



Case No. SCSL-2004-14-T  
THE PROSECUTOR OF  
THE SPECIAL COURT  
V.  
SAM HINGA NORMAN  
MOININA FOFANA  
ALLIEU KONDEWA

FRIDAY, 25 NOVEMBER 2005  
10.25 A.M  
STATUS CONFERENCE

TRIAL CHAMBER I

Before the Judges:

Pierre Boutet, Presiding  
Bankole Thompson  
Benjamin Mutanga Itoe

For Chambers:

Ms Candice Welsh  
Mr Matteo Crippa

For the Registry:

Ms Susan Gunstone

For the Prosecution:

Mr James C Johnson  
Mr Joseph Kamara  
Ms Nina Jorgensen  
Mr Marco Bundi  
Ms Suzanne Mattler (intern)

For the Principal Defender:

Mr Vincent Nmeielle

For the accused Sam Hinga  
Norman:

Dr Bu-Buakei Jabbi  
Mr Kingsley Belle (legal assistant)

For the accused Moinina Fofana:

Mr Arrow Bockarie  
Mr Andrew Ianuzzi

For the accused Allieu Kondewa:

Mr Charles Margai  
Mr Yada Williams  
Mr Ansu Lansana  
Mr Martin Michael (legal assistant)

1 [CDF25NOV05A - EKD]  
2 Friday, 25 November 2005  
3 [The accused Fofana and Kondewa present]  
4 [The accused Norman not present]  
10:00:49 5 [Status Conference]  
6 [Open session]  
7 [Upon commencing at 10.25 a.m.]

8 PRESIDING JUDGE: Good morning, ladies and gentlemen. We  
9 have ordered that there be a status conference this morning,  
10:28:15 10 because we feel that we haven't seen any meaningful progress as a  
11 result of the latest status conference, and certainly there  
12 appears to be major noncompliance with our direction at the time.  
13 But before we get into some of the details of that, I would like  
14 to indicate for the record and for the understanding of all  
10:28:46 15 concerned, what a status conference is all about and I refer here  
16 to Rule 65 *bis* of the Rules which reads as follows:

17 "A status conference may be convened by the Designated  
18 Judge or by the Trial Chamber.  
19 The status conference shall:  
10:29:03 20 (i) organise exchanges between the parties so as to ensure  
21 expeditious trial proceedings;  
22 (ii) review the status of his case and to allow the accused  
23 the opportunity to raise issues in relation thereto."

24 And that was exactly for that purpose that we convened a  
10:29:22 25 status conference the last time.

26 I would like to mention in this respect that the order  
27 concerning preparation and presentation of the Defence case was  
28 issued on 21 October 2005, and the status conference was held on  
29 27 October 2005. That is a week later. At that status

1 conference we went through a fairly detailed agenda and I did ask  
2 all parties, especially the Defence, if there was any problem,  
3 and certainly the record does not indicate any of the issues that  
4 have been raised in the submission presented by the Defence. So  
10:30:09 5 we will review this this morning and make sure that there is a  
6 clear understanding as to what is required and what is expected.  
7 But before we get there, I will ask Justice Itoe to address the  
8 issue of the joint submission as such and then we will proceed  
9 from there. Justice Itoe.

10:30:35 10 JUDGE ITOE: Well, learned counsel, I will be very brief.  
11 We have indicated all along, since we started the trial that  
12 although the accused persons are being tried jointly, their  
13 defences are being conducted separately. There may be certain  
14 subjects that come within a common denominator, but that does not  
10:31:03 15 mean that they are not being defended separately by separate  
16 defence teams.

17 When we made our order on 21st October, we expected that  
18 each defence team will individually comply with that order, and  
19 we are expecting at least three documents to reflect this  
10:31:24 20 compliance. This has not been the case. We have been treated to  
21 a joint reply, a joint compliance, I would say, by the three  
22 defence teams in a single document. We do not consider that this  
23 is appropriate. We want to proceed very neatly. We want to know  
24 that issues that are raised in a document concern the first  
10:31:57 25 accused exclusively, and so do we want to feel is the case with  
26 the second and the third accused persons. You would see it makes  
27 for the neatness of the proceedings. So I want to make this  
28 observation and to emphasise that we never ordered -- we never  
29 ordered a joint compliance with scheduling order and that somehow

1 it has to be corrected in order to reflect the records and in  
2 order to enable the Chamber and the Prosecution and defence teams  
3 to know who is raising what arguments, just as has been the case  
4 throughout the conduct of the Defence in this matter. So these  
10:32:43 5 are the comments that I wanted to address to the Prosecution and  
6 the Defence on this particular issue. Thank you.

7 PRESIDING JUDGE: Obviously any future filing will be  
8 expected to be done separately unless specifically authorised  
9 pursuant to an application in due course made to the Court in  
10:33:06 10 this respect. So I haven't gone through the appearance of the  
11 parties. Maybe we should do that before we proceed any further.  
12 So may I ask for the Prosecution who is appearing today?

13 MR JOHNSON: Yes, Your Honour. Marco Bundi,  
14 Nina Jorgenson, Joseph Kamara and James Johnson, Your Honour.

10:33:24 15 PRESIDING JUDGE: Thank you, Mr Johnson.

16 MR NMEHIELLE: [Microphone not activated] Your Honour,  
17 Vincent --

18 PRESIDING JUDGE: Would you open your microphone?

19 MR NMEHIELLE: Yes, I'm sorry about that.

10:33:40 20 Vincent Nmehielle, Principal Defender. I will let each defence  
21 counsel introduce themselves. I am here possibly to get an  
22 update of what is happening and possibly also inform the Court of  
23 a number of issues.

24 PRESIDING JUDGE: Thank you, Mr Principal Defender; I will  
10:33:57 25 come back to you. Thank you. For the first accused?

26 MR JABBI: My Lords, Dr Bu-Buakei Jabbi for the first  
27 accused.

28 PRESIDING JUDGE: Thank you, Dr Jabbi. Second accused.

29 MR BOCKARIE: Your Honour, for the second accused is Arrow

1 J Bockarie and Andrew Ianuzzi.

2 PRESIDING JUDGE: Thank you. For the third accused?

3 MR MARGAI: May it please you, My Lords. CF Margai,  
4 YH Williams, Ansu Lansana and Martin Michael.

10:34:26 5 PRESIDING JUDGE: Thank you. Before we proceed with our  
6 agenda on the status conference, Mr Principal Defender, I would  
7 like to raise with you and indicate for the record that we have  
8 received the letter you had forwarded about representation of the  
9 third accused and we have reviewed the comments made. And, as I  
10:34:54 10 have indicated to you, we are accepting your recommendation and  
11 we are not prepared to see any substitution of counsel for the  
12 third accused at this particular time. And, therefore, as far as  
13 this Court is concerned the accused is to be represented as it  
14 has been the case by the Court appointed counsel, that is  
10:35:13 15 Mr Margai, Mr Williams and Mr Lansana. So that is the way it is  
16 for the time being. Do you have any other matter you wish to  
17 raise about representation at this particular stage,  
18 Mr Principal Defender?

19 MR NMEHIELLE: Yes, I would like to raise about  
10:35:38 20 representation with regard to the Chief Norman team.

21 PRESIDING JUDGE: Yes.

22 MR NMEHIELLE: Your Honour may be aware of a memo that I  
23 wrote some time ago informing the Court that Ibrahim Yillah who  
24 is associate legal counsel in my office and who also doubled as  
10:35:55 25 duty counsel for the Norman team had resigned and I needed to  
26 resolidify and fortify the team with additional counsel. And, of  
27 course, also to make sure that my duty counsel are not  
28 necessarily deeply involved in the day-to-day defence, which was  
29 not the intention of why the position was created. So in that

1 regard I sought the cooperation of the senior or the co-lead  
2 counsel, Mr John Hall and Dr Jabbi, to facilitate this even  
3 though I could do it on my own. It took quite a while, but they  
4 had separately nominated two individuals to me and for me to  
10:36:47 5 consider. The two individuals they separately nominated, Mr Hall  
6 thinks that the legal assistant Claire da Silva should fill in  
7 the position, while Dr Jabbi thinks otherwise and thinks that a  
8 more senior lawyer who will be on the ground to participate in  
9 the process will be more feasible. Looking at both CVs that were  
10:37:17 10 submitted to me and looking at what the Rules provide for, even  
11 though Dr Hall was asking that Claire da Silva who has about  
12 three years' legal experience, quite below the requirement of the  
13 Rules, should be allowed under exceptional circumstances because  
14 she has been hired as a legal assistant.

10:37:37 15 And on the other hand, Dr Jabbi provides for me Mr Allusine  
16 Sani Sesay who has 13 years at the Bar and who has had elaborate  
17 criminal law practice in Sierra Leone. And I look at these two  
18 in terms of what is required for me will mean somebody who will  
19 bring some co-ordination in the team, because it lacks  
10:38:05 20 co-ordination as far as I am concerned, and somebody who will be  
21 there on a day to day to ensure effective advocacy in the Court.  
22 I will let the Court make the decision, but my recommendation  
23 will be for a senior lawyer and in that regard I would want the  
24 Court to maybe consider my recommendation unless the Court feels  
10:38:35 25 otherwise that Mr Allusine Sesay be added as a court-appointed  
26 counsel because I do not have the power to appoint, but I can  
27 recommend.

