

SUBSTANTIVE ALLEGATIONS AND DEFENSE RESPONSE

1. The Defendant, Allieu Kondewa, stands charged with 8 counts of criminal conduct as set forth in the Statute of the Special Court for Sierra Leone. The charges are (1) Murder; (2) Violence to life, health and physical or mental wellbeing of persons; (3) Inhumane acts; (4) Violence to life, health and physical or mental wellbeing of persons; (5) Looting and/or pillaging; (6) Acts of terrorism; (7) Collective punishment; and (8) Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities. The Defendant is charged “cumulatively” together with Defendants Moinina Fofana and Samuel Hinga Norman in a consolidated indictment. The prosecutor submits that such cumulative charges are warranted based on what they contend are the same set of facts and circumstances pertaining to all defendants.
2. On March 2, 2004, the Prosecutor filed a Pre-Trial Brief in accordance with the orders of this Court and Rules 54 and 73*bis*. The Prosecutor’s brief is 40 pages in length, together with additional pages for footnotes and attachments. The brief recites the history of the brutal civil war in Sierra Leone, and provides extensive citation to international humanitarian law and the developing case law from the international tribunals for the former Yugoslavia and Rwanda. Yet in 40 pages of text, and despite more than a year of preparation, the Prosecutor’s brief fails to identify a single witness against Mr. Kondewa or any other defendant in the consolidated indictment. Nor does the prosecutor identify a single document or exhibit which it believes might tend to incriminate Mr. Kondewa.

3. Interestingly, the Prosecutor maintains that it would have filed a more comprehensive Pre-Trial Brief following a Pre-trial conference, a brief that would take into consideration admission of facts and law by the defendants, along with a definitive list of witnesses to be called, and documents and exhibits to be tendered in at trial.” See Prosecutor’s Pre-Trial Brief, p. 1. The Prosecutor further suggests that it will seek to file an additional Pre-Trial Brief “at the appropriate time.”
4. As of the date of this submission, Defendant Kondewa has yet to learn the name of any witness expected to testify against him. The Defendant expects to join in the motion of Defendant Kanu filed on the 18th of March, a motion that seeks to exclude the introduction of prosecution witness statements that are incomplete or produced after the 30 day rule set forth in Rule 66(A)(i).
5. Indeed, the prosecutor has relied on “protective” measures for witnesses to such an extent that it has redacted virtually every statement provided to the defense in this case.
6. While protection of prosecution witnesses is an accepted and understandable practice of international courts as well as many national courts, the prosecution here has actually *redacted names of persons who give evidence that appears to exculpate Mr. Kondewa*. It is difficult to imagine how Mr. Kondewa presents a risk of harm to witnesses who seem to possess evidence that would assist him. Given this prosecution tactic, together with the lack of resources available to Mr. Kondewa, a proper evaluation of prosecution witnesses and investigation of defense witnesses is severely hindered.
7. Mr. Kondewa respectfully submits that in the present circumstances, complete preparation of a pre-trial brief is not possible. Until the Prosecutor meets its

obligation to provide full disclosure of the evidence it intends to offer, it is impossible to brief this honourable court as to defendant's theory of the case.

PRELIMINARY CASE STATEMENT PURSUANT TO RULE 67

8. Notwithstanding the difficulties faced by Mr. Kondewa due to the Prosecutor's failure to make full disclosure, the defendant now makes the following Preliminary Case Statement pursuant to Rule 67(C), and specifically submits the following facts:
9. The defendant was born in the Bo district in the village of Mokeimeh. Defendant's father died while he was still a small boy and his mother lacked the means to care for him. The defendant made his way in the world and found work as an herbalist and healer. *To the extent that the Prosecutor is aware of any evidence that supports these facts, the defendant asks that such evidence be produced immediately pursuant to the exculpatory evidence obligations set forth in Rule 68.*
10. The defendant is of the Mende tribe. He speaks no English, and knows only the limited Krio that he has acquired as a result of association with other prisoners during his lengthy detention at the Special Court. *To the extent that the Prosecutor is aware of any evidence that supports these facts, the defendant asks that such evidence be produced immediately pursuant to the exculpatory evidence obligations set forth in Rule 68.*
11. Mr. Kondewa has never served in the military in any capacity. He has never attained high rank in government. Further, the defendant has no formal education. To the extent that the Prosecutor is aware of any evidence that supports these facts, the defendant asks that such evidence be produced

immediately pursuant to the exculpatory evidence obligations set forth in Rule 68.

DEFENSE THEORY

12. Far from the Prosecutor's assertion that Mr. Kondewa was a high-ranking official of the Civil Defense Forces, the defense expects to show that Allieu Kondewa was little more than a popular and respected man who used herbs to bless young men to protect them and their families from atrocities committed by RUF and AFRC rebels.
13. Based on the evidence produced by the Prosecutor, Mr. Kondewa lacked both ability and authority to prevent or punish those who committed atrocities and criminal acts during the civil war. He is not the deviant war criminal that the Prosecutor suggests. *To the extent that the Prosecutor is aware of any evidence that supports this assertion, the defendant asks that such evidence be produced immediately pursuant to the exculpatory evidence obligations set forth in Rule 68.*
14. The Defendant looks forward to the point where the Prosecutor meets its obligation of full disclosure of witness and anticipates seeking leave to file an additional Pre-Trial Brief at that time. Until that time, he respectfully denies the allegations contained in the indictment and puts the Prosecutor to its proof.

TRIAL SCHEDULING

15. The parties have been advised that trial of this matter is expected to commence in late May or June. Trial is to be conducted jointly with defendants Norman and Fofana. The prosecution has announced that it anticipates that six months

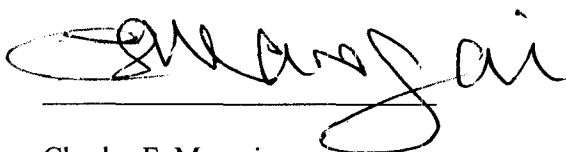
will be necessary to present its case, and that it expects to call approximately 150 witnesses.

16. Scheduling of trial is a critical issue for the defendant in term of his limited resources and logistics. It is unclear as to how the Prosecutor intends to proceed, but it appears that substantial portions of the trial will be devoted to the introduction of evidence relevant to the cases of codefendants and not Mr. Kondewa.

17. While Mr. Kondewa will have the assistance of counsel throughout the trial, it is impractical to expect all members of his defense team to be present for lengthy periods when evidence is heard by the court that does not pertain to Mr. Kondewa. Further, haphazard or unannounced testimony of witnesses will place pressure on the defense team to be present throughout the entire proceedings, thereby wasting valuable resources and adding unnecessary expense.

18. The most practical mechanism for dealing with this issue is to structure the trial so that individual defense counsel will have sufficient advance notice of witnesses to be called by the Prosecutor. Accordingly, the defense prays that this court enter an order compelling the prosecution to provide ample notice—preferably several weeks-- of the witnesses it intends to call.

Respectfully submitted,



Charles F. Margai

At Freetown

22nd March, 2004