



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

TUESDAY, 12 SEPTEMBER 2006
2.51 P. M.
STATUS CONFERENCE

TRIAL CHAMBER I

Before the Judges:

Pierre Boutet

For Chambers:

Ms Roza Salibekova
MS Lisa Schneiderman

For the Registry:

Ms Advera Kamuzora

For the Prosecution:

Mr Joseph Kamara
Mr Mohamed Bangura
Ms Miatta Samba
Ms Lynn Hintz (Case manager)

For the accused Sam Hinga
Norman:

Dr Bu-Buakei Jabbi
Mr Alusine Sesay
Mr Kingsley Belle (Legal assistant)

For the accused Moini na Fofana:

Mr Arrow Bockarie
Mr Michael Pestman
Mr Steven Powl es
Mr Andrew Ianuzzi

For the accused Allieu Kondewa:

Mr Charles Margai
Mr Yada Williams
Mr Ansu Lansana

1 [CDF12SEP06A - CR]

2 Tuesday, 12 September 2006

3 [The accused Fofana and Kondewa not present]

4 [Status Conference]

14:48:10 5 [Open session]

6 [Upon commencing at 2.51 p.m.]

7 PRESIDING JUDGE: Good afternoon to all of you. We're
8 going to start to proceed with the status conference, this CDF
9 status conference of 12 September 2006, by asking for the
14:49:32 10 representati on by counsel for each accused, starting with the
11 first accused.

12 MR SESAY: Al usei ne Sesay for the first accused.

13 PRESIDING JUDGE: Thank you. Second accused?

14 MR PESTMAN: Arrow Bockarie for the second accused,
14:49:56 15 Steven Powles, for the first time, Andrew Ianuzzi, and myself
16 Mi chiel Pestman.

17 PRESIDING JUDGE: Thank you.

18 MR MARGAI: May it please, My Lord, Charles Margai, Yada
19 Williams and Ansu Lansana for the third.

14:50:12 20 PRESIDING JUDGE: Thank you, Mr Margai. For the
21 Prosecuti on?

22 MR KAMARA: My Lord, for the Prosecuti on Joseph Kamara,
23 Mohamed Bangura, Mi atta Samba, and Lynn Hintz.

24 PRESIDING JUDGE: Thank you. For the record, I note that
14:50:27 25 only the first accused is present in Court at this particular
26 moment. Can I hear from counsel for the second accused and then
27 for the third accused, as to why the second and third accused,
28 respectively, are not in Court at this particular moment.

29 MR PESTMAN: We received an email from Dr Harding from the

1 Detention Centre. I understand it has been forwarded to all
2 parties concerned. We've distributed copies of the email, also,
3 to the other accused. He's in quarantine at the moment; he has
4 chicken pox. He fell ill on Sunday. We haven't been able to
14:51:10 5 talk to him yet. We arrived on Sunday, when he was already in
6 quarantine. I understand that the doctor expects him to recover
7 by Monday.

8 PRESIDING JUDGE: Monday next week?

9 MR PESTMAN: Monday next week, yes.

14:51:27 10 PRESIDING JUDGE: What's the situation with respect to his
11 representation at this time?

12 MR PESTMAN: He would like to be present during the hearing
13 of the witnesses, we would like him to be present, the witnesses
14 would like him to be present. We would like to be able to talk
14:51:41 15 to him before we start hearing the first witness. So we would
16 like to ask the Court whether it is possible to postpone the
17 hearing, or starting the hearing of the first witness until next
18 Monday, when, hopefully, he will be recovered and able to attend
19 trial.

14:52:04 20 PRESIDING JUDGE: Does that mean that you are unable even
21 to speak to him at this particular moment?

22 MR PESTMAN: We're not allowed in.

23 PRESIDING JUDGE: Yes, but is it possible, at least, to
24 communicate with him by phone or some other means?

14:52:15 25 MR PESTMAN: I went to the detention centre on Monday, and
26 he was basically delirious. We could not talk to him. He had a
27 temperature of 40 degrees. It was not possible to converse with
28 him.

29 PRESIDING JUDGE: It's because of his medical condition

1 that it was not possible to do that?

2 MR PESTMAN: Yes.

3 PRESIDING JUDGE: If you say that, according to the doctor,
4 he might recover enough to be able to attend on Monday --

14:52:52 5 MR PESTMAN: Well, that's the expectation. I'm not a
6 medical expert, but I understand that, within a week, at least,
7 he should not be contagious any more, and the temperature should
8 have dropped by Monday, which maybe allows him to be present and
9 we would be able to talk to him before Monday, hopefully.

14:53:09 10 PRESIDING JUDGE: But you don't know that, for the moment?

11 MR PESTMAN: No, we don't.

12 PRESIDING JUDGE: What about this afternoon? You have not
13 received any particular instructions from your client as to his
14 absence or presence in Court this afternoon?

14:53:29 15 MR PESTMAN: No, but I think we can continue with the
16 status conference. If I remember correctly, he wasn't present at
17 the last status conference. I think we can continue to deal with
18 the status conference. The hearing of the witnesses is the most
19 important issue.

14:53:42 20 PRESIDING JUDGE: I agree with you, unless there are
21 matters that need to be discussed at the status conference.
22 Honestly, it's not as critical.

23 MR PESTMAN: As far as I understand the agenda, there is
24 nothing that we cannot deal with today, unless there are
14:54:01 25 surprises we haven't been able to cover or prepare ourselves for.

26 PRESIDING JUDGE: I don't think there are surprises. If
27 there are surprises, they are consequential to what you have
28 filed.

29 MR PESTMAN: I hope this is the only surprise.

1 PRESIDING JUDGE: Very well. Thank you very much,
2 Mr Pestman. Mr Margai, may I hear you for the third accused?

3 MR MARGAI: Yes, My Lord. I take full responsibility for
4 the absence of the third accused in Court, because we did not see
14:54:28 5 him to discuss the status conference with him. It has always
6 been our practice to look at the agenda and see whether there is
7 anything personal to discuss with him that needs to be brought to
8 the attention of the Court. In fact, just this afternoon when I
9 met with my team, I was inquiring whether, in fact, the agenda
14:54:54 10 had been received. I'm only seeing it now here in Chambers. I
11 take full responsibility for his absence, but I believe we can
12 proceed, his absence notwithstanding. But we shall definitely
13 brief him on whatever is discussed here, as far as it is --

14 PRESIDING JUDGE: There will be some issues, obviously,
14:55:15 15 related to the third accused, but the issues have to do more with
16 how you intend to proceed and witnesses to be called, and these
17 kind of matters.