28 PRESIDING JUDGE: Mr Principal Defender, I thank you for  
29 your comments and observations. What I would suggest to you is

1 that you make the formal submission to the Chamber. We will give  
2 due consideration to your comments this morning and what you will  
3 have in your submission, and certainly if it is filed that the  
4 team for Mr Norman needs to be reinforced, we are certainly  
10:39:11 5 prepared to assist in whatever way we can. But yes, as you have  
6 pointed out, it is for the Court to make the decision as to who  
7 is to be appointed and we will give due consideration obviously  
8 to your submission in this respect.

9 MR NMEHIELLE: Thank you, Your Honour. One more issue in  
10:39:27 10 relation to Mr Norman's team. It has come to my notice,  
11 following some prompting by Mr Norman, that counsel are listed in  
12 the document as counsel for Mr Norman, rather than  
13 court-appointed counsel for Mr Norman. If possible we would  
14 prefer that they be termed court-appointed counsel for  
10:39:56 15 Mr Norman -- for Chief Norman, rather than as counsel, so that it  
16 will reflect the correct position.

17 PRESIDING JUDGE: It is true that the documents do say  
18 counsel for, but it is also true that counsel for must be read in  
19 light of all the decisions of the Court and counsel for in those  
10:40:18 20 cases can only mean counsel appointed for. The same goes for  
21 every single accused in this trial, because they all have  
22 court-appointed counsel. But we will certainly look into that  
23 and if it is to clarify the issue and avoid any misunderstanding,  
24 this certainly can be corrected fairly quickly. But as I say, it  
10:40:39 25 doesn't to me cause any big concern because counsel in that  
26 scenario can only mean court-appointed counsel.

27 JUDGE THOMPSON: I think out of an abundance of caution and  
28 in the interest of consistency we should have one practice and  
29 court-appointed counsel for would seem to me to be the better way

1 to proceed.

2 PRESIDING JUDGE: Yes, you had comments?

3 MR IANUZZI: Your Honours, yes, if I could seek leave to  
4 make a comment.

5 PRESIDING JUDGE: As to?

6 MR IANUZZI: As to court-appointed counsel.

7 JUDGE ITOE: Let's have your name again.

8 MR IANUZZI: Andrew Ianuzzi for Mr Fofana. I do not enjoy  
9 a right of audience before the Court. I have less than 5 years'  
10:41:25 10 experience, but I am an admitted lawyer in the state of New York  
11 and I have been so for two and a half years and I just wanted to  
12 make some comments today. While we are on the topic of  
13 court-appointed counsel, I wanted to remind the Chamber that the  
14 Fofana team submitted a motion for reconsideration of that status  
10:41:40 15 in March of this year, and that motion has not been decided and  
16 Mr Fofana is very anxious and would like to just have an update  
17 as to the status of that motion. Thank you.

18 PRESIDING JUDGE: Status of that motion is still pending,  
19 as you know.

10:42:04 20 MR IANUZZI: Could we expect a decision some time soon?

21 PRESIDING JUDGE: Yes, some time.

22 MR IANUZZI: Thank you.

23 JUDGE ITOE: The application has wider ramifications and  
24 fall-outs than you might expect. So we will just be patient. It  
10:42:16 25 is still in the pipeline.

26 PRESIDING JUDGE: Coming back to the status conference  
27 per se --

28 MR JOHNSON: Excuse me, Your Honour, could I just make a  
29 couple of observations about the comments by the



1 Principal Defender.

2 PRESIDING JUDGE: As to what, Mr Johnson?

3 MR JOHNSON: The first one is the first issue he brought up  
4 that you denied on release of counsel for the third accused.

10:42:42

5 Just if we could be forwarded copies of some of that

6 correspondence so that we can look at it. We have not been

7 involved or seen any of that. The second issue deals with

8 Mr Ibrahim Yillah and how he had resigned from the

9 Principal Defender's office. I am not aware, because I believe

10:43:01

10 that he also fell in as a court-appointed counsel, although he

11 was a member of the Principal Defender's office. I guess I am a

12 little unsure about did he have the status of court-appointed

13 counsel and if he did, was he released from that appointment.

14 PRESIDING JUDGE: To answer your question, to my own

10:43:21

15 recollection I remember looking at that when I was informed by

16 the Principal Defender. He was not court-appointed. He was

17 assigned by the Principal Defender to essentially at the request

18 of the Court to assist essentially only the Defence team of

19 Norman and not every team of the CDF. But was never

10:43:42

20 court-appointed as we have appointed other counsel for the

21 Defence team Mr Principal Defender?

22 MR NMEHIELLE: Your Honour, you're absolutely correct; I

23 couldn't agree with you more. The team as currently configured

24 is court appointed and not Ibrahim Yillah. Before Ibrahim Yillah

10:44:06

25 was released, they had to give an opinion to the Registrar of the

26 Court. I came to the determination based on the order that he

27 was not court appointed, rather, the team members were. He had

28 to step in as required because the team was not as fortified as

29 one would have preferred. Therefore, the Court wanted to include

1 some participation and he fell into performing the role because  
2 he was duty counsel. Again, we must also try to avoid the  
3 situation where a duty counsel to a trial is seized by just one  
4 accused person. I wouldn't like that to happen on a regular  
10:44:45 5 basis. It happened in his case because of the circumstances.  
6 So, the answer to your question, simple and short, is that he is  
7 not court appointed.

8 As to whether or not you needed to be apprised of the  
9 complaint by the third accused in relation to counsel, I thought  
10:45:13 10 it was something about which I could approach the Chamber, since  
11 it was not anything that in a final determination, per se, would  
12 affect you as Prosecution one way or the other. But, if the  
13 Court guides me in terms of getting the documents to you, I don't  
14 know whether it is necessary to apprise you of this determination  
10:45:40 15 in the manner you want it.

16 PRESIDING JUDGE: Mr Principal Defender, I can alleviate  
17 your fears. If it had been the case we would have so indicated  
18 to you. But we felt that, given the circumstances, it was not  
19 required that it be disclosed to the Prosecution at that time.  
10:45:56 20 Rest assured, Mr Prosecutor, that if you feel you should be  
21 involved, we will order that it be done in all circumstances.  
22 But, given those facts and the circumstances, there was no  
23 requirement to do that. We felt that it was better dealt with  
24 that way. As I say, the discussions were held between the  
10:46:18 25 Chamber and the Principal Defender, not the counsel individually.

26 MR JOHNSON: Thank you, Your Honour.

27 PRESIDING JUDGE: That should resolve your two questions.  
28 Thank you.

29 Regarding your comments, Mr Principal Defender, about

1 court-appointed counsel and the documentation, the Court itself,  
2 whenever it has issued decisions, has always complied with that.  
3 All of our documents indicate court-appointed counsel for whoever  
4 it may be. So the breach, if any, has been done by the defence  
10:46:56 5 team and the Prosecution, not the Court. For example, the last  
6 document filing joint defence material, just says "counsel for".  
7 So, if there is a breach, it is with counsel and not with the  
8 Court. But I would comply with --

9 MR NMEHIELLE: May I formally require the Court to require  
10:47:20 10 counsel and the Prosecution to comply with such indication of  
11 identification of counsel?

12 PRESIDING JUDGE: That is the only way it should be done.

13 MR NMEHIELLE: Thank you.

14 PRESIDING JUDGE: So, coming to the agenda itself, we have  
10:47:40 15 requested a status conference this morning because we feel there  
16 has been, to put it mildly, a lack of compliance with our order.  
17 This order has been issued pursuant to rules that have full  
18 application to all participants of this Court. The rules are  
19 quite clear and explicit in this respect, and do not give any  
10:48:03 20 leeway unless the Court so authorises. Prescription of the rules  
21 having to do with the disclosure material is the basis of the  
22 order that we had issued, and this order shall be complied with  
23 entirely.

24 In compliance with an order there is no rule, per se, for  
10:48:33 25 objection. If objections are to be made, they must be made in  
26 the normal fashion by a motion or application to the Court, and  
27 we will dispose of it in due course. This order was issued on 21  
28 October. I will go through it paragraph by paragraph and  
29 subparagraph by subparagraph because we have looked at the

1 material that has been filed and it has not been complied with.  
2 I would like to reiterate what I have said: We have had a status  
3 conference; these problems, if they existed, ought to have been  
4 raised at that time. Absolutely nothing of that nature was  
10:49:25 5 raised at that status conference. We do not understand why, all  
6 of a sudden, we are faced with real noncompliance with a clear  
7 direction to file.

8 This is an international criminal tribunal and it has  
9 special rules. The Rules of the Court are based in large part on  
10:49:52 10 common law, but this is not necessarily a common law court. We  
11 do follow many principles from common law countries, but this is  
12 not exclusive. In this Court we do expect - and this is a very  
13 clear principle at the heart of all these proceedings - full  
14 compliance with the presumption of innocence. But the fact that  
10:50:17 15 there might be some obligation of disclosure is not, in our view,  
16 a failure to comply with or respect the principle of the  
17 presumption of innocence.

