the summary of each witness. Exhibit list and copies of each exhibit. Let me  
18 hear the Defence.

19

20 Defence, I am sure you may want to make some comments on what we have heard so far on the  
21 witness list and the summary of each witness compliance with the disclosure report.

22 MR. TEJAN-SIE:

23 Your Honour, as I said earlier on, we only received these documents on the night of the 26<sup>th</sup>. We  
24 have perused, but we have not fully studied the documents. Until we do, we are not in a position --

25 MR. PRESIDENT:

26 You are not able to make any constructive contributions.

27 MR. TEJAN-SIE:

28 Any constructive contribution at this stage.

29 MR. PRESIDENT:

30 Much appreciated. Exhibit list. Come, Counsel. I apologise.

31 MR. KOPPE:

32 The same, of course, is for the defence of Moinina Fofana. There was one point though which I would  
33 like to bring to your attention. We are presently speaking to the Prosecution about the possibility of  
34 getting all the material documents which will not be put into evidence. The same goes for witnesses  
35 which were interrogated by the Prosecution but who will not be put on the stand at one point. So just  
36 bringing to your attention that we are at this point presently talking to the Prosecution about this issue.

37



1 MR. PRESIDENT:

2 Well, we encourage the dialogue. Learned counsel for Kondewa.

3 MR. WILLIAMS:

4 I do not intend to add anything to what my learned friends have said on the issue, My Lord.

5 MR. PRESIDENT:

6 Thank you very much.

7 JUDGE BOUTET:

8 Mr. Prosecutor, I do have one question. If I can come back to the witness compliance report. Looking  
9 at your compliance report, Witnesses TF2-217 and TF2-218 are contained in the witness list and are  
10 not cited in the compliance report. Why is the discrepancy and has the Prosecution disclosed the  
11 statement or summaries of these witnesses to the Defence?

12 MR. JOHNSON:

13 I will look into that and get back to it today, Your Honour.

14 JUDGE BOUTET:

15 Because if you look in your list it says from 216, it jumps, in the compliance report, it goes to 219. It  
16 may be a typo, but, on the face of it, 17 and 18 on are not there.

17 MR. JOHNSON:

18 Okay, all right. I will report back to the Court on that.

19 MR. PRESIDENT:

20 On the issue of list of exhibits and copies of each exhibit, two short points from the Chamber. One,  
21 we note that you have 56 documents; are we right in that counting?

22 MR. JOHNSON:

23 How many, Your Honour?

24 MR. PRESIDENT:

25 Fifty-six.

26 MR. JOHNSON:

27 Fifty-six.

28 MR. PRESIDENT:

29 Or is it more than that?

30 MR. JOHNSON:

31 The exhibit list was much longer than that, Your Honour, it was 262.

32 MR. PRESIDENT:

33 Well 56 for which the Prosecution seeks judicial notice.

34 MR. JOHNSON:

35 Oh, on the judicial notice list?

36 MR. PRESIDENT:

37 Yes.

1 MR. JOHNSON:

2 That sounds right, Your Honour. I would have to double check.

3 MR. PRESIDENT:

4 Did you disclose all the copies of the exhibit to the Defence prior to filing the judicial notice motion?

5 MR. JOHNSON:

6 No, not all of them, Your Honour, some of them -- we disclosed -- those documents included on the  
7 judicial notice motion were, of course, filed with the court and the Defence would have received them  
8 with that filing. We were able to disclose -- at the time we filed we disclosed to the two counsel that  
9 were located here in Freetown. The counsel for Mr. Fofana did not get -- we did not hand those to  
10 him until Monday.

11 MR. PRESIDENT:

12 Yes.

13 MR. JOHNSON:

14 We carried them over on Monday to the Defence office.

15 MR. PRESIDENT:

16 So in terms of the total exhibits the number might reduce --

17 MR. JOHNSON:

18 Oh certainly.

19 MR. PRESIDENT:

20 -- depending on the outcome of the judicial notice?

21 MR. JOHNSON:

22 Absolutely, because they are included in both places.

23 MR. PRESIDENT:

24 Well at that point I will recess this court for a break. Thank you.

25 *(Court recessed at 1115 H)*

26 *(Pages 1 to 21 by Susan G. Humphries)*

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1 (Court resumed at 1140H)

2 MR. PRESIDENT:

3 We are back in session.

4  
5 We'll move on to the -- I think we've already covered the item dealing with further expected filing and  
6 obligations of the parties. The Prosecution has indicated that they will be filing a proofing chart. Is  
7 that right? And -- and you've heard the Chamber's reservations about -- or observations about what  
8 more details may be necessary. Do you want to respond?

9 MR. JOHNSON:

10 As I understand, you've requested that I file a further detail on where the disclosed statements in  
11 summary form and we now show where those are indeed delineated. That was when summaries  
12 were filed and that has now been disclosed in redacted form. And so we will provide in addition to the  
13 compliance report, that shows what statements which we filed as summaries (*inaudible*). And of  
14 course now that all of those statements have be filed in redacted form, so that there are no  
15 statements outstanding when that happens.