18 MR MARGAI: That has been addressed, and we shall apprise
19 the Bench of it.

14:55:30 20 PRESIDING JUDGE: I don't intend to go into any more
21 details. What you have is an agenda here. It is just to
22 highlight some of these matters, but we're not intending to get
23 into some lengthy discussions on these matters. At least, this
24 is my hope.

14:55:47 25 MR MARGAI: As My Lord pleases.

26 PRESIDING JUDGE: Thank you very much. Dr Jabbi, good
27 afternoon.

28 MR JABBI: Good afternoon, My Lord. My Lord, first of all,
29 if I may apologise for coming so late. It was because of

1 circumstances completely beyond my control that made that
2 possible.

3 PRESIDING JUDGE: I just asked, before you came in, for
4 representation for each accused. Obviously you were absent at
14:57:47 5 the time, but I take it you are here on behalf of the first
6 accused?

7 MR JABBI: Yes, My Lord.

8 PRESIDING JUDGE: Thank you, Dr Jabbi. You may be seated.
9 The first item I have on the agenda for this status conference
14:58:02 10 had to do, indeed, with the health of the second accused, given
11 the stage that we are at in these procedures. I take it,
12 Mr Pestman, when I asked you for representation that your
13 position, or the position of your client, at this stage, is and
14 will be that the session be postponed for a few days to wait for
14:58:27 15 the improvement of the health of your client?

16 MR PESTMAN: Yes, Your Honour. That's correct.

17 PRESIDING JUDGE: So you're making this as an official
18 application?

19 MR PESTMAN: Yes. We were hoping that that would not cause
14:58:41 20 unnecessary delays. We have a number of witnesses. For your
21 information, we will probably cut down the list even more.

22 PRESIDING JUDGE: I will be coming to that. I will ask
23 these questions, don't worry.

24 MR PESTMAN: It's an official application, yes.

14:58:58 25 PRESIDING JUDGE: I just want to make sure that this is
26 quite clear and well understood. I appreciate the position
27 you're in. At least, if you are unable to even communicate with
28 your client, at this important aspect of the trial, where you are
29 about to start his defence, it makes your position a difficult

1 one. So I will discuss these matters with my brother judges, but
2 with a recommendation that we might look at it and should be
3 looking at it in a favourable light.

4 MR PESTMAN: Thank you, Your Honour.

14:59:39 5 PRESIDING JUDGE: Thank you. Now, I would like to come to
6 the first accused. During the seventh trial session, the first
7 accused concluded representation of his case, with the exception
8 of one witness, which was Major General Abdu One Mohamed, who was
9 also a common witness to the second accused.

15:00:01 10 The Chamber, in its decision on the Norman motion to defer
11 further evidence and the closing of its case to the September
12 trial session, dated 14 June, granted the first accused's request
13 to defer the calling of that witness until this particular
14 session, the September - December trial session as this witness
15:00:25 15 was unable to attend the Court, due to his health. And, at that
16 time, the Court was informed that the witness would be only able
17 to do so in September, and, therefore, ordered the first accused
18 to call this witness, as the first witness to commence, giving
19 his testimony in Court on 13 September 2006. The Chamber also
15:00:46 20 ordered the first accused to close its case upon the completion
21 of the testimony of that witness, Major General Abdu One Mohamed.

22 On 8 September 2006, counsel for Norman filed, and I quote,
23 "The first accused requests to admit certain documents in lieu of
24 the oral testimony of Major General Abdu One Mohamed pursuant to
15:01:13 25 Rules 89(C) and 92*bis* and request for clarification on procedure
26 for closing."

27 Therein, counsel for Norman informed the Chamber that it
28 now appears -- and I am quoting from your application -- that
29 "Major General Mohamed will not be able to attend the Special

1 Court to give testimony" when the trial resumes on 13th September
2 2006 "because of continuing poor health."

3 Therefore, counsel for Norman requests the Chamber to admit
4 into evidence a witness statement of Major General Mohamed, dated
15:01:55 5 2 March 2006, and two exhibits, which were disclosed to the
6 parties and filed with the Court on 3 August 2006, pursuant to
7 Rules 92*bis* and 89(C) in lieu of his oral testimony.

8 On 11 September 2006, the Chamber received the Fofana
9 response to Norman request to admit documents pursuant to Rule
15:02:24 10 92*bis* wherein counsel for Fofana do not object to the admission
11 of the aforesaid statement and the two exhibits, according to
12 Rule 92*bis*(C). The Prosecution and counsel for Kondewa must
13 bring their objections, if any, to the admission of these
14 documents within five days from the date of the filing of the
15:02:43 15 notice, that is, before Wednesday, 13 September 2006, by 4.00
16 p.m., which is tomorrow.

17 Can I ask if you would be prepared to give some indication
18 as to the position you're going to be putting forward, Mr Margai,
19 first. Are you objecting, or will you likely not object? I
15:03:08 20 don't want to put you in a bind and put you in a commitment that
21 you may not be able to comply with tomorrow.

22 MR WILLIAMS: Your Honour, we shall not be objecting to the
23 application by the first accused, and we shall file the necessary
24 papers by 4.00 p.m. tomorrow.

15:03:36 25 PRESIDING JUDGE: Okay. Fine. Thank you. Can I ask the
26 same of the Prosecution again, if your position will be to admit,
27 or to deny, whatever it is, or object?

28 MR KAMARA: My Lord, that application is under review at
29 the moment. Our only worry is that he's a common witness to the

1 second, and we do not want to make a commitment that gets us
2 locked in a situation that we cannot reverse ourselves. The
3 application is under review, and we'll file something before the
4 end of the day.

15:03:59 5 PRESIDING JUDGE: Tomorrow? Today?

6 MR KAMARA: Today. If I may also draw your attention, My
7 Lord, to the fact that, even if we are, in principle, not
8 objecting to the Rule 92*bis* application, we would want to reserve
9 our right to call that witness for cross-examination, as events
10 unfold before this Court.