18 Looking at paragraph 2(a)(i) of the order of 21 October  
19 2005, the Chamber is of the view that the Defence have failed to  
10:50:48 20 comply with its order when presenting these joint filings. The  
21 first act of noncompliance concerns paragraph 2(a)(i) of that  
22 order. The Defence have not submitted a list of witnesses that  
23 it intends to call containing the name of each witness. At the  
24 previous status conference I remember asking each counsel for  
10:51:18 25 each accused about this matter and whether you had any matter  
26 which you wished to raise in relation to that particular issue.  
27 There was no comment; nothing was raised. This order for the  
28 Defence to provide such material was made some three months after  
29 the case for the Prosecution closed on 14 July 2005. The date

1 for filing of such materials spans some four months since the  
2 close of the Prosecution case. There seems to be, based on the  
3 material in front of us, some misunderstanding, not as to the  
4 order, as such, but as to what may or may not be disclosed  
10:52:34 5 concerning the protective measures. There should be no  
6 confusion. If you are not asking for protective measures for any  
7 particular witness, then there is no need to have pseudonyms.  
8 Therefore, the full disclosure of the identity of that witness or  
9 those witnesses shall be made. If you do wish to seek protective  
10:52:56 10 measures, you must comply with the provisions and you must  
11 support an application in this respect with appropriate material  
12 as to why protective measures are warranted in those  
13 circumstances.

14 I see the representative from the Witness Protection Unit  
10:53:16 15 present at this status conference. The Witness Protection Unit,  
16 headed Mr Vahidy, is there to assist anybody and everybody who  
17 needs assistance for protected witnesses. This is not an  
18 organisation solely devoted to the Prosecution; it assists the  
19 Court. In this respect, it provides, will provide and shall  
10:53:37 20 provide assistance to the Defence, whoever they may be. So, if  
21 you need assistance to protect witness you shall be in touch with  
22 Witness Protection Unit, because that is their duty. Their duty  
23 includes the duty of confidence, if need be, to ensure that these  
24 witnesses are not only protected but also given the confidence  
10:53:58 25 that they need if they have to appear in court. There needs to  
26 be consultation between whoever is claiming protection for  
27 witnesses and the unit in question, otherwise we will obviously  
28 have problems. Failure to request protective measures obliges  
29 you to provide, when ordered to do so, the full name of the

1 witnesses you are intending to call. When I say "full name", it  
2 is the name, place of birth, and whatever else we have specified  
3 in our order. This is not a case of what you would like or not  
4 like, you have to comply and you have to disclose that  
10:54:41 5 information.

6 MS EHRET: Your Honours, we also need a list of witnesses,  
7 otherwise we cannot prepare ourselves.

8 PRESIDING JUDGE: Thank you. I had not mentioned it, but  
9 obviously if we are to provide an adequate translation, the Court  
10:55:33 10 needs to know what language will be used. As you know, when we  
11 were doing the Prosecution case we asked all the time what  
12 language would be used by the witnesses. The Language Unit needs  
13 to know that ahead of time. To have an efficient process they  
14 need to know that more than a few days before the Court is to  
10:55:54 15 hear these witnesses, otherwise it will cause serious problems.

16 MS EHRET: Yes, if I may add, Your Honours, if it is a  
17 language other than Krio, Limba, Mende or Temne, we need to know  
18 much more in advance.

19 PRESIDING JUDGE: How much?

10:56:09 20 MS EHRET: Several weeks in fact. These languages are not  
21 spoken by permanent staff. I have to recruit them from outside  
22 the Court. Thank you.

23 PRESIDING JUDGE: Thank you. I ask the defence team to  
24 take note of this. Again, it would be appreciated if we were not  
10:56:31 25 in a situation where we cannot proceed simply because we have  
26 failed to get the proper interpreters on time. So it rests with  
27 you to inform the unit in question of the language that  
28 witnesses, or prospective witnesses, will be using.

29 MR IANUZZI: Your Honour, excuse me. Can I raise a

1 preliminary matter?

2 PRESIDING JUDGE: Yes.

3 MR IANUZZI: I request on behalf of all defence teams that  
4 the joint materials that were filed be deemed a motion, the  
10:57:10 5 response that was filed by the Prosecution be deemed a response,  
6 and that we be given an opportunity to file a reply by the close  
7 of business today.

8 PRESIDING JUDGE: Just a moment. Before I respond to your  
9 application, we will just break briefly to consult on this and we  
10:58:34 10 will come back. The Court is adjourned.

11 [Break taken at 10.58 a.m.]

12 [Upon resuming at 11.30 a.m.]

13 [The accused not present]

14 PRESIDING JUDGE: Before we proceed, I would like to note  
11:40:14 15 for the record that none of the accused is now present in court  
16 for this status conference.

17 MR BOCKARIE: Yes, for the second accused, Your Honour, he  
18 was complaining of back ache.

19 PRESIDING JUDGE: We will ask Detention to review his  
11:40:14 20 medical condition and report back to the Court if that is the  
21 case. If that is the case, that will be noted through the record  
22 of the Court. But for the time being we can only observe that  
23 none of the accused is present in court, and we take your  
24 comments and accept that.

11:40:14 25 MR IANUZZI: Your Honour, if I might add that the accused  
26 is free not to attend trial proceedings and we would request that  
27 no adverse inferences be drawn from their absence in court.

28 JUDGE ITOE: What are you talking about? That an accused  
29 is not free to -- is not obliged to attend the Court?

1 MR IANUZZI: As I understand it.

2 JUDGE ITOE: As you understand it.

3 MR IANUZZI: Principles of criminal law, accused need not  
4 be present in court if he chooses.

11:40:15 5 PRESIDING JUDGE: True and that is why we have proceeded in  
6 their absence. But we want to make it clear for the record and  
7 there is no adverse inference.

8 MR IANUZZI: Thank you.

9 JUDGE ITOE: And we want to be sure, you know, that he is  
11:40:15 10 not absent because he is boycotting the proceedings because if it  
11 is a boycott then we would treat him as absenting -- we will  
12 treat him as -- we will go on with his case as if he is being  
13 tried in absentia.

14 MR IANUZZI: Thank you.

11:40:16 15 MR NMEHIELLE: Your Honour, I would like to make an  
16 observation, please. Your Honour, Mr Ianuzzi, Andrew, who has  
17 just spoken is a legal assistant and not counsel and I will  
18 appreciate a situation whereby he will let counsel make  
19 presentations to the Court. And if he seeks leave of the Court  
11:40:16 20 to speak and the Court grants him a leave for a particular issue,  
21 which he did in the beginning, I will do appreciate the fact that  
22 the Court had granted him leave. But to make substantive  
23 submissions to the Court, like he has just done, I would prefer  
24 that if he has any reason to make such, as a counsel who has no  
11:40:16 25 right and who, under the Rules, has not been granted exceptional  
26 circumstances grounds to represent counsel, particularly where  
27 counsel are court-appointed, that he clears whatever he wants to  
28 speak with the co-counsel or the lead counsel who is there and  
29 possibly whisper to him. I have tried to bring this to



1 Mr Ianuzzi's notice as Principal Defender. He thinks he has a  
2 right to speak in court, particularly if he clears it with other  
3 teams, and I want to urge the Court to remind Mr Ianuzzi that he  
4 is not counsel, he is a legal assistant, does not have a right of  
11:40:17 5 audience in court and cannot make substantive submissions to the  
6 Court unless the Court deems it necessary under the Rules to  
7 provide an exceptional circumstances ground to enable him to  
8 operate as counsel. That is my observation.

9 PRESIDING JUDGE: I would have preferred that these kinds  
11:40:17 10 of issues be resolved between you and counsel as such, not as  
11 part of the status conference. But as you have indicated, I had  
12 granted Mr Ianuzzi the right to speak earlier. Whether or not it  
13 extended to this last part I thought that when I was granting him  
14 leave to speak it included that, but obviously it was not clear  
11:40:18 15 to you as well. But, as I say, if there is any difficulty of  
16 that nature in the future, I would appreciate that we be informed  
17 of it before. And furthermore, I thought that Mr Ianuzzi was  
18 part of the team for Mr Fofana. He is not part of the  
19 Court-appointed counsel, is that what you are saying?

11:40:18 20 MR NMEHIELLE: No, he's not. He's a legal assistant.

21 PRESIDING JUDGE: So the court-appointed counsel are  
22 Mr Koppe, Bockarie and Pestman?

23 MR NMEHIELLE: That's right. And, Your Honour, for clarity  
24 of purposes too, I would want it indicated in documents, because  
11:40:19 25 I see documents whereby legal assistants are listed as counsel  
26 for the accused persons. I know it is not the fault of the  
27 Court, but as part of the status conference correcting the issues  
28 on documentation, I would urge counsel to ensure that legal  
29 assistants are so listed as legal assistants rather than as

1 counsel of the accused persons.

2 PRESIDING JUDGE: Thank you. So we adjourned at a time to  
3 consult on the application that was made and I ask Justice  
4 Thompson to speak about it and to give our decision.

