

THE SPECIAL COURT FOR SIERRA LEONE

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

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

1 JUNE 2004
1029H
STATUS CONFERENCE

Before the Judges:

Bankole Thompson, Presiding
Mutanga Itoe
Pierre Boutet

For the Registry:

Mr. Robert Kirkwood
Dr. Rebekka Ehret
Mr. Saleem Vahidy
Mr. Geoff Walker

For the Prosecution:

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

For the Principal Defender:

Ms. Simone Monasebian
Mr. Ibrahim Yillah

For the Accused Sam Hinga Norman:

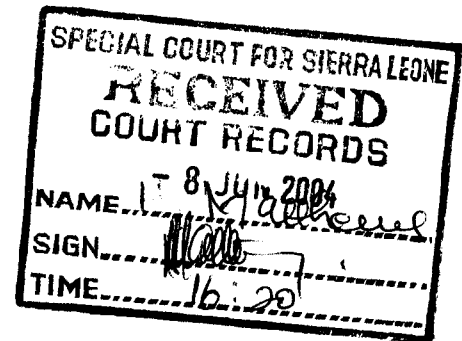
Mr. James Jenkins-Johnston
Mr. Sulaiman Tejan-Sie

For the Accused Moinina Fofana:

Mr. Michiel Pestman
Mr. Arrow Bockarie

For the Accused Allieu Kondewa:

Mr. Charles Margai
Ms. Susan Wright
Mr. Yada Hashim Williams
Mr. Thomas Briody



Court Reporters:

Ms. Susan G. Humphries
Mr. Momodou Jallow

PROCEEDINGS

MR. WALKER:

This is a status conference in case No. SCSL-2004-14-PT.

MR. PRESIDENT:

May we have representations, please?

MR. JOHNSON:

Your Honour, for the Prosecution, Luc Côté, Charles Caruso and James Johnson.

MR. PRESIDENT:

Defence, first Accused.

MR. TEJAN-SIE:

For Sam Hinga Norman, Sulaiman Banja Tejan-Sie.

MR. PRESIDENT:

Second Accused.

MR. PESTMAN:

Yes, for Mr. Fofana, Arrow Bockarie and Michiel Pestman.

MR. PRESIDENT:

The third Accused.

MR. MARGAI:

Charles Margai, Susan Wright, Yada Williams, Thomas Briody.

MR. PRESIDENT:

Thank you, learned counsel. Do we have interpretation facilities?

(Interpreters sworn)

MR. PRESIDENT:

Thank you. Learned counsel on both sides, I need to state that today's proceeding is being held just two days prior to the commencement of the trial of the case entitled The Prosecutor against Sam Hinga Norman, Moinina Fofana and Allieu Kondewa, SCSL-04-14-PT. And you are no doubt familiar that this proceeding is described as a status conference. Like previous status conferences, it is being held pursuant to Rule 65 *bis* of the Rules of Procedure and Evidence of this Court, which states, and I quote, "A status conference may be convened by the Designated Judge or the Trial Chamber. The status conference shall: (i) organise exchanges between the parties so as to ensure expeditious trial proceedings; (ii) review the status of his case and to allow the Accused the opportunity to raise issues in relation thereto."

But I must emphasise that unlike previous status conferences where we had to hold some portions of our proceedings in executive session and others in open session, today, following the norm as provided in Rule 78 of our Rules, all our proceeding will take place in open session.

1 With these remarks let me now direct the attention of counsel on both sides to the agenda items for
2 today's proceeding. First of all, our sitting times are 11 to -- 1000 to 1130; 1145 until 1300 hours; then
3 a lunch break; then we will resume sitting at 1445 going on to 1600 hours; and, if necessary, 1630 to
4 1800 hours.

5
6 The first item on the agenda for this status conference is appearances of the parties. We have
7 already covered that. The second item is the Accused and here we are concerned with two items --
8 sub-items: interpretation and the health of the Accused. We have already covered the interpretation
9 aspect. The third item -- main item, is general housekeeping matters. Under that item we will be
10 essentially concerned with composition of the trial teams. The fourth item is trial preparation and
11 logistics. And there we will deal with three sub-items: (a) trial logistics and schedule; (b) report from
12 Court management/facilities management unit; (c) case presentation, order for cross-examinations
13 and re-examinations. Our fifth item is filings received and filings expected. Under item six, which is
14 other witness issues, we will cover (a) witness list, and (b) expert witnesses. Item seven concerns
15 outstanding motions. Item eight is about decisions of the Appeals Chamber. Item nine is about
16 exhibits. Item ten, agreed facts. And there is a residual item, 11, any other matters.

17
18 We shall now proceed to the second item of the agenda, the Accused. And of course the state of
19 interpretation has been addressed. The Accused, Fofana and Kondewa are receiving translation from
20 English to *Mende* and no translation is required for the first Accused. The records will reflect that the
21 interpreters are present and that they have been sworn.

22
23 Sub-item (b) under two, the health of the Accused. Before we address sub-item (b) of agenda item
24 two, I would like to invite Dr. Ehret to make an intervention on the technology of interpretation, if she
25 chooses. I think it is an appropriate point at which she can do that, unless she has any reasons why
26 she wants to do otherwise.

27 DR. EHRET:

28 I think I have had chance to discuss some of the points I think we have covered. I will make a list of
29 what the points shall be so that everybody should know about the role of the interpreters. I think it is
30 very important for everybody to know that interpreters have a role of mere communication channel
31 and that channel is being monitored very, very closely. I want everybody to be aware of that, first of
32 all. And I think about the technical items, since the booths are not ready yet for Thursday, I will have
33 to find a solution to that. I will furnish you with the results. Thank you.

34 MR. PRESIDENT:

35 Thank you very much. At this stage does any counsel on either side want to make any brief response
36 to Dr. Ehret's contribution? Prosecution.

1 MR. JOHNSON:

2 No, your Honour.

3 JUDGE ITOE:

4 Are there any concerns about translation (*inaudible*)?

5 MR. PRESIDENT:

6 Defence.

7 MR. PESTMAN:

8 I was wondering whether we were going to try simultaneous translation or whether it is going to be
9 consecutive?

10 MR. PRESIDENT:

11 The Defence please use the microphone again, repeat your question.

12 MR. PESTMAN:

13 It does not work. My question was whether there was going to be simultaneous translation or whether
14 it was going to be consecutive and especially the first period because I understand that the booths are
15 not ready, so we will not be able to use the microphones – headphones, microphones.

16 MR. PRESIDENT:

17 Thank you. Let us invite Dr. Ehret to respond.

18 DR. EHRET:

19 There will be -- until the booths are ready there will be consecutive interpretation.

20 MR. PRESIDENT:

21 Does any other counsel wish to address that issue briefly?

22 MR. MARGAI:

23 Yes, My Lord, I was thinking that perhaps if it might not be out of place during the course of this status
24 conference, for a visit to be made to the Trial Chamber in case certain observations arise for the
25 consideration of the Bench to address those issues before Thursday.

26 MR. PRESIDENT:

27 You mean the courtroom?

28 MR. MARGAI:

29 Yes, My Lord.

30 MR. PRESIDENT:

31 Is the Deputy Registrar here?

32 MR. KIRKWOOD:

33 Yes.

34 MR. PRESIDENT:

35 Would you like to respond? Do sit down, learned counsel. Would you like to respond to that request?

36 There is a request here from the Defence for a visit to be made to the courtroom before Thursday so
37 that they could have some kind of visual assessment of what sort of problems there are. How do you

1 respond to that?

2 MR. KIRKWOOD:

3 I think it is -- yes, we can accommodate that (*inaudible*).

4 MR. PRESIDENT:

5 Would you use your microphone there?

6 MR. KIRKWOOD:

7 I will speak louder

8 MR. PRESIDENT:

9 Good. Thanks.

10 MR. KIRKWOOD:

11 I can accommodate that for the Defence office.

12 MR. PRESIDENT:

13 Right. Does that satisfy you, Mr. Margai? Could you be in touch with the --

14 MR. MARGAI:

15 It does satisfy me, but, My Lords, I would particularly appreciate it if the procedure could be done

16 today, so the issues could be raised -- we would raise those concerns for them to be addressed.

17 MR. PRESIDENT:

18 Mr. Kirkwood, would you like to respond to that, please?

19 MR. KIRKWOOD:

20 I will accommodate that today.

21 MR. PRESIDENT:

22 Right.

23 MR. MARGAI:

24 I appreciate that, Your Honour.

25 MR. PRESIDENT:

26 We will move on. Any other counsel wishing to -- Dr. Ehret.

27 DR. ECKHART:

28 There is one request that I would have and that is my interpreters must be guaranteed enough

29 preparation time to examine the documents that they have to interpret. So please make sure that I

30 have access to them as soon as possible. I will, you know, guarantee full responsibility.