15:04:14

11 PRESIDING JUDGE: That's fine.

12 MR KAMARA: Thank you, My Lord.

13 PRESIDING JUDGE: In his request of 8 September 2006,
14 counsel for Norman also sought guidance from the Chamber as to
15 the timing and procedure for closure of their case in light, at
16 that time, of the pending decision of the Appeals Chamber
17 concerning a subpoena to His Excellency the President, and
18 further submit that in the event that the Chamber orders the
19 first accused to close his case prior to, and so on. I take it
20 that it does not have an application any more, as, on 11

15:04:41

21 September, that is yesterday, the Appeals Chamber issued its
22 decision on interlocutory appeal against Trial Chamber decision,
23 refusing to subpoena the President of Sierra Leone.

24 The decision dismisses the appeals lodged by both
25 appellants, the first and second accused, to issue a subpoena to
26 His Excellency, Dr Tejan Kabbah, President of the Republic of
27 Sierra Leone, to testify on behalf of these accused.

15:05:20

28 In light of this decision by the Appeals Chamber, the
29 Chamber orders counsel for Norman to close their case tomorrow,

1 12 September 2006.

2 Do you have any comments, Dr Jabbi? We will issue that
3 order in writing, if need be. This is, essentially, in
4 compliance with a prior decision of the Court as to the closing
15:05:59 5 of your case after the evidence of Major General Mohamed, if you
6 were to call him, but he's not coming.

7 MR JABBI: My Lord, notwithstanding the issuance of the
8 decision on the subpoena, we'd also want to seek proper guidance
9 of the Court in respect of our closing, in the light of the *92bis*
15:06:32 10 process not having been completed yet. There is a process in
11 course, at present, the *92bis* application, and Your Lordship has
12 not made orders that the other parties file their responses --

13 PRESIDING JUDGE: I didn't make orders. This decision
14 accorded with the procedure. That's all it is. I just repeated
15:07:02 15 the time frames that are in existence. That's all it was. So
16 that is why when I referred to Wednesday, 4.00 p.m., it is
17 because it is the five days after. It's not a new order I've
18 issued. It's just a reminder that you have until tomorrow.

19 MR JABBI: Yes, My Lord. So, My Lord, in the light of that
15:07:22 20 process being on course, for the moment, we want some guidance as
21 to whether we need to wait for its completion before closing the
22 case.

23 PRESIDING JUDGE: I think it might be more prudent to wait
24 for that before you effectively close your case, and we will wait
15:07:46 25 until the end of the day tomorrow, after 4.00 tomorrow, and we'll
26 see then where we go. Normally on a Wednesday, we sit only in
27 the morning, but given what is happening, given the circumstances
28 of the health of the second accused, it is unlikely that we're
29 going to sit, certainly tomorrow morning. As I said to

1 Mr Pestman, your colleague, I would wish to confer with my
2 brother judges before we issue that direction about sitting. I
3 reserve the decision of the closing of your case until the 4.00
4 time frame is over tomorrow. We'll get to that issue after that.

15:08:30 5 MR JABBI: Thank you very much, My Lord.

6 PRESIDING JUDGE: I mean, we're talking here of a very
7 short time frame, Dr Jabbi. If it is after 4.00, or whatever it
8 is, we are talking either tomorrow or Thursday. We are not
9 talking weeks here.

15:08:47 10 MR JABBI: Thank you, My Lord.

11 PRESIDING JUDGE: I just want that to be clear with you.
12 You have to close your case before we start with the case for the
13 second accused. Although you may gain some time, by a day or
14 two, that's all we're talking about.

15:09:01 15 MR JABBI: Yes, indeed, My Lord.

16 PRESIDING JUDGE: Thank you. Coming to you, Mr Pestman, or
17 counsel for the second accused, whoever wants to speak on these
18 issues.

19 On 20th July, we issued the scheduling order concerning the
15:09:29 20 preparation and presentation of the Defence case for the second
21 and third accused, ordering counsel for Fofana and counsel for
22 Kondewa to file their respective Defence materials by 21st August
23 2006 and 31st August 2006, respectively.

24 On 21st August 2006, counsel for Fofana filed the Fofana
15:09:53 25 materials, filed pursuant to the scheduling order of 20 July,
26 which contained the following materials: A proposed order of
27 witnesses for the eighth trial session as appendix A, the renewed
28 witness list, which contains witness names, points of the
29 indictment to which they will testify, the estimated length for

1 their testimony, the mode of their testimony, the language of
2 their testimony, and the summary of their proposed testimony,
3 including a summary of the testimony of an additional seven
4 witnesses, and a complete set of witnesses identifying
15:10:28 5 information as appendix B, as well as an expert report of Daniel
6 J Hoffman PhD as appendix C. This is collectively referred to as
7 the Fofana Defence materials of 22 August 2006.

8 Counsel for Fofana notified the Chamber of their intention
9 not to call the witness Simon Arthy any more, and remove him from
15:10:58 10 the witness list. And that witness Foday Sesay will not appear
11 to give oral testimony, but that he might be able to produce a
12 written statement, which would be tendered through Rule 92*bis*.

13 The Chamber wishes to emphasise that any such change shall
14 be communicated to all the parties as soon as possible, and any
15:11:19 15 such statement shall be filed, as soon as possible. Counsel for
16 Fofana also submitted that witnesses Tommy Jabbi, Dema Moseray
17 and Frances Katherine Barclay Fortune will testify in person, as
18 opposed to the counsel for Fofana's initial intention to submit
19 their written statements, pursuant to and in accordance with Rule
15:11:44 20 92*bis*.

21 Am I right in my description of these positions, and this
22 is what you intend to do? I have spoken a bit of witnesses
23 appearing on the witness list and some that have been removed.

24 MR PESTMAN: Yes, our position remains unchanged. But, as
15:12:10 25 I said, we might cut down the number of witnesses. And we're
26 still considering to submit maybe one or two statements under
27 Rule 92*bis*. We're still considering. We will, in any case,
28 comply with the order and do so in time. In any case, as soon as
29 possible.

1 PRESIDING JUDGE: Thank you. Mr Pestman, appendix A of
2 your filing of material had the witness Major General Mohamed as
3 your first witness. As you know --

4 MR PESTMAN: It still has, actually, yes. We're not giving
15:12:59 5 up on him.

6 PRESIDING JUDGE: But he's still listed as your witness
7 number one.

8 MR PESTMAN: Yes. It is unlikely he will be heard as the
9 first witness, because we're still seeking contact with him, and
15:13:11 10 we haven't been able to establish contact with him. We'll try
11 getting into contact with him and convince him to come to Court.
12 We will start with witness number 2 and follow the order
13 subsequently.