11:40:19

5 [Ruling]

6 JUDGE THOMPSON: This is the brief ruling of the Bench on  
7 the Defence request.

11:40:19

8 After deliberating on the Defence request for converting  
9 their written joint submissions dated 17th November 2005 into a  
10 motion, the Bench is strongly disinclined to accede to the said  
11 request on two grounds. Namely, one, that the document amounts  
12 to a contravention of the Court's order of 21st October 2005; and  
13 two, that there is no legal or statutory basis for such a  
14 request.

11:40:20

15 Further, the Bench strongly opines that the Defence, having  
16 failed to comply with the Court's order, cannot now seek to  
17 benefit from such noncompliance. Orders issued by the Court must  
18 be complied with. A consequential scheduling order will  
19 accordingly be issued in this regard.

11:40:20

20 PRESIDING JUDGE: Thank you.

21 MR WILLIAMS: May I be heard, My Lords? My Lords, it  
22 appears that on the issue of noncompliance, all three accused  
23 persons are being treated equally. I mean, we -- our position is  
24 fundamentally different from that of the two other accused  
25 persons. At the last status conference we indicated to this  
26 Bench that we would be filing --

11:40:21

27 JUDGE ITOE: Mr Williams, I don't want to cut you short,  
28 but I think -- we didn't go into details about this because we  
29 were not expected to go into real details. But I think that

1 there is some effort by the Defence team of the third accused to  
2 comply, but the compliance has not risen to the level that the  
3 Court would have expected.

11:40:21 4 MR WILLIAMS: Yes, My Lord, I take the cue, My Lord. But  
5 furthermore, My Lord --

6 JUDGE ITOE: We are not saying that -- somehow you  
7 complied, but it didn't rise up to that level.

8 MR WILLIAMS: Yes, My Lord, and there are justifiable  
9 reasons for that, My Lord, which has not come out this morning.  
11:40:21 10 We actually filed a motion for protective measures so we could  
11 not have --

12 PRESIDING JUDGE: We know. We know.

13 MR WILLIAMS: Yes. I just wanted to make the --

14 PRESIDING JUDGE: We are not there yet. We are talking in  
11:40:21 15 general terms, but we are going to go through every aspect of it.  
16 And yes, we acknowledge that the third accused has filed a motion  
17 for protective measures --

18 MR WILLIAMS: Most grateful, Your Honour.

19 PRESIDING JUDGE: -- for some witnesses.

11:40:22 20 MR WILLIAMS: For all of the witnesses, My Lord.

21 PRESIDING JUDGE: We will get there.

22 MR WILLIAMS: I am grateful.

23 PRESIDING JUDGE: Justice Thompson.

24 JUDGE THOMPSON: I just wanted to say that clearly it was  
11:40:22 25 very difficult to lift the veil of the document entitled joint  
26 defence material file pursuant. And the presumption is that if  
27 you have a document entitled joint defence material filed by  
28 the -- pursuant to, et cetera, that in fact all of the Defence --  
29 all lawyers defending the accused persons have indeed more or

1 less filed this document and asking the Court to treat it as a  
2 joint endeavour and what you have now said seems to suggest that  
3 perhaps the concept of noncompliance should not be applied to  
4 your client or to you as defence counsel for the third accused.

11:40:23 5 But I find it difficult to see why this should be so when we are  
6 confronted with a document called a joint defence materials and  
7 it describes the order in certain parts as objectionable.

8 PRESIDING JUDGE: And signed by counsel for [overlapping  
9 speakers].

11:40:23 10 JUDGE THOMPSON: For all of -- yes, quite right. So it  
11 would seem to me in a sense disingenuous to suggest that there  
12 has been compliance, when in fact this seems to be a product of  
13 all three defence teams. Except I am misreading something.

14 MR WILLIAMS: My Lord, we filed a separate annex, annex C.

11:40:23 15 PRESIDING JUDGE: We know.

16 MR WILLIAMS: Yes, and the other defence teams filed their  
17 own annexes, My Lord. And we are saying that, I mean, as far as  
18 the arguments are concerned, I mean it applies -- the arguments,  
19 sorry, apply to all three accused persons but the annexes are  
11:40:23 20 completely different -- it is a complete different matter,  
21 My Lord.

22 JUDGE THOMPSON: Yes, but in fact, I would have thought  
23 that the main part of the document is what is really of critical  
24 importance and it is from that aspect that I am drawing the  
11:40:45 25 conclusion that this is a joint product unless you are now  
26 disowning any kind of ownership of that.

27 MR WILLIAMS: It is, My Lord. It is, My Lord, it's a  
28 joint -- the document was jointly filed. But what I am saying is  
29 that our situation is different because we filed a document

1 preceding the joint document and we separately filed a motion for  
2 protective measures which could have given our justifications for  
3 the way and manner in which we presented the chart.

4 JUDGE THOMPSON: So, in other words, you were not a party  
11:41:19 5 to the submission of partial noncompliance?

6 MR WILLIAMS: Sorry, My Lord?

7 JUDGE THOMPSON: In other words, you were not a party to  
8 the submission complaining that certain parts of the order of the  
9 court were so burdensome?

11:41:32 10 MR WILLIAMS: Yes, My Lord, we actually complained but --

11 JUDGE THOMPSON: But it could not be complied with?

12 MR WILLIAMS: We actually complained that some aspects were  
13 burdensome, but we still went ahead and did as best as we can to  
14 comply. But again, justification for the way and manner in which  
11:41:54 15 we presented the chart, My Lord, could be found in the motion we  
16 filed -- the motion that preceded the joint submissions.

17 JUDGE THOMPSON: Let the matter rest. It is just that I  
18 didn't think we were out of place in complaining that there has  
19 been noncompliance by the Defence as a group.

11:42:18 20 JUDGE ITOE: You would agree, Mr Williams, that this more  
21 than re-emphasises the necessity for separate filings, because  
22 this confusion would not arise if it had been done the way we  
23 expected that it be done. Right.

24 PRESIDING JUDGE: What I had mentioned in the noncompliance  
11:42:41 25 was that none of the teams had complied with what we had ordered  
26 under 2(a) a list of witnesses of each defence team intends to  
27 call, including the name of each witness. You have not complied.  
28 You are saying now you have applied subsequently to have  
29 protected witness and filed a motion. I acknowledge that there

1 is a motion pending of that for seeking protected witness status  
2 for all the witnesses you intend to call. I do not -- I know  
3 this, but I said at the time that we ordered that you had not  
4 filed any such thing and what you filed, it now is not  
11:43:17 5 necessarily -- we have not disposed of your motion yet, so we  
6 will see how we deal with that.

7 MR WILLIAMS: My Lord, the motion preceded the --

8 PRESIDING JUDGE: But, Mr Williams, we have heard your  
9 comments, we know what you say. Let that suffice.

11:43:31 10 MR IANUZZI: Mr Presiding Justice, could I seek leave to  
11 make two brief comments?

12 PRESIDING JUDGE: No, we have dealt with that and we are  
13 not prepared to entertain any more comments. So we have disposed  
14 of it.

11:43:46 15 We were dealing with paragraph 2(a)(i) of our order. The  
16 Chamber is further of the opinion that the Defence have --

17 MR NMEHIELLE: Your Honour, I wanted to seek leave of you  
18 to leave the Court to attend to some personal issues in the  
19 office. If you don't mind.

11:44:03 20 PRESIDING JUDGE: Yes, yes, please.

21 MR NMEHIELLE: Thank you very much.

22 PRESIDING JUDGE: As to paragraph 2(a)(ii) of the order of  
23 21 October, our order, the summaries provided in the annex list  
24 of witnesses does not comply with the Chamber's order, nor with  
11:44:25 25 its specific explanation at the status conference of 27 October  
26 2005. At the status conference the Chamber explained that  
27 summaries that provided solely a topical index of the issues the  
28 witness would cover in his or her evidence was not acceptable.  
29 Rather, the summary should be descriptive enough for the Chamber

1 to understand the testimony, including the nature of their  
2 evidence, and not just the area of their testimony. This is what  
3 we said at the status conference.

4 The annex list of Kondewa's witnesses is closer - closer -  
11:45:02 5 to fulfilling this requirement, but none of the defence teams  
6 have complied with this requirement. This is what we have found.  
7 So we acknowledge there has been an effort by the defence team  
8 for Kondewa. We make those differences. That is why I said to  
9 you, Mr Williams, wait, we are coming to you.

11:45:21 10 The Chamber further stresses that this should not be, for  
11 example, a three line summary, but a description of events for  
12 each witness. The Prosecution must be in a position to  
13 cross-examine the witnesses and the Court must be able to  
14 understand what the witness will be talking about. The Defence  
11:45:35 15 may choose to provide Prosecution with a witness statement, but  
16 it is at this stage not bound to do so. You may choose to do so  
17 rather than provide the whole description, but you must provide  
18 more information than the one you have at this particular moment.

19 We would just like to indicate that we have not ordered a  
11:45:55 20 statement be produced by the Defence and that it be provided to  
21 the Prosecution. We have not so ordered. I am reminded not yet.  
22 We may get there, but we have not yet so ordered.

23 Mr Jabbi, do you have any comments on my comments on this  
24 noncompliance with 2(a)(ii), which has to do with summary of  
11:46:26 25 respective testimony? As I say, we have concluded clearly that  
26 there has been no compliance at this stage.