31 MR. PRESIDENT:

32 Yes. Anything else on the translation aspect? Yes, learned counsel for the Prosecution.

33 MR. JOHNSON:

34 Yes, Your Honour, perhaps I just should add, I think we are planning for it, that each of the witnesses

35 that will testify -- right now all the witnesses will be testifying in either *Krio* or *Mende*.

36 MR. PRESIDENT:

37 Thank you. Does counsel on the Defence side (*overlapping microphones*)

1 MR. MARGAI:

2 I was just a bit concerned, you know, because the request was not quite definitive because if we are
3 referring to statements, documents, et cetera, et cetera, then we would need to be clarified as to
4 which should be made available to the interpreters before the evidence is led, but it -- since the
5 witness is contemplated will be testifying in *Mende* then that answers my concern.

6 MR. PRESIDENT:

7 Right. Thank you.

8

9 Counsel for the -- any counsel wants to make any contribution on the translation in issue? Right, let's
10 move on.

11

12 Our next sub-item is the health of the Accused. Learned counsel for the Defence, would you like to
13 refer to the first Accused on the general status or the health of your client?

14 MR. TEJAN-SIE:

15 Yes, My Lord, the first Accused, Sam Hinga Norman, is in good health, physically and mentally.

16 MR. PRESIDENT:

17 Thank you. Second Accused. Counsel.

18 MR. PESTMAN:

19 Your Honour, I have no comments.

20 MR. PRESIDENT:

21 Third Accused.

22 MR. MARGAI:

23 In the circumstances, no complaint.

24 MR. PRESIDENT:

25 Thank you very much.

26

27 The next agenda item is general housekeeping matters. The first sub-item, composition of trial teams.

28 The question now is, are the Defence teams fully formed? Counsel for the first Accused?

29 MR. TEJAN-SIE:

30 Ours was until about last week, My Lord, we have a few hitches which we will take care of in the next
31 week.

32 MR. PRESIDENT:

33 Right. And there is not likely to be any obstacle for this week?

34 MR. TEJAN-SIE:

35 To trial preparation, no, My Lord.

36 MR. PRESIDENT:

37 Right, okay. What about counsel for the second?

1 MR. PESTMAN:

2 Yes, we are fully formed.

3 MR. PRESIDENT:

4 Right. Counsel for the third Accused.

5 MR. MARGAI:

6 The team is complete, My Lord.

7 MR. PRESIDENT:

8 All right. Prosecution, is your team complete?

9 MR. JOHNSON:

10 Yes, your Honour.

11 MR. PRESIDENT:

12 And ready to go?

13 MR. JOHNSON:

14 Yes, Your Honour.

15 MR. PRESIDENT:

16 Thank you.

17

18 Item four, trial preparation and logistics. We are under sub-item (a) trial logistics and schedule. Here
19 we need to put out the following information. We did issue -- that is the Trial Chamber did issue an
20 order for commencement of trial dated 11 May 2004, ordering the joint trial of this case to start on the
21 3rd June 2004 at 10.00 a.m. and for the Prosecution to disclose to the Defence identifying data of the
22 first ten witnesses it intends to call by Wednesday, the 12th of May. In other words, such disclosure
23 should have been done by the 12th of May.

24

25 Perhaps we should have a response from the Prosecution on that.

26 MR. JOHNSON:

27 Yes, Your Honour. We complied with that order and we made that disclosure on the 12th of May.

28 MR. PRESIDENT:

29 Thank you. Any comments from the Defence? Right.

30

31 The next enquiry relates to the order issued by the Trial Chamber detailing the judicial calendar for the
32 up-coming trial sessions. And that order is dated 26th May 2004 and references the period of 3rd
33 June up until 1st October 2004. And here is the scenario for trial: the Trial Chamber will sit Monday to
34 Friday with a court recess on Wednesday afternoon. Generally speaking, Fridays will be reserved for
35 the hearing of motions or legal arguments as necessary, if any. But if there are no legal motions or
36 other issues, they will be a sitting for the purposes of taking testimony.

37 The hours of court operation for Monday, Tuesday, Thursday and Friday, will be from 9.30 a.m. to

1 11.00 a.m.. That is the first segment. The second segment is from 11.15 a.m. to 1.00 p.m.. And the
2 third segment is from 2.30 p.m. to 3.30 p.m.. And the last segment of the day, 3.45 p.m. to 5 p.m..

3
4 On Wednesdays, the Court will sit from 9.30 a.m. to 11 a.m. and from 11.15 a.m. to 1.00 p.m. and
5 then we will recess for the rest of the day.

6
7 It is important to note that the first trial session for this case will run from the 3rd June 2004 to the
8 22nd June 2004, inclusive. The second trial session of this case will run from the 8th of September
9 2004 to the 1st of October 2004 inclusive. So that is the trial calendar, the scenario, and on that
10 aspect of our agenda nothing is negotiable.

11
12 I will now move onto the sub-item under that -- sub-item three on the trial preparation and logistics.
13 Court Management will provide additional information on logistics as necessary. So we do have that
14 resource of -- or pool that will provide you with all the other arrangements.

15
16 Item four: well, needless to mention that by our Statute we are authorised to use as the official
17 language of the proceeding English and nothing else. Of course, interpretation will be provided to the
18 Accused and to us, the judges.

19
20 Fifth sub-item: for the first day of trial note particularly that the Trial Chamber anticipates that in
21 addition to the opening statement of the Prosecution it will begin the testimony of the first witness.

22
23 One quick enquiry here is, will the Defence be delivering opening statements, of course, with the
24 reminder that if they opt to give an opening statement at that stage they will not be able to do so prior
25 to the opening of the Defence case. So that is the short enquiry for this sub-segment. Any Defence --
26 First Accused, will the Defence on the day of the opening statement by the Prosecution be responding
27 with a Defence statement?

28 MR. TEJAN-SIE:

29 My Lord, we really reserve that comment (*inaudible*).

30 MR. PRESIDENT:

31 Well, provided we have something by tomorrow.

32 MR. TEJAN-SIE:

33 I have no (*inaudible*).

34 MR. PRESIDENT:

35 Second Accused.

36 MR. PESTMAN:

37 No, Your Honour, we will not.

1 MR. PRESIDENT:

2 You will not. And learned counsel for the third.

3 MR. MARGAI:

4 We will not.

5 MR. PRESIDENT:

6 No, you will not.

7

8 Let us go to section (b). It will be helpful for Court Management to give an overview on the readiness
9 of the courtroom, that is courtroom one, guide to use of courtroom and an update on the work of the
10 AV installation team. I invite the Deputy Registrar to make any short statement on that or to expand
11 that observation from the Trial Chamber.

12 MR. KIRKWOOD:

13 Your Honours, courtroom one is in fact completed. The finishing touches are being made, furniture
14 being brought in and so on. There will be the same audio visual facility that we have currently until
15 the hardware audio visual is put in in the next couple of weeks. So by the 17th of June the hardware
16 audio visual equipment will be in, but until that time we have to use a similar system that we are using
17 for this courtroom right now.

18 MR. PRESIDENT:

19 Thank you. Any comments by the Prosecution in response to what the Deputy Registrar said? Any
20 observations?

21 MR. JOHNSON:

22 None.

23 MR. PRESIDENT:

24 Learned counsel for the Defence, short points.

25 MR. TEJAN-SIE:

26 None.

27 MR. PRESIDENT:

28 Nothing?

29 MR. PESTMAN:

30 No.

31 MR. MARGAI:

32 No.

33 MR. PRESIDENT:

34 Thanks. Thank you, Mr. Kirkwood.

35

36 Now we go to (c), case presentation, order for cross-examination and order for re-examination. Our
37 appreciation of the norm is as follows: one, one member of each team will conduct each witness

1 examination and will be generally responsible for objections raised. Any short responses? That is
2 what we understand it to be.

3
4 Right, well if not, can the Prosecution at this stage give us the benefit of their own assessment of the
5 length of the Prosecution's opening statement, now that I am assuming that that has been put
6 together and may be ready? A rough, sort of, time frame as to how long we expect to hear it.

7 MR. JOHNSON:

8 We are anticipating at this time that it would take -- the combined opening statements by the
9 Prosecutor and a member of the team will take no longer than an hour and a half.

10 MR. PRESIDENT:

11 Ninety minutes, right. Well, then let us make a further enquiry, and this is predicated upon information
12 given by the Prosecution at the last status conference. Can they now give us a definitive estimate of
13 the -- well, I don't know, take that back. Can they give us, at this point in time, an approximate
14 estimate of the length of their case? In other words, I recall that -- we recall that it was four to six
15 months at the last status conference. In other words, can they confirm this period or are they
16 prepared to revise it or abbreviate it? Just a minute, before you answer, my learned brother, Judge
17 Itoe, wants to ask a question.

18 JUDGE ITOE:

19 Talking about the length of your opening statements, I just have maybe an advice or a comment to
20 make and that is that it is important that that statement be as professionally and judicially inclined as
21 possible and to avoid any accentuations on politics. That is the comment I want to make and I hope
22 that it is taken.