14 PRESIDING JUDGE: So you are saying this witness will still
15:13:36 15 be maintained on your witness list, for the time being?

16 MR PESTMAN: Yes.

17 PRESIDING JUDGE: Are you moving the Court to modify your
18 witness list, so this witness will be seen and perceived to be
19 the last witness you're calling, for the time being? At least,
15:13:49 20 he's not your first witness, that's for sure.

21 MR PESTMAN: Yes, Your Honour.

22 PRESIDING JUDGE: Do you intend now to start with your
23 witness number 2 on your witness list, and then move on from
24 there?

15:14:03 25 MR PESTMAN: Yes, Your Honour.

26 PRESIDING JUDGE: You will maintain the list as it is,
27 except for that first witness?

28 MR PESTMAN: Yes, and hopefully we will be able to hear him
29 before the end, before we hear the last witness, or immediately

1 afterwards. We'll keep the Court informed, of course, on our
2 progress of this particular point.

3 PRESIDING JUDGE: Thank you. The Chamber has been
4 informed, I'm told, as well as the other parties, that the
15:14:27 5 witnesses for Fofana, 15 of these witnesses are now, or were, in
6 Freetown, and three are expected to arrive soon. Is that still
7 the situation? I just want to make sure that once we start
8 hearing witnesses, that we're going to be able to move fairly
9 swiftly without having to adjourn because witnesses are not
15:14:53 10 available.

11 MR PESTMAN: I'm not sure about the exact number. There
12 are certainly enough to start. I think there are at least 13 -
13 12 at the moment, I understand, waiting for us, and the rest are
14 on their way.

15:15:11 15 As I explained earlier, we expect to go through the
16 witnesses reasonably fast. We were hoping that we could do, on
17 average, two witnesses a day. If I can expand a little bit on
18 that now --

19 PRESIDING JUDGE: Yes. May I ask you, are including the
15:15:31 20 cross-examination when you say that?

21 MR PESTMAN: That's why I say I'm hoping we will be able to
22 do two a day. I understand there are 12 waiting here, and there
23 are three who are available in Freetown. So, 15 are ready to go
24 and the rest are still in the provinces, but I understand that
15:15:51 25 they are about to collect them. There is nobody, apart from the
26 first witness, who, as far as we know, is unable to attend.

27 PRESIDING JUDGE: Can you comment on the availability of
28 your expert, Professor Hoffman?

29 MR PESTMAN: Yes, that's the only problem. He is,

1 unfortunately, unable to start testifying before 9 October. We
2 certainly expect to finish with the other witnesses before that.

3 PRESIDING JUDGE: If we follow your analysis and your
4 estimate --

15:16:28 5 MR PESTMAN: Yes, my estimate of the cross-examination
6 being short, then we should be able to finish before the 9th.
7 There might be a small gap, about we're not sure. As you said,
8 Your Honour, it doesn't depend entirely on us.

9 PRESIDING JUDGE: Very well. We'll assess that situation
15:16:43 10 at that particular moment. We will inquire from counsel for the
11 third accused, and we will see where counsel for the third
12 accused is, and when they will be ready to proceed, and I hope
13 soon after you finish. We'll get to them soon and we'll see
14 where we go.

15:17:02 15 MR PESTMAN: Thank you, Your Honour.

16 PRESIDING JUDGE: Just before you sit down, looking at the
17 exhibits, based on the information you have provided the Court
18 with, you do not intend to tender any exhibit through any of the
19 witnesses, save and except your expert witness, obviously. Is
15:17:31 20 that still your position; you don't intend to file any exhibits?

21 MR PESTMAN: We were intending to file, maybe, one or two
22 exhibits through the first witness. That's a problem we have to
23 deal with when we --

24 PRESIDING JUDGE: Leaving aside the one who is still your
15:17:47 25 first witness on the witness list, you don't intend to file --

26 MR PESTMAN: Our position remains unchanged, and we'll do
27 so in time, complying with the order of the Court.

28 PRESIDING JUDGE: Thank you. Now, talking of this expert
29 report, in the filings of documents, the Prosecution indicated

1 the intention to cross-examine this witness, your expert witness,
2 if his report was accepted. Is that still your position,
3 Mr Prosecutor?

15:18:44 4 MR KAMARA: Yes, My Lord, we intend to cross-examine him on
5 his credentials and on his report.

6 PRESIDING JUDGE: Thank you. My last comment on your
7 position, Mr Pestman, is, in your Defence material, you indicated
8 that additional materials intended to be tendered through
9 Rule 92*bis* will be disclosed and filed in accordance with the
15:19:22 10 15th order of the scheduling order. That order has stated,
11 "Counsel for Fofana and counsel for Kondewa shall endeavour to
12 submit any documents pursuant to Rule 92*bis* of the Rules as soon
13 as possible, or at least 15 days prior to the anticipated closing
14 of their respective Defence case."

15:19:42 15 I just want to remind you of that. If it is your intention
16 to produce 92*bis*, there is a time limit that we have imposed,
17 which is 15 days before the closing of your case. We are not
18 there yet, but just a reminder.

19 Can I ask you now, Mr Pestman, if you can give me, and the
15:20:04 20 Court, some indication of the length of your Defence case? We're
21 talking of the rate you're intending to proceed, because you have
22 given some indication that you are likely to be finished before
23 9 October, which is when your expert witness is to come. Does
24 that mean that, likely, if things run in accordance with your
15:20:31 25 expectation, you are likely to be finished by the end of
26 September?

27 MR PESTMAN: By the 9th or 10th October.

28 PRESIDING JUDGE: Yes, but excluding your expert.

29 MR PESTMAN: It depends on when our client will recover,

1 but I think --

2 PRESIDING JUDGE: Assuming that he's back on and at least
3 able to give you some instructions on Monday.

4 MR PESTMAN: Let me just have a look at the diary. I think
15:20:56 5 we should definitely be able to -- we're aiming for the end of
6 September.

7 PRESIDING JUDGE: It is just some indication, Mr Pestman.

8 MR PESTMAN: We'll never know what will happen, but we
9 expect to go through it fairly quickly. Of course, hoping that
15:21:19 10 the Prosecution will limit the scope of cross-examination. We
11 should be fine.