27 MR JABBI: My Lords, we do appreciate the observations the  
28 Court is making on these various items under the orders.  
29 My Lord, the Norman team in particular is labouring under certain

1 problems, relating both to the attitude of our client and also  
2 the availability of time and resources to do the amount of work  
3 required. We have endeavoured --

4 PRESIDING JUDGE: Mr Jabbi, I will not accept comments  
11:47:24 5 about time available. I mean, there has been a huge amount of  
6 time made available to all of the defence teams since the close  
7 of the Prosecution's case. It is not something that happened two  
8 weeks ago. It happened in July. We are now in November.

9 JUDGE ITOE: And Mr Jabbi, we have taken our time to look  
11:47:45 10 across the frontiers to practices and what has happened in sister  
11 tribunals. I think that we have been more than generous on the  
12 time accorded to the Defence after the close of the case for the  
13 Prosecution on 25th July 2005. We are at the sixth month, and  
14 that is very, very long compared to what has happened elsewhere.  
11:48:14 15 So I think I will join my voice to that of the Presiding Judge,  
16 to say that we do not think that it is reasonable for the defence  
17 teams to complain about time at this point in time.

18 PRESIDING JUDGE: That you do not have enough resources,  
19 the Principal Defender has made observations in this respect. If  
11:48:36 20 that were the case, Mr Jabbi, I would have expected from you that  
21 you move forward and make such application months ago. What you  
22 are describing to me should not be news that just happened  
23 yesterday. If that is the case and you don't have enough  
24 resources, if this is what you are complaining about, as I say,  
11:48:55 25 the case for the Prosecution has been closed a long, long time.  
26 You had ample opportunity to raise these issues with us, with the  
27 Principal Defender, with whoever. We are now at the eve of  
28 starting the Defence case and you are raising this kind of  
29 matter.



1 As I say, I took it that all the members from all defence  
2 teams in the CDF were eager to move as expeditiously as possible.  
3 That has been what I have heard right from day one in the CDF.  
4 And now we are about to move into the Defence case and now I  
11:49:26 5 sense there is this ambiguity. We are ready but we are not ready  
6 because. And this is the concern I have and that is why we have  
7 the status conference this morning to see where we are.

8 I said to the Principal Defender in your presence that we  
9 are quite prepared to review and see what it is he had to submit  
11:49:47 10 and if you need additional resources and it is justified, we are  
11 quite prepared to do this. But I will not accept at this moment  
12 that you do not have enough time. The time that has been  
13 accorded and afforded is more than ample to prepare defence in  
14 these kinds of cases. If you compare, as my dear brother Justice  
11:50:04 15 Itoe just said, the time that has been allowed for the defence  
16 team to get ready is much more than any other tribunal has ever  
17 granted in these kind of circumstances. Much more.

18 MR JABBI: My Lord, as far as time per se is concerned,  
19 those observations are very much in place. But obviously that is  
11:50:27 20 affected by the nature of the resources available. And we have  
21 not been availed as much resources as we thought we needed in  
22 order to complete the job in that time available. That is all  
23 that I was saying. But we are making the best possible effort to  
24 ensure that we in fact comply with all these requests, just as we  
11:50:57 25 have recorded in the aspects of the joint materials referring to  
26 us.

27 PRESIDING JUDGE: Thank you, Mr Jabbi. Mr Bockarie?

28 MR IANUZZI: With leave, Your Honour.

29 PRESIDING JUDGE: Yes. As to these --

1 MR IANUZZI: As to this point only.

2 PRESIDING JUDGE: Yes.

3 MR IANUZZI: We took as a guide Your Honours' comment at  
4 the 27 October 2005 status conference on page 18, lines 2 through  
11:51:25 5 6 when preparing our response to paragraph 2(a)(i):

6 "I indicate here that a summary should be descriptive  
7 enough so that the Chamber understands the nature of the  
8 evidence of that particular witness. Not only that the  
9 witness will talk about Moyamba District; it should contain  
11:51:44 10 a little more detail than that kind of summary  
11 description."

12 It is our submission that our summaries are in accordance  
13 with that directive.

14 PRESIDING JUDGE: Well, we have just told you that it is  
11:51:54 15 not. If you read it that way, I am saying to you that should be  
16 more expansive. What has been provided is not sufficient for the  
17 purpose that this is to be provided for. I understand what you  
18 are saying.

19 MR IANUZZI: Thank you.

11:52:07 20 PRESIDING JUDGE: You have attempted to comply, it was your  
21 understanding this was in compliance. I understand that, but we  
22 are saying to you this morning it is not and therefore we expect  
23 more.

24 MR IANUZZI: And we note our exception for the record.

11:52:21 25 PRESIDING JUDGE: Thank you.

26 MR IANUZZI: Thank you.

27 PRESIDING JUDGE: Mr Margai?

28 MR MARGAI: My Lords, I apologise for the lapses.

29 PRESIDING JUDGE: And as I said in the case of Kondewa,

1 Mr Margai, we said it is almost compliant.

2 MR MARGAI: I know, My Lord, and I believe what has  
3 happened is as a result of the joint enterprise. Surely if we  
4 had done things individually we probably would not be in the  
11:52:40 5 position in which we are. I can only give an undertaking that we  
6 shall endeavour to comply fully with the order of this Court.

7 PRESIDING JUDGE: Thank you, Mr Margai.

8 MR MARGAI: Thank you.

9 PRESIDING JUDGE: Mr Prosecutor? I am not sure who speaks  
11:52:58 10 for the Prosecutor. Mr Johnson, do you wish to say anything on  
11 this now?

12 MR JOHNSON: No.

13 PRESIDING JUDGE: Thank you. Looking at paragraph 2(c) of  
14 the order, which is the other aspect, in our view the Defence  
11:53:09 15 have failed to comply with that paragraph. The Defence state  
16 they are in possession of documents upon which it may wish to  
17 rely at trial, however, final decisions in respect of these  
18 documents have not been taken. So this is essentially what has  
19 been the position of the Defence as we understand it. Given the  
11:53:31 20 time that has already been made available to the Defence for  
21 their preparation, the Chamber considers that the Defence exhibit  
22 either a lack of preparedness for their case or a lack of  
23 co-operation, and they shall provide that information now.

24 We will not accept any delay in providing in compliance  
11:53:51 25 with 2(c). As I said, we will issue a consequential order today  
26 in which we will expect compliance in a very short time frame.

27 MR IANUZZI: Your Honour, with leave.

28 PRESIDING JUDGE: No specific comments have been made by  
29 the Defence on this issue during the previous status conference

1 even though we spoke about it. Yes, Mr Ianuzzi?

2 MR IANUZZI: Thank you. Just for the record, when  
3 preparing our response to paragraph (c), we were focusing on the  
4 word "intends", and at the point we made our submissions we had  
11:54:26 5 not intended to file anything. We had not made final decisions  
6 and we are still in the process of vetting our documents. We  
7 will certainly be in a position to provide a list of the  
8 documents we intend to use at trial before the recess. With your  
9 leave we could provide some jurisprudence possibly as support for  
11:54:50 10 this interpretation of the word "intends".

11 PRESIDING JUDGE: We obviously do not share your  
12 interpretation of that. Because if this is a document that you  
13 intend to file, you should provide a list at this particular  
14 moment. That is what we are saying.

11:55:07 15 MR IANUZZI: Okay. Our exception is noted, please.

16 PRESIDING JUDGE: Thank you.

17 MR IANUZZI: Thank you.

18 PRESIDING JUDGE: Paragraph -- sorry.

19 MR MARGAI: My Lord, with regard to (c), we have reviewed  
11:55:18 20 the position regarding exhibits and we will not be filing any  
21 exhibits subject -- we have none to file and should the need  
22 arise as the trial proceeds, we shall seek leave.

23 PRESIDING JUDGE: That is different. That is what I mean  
24 by "intends". If at this time you intend to --

11:55:43 25 MR MARGAI: No, we don't. Thank you.

26 PRESIDING JUDGE: Fine. And as I say, we will issue a  
27 consequential order, hopefully today, and we take it that your  
28 response will be that you have none to file.

29 MR MARGAI: As My Lord please.

1           PRESIDING JUDGE: With reference to paragraph 2(d), we  
2 consider that the Defence have failed to comply with that  
3 paragraph. At this stage there is no provisions for such a  
4 directive in the Rules and it is at odds with the presumption of  
11:56:11 5 innocence. The Chamber considers that in accordance with its  
6 responsibility to manage trial proceedings and ensure that a fair  
7 and expeditious trial is conducted, that this is a reasonable  
8 request for the Defence to perform. The Chamber must ensure that  
9 the Defence will be prepared to present their defence of accused  
11:56:39 10 in an efficient and expeditious manner. The Chamber issues this  
11 order for the preparation and conduct of trial pursuant to  
12 Rule 54, which is the general authority for the Court to issue  
13 such orders. And therefore we expect, again, compliance with  
14 that particular provision.

11:56:53 15           Mr Ianuzzi, you have any comment?