23 MF. MARGAL:

24 As My Lord pleases.

25 MF. JOHNSON:

26 Yes, of course, Your Honour.

27 MR. PRESIDENT:

28 Yes, in other words, we will be -- what I understand my brother is saying that -- of course, we've said it
29 before, that this is a court of justice not a court of politics. Yes. Thanks. I subscribe to that
30 philosophy myself.

31
32 Let us look at the Defence side. Does the Defence have any idea in terms of their strategy as to the
33 order within which they will proceed with cross-examination? In other words, have you discussed
34 among yourselves a possible order for cross-examination?

35
36 MR. PESTMAN:

37 I am of course happy to answer that question. I was waiting for the answer to your earlier question

1 about the length of the trial.

2 MR. PRESIDENT:

3 I see. Right. Thank you very much for that reminder. Do you want to -- please respond to that in fact.

4 MR. JOHNSON:

5 I had hoped we had slipped past that one, Your Honour.

6 MR. PRESIDENT:

7 Four to six months was the last estimate, have you revised it downwards or upwards? .

8 MR. JOHNSON:

9 At this time, Your Honour, I would have to stick with that estimate. At the end of the first trial session I
10 think I could probably give you a better estimate of time and that time we will -- of course, we are still
11 working with Defence on agreed points of fact and law, we are still considering what will come out of
12 the judicial notice motion, and once we have a chance to examine witnesses and see how long
13 witnesses take, how the interpretation works and things like that, possibly at the end of this first trial
14 session we could revise that estimate.

15 MR. PRESIDENT:

16 If I may say, a clear demonstration of prosecutorial prudence. Thanks.

17
18 The Defence, I am not inviting any comments, they are in charge of their case, they know their
19 strategies and we have to give them that latitude, but, of course, without prejudice to you, making
20 subsequent enquiries when the time comes.

21
22 What about possible order for cross-examination, any tentative arrangement that you want to appraise
23 the Court of? Learned counsel.

24 MR. TEJAN-SIE:

25 The best (*inaudible*) in a position today, My Lord, we are still working out --

26 MR. PRESIDENT:

27 Well, please use the mike and we will all hear you. So are you likely to --.

28 MR. TEJAN-SIE:

29 We are still meeting on it, My Lord.

30 MR. PRESIDENT:

31 Yes. So it means that by the end of this week we would have some indication?

32 MR. TEJAN-SIE:

33 Yes, My Lord.

34 MR. PRESIDENT:

35 All right. I am not inviting the Prosecution for any reply, because -- you must realise that there is a
36 discretion in the Court to vary any order depending on the exigencies of the situation.

1 Any idea about the length of cross-examination at this stage? If -- would you -- would you like to send
2 a memorandum to the Chamber on that? And also both sides' re-examination or would you like to
3 discuss that now? Have you planned anything in terms of the length of cross-examination? It may
4 not be -- it may be a difficult to kind of enquire at this stage, but let me hear contributions.

5 MR. MARGAI:

6 My Lord, before I answer that, with your leave, I'm not quite sure because I wasn't here at the last
7 status conference.

8 MR. PRESIDENT:

9 Status conference, yes.

10 MR. MARGAI:

11 Sorry, the pre-trial conference, but then I was informed of what happened and I think that is an issue
12 which ought to be addressed now as to the --

13 MR. PRESIDENT:

14 Length.

15 MR. MARGAI:

16 (*inaudible*) of cross-examinations. I was of the view that perhaps we should follow the sequence, first
17 Accused, second and third, otherwise if it is going to be randomly done that might make the records a
18 bit untidy.

19 MR. PRESIDENT:

20 Yes, quite. I mean, deviation from the norm would have to be dictated by some --

21 JUDGE ITOE:

22 Circumstances.

23 MR. PRESIDENT:

24 -- necessity, extreme necessity, or the exigencies of the situation.

25 MR. MARGAI:

26 With regard to the length of cross-examination, I believe that will be determined by the evidence.

27 MR. PRESIDENT:

28 Well, we were thinking that at some point in time -- sort of guided by what happens in other
29 international criminal tribunals or war crime tribunals, in terms of general practice, for example, at
30 ICTY there is usually an allowance of 80 per cent of the time given for examination-in-chief to each
31 Defence counsel for cross-examination, and because -- this is an area where it is so difficult to be
32 rigid.

33 MR. MARGAI:

34 My Lord, I believe it should be relative because, for instance, if the first ten witnesses testify and say
35 nothing of consequence with regard --

36 MR. PRESIDENT:

37 For the Accused persons.

1 MR. MARGAI:

2 -- with regard to the third Accused, whom I represent, then, of course, there would not be the need for
3 me to cross-examine, that is why I am saying that it is relative.

4 MR. PRESIDENT:

5 Perhaps I should invite learned counsel for the Prosecution, what -- this area that we are in in terms of
6 length, what -- can we have the benefit of your own insights or thoughts on this? Of course, having
7 regard to the fact that flexibility here would be the virtue and not -- but, at the same time, as you
8 constantly remind us, judicial economy is a factor too, so we are here in an area of competing values.
9 Does the Prosecution want to throw some light -- shed some light on this?

10 MR. CÔTE:

11 Your Honour, I think it is a work in progress. I think that the first month will give us opportunities to
12 see how it works. Certainly there are basic rules that are observed by any court of law that we should
13 avoid repetition of cross-examination, but I think my colleagues are all professional lawyers and they
14 understand that, or, as Mr. Margai just said, if the witnesses that will testify on what we call the crime
15 base, that is not directly related to their client, should normally not necessitate the same kind of cross-
16 examination as would the witness who is testifying on the direct responsibility of any of the Accused.
17 And I think your Honours will be in a position after three weeks to see where this is going.

18 MR. PRESIDENT:

19 Thank you.

20 JUDGE BOUTET:

21 That is fine with me as well. Mr. Margai, I would have one observation to what you have suggested as
22 to the order which we should follow for cross-examination. Although I have not been involved in other
23 trials, at ICTY and ICTR, I am told, however, that experience has shown that if you keep always the
24 same order of cross-examination after a while, because everybody has to be seen to be doing his
25 part, the third cross-examiner has to do an hour of cross-examination because everybody else has
26 done an hour of cross-examination. So if we see this kind of pattern develop we may change the
27 order in question, so we will have again to adjust whatever is happening, so everyone has a fair say to
28 what is happening. At the same time there is fair representation, but at the same time we don't want
29 to lose the time of the Court simply because you or your colleagues would like to have 25 minutes
30 because others have had 25 minutes. So we are concerned about the time of the Court and will keep
31 an eye open on this issue, but your suggestion, obviously, is the one that we will follow at the
32 beginning.

33 MR MARGAI:

34 I couldn't agree with you more, My Lord.

35 MR PRESIDENT:

36 Well, thank you very much. So the consensus is that rather than decide on strict limits we allow this to
37 be -- we allow flexibility to be our guide, of course, observing the basic norm and that empiricism

1 should be the guide as we go along, rather than any kind of artificial pre-determination of how these
2 things will proceed. Of course, again, the emphasis has been on the expectation that we are here to
3 perform with a high degree of professionalism.

4
5 There is a fifth item here, it is filings received /expected . I would run down quickly the filings we have
6 received. In accordance with the Trial Chamber's order to the Prosecution to file disclosure materials
7 and other materials in preparation for the commencement of trial which was issued on the 1st April
8 this year, and another order from the Trial Chamber at the pre-trial conference, held on 28th April this
9 year, the Prosecution submitted the following: one, the Prosecution proofing chart, indicating
10 documentary and testimonial evidence by paragraph of consolidated indictment pursuant to the Trial
11 Chamber order, dated 1st April 2004. That chart was filed on the 4th of May this year.

12
13 Two, supplemental materials filed pursuant to order from the Bench during pre-trial conference held
14 on 28th April this year, and order to the Prosecution to file disclosure materials and other materials in
15 preparation for commencement of trial, that was dated 1st April 2004. That was filed on 5th May.

16
17 Does that reflect a correct and accurate reporting of the Prosecution's filings?

18 MR. JOHNSON:

19 Yes, Your Honour.

20 MR. PRESIDENT:

21 Defence, does that -- did you receive those filings?

22 MR. PESTMAN:

23 We did.

24 MR. PRESIDENT:

25 Thank you. Well, there are further expected filing obligations of the parties. Let us deal first with pre-
26 Defence -- Defence pre-trial briefs. The deadline set for filing of the briefs was two weeks before trial.
27 Up to yesterday, or the day before yesterday, the first Accused had not filed the pre-trial brief, but by
28 the end of yesterday information was received by the Chamber judges that the pre-Defence trial brief
29 -- the Defence pre-trial brief had been filed. So even though there was a request for extension of
30 time, we have got that.

31
32 The supplemental pre-trial brief of Kondewa, the second -- third Accused, was filed on the 18th of May
33 2004. And the Defence pre-trial brief for Fofana was filed on the 28th May 2004.