12 PRESIDING JUDGE: We shall see. Thank you, Mr Pestman.
13 Now, Mr Margai, looking at the presentation of the Defence case

14 for the third accused. On 29 August, you filed the Kondewa
15:21:43 15 application for leave to call additional witnesses, requesting
16 the Chamber to grant their leave to add an additional seven
17 factual witnesses to your witness list. This includes two
18 witnesses, namely Momoh Bockarie Moiwa and Joe Kpana Lewis, who
19 were asked to be added to the witness list, as they were

15:22:07 20 previously added without leave sought by the Chamber. They
21 appeared on your witness list, but you never sought permission or
22 authorisation to add them.

23 On 30th August, you then filed materials pursuant to the
24 scheduling order of 20th July. Therein, you submitted that 15
15:22:28 25 witnesses had been removed from your witness list of 8th May
26 2006, including the two aforementioned witnesses, in respect of
27 whom a motion is pending, that is, these two witnesses that are
28 subject to the motion.

29 This filing contains a renewed list of remaining 13

1 witnesses and a complete set of their identifying information as
2 annex A, and a list of witness names, points of the indictment to
3 which they will testify, the estimated length for their
4 testimony, the mode of their testimony, the language of their
15:22:59 5 testimony, and a summary of their proposed testimony as annex B,
6 and the order of their appearance in Court as annex C. The
7 latter contains the names of seven additional witnesses, for whom
8 leave is sought from the Chamber in the order of their
9 anticipated appearance, should leave be granted.

15:23:18 10 The Chamber wishes to clarify a couple of points on that
11 witness list. Witness Simeon Tommy Yavannah, according to the
12 summary of his proposed testimony, as described in annex B, is
13 reported to give a testimony in relation to attacks on Gerihun,
14 specifically at Kalia Junction, in 1997, and the Kenema axis. In
15:23:52 15 a previous summary of the witness's proposed testimony of 8 May
16 2006, it was reported that this witness would testify about the
17 operation Black December. The Chamber wishes to clarify if the
18 now updated proposed testimony of this witness will not include
19 any reference to the Operation Black December, which was
15:24:14 20 dismissed in our Rule 98 decision, specifically paragraphs 24(f)
21 and 25(g) of the indictment, which charged the murder in road
22 ambushes at Gumahun, Gerihun, Jembah and Bo-Matotoka Highway.

23 I just want to make sure that if this witness is called to
24 testify about Gerihun, that's fine, provided it is not in
15:24:41 25 relation to the Black December operation. Because this is of no
26 more relevance, given the Court's decision. This is for
27 clarification purposes. May I ask Mr Margai, or whoever --

28 MR WILLIAMS: Your Honour, the testimony of the witness
29 would be restricted to the latter filing, My Lord.

1 PRESIDING JUDGE: To Geri hun?

2 MR WILLIAMS: Yes.

3 PRESIDING JUDGE: This is the Kenema axis and the Kalia
4 Junction in 1997, which is separate from the Black December
15:25:12 5 incident?

6 MR WILLIAMS: Exactly, My Lord.

7 PRESIDING JUDGE: I have other similar comments. Witness
8 Charles Kailie's proposed testimony includes reference to the
9 AFRC and RUF occupation at Kebbie Town in the period
15:25:28 10 between January and February 1998, and the atrocities allegedly
11 committed by the AFRC/RUF forces, including killing, looting,
12 burning of houses. The Chamber wishes to remind counsel that an
13 allegation of murder in Kebbie Town has been dismissed by the
14 Chamber in our Rule 98 decision as well.

15:25:50 15 Again, my comments are not to preclude you from calling
16 this witness, but, if you do, I want to remind you that this is
17 not an issue any more, because that has been dismissed. If that
18 witness was called essentially for that purpose, we are really
19 not interested to hear that. I take it this is for additional
15:26:07 20 material?

21 MR WILLIAMS: In leading the witness, My Lord, we shall
22 abide by the ruling on the 98 motion, My Lord, and exclude
23 whatever has been --

24 PRESIDING JUDGE: You're calling this witness for matters
15:26:21 25 that would exceed this? It's more than just to talk about Kebbie
26 Town?

27 MR WILLIAMS: Exactly, My Lord.

28 PRESIDING JUDGE: Fine. If he is, I will ask you to brief
29 your witness, that this is not relevant any more, the Kebbie Town

1 issue.

2 MR WILLIAMS: I shall do that, My Lord.

3 PRESIDING JUDGE: Thank you. Looking at exhibits, the
4 Chamber notes that the order of witnesses' appearance of the
15:26:57 5 third accused does not contain references to exhibits which
6 counsel for Kondewa are intending to tender through any
7 particular witness in that order, as was ordered to be submitted,
8 according to Order 11 of the scheduling -- paragraph 11 of the
9 scheduling order concerning the preparation and presentation of
15:27:14 10 the Defence case for the second and third accused.

11 The Chamber wishes to clarify whether counsel for Kondewa
12 still intends to submit any exhibit, or whether a non-inclusion
13 of any reference to an exhibit means that no exhibits will be
14 tendered through any witness on that list.

15:27:32 15 MR WILLIAMS: That is the position of the team for the
16 third, My Lord, we shall not be tendering any exhibit through any
17 of our witnesses.

18 PRESIDING JUDGE: Thank you very much. As to *92bis*
19 submissions, if you intend to do any of those, I wish to remind
15:27:57 20 you, as I did for the second accused, if you do, you must make
21 sure you do that within at least 15 days prior to the anticipated
22 closing of your Defence case. That's the only reminder I would
23 like to bring to your attention at this moment, should you wish
24 to proceed with any *92bis* submission.

15:28:23 25 Can you give an indication of the anticipated length of
26 your Defence case, either Mr Margai, or Mr Williams?

27 MR WILLIAMS: Three to four weeks, My Lord. Not more than
28 four weeks.

29 PRESIDING JUDGE: Thank you. Admissions by the parties and

1 the statement of other matters not in dispute. On 18 July 2006,
2 the Prosecution filed the status report between the parties
3 wherein they stated that the Prosecution submitted 10 additional
4 proposals for agreed points of fact and law to all three Defence
15:29:14 5 teams, hoping to reach an agreement by 3 July 2006. They also
6 submitted that only counsel for Fofana responded to this
7 proposal, agreeing to the first point of the additional proposal.
8 However, no answer was received from counsel for Norman or
9 counsel for Kondewa.