16           MR IANUZZI: Yes, sir, thank you. Your Honour, we stand by  
17 our submissions that this requirement is in contravention of the  
18 presumption of innocence. It is our position that the  
19 information listed in paragraph 2(a) items (i) through (v) is  
11:57:07 20 sufficient for the preparation of the trial, and that paragraph  
21 (d) adds nothing to that effect. Again, we are more than willing  
22 to make formal submissions on this point and we note our  
23 objection for the record.

24           PRESIDING JUDGE: We don't expect submissions on this  
11:57:25 25 point. We will issue, as I say, a consequential order today and  
26 we expect full compliance with the order by the day that will be  
27 set in there.

28           MR IANUZZI: We note our exception, thank you.

29           PRESIDING JUDGE: The number of witness --

1 MR MARGAI: Sorry, My Lord.

2 PRESIDING JUDGE: Yes.

3 MR MARGAI: With regard to the Kondewa team, Annex C will  
4 by modified to comply with the order of the Chamber.

11:57:49 5 PRESIDING JUDGE: Thank you. Mr Jabbi, I didn't ask you.  
6 I took it that your comments at the beginning were applicable to  
7 all of these observations. That is why I didn't come back to you  
8 each and every time. Am I right?

9 MR JABBI: Yes, indeed, My Lord. And your own observation,  
11:58:09 10 My Lord, that indeed a consequential order is to be made giving a  
11 date by which absolute compliance must be done has also been  
12 noted.

13 PRESIDING JUDGE: Thank you.

14 The number of witnesses is the other issue I want to raise  
11:58:34 15 at this particular moment. Obviously we have serious concerns  
16 over the number of witnesses that the accused intends to call.  
17 We know, for example, that the Defence team for Norman at this  
18 stage intend to call 74 witnesses; the Defence team for Fofana  
19 intends to call 28 witnesses, and the team for Kondewa intend to  
11:58:56 20 call 47 witnesses. This amounts to a total of 149 witnesses for  
21 the Defence, over double the number of prosecution witnesses  
22 called at this particular time, which we find difficult to  
23 understand and accept.

24 We are not in a position at this moment, nor at this stage,  
11:59:19 25 to order and impose any reduction of witnesses. We will wait to  
26 receive the compliance with our order to look at the list of  
27 witnesses, because one of the purposes of that as well is to  
28 assist the Court to make a determination if the witnesses that  
29 are being called are on the face of it relevant and if they are

1 repetitive. In other words, if a witness called by a first team  
2 is another witness called by the second team and the third team,  
3 all talking about the same incident, and there is ten of these  
4 witnesses talking about the same kind of incident, we make ask  
11:59:57 5 you to do further consultation and come up with a common approach  
6 on five witnesses and so on. But we are not at this stage. All  
7 we are saying at this particular moment is we are seriously  
8 concerned by the number of witnesses that are intended to be  
9 called at this particular moment.

12:00:13 10 I would like to make a suggestion to all the teams that  
11 maybe you look at something that was done by the Prosecution,  
12 where they produce a list of witness with core witnesses and  
13 back-up witnesses. Obviously at this stage you are presenting a  
14 list of witnesses that is as comprehensive as possible. As you  
12:00:32 15 know, we have accepted this process by the Prosecution and it  
16 would be perfectly acceptable by the Defence as well. If you  
17 have -- you produce a list of let's say 35 witnesses, but you  
18 will call this 20 witnesses, the other ones are more or less  
19 back-up witnesses, and you can move them from the back to the  
12:00:52 20 core list. That is a proposal I would submit to you that we  
21 would welcome if that is the case. But we need to know what is  
22 the core list of witness that the Defence is intending to call.

23 Because I want to make it clear, 149 witnesses is way too  
24 much and we're not prepared to hear and listen to 149 witnesses.  
12:01:12 25 But how we achieve to reduce this, we can only ask and suggest  
26 better cooperation and consultation between the defence teams to  
27 see what it is you can make as an adjustment to that.

28 Yes, Mr Ianuzzi.

29 MR IANUZZI: With leave, Your Honour.

1           PRESIDING JUDGE:  Yes.

2           MR IANUZZI:  Thank you.  I might just add that I have been  
3 in consultation with the legal assistant for the Norman team,  
4 Ms da Silva, and co-counsel for Kondewa, Mr Lansana.  It seems  
12:01:40 5 that approximately 24 of the witnesses on our list are common to  
6 the Norman team, and approximately 8 witnesses on our list are  
7 common to the Kondewa team.  If that helps in your assessment.

8           PRESIDING JUDGE:  Which means from 149 it would reduce by  
9 about 24.

12:01:59 10          MR IANUZZI:  Indeed.

11          JUDGE ITOE:  That is still not --

12          PRESIDING JUDGE:  Still very high.  But it is a good step  
13 in the right direction; let's put it this way.

14          MR IANUZZI:  It is our submission that the Fofana team's  
12:02:08 15 number, whether it be core or otherwise, is not unreasonable at  
16 this time.

17          PRESIDING JUDGE:  If we were to use 28 or 25 as a  
18 foundation, I would agree with you that it seems to be  
19 reasonable.

12:02:22 20          MR IANUZZI:  Thank you.

21          PRESIDING JUDGE:  As I say, for now it is much more than  
22 just 25 or 28 by each team.  I can only at this time again ask  
23 and urge all the teams to talk and discuss to see.  And as I say,  
24 I would appreciate -- I don't know with 28 if they are all core  
12:02:42 25 witnesses.  I would imagine that the majority of them are, with a  
26 number like this.  But if you can come up with a core list, and  
27 as I say, a back-up in case of, so we know exactly what it is we  
28 have to deal with.

29                                   [CDF25NOV05B - SV]



1 MR IANUZZI: Could I make a suggestion while we're on the  
2 topic of witnesses.

3 PRESIDING JUDGE: Yes, that's why we're here at the status  
4 conference.

12:03:38 5 MR IANUZZI: I had a brief discussion with Mr Johnson  
6 during the break, and I think we both agree that it might be  
7 helpful to have discussions amongst ourselves about the possibly  
8 of having another status conference with respect to the mechanics  
9 of calling witnesses in terms of joint 1, 2, 3, and how that will  
12:03:38 10 actually happen. I think we'll agree to have a meeting on that,  
11 and possibly urge the Chamber to call another status conference  
12 before the recess.

13 PRESIDING JUDGE: Before the recess?

14 MR IANUZZI: Merely a suggestion.

12:03:39 15 PRESIDING JUDGE: Mr Johnson, do you want to speak about  
16 that?

17 MR JOHNSON: Yes, Your Honour, and now seems to be a good  
18 time. We are concerned that the procedural mechanics of the  
19 trial be sorted out before the recess. Many of these are items  
12:03:55 20 that you listed in your initial order on 21 October to be dealt  
21 with on 11 January. We were merely suggesting that some of these  
22 things might be better dealt with before the recess because they  
23 will affect last-minute preparations on both sides and so that we  
24 can start the trial on 17 January. An example that my colleague  
12:04:21 25 pointed out was the order that the defence teams will present  
26 their case determining if the accused will be testifying on their  
27 own behalf. A good example of that would be that if the accused  
28 are going to testify, would all three accused need to testify  
29 before the joint witnesses testify, and things like that. These

1 are some mechanics that we're very concerned might need to be  
2 sorted out before the recess.

3 PRESIDING JUDGE: That's a good suggestion. We'll  
4 certainly give it due consideration. As I say, we're not averse  
12:04:57 5 to having another status conference if need be. This is the  
6 purpose of that, to see how we can work the mechanics so once we  
7 get to the trial itself it works more smoothly and in a more  
8 efficient way. Yes, we will look at that, and, if need be, we'll  
9 inform you that we'll convene another one. Thank you very much  
10 for your comments and suggestions in this respect.

11 With regard to the number of witnesses and the issue you  
12 raised, Mr Ianuzzi, the Chamber believes that a more  
13 proportionate number of witnesses would be in a range of 25  
14 witnesses per defence team. You're not very far from that range  
12:05:42 15 given that we are talking about 28. If there is further  
16 consultation, you may get to 25. And 25, 25, 25, will be 75  
17 witnesses, which would be the equivalent of about four to five  
18 trial sessions. We're trying to see how best to achieve all that  
19 without having this drag out over another year and a half, which  
12:06:11 20 we're not prepared to do. I hope that you're not prepared to do  
21 it and that you'll assist the Court in achieving a conclusion as  
22 soon as possible and feasible while respecting the rights of the  
23 accused. That's basically what we're concerned about. As we  
24 stand, far too many witnesses have been listed, but we're not  
12:06:29 25 prepared, and we don't have enough information at this time, to  
26 order a reduction. We're just asking for full co-operation  
27 between the defence teams in this respect.

28 MR IANUZZI: You mentioned "proportionate". I'm assuming  
29 you're referring to the number of witnesses that the Prosecution

1 called?

2 PRESIDING JUDGE: Yes.

3 MR IANUZZI: When you said the defence would be 25, 25, 25  
4 in proportion --

12:06:51 5 PRESIDING JUDGE: I think the Defence mentioned 75 or 74,  
6 but in that time frame --

7 MR IANUZZI: Is that intended to be a [overlapping  
8 speakers] benchmark?

9 PRESIDING JUDGE: Not necessarily. The Defence has no  
12:07:01 10 onus; they don't have to prove anything. The onus is all on the  
11 Prosecution. It is really rather strange that to prove a case  
12 the Prosecution needs, let's say, 75 witnesses and to defend  
13 against that case the Defence needs 200 witnesses. I fail to  
14 grab the logic of that.