34
35 On May 25, Fofana filed a request for extension of time to file a pre-trial brief and the Trial Chamber
36 issued a decision on that request requiring all outstanding Defence pre-trial briefs to be filed by 27th
37 May. Can we have some clarification here from learned counsel for Fofana? What is the position?

1 MR. PESTMAN:

2 I am afraid I can only apologise for the delay. The order I received on 27th and my file --

3 MR. PRESIDENT:

4 Please use the mike .

5 MR. PESTMAN:

6 Oh yes. I can only apologise for the delay. The order for filing the pre-trial brief, the last order, I
7 received on the 27th and I filed a pre-trial brief on the 28th which was one day late and I apologise for
8 that.

9 MR. PRESIDENT:

10 Judge Boutet would like to --

11 JUDGE BOUTET:

12 I was going to raise that particular issue, and the same applies to counsel for Mr. Norman. I was
13 going to ask both of you -- explanation as to why there has been a failure, an out-right failure, to
14 comply with a court order. I do acknowledge that we did receive a request for extension of time in
15 both cases, but when it was received it was outside the time prescribed for the filing of these
16 documents. I am getting concerned at this particular time that orders that were quite clear were not
17 fulfilled or complied with. I would like -- I understand you have apologised now and not --

18 MR. PESTMAN:

19 Yes.

20 JUDGE BOUTET:

21 -- but I would like to remind you that a court order has to be respected and complied with.

22 MR. PESTMAN:

23 I can only apologise again.

24 MR. PRESIDENT:

25 Counsel for the first Accused.

26 MR. TEJAN-SIE:

27 Yes, My Lord, we do apologise. We were taken by certain events which we did explain in our request
28 for an extension of time. But, My Lord, we do apologise profusely and we do take your orders very
29 seriously and we continue to take them very seriously, My Lord. We apologise.

30 MR. PRESIDENT:

31 Thank you very much. We expect there is an implied undertaking that there will be no repetition of
32 this.

33 MR. TEJAN-SIE:

34 We do give that undertaking, My Lord.

35 MR. PRESIDENT:

36 We are looking for a high degree of professionalism on all sides.

37

1 MR. TEJAN-SIE:

2 As My Lord pleases.

3 MR. PRESIDENT:

4 Thank you.

5
6 I think it is an appropriate point to take a 15 minutes recess and I so order. The Court will recess for
7 15 minutes.

8 *(Court recessed at 1048H)*

9 *(Pages 1 to 15 by Susan G. Humphries)*

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2 MR. PRESIDENT:

3 Well, these proceedings are resumed and we are under item -- agenda item 5 (b). The other items,
4 which we now have to address is disclosure of witness identities by the Prosecution to the Defence.
5 And the question, of course, is for the Prosecution to address us on the extent to which they have
6 complied with the orders in force for disclosure and, of course, how they have resolved this question
7 of the discrepancy in the current protective measures orders in the light of their undertaking during
8 one of the status conferences, that they would apply the 42-day formula as opposed to the 21-day
9 formula.

10
11 From our perspective, this issue has resurfaced in the sense that in the Prosecution renewed motion
12 for protective measures, there seems to be a disposition towards the 21-day formula. So I will ask the
13 Prosecution to guide us as to how we have -- whether we still have any problems that we need to
14 resolve. Yes, we will give the Prosecution the opportunity to address us.

15 MR. JOHNSON:

16 First of all, we certainly acknowledge that in the absence of another decision on protective measures,
17 that we have a 42-day obligation to disclose unredacted statements and identities prior to the
18 testimony of the witnesses. In compliance with your order of the 11th, we disclosed on the 12th
19 unredacted statements and identities of the first ten witnesses that we intend to call, as quickly
20 thereafter, as we could arrange for protection but, unfortunately, not until the 21st of May, we
21 disclosed unredacted statements and the identities of the next nine witnesses that we would intend to
22 call. To be sure -- not knowing first of all, at that time, how long the first trial session would be; not
23 knowing if we would complete those first ten witnesses in that first trial session, so we immediately
24 took steps to arrange for the next witnesses to come under our protection and disclosed an additional
25 nine statements as quickly as we could, but as I said, unfortunately, not until the 21st of May.

26
27 Now, realistically, and I clearly acknowledge that if we get to some of these next witnesses in the
28 scheduled trial session we certainly would not have complied with the 42-day requirement to disclose
29 those witnesses before they testify because the trial session will end within 42 days of the date of 21
30 May. All I can say is that we disclosed an additional nine witnesses as quickly as we could arrange
31 for protection for those witnesses under our witness protection. But as of today, we have disclosed
32 the names and redacted statement of the 19 witnesses -- of the first 19 witnesses we intend to call.

33 JUDGE BOUTET:

34 We thank you for the explanation. I would like to be reassured, however, that even with nine more
35 witnesses you have disclosed the identity of enough witnesses to be able to fill this session. In other
36 words, you better err on the side of over disclosing than non-disclosure at this particular time because
37 given the short session, I would not like to be in a position where we have to sit and wait because you

1 have failed to disclose enough -- the identity of enough witnesses.

2
3 Furthermore, we understand at this juncture because of the time frame that we are working under as
4 such, that when we ordered the Prosecution to disclose at that time we were indeed breaching the
5 order ourselves because obviously, we were, at that time when the date was fixed for the 3rd of June
6 in a period of time when we were sort of within the 42 days. But these were the necessary
7 adjustments to be made if we were to start at this particular time. However, come September, where
8 you know already the session time as such and therefore, we expect full, complete -- compliance as
9 such, whatever the order would be.

10 MR. JOHNSON:

11 Absolutely, Your Honour, and certainly by the end of June we will have the benefit of the experience
12 from the June trial session, so that we can, of course, much more accurately, determine how long a
13 witness will indeed be on the stand. I appreciate that.

14
15 We are as confident as we can be that with the 19 witnesses that we have disclosed, that we will be
16 able to fill the first trial session. I believe that works out to be about 13 days that I think are available
17 for witnesses within the first trial session that we have. That would include if we had witnesses each
18 Friday and we had no other matters to deal with on Friday.

19
20 But, again, with the degree of confidence that we can have at this point, not knowing how long
21 witnesses will testify as well as striking a balance that to over disclose witnesses now would have
22 witnesses -- would likely have witnesses in some kind of protective status for the 11-week break
23 between this trial session and the next trial session. We tried to give it as accurately as we can.

24 JUDGE BOUTET:

25 Thank you

26 MR. PRESIDENT:

27 Thank you. Can I hear some brief comments, if any, from the Defence? First Accused.

28 MR. TEJAN-SIE:

29 No, not at this moment.

30 MR. PRESIDENT:

31 Second Accused?

32 MR. PESTMAN:

33 No comments?

34 MR. PRESIDENT:

35 Third Accused?

36 MR. MARGAI:

37 No, My Lord.

1 MR. PRESIDENT:

2 At this stage, does the head of the victims and witnesses unit have any relevant short contribution to
3 make on this subject?

4 MR. VAHIDY:

5 Thank you, Your Honour. Your Honour, at this particular moment, we generally support the disclosure
6 period as close to testimony as possible. At the moment, it is okay.

7 MR. PRESIDENT:

8 The other dimension of the witness aspect is that the Trial Chamber issued an order to the
9 Prosecution to provide the order of witnesses and witness statements, and we issued that on the 28th
10 of May 2004. In other words, the rationale was to request the Prosecution to provide the Trial
11 Chamber with a list of the order it intends to call the first ten witnesses by the 1st of June 2004 and
12 with respect to the remaining witnesses called in the first trial session, and to provide each Defence
13 team and the Trial Chamber with a list of the order it intends to call witnesses to testify, 14 days in
14 advance of their testimony.

15
16 And, again, concerning the first ten witnesses, this Chamber require the Prosecution to provide it with
17 a confidential copy of the unredacted witness statements of these witnesses by today, and for the
18 remaining witnesses called in the first session, to provide us with a confidential copy of their
19 unredacted statements one week prior to testimony. I agree this is a mouthful but has the
20 Prosecution complied with these orders?

21 MR. COTE:

22 Your Honours, of course, we have an order from the Court we haven't complied with but I must say
23 that we have concerns that are shared with our colleagues from the Defence about providing this
24 Chamber with copies of the statements before they hear the witnesses.

25 Your Honour said in the motion that -- I mean, we haven't had proper time to try to file a motion,
26 maybe a common motion with the Defence on this issue, saying that we have concerns of giving the
27 triers of facts in an adversarial system, the content of the witness statements before they are either
28 properly introduced in court under Rule 89 or 92, if this is the desire of the party to introduce it; which
29 is not the case.

30
31 The practice in front of the other tribunal is not as clear as it would seem. Your Honours quote
32 *Akayesu*. *Akayesu* was rendered by Judge Kama, who, of course was used, being Senegalese of a
33 system by which they had statements in front of them.

34
35 But in some of the jurisprudence that is quoted in Your Honours' order, you have cases where
36 Prosecutors were asked to give the witness statements so that the Chamber was in a position to
37 evaluate if the redaction was done properly, which is not the same thing as giving the statement for

1 the benefit of the Court to see the content.