15:29:32 10 Anything to report on this matter? Counsel for Mr Norman?

11 MR JABBI: My Lord, we have not seen it feasible to agree
12 to any of the points that the Prosecution proposes in that paper,
13 namely because of certain overstatements in almost every item on
14 the list. We are looking at it in order to propose other related
15:30:15 15 sets of facts, admissions, or otherwise.

16 PRESIDING JUDGE: Thank you, Dr Jabbi. Mr Margai? The
17 second accused had responded to that, but I'm still to see any
18 response or position from counsel for the third accused.
19 Mr Williams?

15:30:41 20 MR WILLIAMS: My Lord, we intend to continue talking with
21 the Prosecution, and, by the close of next week, we intend to
22 file something.

23 PRESIDING JUDGE: Very well. I can only encourage you to
24 do that, if it can focus the issues where they should be, and it
15:31:01 25 is always welcome.

26 MR WILLIAMS: I'm grateful.

27 PRESIDING JUDGE: Thank you very much. One of the items of
28 the agenda that has been proposed by counsel for Fofana is a
29 discussion on the possibility of bringing rebuttal or rejoinder

1 evidence by the parties.

2 The Special Court Rule 85(A) states that subsequent to the
3 presentation of the evidence for the Defence, the Prosecution
4 evidence in rebuttals shall be presented "with leave of the Trial
15:31:31 5 Chamber."

6 The ICTY Chamber decision of Delalic et al held that
7 rebuttal evidence must relate to a significant issue arising
8 directly out of defence evidence which could not reasonably have
9 been anticipated. I underline this particular part.

10 Rule 85(A) of the Special Court does not provide for a
11 possibility of calling the rejoinder evidence of the defence as
12 opposed by Rule 85 of the ICTY, ICTR Rules.

13 Do you wish to comment on that, Mr Pestman, or any members
14 of your team?

15 MR PESTMAN: We would just appreciate the guidance of the
16 Court on this particular issue. I don't know whether we have to
17 address it at this very moment. We might cross the bridge when
18 we get there. I don't know whether the Prosecution wants to call
19 for rebuttal witnesses at all.

20 PRESIDING JUDGE: All I can say, this is what the Rules do
21 provide at this particular moment. Whether or not they will make
22 an application, it is for them to make that assessment in due
23 course. If they make that application, as I stated, this is a
24 matter of discussion for the Court to make and assess, given the
15:32:29 25 criteria that I have just underlined. I think the law, in this
26 respect, I would say, is quite clear. It is a matter arising --
27 a significant issue arising directly out of the defence evidence
28 which could not reasonably have been expected, or anticipated.

29 So this is what the Court will deal with if -- as I say, it

1 is for them to make that decision then, but they don't have to
2 make that announcement before you call your case. I guess we'll
3 have to wait till the case for the Defence in its totality is
4 done to see if there is any such application. They may wish to
15:33:29 5 give you an indication at this time. I mean, whatever indication
6 they give to you, as I say, is subject to the approval of the
7 Court.

8 MR PESTMAN: Thank you very much, Your Honour.

9 PRESIDING JUDGE: You have, also, proposed some discussion
10 for this agenda for the status conference of discussing dates for
11 the closing arguments and filing of the final trial briefs. I
12 certainly welcome these suggestions. We will address that very
13 briefly. The Rules are silent as to how many days the parties
14 may be allowed to have in order to file their final trial brief.

15:34:14 15 The only reference in the Rules could be found in relation to the
16 presentation of closing arguments, and Rule 86 on closing
17 arguments states that, "(A) After the presentation of all the
18 evidence, the Prosecutor shall and the Defence may present a
19 closing argument; (B) A party shall file a final trial brief with
15:34:34 20 the Trial Chamber, not later than five days prior to the day set
21 for the presentation of that party's closing argument; and (C)
22 the parties shall inform the Trial Chamber of the anticipated
23 length of closing arguments. The Trial Chamber may limit the
24 length of those arguments in the interests of justice."

15:34:54 25 A brief perusal of the jurisprudence of other international
26 tribunals in respect of this issue reveals that different Trial
27 Chambers of ICTY, where Rule 86 on closing arguments are similar
28 to the Special Court for Sierra Leone Rule 86, have given various
29 time frames for the filing of the final trial brief, but, as a

1 practice, a period between three to four weeks seems to be the
2 most common. Such factors as complexity of the case,
3 multiplicity of accused, number of witnesses heard, and documents
4 admitted, counts of the indictment, presentation of the rebuttal
15:35:33 5 and rejoinder of evidence and orders, as it may be, are taken
6 into account in determining this deadline.

7 In Simic, for example, a case of three co-accused persons
8 could present a good example of this matter. The trial lasted
9 for 234 days. The Defence case closed on 4th June 2003. The
15:35:59 10 Prosecution and Defence filed their respective final trial briefs
11 on 18 and 19 June 2003. The Prosecution presented their closing
12 arguments between 30th June 2003 and 1st July. The Defence
13 presented their arguments between 2nd and 3rd July 2003. The
14 Prosecution called the evidence in rebuttal on 3rd July 2003, and
15:36:25 15 the Defence presented the rejoinder evidence on 4th July. But,
16 as I said, rejoinder does not exist under our Rules, the Rules of
17 this Court. And the case closed on 4th July 2003.

18 So, I would like to know from the parties if they have any
19 comments on this, any particular views on these matters, as such.
15:36:55 20 I think it is a very important matter that we should have as much
21 discussion as we can on this issue at this stage, so you can
22 prepare yourself and discuss these matters with your client as
23 you may wish to do so.

24 Dr Jabbi, I would like to ask you first if you have any
15:37:14 25 comments in this respect, for now. Then I will go to the second
26 and third accused. At least, comments as to how many days you
27 think that you might need to file your final trial brief.

28 MR JABBI: My Lord, I would consider that the one-day
29 differences at the end of the particular example you have given

1 would be most improbable with us here. One would be suggesting a
2 number of weeks, rather than days, between those concluding
3 dates. It would be obvious it would depend on the progress of
4 the entire trial. Maybe by the time the Defence closes, we'll
15:38:17 5 have had certain indications from all angles as to how soon
6 closing argument on the final trial briefs are best likely to
7 called. Certainly, one, two, three days would seem, to me, an
8 unsuitable situation, for our circumstances.