16 MR. PRESIDENT:

17 Yes, thank you. Well, we are aware from our researches that some such effort has been made in the  
18 supplementary pre-trial briefing, somewhere, I'm not sure, but we take that -- we accept the  
19 undertaking to do that. Do you want to comment on the -- or have you said sufficiently what you want  
20 to say on the renewed motion for protective measures? Do you want to add anything useful to what  
21 you have told us?

22 MR. JOHNSON:

23 Yes, I would like to make one request, Your Honour. We were going to file in writing today, but  
24 perhaps I could do it before the Chamber orally, and that is to request leave to exceed the ten-page  
25 limitation on motions. We cannot adequately cover the subject in ten pages in our renewed motion for  
26 witness protection measures, and we seek to be able to file it in greater than ten but less than 20.

27 JUDGE BOUTET:

28 May I ask you why?

29 MR. JOHNSON:

30 We do not think we can adequately cover as my co-counsel has said. We think that things have  
31 certainly changed and that the situation and, indeed, potential danger to our witnesses, has increased  
32 and I don't feel we can significantly cover the issue in ten pages, but less than 20, certainly.

33 JUDGE ITOE:

34 I was going to ask if it's not ten how many less than 20.

35 MR. PRESIDENT:

36 Has the Defence any comment on this? Let them reply to an --

37

1 JUDGE ITOE:

2 Yes, let the Defence respond to an oral --

3 MR. PRESIDENT:

4 -- application. Yes, let's hear the response of the Defence.

5 MR. TEJAN-SIE:

6 My Lord, for the first Accused we would oppose the objection (*sic*) vehemently. This is not the first  
7 time that they are coming for protective measures, My Lord. The first time they came in they had the  
8 file on *ex parte* motion the first time they came around for protective measures and I think that motion  
9 was in consonance with the rules for filing, My Lord. So I don't see why that rule should be relaxed  
10 because of what they have referred to us new developments or fresh facts. My Lord, I think the rules  
11 should stand. We should act within those Rules.

12 MR. PRESIDENT:

13 But what would be the prejudice to your side? If this motion is filed what sort of -- remember here we  
14 are dealing with a matter of great sensitivity.

15 MR. TEJAN-SIE:

16 Yes. My Lord, we welcome the order for them to file to revisit this area because, I mean, our  
17 preparation for trial, My Lord, is already stalled because of the ongoing protective measures. We  
18 don't know who is coming to testify against us at this stage; we are investigating blindly. Our  
19 investigations have started and we are starved for funding our investigation; we are only -- as far as I  
20 know from the Defence office, we only have six months to conduct our investigations, we've already  
21 used three of these six months and we have not even started trial, we don't -- we do not even know  
22 the witnesses we are -- that will be coming up; we need to know the background of those witnesses.

23

24 We do not -- the prosecution has already indicated that they do have the names of the experts. We  
25 don't know who those experts are, we have not even -- how can we even start the process of talking  
26 to our own experts when we do not know the experts that are coming in?

27 MR. PRESIDENT:

28 Anything else?

29 MR. TEJAN-SIE:

30 That's what I have to say, except if you have any questions, My Lord.

31 MR. PRESIDENT:

32 Well, I will at this point detach myself from it and ask if any of your other learned colleagues want to  
33 associate or make any statement.

34

35 Any response, Counsel?

36 MR. KOPPE:

37 Just very briefly, Your Honour, on the matter of whether it should be more than ten pages.

1 If it's not much more than ten pages, we don't really --

2 MR. PRESIDENT:

3 No, the practised direction says ten pages.

4 MR. KOPPE:

5 Yes, I know, but if this motion is going to be less than 20 --

6 MR. PRESIDENT:

7 Okay.

8

9 Counsel -- Which other counsel?

10 MR. WILLIAMS:

11 Your Lordships, we are indifferent. We are indifferent.

12 MR. PRESIDENT:

13 Okay, thank you.

14 MR. PRESIDENT:

15 Well, let's -- let the Prosecution respond.

16 MR. JOHNSON:

17 I would just like to point out one more thing, please, Your Honour. In the order that you provided us to  
18 file this by the 3rd of May, you said, "The motion shall specify the form of protection being sought for  
19 each witness, including this late disclosure, pseudonym, face distortion or closed session, to the  
20 extent that Prosecution can provide a specification." And we are attempting to do that to the extent  
21 that we can, but as you can see this goes beyond to measures at trial, talking about closed sessions  
22 and face distortion or other types of measures that could be taken at trial. So, I only submit that this  
23 goes beyond a little bit what we did in our initial protective measures motion and to do that the best  
24 we can, we need more than ten pages.

25 JUDGE BOUTET:

26 That was a bit -- the meaning of my question to you as to what -- why you need more than ten pages  
27 there. I know that we have imposed upon you a bit more detail than you had the first time because  
28 now you are asked to categorise and specify and so on. So, thank you.

29 MR. PRESIDENT:

30 We'll give our response at the end of this -- before the end of the proceedings.

31 JUDGE BOUTET:

32 May I just come back a bit on the exhibits that we dealt with on the previous issue. I -- the proofing  
33 chart, and -- that we are asking that you produce for the 3rd of May where you will be describing the  
34 counts at all, I want to make sure that you do understand that we would like to have exhibits with as  
35 well referred to; in other words, you have two hundred and some exhibits listed. We would like to  
36 know Exhibit No. 225, is it used to all counsel, counsel number one or -- this kind of --

37

1 MR. JOHNSON:

2 Yes, Your Honour, as we currently have it formatted, we have column 1, paragraph number from the  
3 indictment; column 2, the witnesses we expect to testify towards that paragraph number; column 3,  
4 the exhibit number.