2
3 With your permission, I mean, I know that we discussed with our colleagues and both sides here feel
4 a bit concern about that and would like to have an opportunity to explain more clearly our position.

5 Unfortunately, your order ordered us to deliver the statements today, which is not a big problem
6 because we have them but I don't know if I can ask this Court to give us the opportunity to file the
7 motion explaining our position about the fact that there may be concerns and problems with providing
8 the triers of fact statements beforehand than the witnesses called.

9 MR. PRESIDENT:

10 In short -- don't sit down yet. Would these -- and, again, without requiring you to be specific, would
11 these concerns, in a way, have some connection with the notion of preserving the integrity of the
12 proceedings? I ask that in a purely general sense, I don't want a specific answer and perhaps, if that
13 is the way your mind is working, the two approaches, I would suggest -- and my brothers are at liberty
14 to give any other suggestion they would want -- would be to have some kind of conference in
15 Chambers, both sides, for us to have some specifics on this issue. But at this stage I will rest on that
16 and allow Judge Boutet who wants to speak on that.

17 JUDGE BOUTET:

18 Based on the information that we have, this is a normal procedure that is followed at ICTR.
19 Furthermore, we have amended the Rules of Evidence and Procedure at this very last plenary where
20 we had 73 *bis*. Your organisation was represented at that plenary when that matter was being
21 discussed. What you are raising now was not raised by your representative. The Principal Defender
22 was also present at that time, that issue was not raised. They did make observations. In fact, not on
23 that issue, on some other issues and we have had a full discussion at plenary, of these matters and
24 we have approved a new regulation and rule that covers exactly that issue and we have made it very
25 clear in the Rules as to what we intend to do.

26
27 I would also inform you that your comments are more applicable to a judge and jury scenario than it is
28 with judges as such. As you know, judges are supposed to be able to make abstraction of information
29 they may have obtained outside the court contrary to a jury, as such. That is trite fact. As you know,
30 this is part of the education, the training and the judicial discharge of duty as such.

31
32 Certainly, we will make sure that whatever information is provided, if it is not in evidence, it is not in
33 evidence. But my colleague and brother, Judge Thompson, has suggested that maybe we could have
34 an in-Chamber meeting to clarify some of the issues. I am certainly prepared to do that as well. So, if
35 it is to resolve any outstanding matters and concerns that you may have, I'm quite prepared to do that.
36 Thank you.

1 MR. PRESIDENT:

2 Yes, we will give the Defence Unit the opportunity to address some comments. Learned Counsel for
3 the first Accused, let's ask Miss -- the Head of the Defence Unit to the Special Court.

4 MS. MONASEBIAN:

5 I thank you, Your Honour, I would just like to assist the Court, if I may --

6 MR. PRESIDENT:

7 Yes.

8 MS. MONASEBIAN:

9 In the ICTR the reason why the judges demanded that the Prosecution release all of the witness
10 statements in unredacted form to the Bench was because of the fact that that was the only way to
11 determine the Prosecution's (*inaudible*) was If the judges have all these statements before them and
12 so I found that the judges (*inaudible*) it was very useful to have a (*inaudible*) for evident reasons but
13 for its management and efficiency (*inaudible*) to determine how long it would probably take, what kind
14 of evidence there is, and would the Prosecution call too many witnesses. And so I think that would
15 assist the Court in that respect. Thank you.

16 MR. PRESIDENT:

17 Thank you. Before the Prosecution is given an opportunity just to rap up its reply to this, let me invite
18 counsel for the first Accused. What are your -- your res --

19 MR. TEJAN-SIE:

20 My Lord, we share the same concern as the Prosecution. This is an issue we have discussed --

21 MR. PRESIDENT:

22 Very well.

23 MR. TEJAN-SIE:

24 And at the same time, we do accept your solution that this issue be discussed in Chamber.

25 MR. PRESIDENT:

26 Mr. Pestman?

27 MR. PESTMAN:

28 Yes, I understand that I would be able to raise my concerns *in camera* hearing. So I will do that --

29 MR. PRESIDENT:

30 Alright, thanks. Mr. Margai?

31 MR. MARGAI:

32 With your leave, my learned friend Mr. Williams will address that.

33 MR. PRESIDENT:

34 Okay, Mr. Williams.

35 MR. WILLIAMS:

36 The order of the 28th May, My Lord, especially the first ambit of the first order, My Lord, did not seem
37 to have been taken all this into consideration. The calendar -- it is quite clear that they should provide

1 the Bench with the calendar for the first ten witnesses but no reference is made to the Defence, My
2 Lord. And My Lord, we would want to have the calendar as well. The second ambit with regard to the
3 14 second witnesses --

4 MR. PRESIDENT:

5 Yes.

6 MR. WILLIAMS:

7 Clearly refers to us.

8 MR. PRESIDENT:

9 Yes, I know.

10 MR. WILLIAMS:

11 And I don't think the Prosecution will really provide us with that calendar --

12 MR. PRESIDENT:

13 Without an amended modification of the order?

14 MR. WILLIAMS:

15 Yes, My Lord.

16 MR. PRESIDENT:

17 Prosecution, what is your response to that, please? Any reply to that? Well, his complaint is that the
18 first segment of our order did not include the Defence, it was only the second segment that included
19 the Defence, and he is suggesting that they are entitled to have this list.

20 MR. JOHNSON:

21 But we would -- I mean, yes, it would certainly be provided to the Defence as well. We will file it with
22 the Trial Chamber and as a result of that filing, the Defence would receive copies of them.

23 MR. PRESIDENT:

24 Well, thanks. There is one matter before we move on to the fifth item. It is that three of the
25 Prosecution witnesses appear in the proofing chart but neither in the old, nor in the up-dated witness
26 list. These are TF2/024, TF3 -- TF031, that's for Paragraphs 18, 19, 20 and 21. And TF049 for
27 paragraphs 14, 15 of the indictment, and then there are three others that are not on the proofing chart
28 at all but are on the new witness list: TF179, TF2/193, TF2/219. The first one was TF2/179. These
29 would appear in our assessment to be discrepancies. If we right, I will invite the Prosecution to clarify
30 that.

31 MR. JOHNSON:

32 Well, Your Honours, I can only offer this at this time and I would certainly clarify -- give you complete
33 clarification as early as I can. The witness list -- the last witness list that we filed is our current witness
34 list and if witnesses appear on the proofing chart that was not in that witness list -- that was not
35 mentioned, we couldn't get them off the proofing chart as it should have been, and likewise, the
36 reverse for the others.

1 MR. PRESIDENT:

2 So, in other words, there will be -- it would be rectified?

3 MR. JOHNSON:

4 I would certainly rectify it.

5 MR. PRESIDENT:

6 Right.

7 MR. JOHNSON:

8 And provide you with the full explanations.

9 MR. PRESIDENT:

10 I don't think there is any need for response from the Defence. Next item, item five, other witness
11 issues; (a) Witness list. Prosecution previously indicated that it will only call oral witnesses, *viva voce*
12 witnesses. Are there any Rule 92 *bis* witnesses that the Prosecution intend to call? At this stage, do
13 we know?

14 MR. JOHNSON:

15 We are looking very much to possibility of two 92 *bis* witnesses, Your Honour. We need to do a little
16 bit more research in the possibilities of those two witnesses, but yes, we are considering to.

17 MR. PRESIDENT:

18 Well, thanks. Any responses on that matter?

19 MR. PESTMAN:

20 Yes, I'm a bit worried about that statement. I remember that earlier, the Prosecution stated that they
21 were not going to use 92 *bis*. In any case, if they want to file written evidence of witness statement
22 instead of giving oral testimony in trial, there is specific procedure for doing that and that's Rule 71
23 and that would not be Rule 92 *bis*. And Rule 71 offers guarantees also for the Defence to cross-
24 examine those witnesses who are not going to be at the trial.

25 So my suggestion would be if they are considering of filing witness statements that they follow the
26 procedure of Rule 71 and not the procedure of Rule 92 *bis*.

27 MR. PRESIDENT:

28 Does any other counsel wish to add anything to that observation?

29 MR. TEJAN-SIE:

30 No, My Lord. We adopt the argument of learned counsel for Fofana.

31 MR. PRESIDENT:

32 Right. Does Mr. Margai adopt the --

33 MR. MARGAI:

34 Yes, My Lord.

35 MR. PRESIDENT:

36 Prosecution?

37

1 MR. CÔTE:

2 First, to reply to my colleague, Your Honour, I was here during all the pre-trial conference and the
3 status conference and we never said to this Bench we will not use -- we said that at this moment in
4 time, when you asked us, that we didn't have any. I mean, never did we say that it would not happen.
5 I think Your Honour was there. This was our position.