9 PRESIDING JUDGE: Thank you. We'll hear from all parties
15:38:52 10 and we'll see if we can find some common ground on these matters.
11 Mr Pestman?

12 MR PESTMAN: Three or four weeks is fine, but not after the
13 closing of our case, but after rebuttal of the Prosecution, if
14 any. I understand that is self-evident. We are intending to be
15:39:15 15 clear to submit a final brief, and we would also like to present
16 closing arguments. We were hoping that we could wrap up before
17 the end of this year.

18 PRESIDING JUDGE: I hope we can do that, too.

19 MR PESTMAN: We're counting on it.

15:39:37 20 PRESIDING JUDGE: Thank you. We'll canvass that in more
21 detail. I just wanted to know your initial position on this.
22 Mr Margai, or Mr Williams, whoever wants to speak on this matter.
23 Mr Williams?

24 MR WILLIAMS: My Lord, we are of the view that a four-week
15:39:52 25 period, My Lord, after --

26 PRESIDING JUDGE: After the close of the Prosecution, or
27 rebuttal?

28 MR WILLIAMS: After all --

29 PRESIDING JUDGE: All the evidence is dealt with?

1 MR WILLIAMS: Yes, My Lord. A four-week period would be
2 advisable, My Lord, for the filing of a final brief.

3 PRESIDING JUDGE: Thank you, Mr Williams. Prosecution?

4 MR KAMARA: Yes, My Lord, we do agree that a four-week
15:40:18 5 window is reasonable, under the circumstances. Realistically, as
6 I see it, that means we may not conclude within the year. If we
7 were to go by the estimates of the second and third accused
8 persons that the second finishes in October, and the third has
9 asked for four weeks, so we're looking at completing the evidence
15:40:40 10 by at least 15 November. And, if rebuttal evidence is coming in,
11 if at all, we're looking at maybe another two-week window. If
12 time starts to run thereafter, then we're looking at the second
13 week in January for final -- as long as we get the understanding
14 that -- and my learned friend Pestman was thinking it was going
15:41:05 15 to happen within the year, by his calculations, and this is what
16 it would look like, but a four-week window is definitely welcome.
17 My Lord, if I may have a direction from you concerning rebuttal
18 timing, since I heard after the close of the entire evidence --

19 PRESIDING JUDGE: No, I'm reading from the Simic case. I'm
15:41:25 20 not saying this is what we want to do.

21 MR KAMARA: Thank you, My Lord.

22 PRESIDING JUDGE: This is not the position that this judge
23 would take on this. It would be after the close of the Defence
24 case, whatever it is. If there is any rebuttal intended to be
15:41:42 25 called, it would be at that time.

26 MR KAMARA: Is it after the entire Defence, or after a
27 particular defence? I'm looking at -- now we're hoping Dr Jabbi
28 would close their case for the first accused as soon as probably
29 by Monday or Tuesday, when next we meet. Is it the expectation

1 that if any rebuttal evidential shall come in as regards his
2 case, do we make an application within that time frame, or do we
3 have to wait for the entirety of the case and then we make our
4 submissions for rebuttal, if at all.

15:42:21 5 PRESIDING JUDGE: My inclination, but this is not a ruling
6 of the Court - I will have to discuss that with my brother judges
7 on this matter - would be that, after the whole of the evidence
8 of the Defence is called, but not after each and every one of
9 them.

15:42:36 10 MR KAMARA: I thought as much.

11 PRESIDING JUDGE: As I say, I stand to be corrected. This
12 is not an issue I have canvassed. I have not discussed that.
13 This is an important matter.

14 MR KAMARA: We would like some direction in that.

15:42:50 15 PRESIDING JUDGE: We'll give you some direction, so you are
16 not taken by surprise at that time. And we'll do so once the
17 case for the first accused is closed. If you intended to call
18 rebuttal after the close of that case, you will know in
19 sufficient time so you are not prejudiced. Don't take my
15:43:12 20 comments to mean any more than -- what I'm expressing is just
21 some guidance at this stage. It's not an invitation for rebuttal
22 and it is not a decision that it will be only at the end. I will
23 clarify that, for all concerned.

24 MR KAMARA: We are on the same radar screen.

15:43:30 25 PRESIDING JUDGE: Thank you.

26 MR MARGAI: My Lord, before we proceed, My Lordship did say
27 there is no provision for a rejoinder.

28 PRESIDING JUDGE: In our Rules.

29 MR MARGAI: In our Rules.

1 PRESIDING JUDGE: That's right.

2 MR MARGAI: I do accept that, but might it not be relevant
3 under Rule 85(A)(iv)? I would very much appreciate if Your
4 Lordship could also discuss it with your brothers for our
15:43:59 5 guidance. Because, I mean, whenever one talks of the rebuttal,
6 it pre-supposes that there will be a rejoinder, depending on the
7 circumstance.

8 PRESIDING JUDGE: Normally, this is a proposal that is the
9 normal procedure being followed. However, as you know, we have
15:44:24 10 amended our Rules, at that time, and we have removed that
11 particular portion from our Rules from those that were in
12 existence. I, again, will look at it and discuss that with my
13 brother judges, as such. We'll certainly give you, again, clear
14 direction before we get there, if ever. But, again, you'll get
15:44:44 15 there only if the Prosecution is calling rebuttal.

16 MR MARGAI: Yes, we may not, but just in case, out of an
17 abundance of caution.

18 PRESIDING JUDGE: Absolutely. This is a very fair request,
19 and we'll look into it, Mr Margai.

15:44:59 20 MR MARGAI: Very well.

21 MR KAMARA: My Lord, if I may just comment on the position
22 of my learned friend, interpretation of Rule 85(iv) evidence
23 ordered by the Trial Chamber. My Lord, the view of the
24 Prosecution is that that provision is totally different from a
15:45:31 25 rejoinder. Evidence ordered by a Trial Chamber is total. It
26 never contemplates a rejoinder, and that is the statute. If my
27 learned friend wants to canvass or plead with the Court to make
28 any further reconsideration, the learned Prosecution will only
29 submit that the standard for rebuttal be maintained for any

1 further evidence to be called. The position remains as it is in
2 the statute, that 85(iv) never contemplated a rejoinder.