5 JUDGE BOUTET:

6 Thank you.

7 MR. PRESIDENT:

8 Learned Counsel for the Defence, there was in fact an order about the filing of Defence briefs, pre-trial  
9 briefs and the new deadline, I'm sure you are aware, is two weeks before trial. And is there any  
10 comment -- brief comments on that? Is that -- we on our side --

11 MR. TEJAN-SIE:

12 We are bound by Your Lordship's direction, My Lord.

13 MR. PRESIDENT:

14 Quite right. I just wanted to know whether -- I appreciate that.

15

16 Counsel for the second Accused?

17 MR. KOPPE:

18 No, just to put a question back to the Court: What exactly is the Court expecting from the Defence to  
19 put in this pre-trial brief? We are not quite sure.

20 MR. PRESIDENT:

21 Well, two weeks before trial and yes, we can assure you that within the next 48 hours you will hear of  
22 the preferred date of trial.

23 MR. KOPPE:

24 Your Honour, also the content on what should be -- what you are expecting us --

25 MR. PRESIDENT:

26 If you look at the Rules -- just look at the appropriate Rule, you will see everything there and it's a  
27 matter of judgment.

28

29 Counsel for the third accused.

30 MR. WILLIAMS:

31 Your Lordships, we actually filed a Defence pre-trial brief in March.

32 MR. PRESIDENT:

33 Oh, yes.

34 MR. WILLIAMS:

35 But Your Lordship subsequently ordered that we are at liberty to do --

36 MR. PRESIDENT:

37 -- a supplementary pre-trial, yeah.

1 MR. WILLIAMS:

2 Yes, based on the Prosecution's pre-trial brief --

3 MR. PRESIDENT:

4 Quite right.

5 MR. WILLIAMS:

6 -- it will determine this.

7 MR. PRESIDENT:

8 Yes. Thank you.

9  
10 We can now cover, briefly, if the Prosecution wants to mention -- give a response to this disclosure of  
11 witness identities. But, of course, this is a sensitive thing that we are talking about, and your position  
12 is that you haven't disclosed any witness's identity?

13 MR. JOHNSON:

14 That's not true, Your Honour. We indeed have disclosed the identities of two witnesses that had had  
15 protection.

16 MR. PRESIDENT:

17 And -- of course, we also have -- perhaps we need to know -- I mean, again, I don't know whether you  
18 are speaking from your records, but when was that done?

19 MR. JOHNSON:

20 Monday; this last Monday, Your honour, on the 26th.

21 MR. PRESIDENT:

22 Of course, how are you resolving the discrepancy between the 42 days mandate and the 21 days  
23 mandate?

24 MR. JOHNSON:

25 Until such time that there may be additional witness protective measures put in place by the motion  
26 that we're going to seek and file with you on Monday, we consider we have an obligation of 42 days.

27 MR. PRESIDENT:

28 In other words, accept that as a norm?

29 MR. JOHNSON:

30 Yes.

31 MR. PRESIDENT:

32 Thanks.

33

34 Let's move on to the next item: outstanding motions.

35

36 Here we wish to report to both sides that the decisions on the Prosecution's motions for leave to  
37 amend the indictment will be published very soon. And the Prosecution's motion for judicial notice

1 and admissions of evidence, work is currently being done on that and we hope to have a decision in  
2 due course.

3  
4 There is a motion by Fofana for bail and a decision is in progress on that, yes. And my learned  
5 brother, Judge Boutet wants to speak on the Kondewa extension motion.

6 JUDGE BOUTET:

7 I would like to proceed with an in-chamber hearing on that tomorrow afternoon.

8 MR. WILLIAMS:

9 You said what?

10 JUDGE BOUTET:

11 I would like to proceed tomorrow afternoon to hear that motion in Chamber to try to shorten the time  
12 line alone. And I would like to have that at 4 o'clock in Chamber.

13 MR. PRESIDENT:

14 The motion for an extension of time.

15 MR. WILLIAM:

16 Your Lordships, we've not received any response from the Prosecution.

17 JUDGE BOUTET:

18 The response will be done orally at the in-Chamber meeting.

19 MR. WILLIAMS:

20 As it pleases Your Lordship.

21 MR. PRESIDENT:

22 Thank you.

23  
24 We can -- we also wish to report briefly that there are seven motions pending before the Appeals  
25 Chamber on jurisdictional matters, pursuant to Rule 72, and these are motions filed by accused  
26 persons here.

27  
28 I wish this Chamber could say more as to when those motions will be disposed of, but we resist the  
29 temptation to do that, lest we open ourselves to the accusation of judicial encroachment.

30  
31 Let's move on to the next item: Witnesses. I think much of what we expect to discuss here may well  
32 have been covered by the Prosecution, but we give the Prosecution the liberty to indicate, perhaps  
33 provisionally, some order in which the witnesses may be called, only provisionally or tentatively, just a  
34 mere outline without, I mean, asking you to give away any Prosecutorial strategy. And this question is  
35 not intended to elicit any such strategy; it's merely for the information of the Chamber, and also  
36 perhaps that the Defence might have just a tentative idea.