12:07:24 15 MR IANUZZI: I would just urge the Chamber not to bind  
16 itself strictly to a numerical interpretation.

17 JUDGE THOMPSON: No.

18 PRESIDING JUDGE: No, we have not.

19 MR IANUZZI: I understand that we might be presenting  
12:07:31 20 several witnesses who will be testifying very, very briefly on  
21 certain points.

22 PRESIDING JUDGE: I accept that. That's why I say I don't  
23 look at numbers for the sake of numbers. But it is certainly  
24 indicative. As I say, the onus is not on the Defence to do  
12:07:47 25 anything, it is on the Prosecution. If they sought 75 witnesses  
26 to prove their case, it is certainly a factor that we should  
27 consider. That's all.

28 MR IANUZZI: Thank you.

29 PRESIDING JUDGE: We will look now at the expert witness

1 issue. The Defence stated in their filings that they  
2 collectively have one proposed military expert and at least four  
3 cultural anthropologists with expertise in the Kamajor movement,  
4 including the initiation process and further aspects of civil  
12:08:24 5 defence in Sierra Leone. At the previous status conference, Mr  
6 Jabbi indicated that at that time the defence team for Norman  
7 intended to call between three to five expert witnesses, the  
8 defence team for Mr Fofana indicated that they intend to call two  
9 experts, while the Defence for Mr Kondewa indicated that they  
12:08:50 10 intend to call no more than three experts. Do I take it that the  
11 joint submission in this is a composite of all that; in other  
12 words, the maximum number of experts called, putting it all  
13 together, would be five? That is, one proposed military  
14 expert -- and what I have now suggests that it's at least four.  
12:09:13 15 If we hear anthropologists on the Kamajor movement, I'm not sure  
16 why we should hear from four or five of them. Do you have any  
17 comment on that, Mr Ianuzzi? You seem to be prepared to comment  
18 on that.

19 MR IANUZZI: Indeed, Your Honour. The number was a  
12:09:31 20 composite number based on Dr Jabbi's estimate of five experts.  
21 We intend to call one military expert -- "we" being the Fofana  
22 team -- and one cultural anthropologist.

23 PRESIDING JUDGE: Thank you. Mr Margai, on the Kondewa  
24 defence team?

12:09:50 25 MR MARGAI: My Lord, I believe we will be calling one  
26 military expert, and my information is that the cultural  
27 anthropologist will be a common witness between the Fofana team  
28 and ours.

29 PRESIDING JUDGE: Good. Thank you. So I take it that when

1 we're talking about anthropologists here, we will be not be faced  
2 with three or four anthropologists?

3 MR MARGAI: Just one.

4 PRESIDING JUDGE: Just one.

12:10:20 5 MR MARGAI: One.

6 PRESIDING JUDGE: Fine. I have nothing against  
7 anthropologists. It's just that I'm not sure we need to hear two  
8 or three witnesses giving evidence of the same nature.

9 MR IANUZZI: Just for the record, Your Honour. We do  
12:10:37 10 reserve the right to call an additional anthropologist, or at  
11 least to make application at a later stage if we feel that that  
12 is necessary.

13 PRESIDING JUDGE: Well, it's never closed forever. If  
14 there is proper justification to do it, we will look at it and  
12:10:52 15 deal with it in the appropriate manner. Before concluding on the  
16 experts, is there any update as to not only the number but also  
17 whether or not you have reports, or will be provided with reports  
18 soon, so you can disclose that to the Prosecution? How are we  
19 dealing with this?

12:11:16 20 MR IANUZZI: Your Honour, the Fofana team will be in a  
21 position to disclose the names of our experts certainly before  
22 the recess, and probably before 8 December. As to expert  
23 reports, we can only say that we will fully comply with Rule 94  
24 *bis*. Thank you.

12:11:34 25 PRESIDING JUDGE: But again on these expert, I know that  
26 was a problem with the Prosecution and for the Prosecution.  
27 We're trying to motivate people to move as expeditiously as  
28 possible with this. That's all. We're not imposing any time  
29 line; we're just making sure that if witnesses are to be called,

1 that it is kept alive and that we're moving ahead with that.

2 MR IANUZZI: To the extent that we can provide the reports  
3 sooner, we will certainly do so. We do not intend to sit on the  
4 reports for 21 days.

12:12:05 5 PRESIDING JUDGE: Thank you.

6 MR JOHNSON: Your Honour, if I could ask a question,  
7 please. The Prosecution certainly understands the Defence  
8 position and the timing and arrangements that need to be made to  
9 confirm an expert. We went through the same thing and then had  
10 to come back to the Court to seek good cause to add those experts  
11 to our witness list. However, is there a cut-off point for the  
12 Defence to provide the name and thereafter to seek good cause  
13 or --

14 PRESIDING JUDGE: You're talking of experts?

12:12:36 15 MR JOHNSON: Experts, yes, Your Honour -- or maybe a place  
16 holder on their witness list, or something to that effect.

17 PRESIDING JUDGE: Well, if they are witnesses they intend  
18 to call, they should be on their witness list. That information  
19 is expected to be there, yes.

12:12:50 20 MR JOHNSON: So from this point on, to add the experts  
21 requires seeking good cause?

22 PRESIDING JUDGE: You mean subsequent to that?

23 MR JOHNSON: Yes, Your Honour.

24 PRESIDING JUDGE: This is essentially what Mr Ianuzzi has  
12:13:05 25 submitted. It's always possible by showing good cause that they  
26 may seek the addition of either expert witnesses or other  
27 witnesses.

28 MR IANUZZI: Just to clarify, with respect to the two that  
29 we're in discussions with, we will not be required to show good

1 cause?

2 PRESIDING JUDGE: No.

3 MR IANUZZI: Okay, thank you.

4 PRESIDING JUDGE: But they will be on your list of  
12:13:28 5 witnesses?

6 MR IANUZZI: Absolutely.

7 PRESIDING JUDGE: If they are on the list of witnesses, you  
8 will not have to show good cause. It's only if you want to add  
9 to it in the future.

12:13:37 10 MR IANUZZI: They're not currently on the list, but they'll  
11 be added. Thank you.

12 PRESIDING JUDGE: Thank you. We still have a few issues.  
13 One is the special defences. At the previous status conference  
14 the defence teams all indicated that at that time they were  
12:14:00 15 uncertain as to whether they would rely on any of these special  
16 defences and, if they did, they would comply with the provisions  
17 of Rule 67. Rule 67 provides and requires that the Defence is to  
18 notify the Prosecution of any special defence as soon as  
19 practicable and, in any event, before the commencement of the

12:14:23 20 trial. The trial commenced a while ago, so I take it as there  
21 has been no compliance with that provision at this particular  
22 moment that there is no intent to call any special defence.

23 Dr Jabbi?

24 MR JABBI: My Lord, we may need to call special defence in  
12:14:52 25 respect of certain areas. But the other problem I indicated has  
26 not enabled us to identify the special areas. So we will  
27 probably have to seek leave if we do decide that we need special  
28 defence in any of those areas.

29 PRESIDING JUDGE: Fine. I just draw your attention to the

1 provision of Rule 67, which is quite specific. But if you make  
2 special application, we will look into it at that particular  
3 moment. Mr Ianuzzi?

12:15:34 4 MR IANUZZI: Mr Fofana does not intend to rely on a special  
5 defence.

6 PRESIDING JUDGE: Mr Margai?

7 MR MARGAI: None for our team.

8 PRESIDING JUDGE: Thank you. Protective measures, I don't  
9 intend to delve into it. I know a motion has been filed by the  
10 team for the third accused for an order for protective measures.

11 All I wish to say at this particular moment is draw the attention  
12 of all concerned, on the requirements for such application, that  
13 there is time lines that are very important as to where and when.  
14 So I ask and I can only invite you to look very seriously as to

12:16:17 15 those particular provisions and make sure that you do comply with  
16 that. As to the application that we have at this particular  
17 moment, we'll deal with it as expeditiously as we can given the

18 fact that, as I have said, it is still the intention of this  
19 Court to start the trial, or the phase two that I call it, which  
12:16:40 20 is the Defence case, by 17th January 2006. I say this because if  
21 there are applications for protective measures, whatever they may  
22 be, you have to bear that in mind; that there are disclosure  
23 obligations that have to do with time lines and disclosure by a  
24 certain date.

12:17:08 25 So these are all my comments at this particular moment.

26 Justice Thompson, do you wish to add anything at this particular  
27 moment? No. Justice Itoe? No.

28 MR IANUZZI: Your Honour, may I add something?

29 PRESIDING JUDGE: Yes, I'll come to all of you. Dr Jabbi,



1 do you have any comment to make before we close this status  
2 conference?

3 MR JABBI: My Lord, it's just in respect of the time you  
4 will be graciously allowing in the order you will be issuing that  
12:17:42 5 the special constraints of the Norman team as we have nominally  
6 indicated be taken into account so that we will be able in fact  
7 to comply within the time that is given.