6 Then the second position of my colleague is again the confusion between the deposition and a
7 statement.

8 MR. PRESIDENT:

9 Yes, that's the difference.

10 MR. CÔTE:

11 And I'm not going to enter -- because we had that debate previously.

12 MR. PRESIDENT:

13 It keeps resurfacing. It is my recollection, and that is subject to the recollection of my brothers, that
14 the OTP never made that indication. It was at that point in time and -- so I would like to bring the
15 matter to a close unless -- at this stage I would like to invite the head of the victims and witness unit, if
16 he so desire, to provide any update in terms of equipment or facilities -- if you consider that
17 appropriate -- available for witness protection during trials. Not to ask you to disclose anything which
18 is confidential, and here perhaps I should ask you to tread extremely cautiously.
19 It is merely an invitation which you can accept or not. In other words, is there anything this Court
20 needs to be enlightened about, in terms of witness protection during the trial and giving of
21 testimonies?

22 MR. VAHIDY:

23 Thank you, Your Honour. At present there is no solution we could recommend but we agree with the
24 request made by the Prosecution. Firstly, giving an advance situation as I have mentioned earlier, we
25 do agree purely from the point of view of the well-being of the witness's status that the date of
26 disclosure should be as close to testimony as possible.

27
28 The protective measures which are being sought by the Prosecution as far as it concerns close
29 disclosure, as far as it concern closed session, image distortion, they all have to be judged on a case
30 by case basis and whatever is required, so that whenever the Prosecution applies for a particular
31 measure, it has to be for a specific witness. Although in general terms there is an agreement that
32 these are the measures available and we agree with that. For the protection of the witnesses, all
33 these measures are available but when it comes to actual testimony, I think it would be on a case by
34 case basis. That is what would be required. That is all I can say at the moment, unless there are
35 some specific concerns which you would like me to address.

36 MR. PRESIDENT:

37 Does the Prosecution want to say anything in addition or in response to that?

1 MR. JOHNSON:

2 Yes, Sir. I believe I can add one or two things. First, we have before you a supplemental witness
3 protective measures motion, but what I can add to that is that for the witnesses that we have planned
4 for the first trial session, we are only looking at the basic measures that we have set forth in that
5 motion; that means that the witnesses testify behind screen out of view of the public. We are not
6 requesting for any of the witnesses in the initial session voice distortion or things like that. These are
7 very basic measures for the first session.

8 MR. PRESIDENT:

9 Well, thank you. Anything at this stage on that side?

10 MR. PESTMAN:

11 Nothing.

12 MR. PRESIDENT:

13 Thank you.

14 JUDGE ITOE:

15 The witness protection unit, how -- just a question. How ready are you for the trial that begins on the
16 3rd? How ready is your unit, you, yourself and your staff?

17 MR. VAHIDY:

18 The staff is ready for the present batch of witnesses; it is under control and as time progresses we will
19 be in a position to implement protective measures as a solution to look after the interest of witnesses
20 as it goes on. As far as the courtroom is concern, it is more or less complete. We have the screens,
21 we have the ability to have distortion whenever it is required, we have the ability to have a video link
22 whenever it is required, and we are ready really at this stage.

23 JUDGE ITOE:

24 What about the health conditions of your witnesses?

25 MR. VAHIDY:

26 The health conditions generally are poor, and it is part of our mandate to introduce witnesses before
27 the Trial Chamber in the less physical and mental state possible. So when a witness comes under
28 our care, he is examined or she is examined by a doctor so that if there is emergency treatment
29 required he should have it done. There is a psycho-social assessment and if any, is evidence
30 required there, that is also from us.

31

32 But generally speaking, the state of health of the witnesses is poor and we have to take extra
33 measures to look after that.

34 JUDGE ITOE:

35 Because if you say that their state of health is poor, I wonder whether they would be performant, you
36 know, as witnesses, but that is a decision for the Prosecution to take on with you.

37

1 MR. VAHIDY:

2 Your Honour, I beg your pardon, I couldn't quite get what you were saying.

3 JUDGE ITOE:

4 Well, what I'm saying is that if you say, you know, that there general health situation is not good, I
5 wonder whether they would be performant witnesses from the point of view of the trial and the
6 Prosecution. I have said, you know, that it is for the Prosecution to address this issue, because after
7 all, they are their witnesses. But it is --

8 MR. MARGAI:

9 Sorry, with your leave, before that question is answered, may we know what is responsible or might
10 be responsible for their poor state of health?

11 MR. PRESIDENT:

12 I would like to intervene here, and not put the victims witness chief here in a position in which he may
13 not, in fact, be able to articulate this kind of thesis. I mean, I imagine that medical scholars,
14 sociologists, social historians can write a whole thesis on the state of health of even Sierra Leonean
15 population here. So I think this is argumentative; it is highly contentious and it will not help us.

16
17 I -- many times since I came, I have been afflicted by the condition of malaria, and I think we would be
18 getting into very difficult territory here if we ask him to articulate reasons. I think all we can expect
19 him -- to try and consult the -- those who are responsible for putting people in a better state of health,
20 to try the best they can to produce these witnesses when they are required to testify within the realms
21 of what we have. Much as I appreciate the question, but I think it would be more a subject for
22 academic discussion.

23 MR. MARGAI:

24 I was only trying to be helpful, My Lord, if the reason for their present state of health could be
25 addressed within the ambit of your jurisdiction.

26 MR. PRESIDENT:

27 Quite. That's very interesting and actually what we -- we think that this is an area where we would like
28 to tread extremely cautiously, and perhaps the approach should be judicial non-intervention, but to
29 advise that they receive the best medical care they can to restore them in a proper state of health
30 physically and mentally. But not put Mr. Vahidy here into articulating causes. I do appreciate the
31 thrust of the question, and I want to thank you.

32
33 Expert witnesses, a very troublesome area. We keep coming back to that. How many -- we don't
34 know at this stage, how many does the Prosecution intend to call? And coupled with that question,
35 has the identity of one expert witness if it's one you are calling, or have the identities of several expert
36 witnesses been disclosed?

37

1 And clearly, you must bear in mind that the judicial motion -- notice motion -- decision is pending
2 and one would expect you to be able at this point in time to estimate the number of expert witnesses
3 that will be called. Are you in a position to enlighten this Court on that, or are we still in a state of
4 limbo?

5 MR. JOHNSON:

6 Well, we are not in a state of limbo quite as much as we were the last time we were together. Your
7 Honour, we are in discussion with three expert witnesses. We are anticipating three expert witnesses
8 at this time. I can tell you that at the earliest that we would call in expert witnesses -- I don't believe
9 we would call any expert witnesses before the November trial session.

10 MF.. PRESIDENT:

11 Okay.

12 MR. JOHNSON:

13 Once -- we might be looking at September but I think that is very doubtful. I think the soonest we
14 would look at calling expert witnesses would be for the November trial session. So we are still out --
15 we are trying to come to disclosure on that and as soon as we can, we will certainly disclose identities
16 and so on, Your Honour.

17 MR. PRESIDENT:

18 So you wouldn't advise us to issue an order requiring a deadline at this stage.

19 MR. JOHNSON:

20 Well, I would ask that you not to do that, Your Honour. I think I would be in a position soon, perhaps
21 by the end of this trial session, to disclose some identities.

22 MR. PRESIDENT:

23 Yes, because it's so important that the Defence have some indication of the expert witnesses. They
24 will have to bring evidence in rebuttal, and we've heard many times here that it is not an easy thing to
25 get these experts to come. Thank you. Yes.

26 MS. MONASEBIAN:

27 Your Honours, (*inaudible*) in the RUF case.

28 MR. PRESIDENT:

29 Yes.

30 MS. MONASEBIAN:

31 (*inaudible*) the only information I have is that it is my understanding, Your Honours, that some of these
32 expert witnesses that the Prosecution (*inaudible*), in other words, already have had SSA or GTA
33 contract (*inaudible*). And these contracts (*inaudible*) in that the registry is currently working on what
34 their remuneration would be (*inaudible*). That being the case, if these people already have contracts
35 in the past, and it's only a question of them getting the contracts again and those contracts may be in
36 fact be held up because the Registry and the Defence are in negotiation to work a plan of what it
37 should be. But that should not prejudice the Defence from getting the names of the experts now and

1 from the (*inaudible*) indisputably, is for me to tell these good people here what explanation we have,
2 when they can have them and when they can start (*inaudible*) into coming with them, is a virtual
3 impossibility. I cannot say what we have now and later on when your experts names are given that
4 they may be other, so I would just say that it was Rule 94 *bis* which says that the full statement of any
5 expert witness by a party shall be disclosed to the opposing party as early as possible --.

6 MR. PRESIDENT:

7 Yes.

8 MS. MONASEBIAN:

9 That if we cannot give the statements -- the full statements as early as possible, we can give the full
10 names as early as possible, which would be now, which is very much -- is that a (*inaudible*) contract
11 already. That is why I am saying to Your Honours that I trust counsel to keep those names in
12 confidence and that it is highly irregular, it never happened at the ICTR that all the expert witnesses'
13 names were protected and kept away from the Defence. Thank you Your Honour.