37 MR. JOHNSON:



1 Your Honour, I please request that I not be required to do this at this time. I don't have something  
2 prepared for you here today to do that. Of course, at the time that we have a trial date set and we  
3 have witness disclosure obligations, and we will certainly meet those obligations and disclose the  
4 identities of the witnesses and the order of our witnesses as we get to the initial phases of trial,  
5 because that would be something that we must do in accordance with the witness protective  
6 measures that are in place at the time. And I don't have anything to offer to you at -- here today.

7 MR. PRESIDENT:

8 So not even a list of the first ten to 20 witnesses to be called?

9 MR. JOHNSON:

10 I would --

11 MR. PRESIDENT:

12 I'm just thinking here -- thinking perhaps that because we all here are committed to the doctrine of --

13 MR. JOHNSON:

14 We are -- I -- let me add this, Your Honour, please.

15 MR. PRESIDENT:

16 Yes.

17 MR. JOHNSON:

18 We are in the process right now of contacting the witnesses that we will call in the initial weeks of trial.  
19 And we are in the process of contacting them, locating them, notifying them, and letting them know  
20 that the time is for -- that their identities may be released is coming and may take place very soon.  
21 And, of course, giving -- discussing with them continued protecting measures, the options of other  
22 measures that are available once their identities had been disclosed. And until we have had time to  
23 contact those witnesses and let them know that the -- that the -- that this is impending, that this is very  
24 near, I would prefer not to do that.

25

26 By even giving you the names, the pseudonyms of those witnesses at this time, that will -- that may  
27 very well focus in on particular geographic areas, and I prefer not to do that until we have contacted  
28 those witnesses and let them know. And we are in the process of -- we are trying to do that right now.

29 MR. PRESIDENT:

30 Well, I for my part do not intend to push you beyond legitimate bounds, but perhaps let me invite you  
31 to speculate with me, and this is just hypothetical. And let's assume that witnesses' testimonies start,  
32 hypothetically say, on the 7th of June 2004. It would follow, therefore, looking at the Court's judicial  
33 calendar that there will be nine weeks of trial before the judicial recess in August. Am I right in that  
34 estimation?

35 MR. JOHNSON:

36 Well, I don't have a calendar in front of me but I take your word for it, Your Honour.

37

1 MR. PRESIDENT:

2 Well, take into account that I'm doing it. And on the 5 point -- say, 5/4.5 trial days per week and  
3 bases, would it be pushing you too much to ask how many witnesses the Prosecution estimates to  
4 call within that period?

5 MR. JOHNSON:

6 Within those nine weeks?

7 MR. PRESIDENT:

8 Hypothetical time, I think. This is merely hypothesising.

9 MR. JOHNSON:

10 I haven't -- I've thought about the first week and I'm anticipating somewhere between seven to ten  
11 witnesses, Your Honour. I haven't gone beyond that yet.

12 MR. PRESIDENT:

13 I wonder whether Learned Counsel Côte wants to join in this hypothesising

14 MR. CÔTE:

15 I can say two artificial comments --

16 MR. PRESIDENT:

17 Yes.

18 MR. CÔTE:

19 My Lord. We want you to -- I mean certainly in the Office of the Prosecution has been working after  
20 everything that we had to file clearly with the witness list that you have now, which is, again, inflated to  
21 a certain extent, depending on the admission and the judicial notice, but we are now working on a  
22 prior -- priority list of how we are going to start trial which is basically a question of strategy that also  
23 has to be dealt -- also had to be decided by the Prosecutor himself; how we are going to present the  
24 case. But this shall not be construed by the Court in any way as delaying any obligation that we will  
25 have as soon as the date of trial is fixed or as soon as there is an order from this Court that we shall  
26 start to disclose identity of witnesses.

27

28 What my colleague said to you, which is true, since last week or -- yes, last week, we were -- we are  
29 in close contact with the witness protection unit of the registry to start to think of moving witnesses in  
30 Freetown to protect them. This is why, I mean, at one point we desperately need a date of trial to be  
31 able to fulfil our obligation and to be able to put the witness protection unit, who is also after us saying  
32 that, "We don't want to have like everybody coming in town at the same time because we don't have  
33 all those resources."

34

35 So we are going -- since we have rolling disclosure in your order, even if we are talking about nine  
36 weeks, my colleagues had seven to ten witnesses. It depends on the Defence also, cross-  
37 examination. My experience is that normally you can have a little bit more than one witness a day.

1 And we will try to -- looking at the pace of this Court we will be in a position to disclose on a regular  
 2 basis for -- at this point in time till your order is in place, 42 days in advance. Which means  
 3 practically, and we need to be practical about that, if you're telling us today, you'll start on the 31st of  
 4 May, we would have to disclose to the Defence within the next, let's say, 48 hours, your permission,  
 5 the identity of at least 20 witnesses, something like that, because we need to consider the six weeks  
 6 applying after the beginning of the 31st of May also. And we are in a position to do that. We would  
 7 be able -- even if we are not going to be able tomorrow to tell you that the name of the first witness will  
 8 be this one, we are able to disclose a package of names of witnesses at this point in time. And, of  
 9 course, my colleague will know exactly the order of the witnesses before the trial. But, I mean, now,  
 10 it's difficult for us to say.