8 JUDGE ITOE: Like what constraints? Nonco-operation by the  
9 accused with his defence team? Is that what you're referring to?

12:18:02 10 MR JABBI: That is one, of course. That is one. But I did  
11 talk about the time and the resource aspect.

12 JUDGE ITOE: [Overlapping speakers] the time you considered  
13 that at least our comments as far as ample time accorded to you  
14 are very much in place.

12:18:25 15 MR JABBI: Yes. So I'm just asking, My Lord, that this be  
16 taken into account in fixing the time.

17 JUDGE THOMPSON: The resource problem, how formidable is  
18 that? Because you seem to suggest, if I'm right, that it's quite  
19 formidable. If that is so, what kind of realistic estimate would  
12:18:57 20 you propose, because that seems to be, from your perspective, the  
21 handicap now. What efforts are you making to surmount the  
22 problems that you see and how expeditiously are you doing that?

23 MR JABBI: My Lord, as far as the time aspect is concerned,  
24 we are hoping that you will be able to allow at least up to 9th  
12:19:34 25 December and I can give the assurance that we are undertaking  
26 some very active exercise, but we have a large geographical area  
27 to cover. We have tried to cover it in the time that has been  
28 allowed, but, as I said, the resource aspect constrained us and  
29 we are continuing it. In fact, we are supposed to go back into

1 the field again today to ensure that we do in fact come up with  
2 the required witnesses and the information.

3 PRESIDING JUDGE: I can tell you, Mr Jabbi, that 9 December  
4 is too late. So we were thinking of a much shorter period of  
12:20:23 5 time, but we will take in due consideration your plea with the  
6 Court for more time. But I say 9 December is too late. Too late  
7 because then we're going to be backing up and if we go with this  
8 by 9 December, and our problem, we will not be able to start on  
9 17th January as we were planning to do. So that's the time  
12:20:41 10 constraint. You have constraint but we have time constraint as  
11 well, given what's happening, because we do have to make sure  
12 that everything is in place if we want to proceed on 17th  
13 January.

14 If we are unable to proceed, as we have said, we may have  
12:20:57 15 to look at a totally different scenario and the different  
16 scenario may not mean proceeding with CDF as early as we  
17 expected. So we may have to delay CDF at some other time. So  
18 this is the response that we're taking, that if we want to move  
19 ahead and we intend and strongly intend to move on 17th January  
12:21:21 20 to carry on to start with the Defence case, but if it's not  
21 possible we'll have to consider other scenarios. As I say, we  
22 may well proceed with the other case.

23 JUDGE ITOE: We hope we don't get there, you'll assist us  
24 to ensure that we don't get there.

12:21:39 25 PRESIDING JUDGE: That's right. [Overlapping speakers]  
26 it's a reality. We need to be able to make these decisions now.  
27 That's why I say we cannot delay too long because we will get  
28 into very, very difficult time. But we'll take your plea and  
29 we'll look at that with that in mind, but I'm telling you that 9

1 December is not acceptable.

2 MR JABBI: Thank you, My Lord.

3 PRESIDING JUDGE: Mr Ianuzzi.

4 MR IANUZZI: Thank you. I just wanted to draw to your

12:22:04 5 attention that we intend to move the Chamber for assistance with

6 compelling testimony of a particular witness by either subpoena

7 or binding order. We intend to do that before the recess -- we

8 hope to do that before the recess. We'd just like to have some

9 guidance from the Chamber in terms of the exhaustive measures

12:22:22 10 that we need to take in advance to attempt voluntary compliance.

11 We've made several efforts at this point. Does the Chamber have

12 anything to say on that?

13 PRESIDING JUDGE: We don't. I mean, if you've made all

14 possible attempts and they don't want to come then you have the

12:22:39 15 other resources available as such -- other recourses.

16 MR IANUZZI: Just so it's very clear, we come by --

17 JUDGE ITOE: It's not for the Chamber to offer legal advice

18 to legal teams.

19 MR IANUZZI: Well, I'm not asking for legal advice, Your

12:22:54 20 Honour. I'm asking for procedural guidance.

21 JUDGE ITOE: Guidance is advice. It's legal advice. It's

22 veiled legal advice you are asking for.

23 MR IANUZZI: As you like. Your Honour, we come by way of

24 formal motion, application, request so we avoid the problem that

12:23:06 25 we had with our materials.

26 PRESIDING JUDGE: The normal procedure is by motion.

27 MR IANUZZI: By motion.

28 PRESIDING JUDGE: That's the standard procedure.

29 MR IANUZZI: If I could just seek leave to make one more

1 comment with respect to the materials that we filed. I would  
2 just like to note for the record that the materials were styled  
3 as materials filed pursuant to the order and request for partial  
4 reconsideration of thereof. I note that the Prosecution, and the  
12:23:34 5 Defence oftentimes, when making applications for leave to appeal  
6 styles its documents as requests. So we do take exception as to  
7 what we consider a sort of formalistic approach to the title of  
8 documents. That's all. Thank you.

9 PRESIDING JUDGE: It's noted. Mr Margai.

12:23:53 10 MR MARGAI: My Lords, we're comfortable with 17th January.  
11 We'll be ready to start.

12 PRESIDING JUDGE: Thank you. I do have just one more  
13 question -- not from you, Mr Margai. In fact, my question is not  
14 directed to your team because it has to do with protective  
12:24:10 15 measures. I know the position of the Kondewa team about  
16 protective measures but I can ask Mr Jabbi, do you intend to seek  
17 protective measures? For the time being I understand your  
18 position to have been that you do not have and will not apply for  
19 any protective measures. I say this because if you are intending  
12:24:28 20 to do so you have to move fairly quickly to do that because, as I  
21 say, there are time lines involved and disclosure obligations  
22 related to that. So I just wanted to draw your attention. So do  
23 I take it that you are not intending to apply for any protective  
24 measures?

12:24:41 25 MR JABBI: My Lord, on most of our witnesses we will not be  
26 applying for protective measures. But in our consultations we  
27 may well come up against that problem in the case of a few.

28 PRESIDING JUDGE: Okay.

29 MR JABBI: That is why we don't want to be too outspoken on

1 whether we will not be requiring it.

2 PRESIDING JUDGE: But you may. So I take it that the  
3 majority of your witnesses will not be --

4 MR JABBI: Will not require protective measures.

12:25:10 5 MR IANUZZI: Your Honour, I can almost say with certainty  
6 that none of our witnesses will be requiring protective measures.

7 PRESIDING JUDGE: Good. Mr Prosecutor.

8 MR JOHNSON: Yes, thank you, Your Honour. Just a few  
9 comments before we close. The first one being of course since  
12:25:31 10 the refiled witness list will contain names rather than  
11 pseudonyms the Prosecution should be able to determine for  
12 ourselves the common witnesses between the three lists but,  
13 because there are some very common names in Sierra Leone, we  
14 would ask that you require defence to identify on their refile  
12:25:49 15 lists common witnesses between the teams.

16 Secondly, we certainly request that it be the earliest  
17 possible date in your deliberations as you decide what date to  
18 require defence to refile many of the items as a result of your  
19 21st October order, but we request that that be as soon as  
12:26:16 20 possible because, again, it's all of our concerns that we have  
21 many things to do before 17th January in anticipation of the  
22 start of the trial.

23 I would like to ask if there has been any consideration  
24 given, assuming we start on 17th January, as to the length of the  
12:26:31 25 trial session? Would, for example, the trial session go all of  
26 the way to the spring recess of the Court or would you be looking  
27 at doing two sessions, a CDF session and an RUF session before  
28 the recess or something along those lines?

29 PRESIDING JUDGE: We are certainly giving consideration to

1 all of that. We have made no final decision on that. It's still  
2 being looked at as different proposals, one of which is to do a  
3 full session until Easter. But there has been no final decision  
4 on that. When I say one session, it would be a CDF session  
12:27:10 5 running from January to Easter. But we're waiting to see where  
6 we are. I mean, this is why we're asking for cooperation and  
7 support from all of you because we cannot do that in a vacuum  
8 As I say, if we don't have enough information we'll have to find  
9 other means of moving ahead.

12:27:27 10 MR JOHNSON: I understand, Your Honour. So, again, just to  
11 reaffirm my request that the filing date be set as early as  
12 possible.

13 PRESIDING JUDGE: Yes.

14 MR JOHNSON: Lastly, Your Honour, I just wanted to inform  
12:27:39 15 the Court and Defence that we will be requesting, seeking or by  
16 motion we will be seeking that you do exercise your discretionary  
17 power under Rule 73 *ter* and seek that defence witness statements  
18 also be disclosed. Thank you, Your Honour.

19 PRESIDING JUDGE: As I say. We have made no pronouncement  
12:28:03 20 on that and I was very careful when I said that. We've made no  
21 decision one way or the other. So all we know, and all you know,  
22 is we have issued no such order yet.

23 Any further comments from the Defence? Thank you very  
24 much. So that concludes this status conference and we will look  
12:28:21 25 at it to see if we are to have another one between now and  
26 Christmas. Thank you.

27 [Whereupon the Status Conference adjourned at  
28 12.29 p.m.]

29