14 MR. PRESIDENT:

15 Well, before I ask him to respond, clearly you would recognise that in Sierra Leone, situations were
16 operating in an entirely different crimagenic setting. This is where the alleged offences took place, and
17 so the analogy with ICTY would be, in my own judgment, in opposite. Counsel, do sit down, let her
18 just -- before she -- counsel, just sit down. Yes, go ahead.

19 MS. MONASEBIAN:

20 In fact, I told Your Honour that --

21 MR. PRESIDENT:

22 Yes

23 MS. MONASEBIAN:

24 In this situation I have always said that if these experts are people who are coming from abroad, as
25 was the case in the ICTR, which is operating in a neighbouring country, Tanzania, that the expert
26 section and the Registry found a way to deal with them and my concern has to do with the rights of
27 the Accused.

28 MR. PRESIDENT:

29 But we don't have -- we don't have -- we don't know that whether they are coming from abroad or not.
30 You are making that assumption.

31 MS. MONASEBIAN:

32 Maybe that is possible, Your Honours

33 MR. PRESIDENT:

34 Quite, and clearly the point I was making is that when you say at ICTY this would be considered
35 highly irregular, I was actually cautioning you not to use that as a paradigm because we are in an area
36 which is extremely delicate in terms of protective measures. I mean the situation, the crimagenic
37 situations are different and that's all I was virtually cautioning you about.

1 Let me hear the Prosecution here.

2 MR. CÔTE:

3 Well, Your Honour, the first point I would like to make, and I think that was made previously and there
4 is a decision on that, is that the public -- the Principal Defender seems to me that she is completely
5 acting for the Defence lawyers, which I don't think is her role, first of all.

6 But it's quite clear that the Public Defender is not a party and on the way "I have some information"
7 then she argue, "the Prosecution should do that, should do this, should do that", which is the role, I
8 agree, of my three colleagues, but not of the Public Defender.

9 MR. PRESIDENT:

10 Counsel, we will not let you go that far. We are not here to debate the role of the Principal Defender
11 within the Special Court structure. Let me concede for her that she is a resource person to this Court
12 in a Defence capacity; she has locus here, and we are not going to let you demarcate all the legal
13 nuisances and niceties. What you can do is to rebut some of her assumptions because she has
14 premised some of her statements on mere assumptions.

15 MR. CÔTE:

16 And I don't intend here -- this is my second point. I must say that I am a bit outraged that the
17 Defence -- Principal Defender seems to have the name of the people who are hired by the
18 Prosecution to be experts in law, to be -- to come here to help us in our motion or to come here to
19 evaluate if yes or no, they would be willing to be a witness, which I believe at this point if the Principal
20 Defender is seeking that information, and worst of it, if the Registrar is transmitting information to the
21 Defence of the -- I think if they knew of people who are working for the Prosecution, I have great
22 concern. And I must say to this Court that I never asked the Registrar to give me any indication of
23 any people that the Defence wants to hire or wants to have come here and talk with them, and this
24 concerns me a lot.

25 MR. PRESIDENT:

26 Well, I hope you don't find it outrageous, you may find it highly irregular that she should be saying all
27 the things that she is saying from what basis and knowledge. And I think she said a few things which
28 I believe are contentious and it is entirely up to you to reply and I think we have been trying to -- from
29 the Bench's perspective, we are encouraging cooperation here. And clearly, that's the mood that we
30 would like to advocate, not highly contentious and explosive kind of responses on both sides because
31 as I said, I disagree with her that we must use the ICTY standard. This is not -- is so different from
32 ICTY. In other areas we can, but not this particular one.

33
34 But I would encourage you to see the need and to be a little more professionally sensitive to the
35 needs of the Defence in terms of their own ability and capability to get their own experts who will be
36 rebutting whatever your experts would be saying. And that's the kind of approach that I want to adopt,
37 not the kind of investigatory approach which the Principal Defender is adopting; finding out who and

1 who have been this and that kind of thing. But that's all for the Chamber.

2 MR. MARGAI:

3 May I please, My Lord --

4 MR. PRESIDENT:

5 Yes, go ahead.

6 MR. MARGAI:

7 My understanding of our meeting here is to harmonise our respective position and as ministers of
8 justice, I believe what the Principal Defender is rightly doing is performing her role as a resource
9 person to the Defence team, and I believe whatever her contribution to this august body is intended to
10 ensure that justice does prevail.

11 MR. PRESIDENT:

12 Your point is appreciated.

13 MR. MARGAI:

14 As My Lords please.

15 MR. PRESIDENT:

16 We'll move on to outstanding motions, item six. Under item six, we have five outstanding motions
17 before this Trial Chamber. One, leave to amend the indictment in this particular case. The Chamber
18 is advised that the -- a decision was filed and served this morning or is, in fact, being served now.
19 Then the second one is Prosecution motion for judicial notice and admission of evidence, 2nd April
20 2004. Here, we can say that a decision will be delivered very soon.
21 And the third is Fofana motion for bail. A decision again to be delivered shortly. And four, motion to
22 compel the production of exculpatory witness statements, pursuant to Rule 68. Again, a decision will
23 be delivered shortly;

24
25 And five, protective measures motion: Again, a decision is in progress and will be delivered shortly.
26 Those are the outstanding motions before the Trial Chamber and I think we are up-to-date with
27 decisions.

28
29 As far as the Appeals Chamber is concerned, decisions have been delivered by the Appeals Chamber
30 on the following motions: One, the Norman motion based on lack of jurisdiction (*child recruitment*).
31 That was delivered on the 30th of May, this year; then two, Norman motion to recuse Judge Winter
32 from deliberating in the preliminary motion on the recruitment of child soldiers. A decision was
33 delivered on the 28th of May this year; and three, Fofana motion on lack of jurisdiction: illegal
34 delegation of powers by the United Nations. A decision was issued on the 25th of May 2004; Four,
35 Fofana motion on lack of jurisdiction: Nature of the armed conflict. Again, a decision was issued on
36 the 25th of May 2004; Five, Fofana motion on lack of jurisdiction: Illegal delegation of jurisdiction by
37 Sierra Leone. Again, a decision was delivered on the 25th of May 2004; then six, Kondewa motion --

1 preliminary motion based on lack of jurisdiction: Establishment of the Special Court violated the
2 Constitution of Sierra Leone. Again, a decision was delivered on the 25th of May.

3
4 There is one outstanding -- one outstanding decision, that is the Kondewa motion based on lack of
5 jurisdiction, abuse of process and amnesty provided by the Lomé Accord. There, an oral decision was
6 delivered on the 25th of May. So decisions -- the reasons will be published shortly.

7 So those are -- that's the kind of status of motion pending before the two Chambers.

8
9 Let's move on to item 8, exhibits. And here the Court Management section has some contributions to
10 make here, some advice. Would the Court Management -- do you want to give advice on how
11 exhibits will be tendered in court?

12 MR. WALKER:

13 Your Honour, all I can tell you is that we will have an exhibit officer and we have a court records
14 officer who would be responsible for storing the exhibits. The exhibits would be handed in court and
15 we will have an exhibits log. Each exhibit will get a unique number and we will keep those -- we will
16 take them. Each one would be put in a log, it would be given a description on the log.

17 MR. PRESIDENT:

18 Use the microphone. Could you go over it again.

19 MR. WALKER:

20 Yes. As I said, we will have an exhibit officer and a courts records officer who would be responsible
21 for storing the exhibits once they've been filed in court. Each exhibit will get an individual record
22 number. This would be a sequential number; we will start with number one. We will have a court
23 records log, this would contain the number of the exhibits, the date it was filed, the time it was filed, it
24 was filed by -- the description of the item. They would be stored in a secured room. We have various
25 facilities which will be used in the store for different types of exhibits. For example, tapes and
26 cassettes may be kept in a fridge, cool area. The records officer will be responsible for ensuring that
27 exhibits are stored correctly; there is no decay in the records. I think basically that's what happens
28 in --

29 MR. PRESIDENT:

30 Yes. Prosecution, do you want to ask any questions of the Court Officer on the issue of exhibits?

31 MR. CÔTE:

32 I presume that we will receive something by writing about those procedures.

33 MR. WALKER:

34 Certainly, Your Honour.

35 MR. PRESIDENT:

36 Defence, any questions how the exhibits should be protected?

1 MR. TEJAN-SIE:

2 No, Your Honour.

3 JUDGE ITOE:

4 This is a question I'm throwing to all the parties. Do you prefer an alphabetical or a numerical
5 identification of the exhibits when it comes to labelling them? I think it's good for us to agree on that.

6 MF. MARGAI:

7 Numerical.

8 MF. PRESIDENT:

9 Item nine on the agenda is agreed facts, and our recollection is that on the 27th of May this year, we
10 delivered a decision on cooperation between the parties ordering as follows: one, that the parties
11 submit a joint statement signed by both the Prosecution and the Defence teams, not later than today,
12 stating all the agreed points of law and facts reached by them; and two, that the parties intensify their
13 efforts to identify further points of agreement and to submit the report on the progress made every 15
14 days from the date of this decision until further notice by this Trial Chamber.