11 MR. PRESIDENT:

12 Well, thank you very much.

13 JUDGE BOUTET:

14 Just to put it -- before you said -- we are trying to look at some ways to progress with the trial as well,  
 15 and one of the ways we were thinking is we were going to ask you -- we're thinking of maybe issuing  
 16 an order to ask you, Prosecution, to divide your counts; in other words, by grouping them. I don't  
 17 know if it's all the counts other than -- so we could start with Counts 1 to 5 or 1, 5 and 7; whatever it is.  
 18 I'm not giving any magic numbers here.

19  
 20 And so, we -- what we want to do is start as soon as we can. We know what these times are. We  
 21 have issued orders of 42 days. All you have to do is look at the calendar in 42 days. Well, as we  
 22 speak, we are beyond 31 May, but we still have in mind to start at the end of May, early June.

23  
 24 We are trying to find -- and we know that the very first days of trial we would have to have opening  
 25 statements, as such. In some case opening statements have been more than half an hour. So these  
 26 are the kind of things we are trying to measure at this time and see from you -- although I'm talking of  
 27 grouping of counts, it may be grouping of witnesses as well. Obviously not all of your witnesses will  
 28 be called. This is what you were saying and what your colleague was saying. You have already  
 29 identified which group you want to call first. We certainly support that aspect and that purpose to it,  
 30 but we are looking at all of it. So, be aware that you may receive some orders that --

31 MR. CÔTE:

32 Well, I would urge this Court to take into consideration Prosecution discretion and the way that it is  
 33 presenting its case also. And I think it's very important, Your Honours.

34  
 35 One thing that is certain, what you are suggesting now is impossible; we cannot present it by count  
 36 because one witness may testify on seven counts or 12 counts and you will not recall that witness to  
 37 come later on to testify on the two other counts.

1 One of the logical ways that we are looking at right now is to present it more by region which makes  
2 more sense, and start with one region instead of another one. But certainly, by counts would be  
3 impossible. I mean, you cannot a cut a witness statement in the middle saying that, "We just want  
4 you to testify on this part and you may have to come back on another one."

5  
6 And, like I say, this is part of Prosecution strategy. This is part of what we are discussing right now.  
7 We are willing to coming forward with a list of presentations as required by the Court in the coming  
8 weeks without any problem. And, like I say, you can trust us -- if I can say that -- the Prosecution, that  
9 every single witness that will appear will have been disclosed 42 days in advance as long as you are  
10 not changing your order or, if you ask us because we don't have 42 days for the beginning of the trial.  
11 I mean, we can start disclosing identity within 48 hours.

12  
13 You have to keep in mind that when you are setting a date of trial and we have to disclose the identity,  
14 it's not just giving the identity to my colleagues and the full statement with no redaction, this is already  
15 there; it's ready to go. There is no problem with that. The problem that you have is to turn to your  
16 witnesses and say, "Okay, now you come and you're going to have to be protected in Freetown."

17  
18 Normally, if it's a mother with children we have to protect the whole family because she will not leave  
19 the family behind. And these are the type of issues that we have to deal with which has much more  
20 logistical and practical with the witness protection unit, and this is what we have to work on.

21 Therefore, if we have to set the trial, and I re-assess -- I want to re-affirm that again -- I told you that at  
22 the status conference, we need a real date of trial because we're going to move those people in and  
23 those people will -- their lives will be disturbed for six weeks minimally. And if we just fix a date of trial  
24 to go at opening statement (*sic*) and then postpone the trial to another three weeks, it means that  
25 those people will have to remain in safe houses --

26 JUDGE ITOE:

27 Nobody is suggesting that.

28 MR. PRESIDENT:

29 Yeah, we are not saying that.

30 MR. CÔTE:

31 No, I know, I know. I'm just saying that it's just a question of logistic.

32 MR. PRESIDENT:

33 Clearly we are sensitive to the difference between a symbolic date of trial and a real date of trial, and  
34 we assure that we are not interested in the former.

35  
36 And -- so, do I get your position that you may find the option of dividing the Prosecution witnesses into  
37 two groups, rather on the basis of charges? I mean, when you were responding to my brother,

1 Boutet.

2 MR. CÔTE:

3 The charges on region or?

4 MR. PRESIDENT:

5 Of course, yes, on region --

6 MR. CÔTE:

7 Yes, there will be groups of witnesses that will be brought.

8 MR. PRESIDENT:

9 -- rather than on the basis of charges.

10 MR. CÔTE:

11 Yeah. Oh, yeah, certainly.

12 MR. PRESIDENT:

13 I just wanted to be satisfied.

14 MR. PRESIDENT:

15 Certainly.

16 JUDGE BOUTET:

17 That was an example. I mean, we're trying to find ways, ways to help you.

18 MR. CÔTE:

19 I know, I know.

20 MR. PRESIDENT:

21 In other words, we were trying to find what you call management trial techniques. We are all learning  
22 this.

23 MR. CÔTE:

24 But when you asked the question, Your Honour, you said, "Okay, we have nine weeks that we are  
25 going to sit before the recess of this summer."