15

16 The enquiry now is whether the parties have complied with this order. Prosecution?

17 MR. JOHNSON:

18 Yes, Your Honour. And I will try and speak on behalf of the Defence too, and I'm sure if I get
19 something wrong, they will let you know.

20 MR. PRESIDENT:

21 Yes.

22 MR. JOHNSON:

23 But, of course, with very diverse schedules, that is hard to get together as often as like, but we are
24 very much intensifying our efforts. And we were able to get together this morning because
25 Mr. Pestman arrived in town last evening. Of course, for the next few weeks we will be in much more
26 close proximity that we will have that opportunity -- we'll be readily more available to get together.
27 But we have developed a short list, agreed upon facts. At this time it is quite short, but we have
28 developed a list that we certainly will file today if you directed and we will endeavour to intensify our
29 efforts, as you directed us to do, and file a report as you directed.

30

31 The only clarification, I thought you said every 15 days from the date of the order or would that be 15
32 days from the date of the first report that you will give today and then --

33 MR. PRESIDENT:

34 Well, except we modify or revise the order, it is from the date of the order.

35 MR. JOHNSON:

36 Okay. So then agreed, the next report would be done in ten days or there about.

37

1 MR. PRESIDENT:

2 We now move on to the last item on the agenda. Defence, sorry, I apologise. Defence, any response
3 to the Prosecution statement?

4 MR. TEJAN-SIE:

5 No, My Lord, we are in agreement with that.

6 MR. PRESIDENT:

7 In other words, negotiations are going on?

8 MR. TEJAN-SIE:

9 That is to prove, My Lord, we as --

10 MR. PRESIDENT:

11 I appreciate that.

12 MR. TEJAN-SIE:

13 Now that the trial briefs are being filed to ensure that they are --

14 MR. PRESIDENT:

15 Yes, the Bench is encouraged by that comment.

16

17 The last item on the agenda is, any other matters.

18 MR. MARGAI:

19 Yes, My Lord.

20 JUDGE BOUTET:

21 Before you take over, I have an issue to raise with Defence Counsel for Accused Norman. In your
22 response to the Prosecutor's request to admit, there is a paragraph there, is of concern to me and I
23 will just read it, "The Defendant, Sam Hinga Norman, points out that he is not being formerly
24 arraigned on the consolidated indictment." I wonder why this statement is in the response to
25 Prosecutor's request to admit, and furthermore, there is a clear decision of this Court on that issue;
26 that there were not to be, and I underline not to be, any arraignment on the consolidated indictment
27 because the decision was that it was not a new indictment and therefore no arraignment was to be
28 pursued in this respect.

29

30 I would like to hear your comments about that, especially, that it is in a document that has little to do
31 with arraignment. And I'm concerned because just when I was reading this document, I discovered
32 this statement which jumped to my face. It's been a bit surprising to find it in that kind of a response.

33 MR. TEJAN-SIE:

34 Unfortunately, I cannot give reasons for that, My Lord, as I stand here because we are about four or
35 five members in our team and we all prepare different motions. That motion must have been
36 prepared by my learned leader. I'm sure it was an error because I know for fact that I was present
37 when that ruling was given.

1 JUDGE BOUTET:

2 But that document has your own signature on it.

3 MR. TEJAN-SIE:

4 Yes, My Lord. Indeed -- indeed My Lord, as I said, it must have been an error. I don't know whether
5 he was present when that ruling was given, but I was and I should have been in a position to advise
6 against that.

7 JUDGE BOUTET:

8 Yes, quite right.

9 MR. TEJAN-SIE:

10 I was present when a ruling was given that there will be no arraignment -- there was a dissenting view
11 from Judge Itoe on that issue. It must be an error.

12 JUDGE BOUTET:

13 Thank you.

14 MR. PRESIDENT:

15 Any other matter?

16 MR. MARGAI:

17 My Lord, I am encouraged by the harmony and cooperation here, and in fact, we are finishing this
18 exercise before lunch hour. It is in this spirit that I am bringing to Your Lordship's attention the
19 question of handcuffing the Accused from their residence to the courtroom. My Lord, I'm particularly
20 concerned because of the sensitivity and the emotional aspect of this particular case. I mean, if this
21 practice were to continue, especially when we are moving to the Trial Chamber there, it might not go
22 down very well psychologically.

23

24 But, My Lord, more importantly, I am relying on Rule 83 which provides, with your leave, captioned
25 instrument of restrain. "Instruments of restrain such as handcuffs shall not be used except as a
26 precaution against escape during transfer or for security reasons and shall be removed when the
27 accused appears before a judge or a chamber unless otherwise ordered by the Court." My Lord,
28 unless there is some compelling reason for handcuffing the Accused persons, I believe that due
29 observance of Rule 83 must be adhered to. I mean, one of the compelling reasons which perhaps
30 one could envisage is the possibility of one or either of the Accused persons being violent or
31 attempting to escape. Anything short of that, My Lord, I submit, with the greatest respect, that
32 observance of Rule 83 must be strictly adhered to and I so request.

33 MR. PRESIDENT:

34 But the Rule says also for security reasons.

35 MR. MARGAI:

36 Yes, indeed, that is why I am saying that unless there is a security threat to justify the placing of
37 handcuffs, anything short of that must, as a matter of course, be in conformity with Rule 83.

1 MR. PRESIDENT:

2 Yes, I would see that in this kind of situation, the situation is that the Court here does not require the
3 use of instruments of restraint within the court. So clearly we have jurisdiction over that.

4 MR. MARGAI:

5 As My Lordship pleases.

6 MR. PRESIDENT:

7 In other words, we are saying that once they are within our jurisdiction we don't want instruments of
8 restraint.

9

10 The question, of course, for us, is when they are outside our jurisdiction where, for example, they are
11 within the jurisdiction of the security officers. The Rule seems to envisage a situation whereby the
12 security unit will exercise a discretion in terms of precautionary measure, unless our intervention is
13 sought to do that.

14 MR. MARGAI:

15 That is why I am seeking the Court's intervention but before seeking your intervention, I anticipated
16 and premonitously, I told the Registrar that I will be bringing this matter to your attention and perhaps
17 it would be advisable for the Chief of Security to be in attendance to assist this Court as to whether
18 there is need to continue handcuffing these people.

19 MR. PRESIDENT:

20 I'm sure my brother judges would agree that if this matter was properly brought before us, pursuant to
21 Rule 83, then we would be able to apply our minds to the evidence that you want to bring before us,
22 the arguments. But in this pre-emptory situation, as we are about to close our status proceedings, we
23 would like to feel that if the matter is properly brought before us, then under 83, we will advise
24 ourselves as to whether to exercise our discretion.

25 MR. MARGAI:

26 Since we are trying to harmonise our position, I want to use, in summary form --

27 MR. PRESIDENT:

28 On the law, we agree with you perfectly. The Bench does not disagree with you on the law, we are at
29 one.

30 MR. MARGAI:

31 So shall I leave it to your wise discretion to --

32 MR. PRESIDENT:

33 Well, shall we also leave it to your wise professional discretion as to how to come properly before us.

34 MR. MARGAI:

35 Much obliged.

36 MR. PRESIDENT:

37 Thank you. Any other matters?

1 MR. TEJAN-SIE:

2 Yes, My Lord. I hope this one is within your jurisdiction, My Lord. This has to do with the opening of
3 trial on Thursday. My Lord, the Accused persons have already indicated to us that they are only
4 entitled to three members of their family to witness the occasion and they do want me to implore Your
5 Lordship if you can order an extension of that amount to about five or six, as some of them are from
6 extended families who would like to support them --

7 MR. PRESIDENT:

8 Right.

9 MR. TEJAN-SIE:

10 -- as this trial starts.

11 MR. PRESIDENT:

12 We have carefully considered your request and it is our collective thinking that perhaps the number
13 should be increased beyond three. We will be advising the security unit, but as to an appropriate
14 number, but I am not sure whether we would be able to go beyond five or six.

15 Any other matters that need to be dealt with? Yes.

16 MR. MARGAI:

17 The only other thing I would want your guidance on is since I requested that a visit should be made to
18 the Trial Chamber, My Lord, I don't know whether there is need for the Court to be re-convened.

19 MR. PRESIDENT:

20 Yes, we in fact --

21 MR. MARGAI:

22 Whatever observations, will be communicated.

23 MR. PRESIDENT:

24 Yes, quite. We are bringing this proceeding to a close in another two minutes and we will let you have
25 a chance to visit the court, and also that your clients need to have their lunch at one o'clock. So in the
26 absence of any other matter that needs to be brought to the attention of this Special Court, I adjourn
27 this Court.

28 *(Court adjourned at 1245H).*

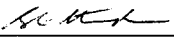
29 *(pages 16 to 35 by Momodou Jallow)*

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CERTIFICATE

We, Susan G. Humphries and Momodou Jallow, 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



Momodou Jallow