26 MR. PRESIDENT:

27 That was hypothetical.

28 MR. CÔTE:

29 Yeah. Nine weeks, let's say you have five witnesses a week, it means 45 witnesses. We don't intend,  
30 and I mean, I urge this Court not to force us to disclose 45 identities right now before the recess,  
31 because then it will be more than 60 -- 42 days and it would cause a lot of pressure on the witness  
32 protection unit.

33 MR. PRESIDENT:

34 No.

35

36 We -- on the question of agreed facts -- before we move on to the agreed facts item, would the

37 Defence want to make any comments on what counsel has just said?

1 MR. TEJAN-SIE:

2 None, My Lord.

3 MR. PRESIDENT:

4 None. Thank you.

5 On the question of agreed facts, I think what the Trial Chamber can do here, because we do not know  
6 whether the parties have come to any agreement on this. Does the Prosecution want to report on  
7 any --

8 MR. JOHNSON:

9 I have to say there is nothing to report.

10 MR. PRESIDENT:

11 Yeah, nothing. Well, all we can do here is to urge the parties to meet again and see whether there  
12 are any points of agreements on issues of facts or law, and this is very important for us.

13

14 The next item is -- yes, go ahead, Counsel.

15 MR. KOPPE:

16 Thank you.

17

18 We have not formally responded yet to the Prosecution's motion for judicial notice, I agree with that.

19 MR. PRESIDENT:

20 Yes.

21 MR. KOPPE:

22 And there are at least three facts which we are willing now at this point to agree to.

23 JUDGE ITOE:

24 Can you be more audible, please?

25 MR. PRESIDENT:

26 Speak out.

27 MR. KOPPE:

28 Yes, there are -- we haven't responded yet to the --

29 MR. PRESIDENT:

30 Press the red button on your mike.

31 MR. KOPPE:

32 -- we are willing to agree to at least three facts right now and please consider this as our response to  
33 this Prosecution's motion.

34

35 We had a discussion yesterday with the Prosecution that there are at least six other facts which, if  
36 brief or slightly amended, we might also agree to these facts. They are just one or two words missing,  
37 sometimes just a little rephrasing, so we might end up agreeing to at least nine facts.

1 If you would allow me we could at least agree to the facts of -- mentioned under B, P and W.

2 MR. PRESIDENT:

3 Yes

4 MR. KOPPE:

5 And on E, Q, F, G, L, U, we would like to speak further to the Prosecution and to request them to  
6 amend only a few words and then we might give you -- we would agree the facts.

7  
8 As regards to the reports in Annex B, we are willing to take judicial notice -- to accept the existence  
9 and authenticities of these documents, referring this matter to the *Semanza* case in the ICTR but, of  
10 course, not to the content of the reports.

11  
12 So we are willing to admit that these reports are existing, authentic, but not to the actual content of the  
13 reports. So, please consider this response our formal response on the motion.

14 MR. PRESIDENT:

15 Yes, we certainly consider it a very constructive response from the Defence.

16 MR. JOHNSON:

17 Yes, we certainly -- we certainly welcome that -- their submissions and when we talked yesterday, I  
18 said, "Please submit them to me in writing and -- so that we can look at the --"

19 MR. PRESIDENT:

20 -- the adjustments. Thanks.

21  
22 Now, item 8: Trial preparation and logistics.

23  
24 For the time being, I think we -- our plan is to have the trial proceed on a -- on the basis of a five-day  
25 schedule. And the Chamber may adjust this schedule as necessary, due to witness-related issues,  
26 specific requests by the parties, or other unforeseen circumstances.

27  
28 In this regard, the Court Management Section and the Registry will provide additional information on  
29 the logistics as necessary. But I think from our own perspective we want to indicate that while the  
30 case or cases may be scheduled to sit five days a week, it may be possible that the Trial Chamber will  
31 not hear witnesses everyday or each day, possibly reserving one day every second week to address  
32 any outstanding procedural issues or other motions that may arise so as not to disturb the rhythm of  
33 calling witnesses of other days -- the other days.

34  
35 And there is a possibility too that we might inject some flexibility by saying that the Trial Chamber may  
36 not sit, say, one afternoon on a particular day of the week.

37

1 These are the kinds of variables that we are working or playing around with in terms of trial  
2 preparation and logistics.

3  
4 Are there any responses, Prosecution?

5  
6 Before you respond, my brother, Judge Boutet, wants to supplement what I have just said.

7 JUDGE BOUTET:

8 There might be also the possibility that this Trial Chamber may do two trials. So what we have just --  
9 what my brother has just mentioned remains fully applicable, but should we be moved and hear a  
10 second trial, obviously we would have to do some alternative movement. So we may be able -- we  
11 may proceed two weeks with one of the trial and then the next two weeks to the other trial. So we'll  
12 have to do the logistic and amendments accordingly, but for the time being, what my -- the Presiding  
13 Judge has mentioned is the way we intend to proceed. So we'll see, as we move along, how we can  
14 accomplish what I've just mentioned.

15  
16 There is movement to have second trial chamber appointed, we don't have information at this moment  
17 that they have or have not. So, for the time being, what I'm describing is what we intend to do.

18 MR. PRESIDENT:

19 Mr. Prosecutor?

20 MR. CÔTE:

21 I don't have much comment, Your Honour.

22  
23 I welcome the fact that this Court is ready to sit five days a week for hearing. I think that that will help  
24 us to expedite the trial to a -- to expedite it in a good term, not meaning anything negative about that.  
25 And, of course, if this Chamber decided to hear two cases, then for us it's basically it's question of  
26 having a very precise judicial calendar to know that -- well in advance. I mean, like a couple of  
27 months in advance that on this week this trial will sit because it would have naturally an impact on the  
28 disclosure of identity of witnesses. Thank you.

29 MR. PRESIDENT:

30 Thank you. Learned counsel for the Defence, any comments?

31 MR. TEJAN-SIE:

32 Your Honour, we share the same sentiments as the Prosecution.

33 MR. PRESIDENT:

34 Thank you. Counsel -- counsel for the third accused.

35 MR. WILLIAMS:

36 Your Lordships, we have a slight concern here. One or two members of our team reside out of the  
37 jurisdiction and the resources available to our team, I mean, are limited. And they would not be



1 available in Sierra Leone for the entire trial. I mean, they would have to come up in and out. So, we  
2 would -- if that is the way we are going to proceed, we would want sufficient indication because we  
3 intend to apportion witnesses amongst ourselves. We would want an indication as to when particular  
4 witnesses would be called so that, I mean, if they fall within the time, you know, it would be make the  
5 process very expeditious.

6 MR. PRESIDENT:

7 The records will reflect that concern.

8 MR. WILLIAMS:

9 As My Lord pleases.

10 JUDGE ITOE:

11 But, you see, it's a question of team work. Wouldn't want -- what you're saying may be sound all right  
12 now, but it should not create a hold up, you know, of the trials because a member of the Defence  
13 team is not here so his colleagues cannot go on. You see? I think what should be reflected in the  
14 groupings you have is the spirit of team work and it should as much as possible not be disruptive of  
15 the schedule of the Court and how we intend to proceed. So this is the only caution, you know, which  
16 I --

17 MR. WILLIAMS:

18 Yes, Your Honour, if proper arrangement --

19 JUDGE ITOE:

20 -- will give to you because, I mean, we may not be able to fix calendars, you know, calendars that will  
21 have to be followed absolutely; there might be variables, there might be other considerations which  
22 might get us out of a particular schedule, so I think a lot of internal organisation within your teams is  
23 very, very important in order to avoid holding up, you know, the trials at any stage whatsoever.

24  
25 Whatever the case may be, we will be flexible and we'll be prepared to contain your requests, but not  
26 where they become unreasonable or where they are unreasonable.

27 MR. WILLIAM:

28 I agree with Your Lordship. We would -- if there are any spill overs, other members of the team will  
29 step it, but we would have a like -- an indication as to when witnesses would be called.

30 MR. PRESIDENT:

31 We -- of course, it is common knowledge, and we are just stating this for the record, that the official  
32 language of the proceeding will be English and the interpretation will be provided to the Accused.

33  
34 Also, guided by the Rules, we would expect that in terms of case presentation, one member of each  
35 team will conduct the examination-in-chief of each witness and will generally be responsible for  
36 answering or raising objections. I would think that's the kind of -- the Rules at least guide us along  
37 those lines.

1 And, of course, again, much as we don't want to keep encroaching upon prosecutorial discretion here,  
2 but again let me invite them, which invitation they are at liberty to decline respectfully, and to sort of  
3 give a projection of the length of opening statements. How long would that take us?  
4

5 And remember that at the status conference the Prosecution estimated a maximum of four to six  
6 months for their case. And -- so two questions, short questions: One, is the Prosecution in a position  
7 to give us some kind of projection as to the length of the opening statement, how long it will take?  
8 And, also, whether they confirm this period of four to six months?

9  
10 I mean, as I say, this is a question which if they feel they are not able to give any firm answers now, I  
11 would --

12 MR. CÔTE:

13 Starting with your last one, Your Honours, I think four to six months is what we anticipate realistically.  
14 It could be less, it would depend again on negotiation between Defence and Prosecution and some  
15 decisions from this Bench.  
16

17 As far as the opening statement, I can tell you right now that part of the opening statement will be  
18 done by the Prosecutor himself but I don't anticipate that -- what we are maybe going to do is split the  
19 opening statement with two persons, one part by the Prosecutor, one part by somebody who is going  
20 to talk very precisely on the order of presentation of evidence and evidence in the case in a more  
21 specific way, somebody from the trial team that will be in front of this Chamber on a regular basis. I  
22 don't anticipate that both those parts of the opening statement will last more than half a day. I would  
23 say like four hours or something like that. But, again, I haven't consulted the Prosecutor himself about  
24 the length of his opening statement -- his part of the opening statement, so I reserve the right to go  
25 back on this estimation.

26 MR. PRESIDENT:

27 No, we are just *(overlapping microphones)*. We are not casting any *(overlapping microphones)* here.

28 Thanks.

29  
30 What about the Defence, do they have any -- do you want to disclose anything in terms of perhaps  
31 how they would proceed with their cross-examination? Any thoughts yet as to methodology and all  
32 kind of things? Anything agreed yet?  
33

34 No; still being worked out.

35  
36 Counsel on both sides, my brother, Judge Boutet, had indicated that in terms of starting date of the  
37 trial we really are thinking about May 31. But I think I can inform you that an order setting the trial

1 date, the realistic trial date as distinct from anything symbolic, will go out shortly. I did indicate in 48  
2 hours and I think --

3 JUDGE ITOE:  
4 Forty-eight hours.

5 MR. PRESIDENT:  
6 -- 48 hours, right. And so I think that's all we need to say on that because I'm pretty sure that we are  
7 all aware that there is also the question of an additional status conference which we might consider  
8 necessary one week prior to the commencement of the trial.

9 JUDGE BOUTET:  
10 To come back to a question my brother, Judge Thompson asked the Defence about the order of  
11 cross-examination, if I can. The same process that was mentioned to the Prosecution would be  
12 applicable in the sense that, as part of the Defence team, if one counsel is the one doing the cross-  
13 examination of a particular witness, it should be that counsel, not two counsel or three from the same  
14 team doing cross -- examination of that witness. In other words, within the team they have to make a  
15 decision as to who is to do what. And within the Defence team, and by this I mean the Defence of the  
16 three Accused, they have to determine which will go first cross-examination, who will be two --  
17 second, and who will be third. And we'll see how that evolves, but we want to make sure that it's not  
18 always the same one who is the first and not the same one who is the second. So -- but we'll -- it is  
19 possible that we might issue an order in this respect, but we just want to tell you this is what we  
20 expect to be doing.

21  
22 Any questions or any comments on that?

23 MR. PRESIDENT:  
24 Yes, and adding to that, I mean, this Chamber will be very sensitive to the need to monitor cross-  
25 examination as well as also examination-in-chief. This is all part of the equation to ensure and  
26 guarantee the right of each accused person to a fair and expeditious trial. In other words, the  
27 Chamber is not merely going to proclaim commitment to such a right, we want to sustain in reality that  
28 right.

29  
30 Too often we proclaim commitment to certain ideals but we don't sustain them, and so this Chamber  
31 is very sensitive that our procedures and methodologies should reflect that awareness. Much as we  
32 agree that thoroughness, comprehensiveness are important, but sometimes unduly long examination-  
33 in-chief, unduly long cross-examination, repetitive material, can all hamper the right of an accused to  
34 a fair and expeditious trial.

35  
36 Two final things there, Prosecutor: One is this: that -- and we want to factor this in because of the fact  
37 that you mentioned that your opening statement might take about four hours or half a day. From our

1 perspective it may also be necessary, perhaps if that -- after the opening statement, depending on  
 2 other variables, it might be necessary to have a two days break so that we test or get rid of some of  
 3 the teething problems in the technology which I understand is state -- going to be a state-of-the-art  
 4 technology, complicated and all that kind of thing. And when it comes to that kind of technology, it  
 5 doesn't take a rocket scientist to know that there can be hitches and britches. So, that's another  
 6 factor that we have been thinking about.

7 JUDGE ITOE:

8 And the technology becomes obstructive, we would have to resort to the traditional means that are  
 9 known in the legal system, you know, that we operate. Because it is important that all the actors in  
 10 the scene, you know, at least are able to follow the proceedings and to conduct them efficiently the  
 11 way they should be done, that nothing should be introduced that would impair this objective.

12 JUDGE BOUTET:

13 In response to the application for -- in order to allow the extension of the number of pages from ten to  
 14 less than 20, the Court raise this extension of the number of pages for the production of that  
 15 document. It is well understood that it shall be less than 20 pages.

16 Thank you.

17 MR. PRESIDENT:

18 We now come to the conclusion -- about to come to the conclusion of this proceeding. And before we  
 19 do that, I want to ask counsel on both sides if any counsel has anything to proffer for this Special  
 20 Court in particular, or in the interest of justice in general; if not, we will adjourn the proceeding.  
 21

22 JUDGE BOUTET:

23 Just one second, please.

24  
 25 Counsel for Mr. Kondewa, I have indicated that the in-Chamber hearing for the extension -- your  
 26 motion for extension of time will -- is set for tomorrow afternoon at 4 o'clock. I did not say where. It  
 27 would be in the conference room of the Registrar's -- in the Registrar's office.

28  
 29 So that's 4 o'clock tomorrow afternoon. Thank you.

30 MR. PRESIDENT:


31 This Court stands adjourned.  
 32 *(Court adjourned at 1238H)*  
 33 *(Page 22 to 39 by Gifty C. Harding)*

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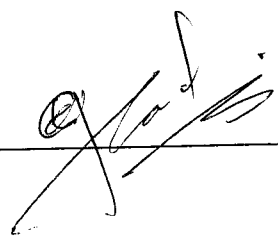
CERTIFICATE

We, Susan G. Humphries and Gifty C. Harding, Official Court Reporters for the Special Court for Sierra Leone, do hereby certify that the foregoing proceedings in the above-entitled cause were taken at the time and place as stated; that it was taken in shorthand (*machine writer*) and thereafter transcribed by computer; that the foregoing pages contain a true and correct transcription of said proceedings to the best of our ability and understanding.

We further certify that we are not of counsel nor related to any of the parties to this cause and that we are in nowise interested in the result of said cause.

  
\_\_\_\_\_

Susan G. Humphries

  
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Gifty C. Harding