3 PRESIDING JUDGE: Sorry, from the plain reading of
4 85(A)(iv), this is for the Court itself calling witnesses and
15:46:18 5 calling evidence. It does not deal with the rejoinder. Now,
6 whether or not it can be given a larger interpretation to satisfy
7 the request, it's a different issue. But this is, clearly, for
8 the Court, calling its own witnesses, whether the Court would
9 like to do. That's the plain reading of that.

15:46:42 10 MR MARGAI: My Lord, I was very cautious not to place an
11 interpretation. I said, depending on the prevailing
12 circumstance, if we deem it fit, after the rebuttal, we could
13 apply to the Court, and the Court could exercise its discretion
14 under 85(A)(iv). That's all I'm saying. That is why I said it
15:47:05 15 ought to be discussed with your brothers, and then we shall have
16 a direction.

17 PRESIDING JUDGE: It would not be a rejoinder in the true
18 sense, but it would serve the same purpose.

19 MR MARGAI: Precisely. The end justifies the means.

15:47:18 20 PRESIDING JUDGE: As you know, we have done something
21 similar to that when we order the Prosecution to call or recall
22 some witnesses, to their great dismay, but this is what we have
23 done in the past.

24 Mr Prosecutor, whatever we do, we'll do in the best
15:47:36 25 interest of justice, I can assure you of that.

26 MR KAMARA: Thank you, My Lord. My Lord, is it the
27 Prosecution recalling witness, or is it the Defence that recalled
28 that witness, the example you just gave; is it for this case? If
29 it's for this case, I think it's the benefit of the Defence, they

1 recalled the witness.

2 PRESIDING JUDGE: I'm not sure if it's CDF or RUF.

3 MR KAMARA: The CDF, we did recall a particular witness,
4 and it was my learned friend, Mr Margai, who did apply to the
15:48:02 5 Court --

6 PRESIDING JUDGE: It's in the RUF case.

7 MR KAMARA: Thank you, My Lord.

8 PRESIDING JUDGE: For the indication and information of the
9 parties, as such, I shall also say that a different approach has
15:48:18 10 been taken by different Chambers and different Courts, as to the
11 final brief, as such.

12 In the ICTY, different Chambers have different approaches
13 to the scheduling of the filing of the final briefs. As a
14 practice, one deadline is set for the filing of the briefs by
15:48:38 15 both parties. However, filing of the briefs is not viewed as the
16 filing of the ordinary motion. There is no 10-day period for the
17 filing of a response. When you look at the final brief, we are
18 in a different scenario than the scenario of standard motions.

19 We may wish to, in this kind of scenario, to set one
15:49:04 20 deadline for the filing of the briefs by both parties and then
21 set a date for the closing arguments, five days after the filing
22 of the briefs, where parties can respond orally to each other's
23 written submission, as well as answer any other questions from
24 the Bench. There are different possibilities that we can take on
15:49:20 25 this. There are no fixed ways of doing it. We will, certainly,
26 welcome -- maybe, on this matter, it might be a good situation to
27 ask the parties to make some submission on this, as to what they
28 consider to be the best approach, and then we'll make a decision.
29 It's not a motion, just a submission as to what you are proposing

1 to be the best approach to this. As I say, to me, this is a very
2 good approach where all parties file their final brief at the
3 same time, as such, and then you deal with whatever matters you
4 want to deal as a response, in your oral submission, as such.
15:50:06 5 Everybody then is on the same footing.

6 It has the objective, as well, of speeding up the process,
7 to an extent, and focusing on the matters that need to be focused
8 upon. So, I will appreciate it if I can get some submission from
9 the parties on this and, maybe, within the next two weeks, so we
15:50:33 10 can look at that and issue a proper direction so you know where
11 to go after that.

12 Dr Jabbi, would that be convenient to you, to make a
13 submission on these matters in the next two weeks?

14 MR JABBI: Yes, indeed, My Lord.

15 PRESIDING JUDGE: All parties are invited to make their
16 submissions. Obviously, if you can make a joint submission for
17 the Defence, that's even better, so I can only invite all parties
18 to discuss, and you can make a joint submission as to what will
19 be the position of the Defence on those final briefs, do it
15:51:08 20 together. If not, do it as a separate issue. I ask the same for
21 the Prosecution. Mr Pestman?

22 MR PESTMAN: I don't think it is necessary to submit a
23 written submission. We completely agree with your view, and the
24 view of the Court. We wholeheartedly support the interpretation
15:51:25 25 of the Rules given by the Court.

26 PRESIDING JUDGE: All I'm trying to do is to see what's the
27 best approach to this, so it serves your interest as well as the
28 interests of the Bench. I want to make sure that these final
29 briefs and presentation, we are focusing on the very issues that

1 need to be dealt with, and we don't go and get lost in a mountain
2 of papers, as such. That's not necessary to reach the decisions
3 that have to be made.

4 MR PESTMAN: That's why we agree.

15:51:59 5 PRESIDING JUDGE: Thank you. Mr Margai, or Mr Williams, do
6 you wish to comment on this?

7 MR WILLIAMS: My Lord, we would like to file something in
8 writing. I think we might beg to differ from the position that
9 the Bench holds.

15:52:16 10 PRESIDING JUDGE: That's why I ask. I'm just making
11 reference to positions that have been taken by other Courts in
12 these matters, as such. There is no firm position from the
13 Court. That's why I'm raising these matters with you, so we try
14 to see if there is a consensus. If not, we have to make a
15:52:34 15 decision how best to go about it, that's all. Mr Prosecutor, do
16 you wish to comment on this?

17 MR KAMARA: My Lord, except for the fact that we hold the
18 view that this is a very serious matter, and it is a court of
19 records. We would love to see a final written brief and,
15:52:59 20 thereafter, make our arguments and show what our position is, and
21 our view of the law on that position. That is the way we treat
22 this matter; it is very matter.

23 PRESIDING JUDGE: Yes, but the example I gave is exactly
24 along these lines. The final brief is -- this is not
15:53:13 25 inconsistent with what you are saying.

26 MR KAMARA: That is it. I understand Mr Pestman was saying
27 about not writing something, and that is why I got --

28 PRESIDING JUDGE: No, not in writing. I asked if
29 submissions could be made how best to proceed with this. He was

1 not talking about the final briefs. I asked and invited them to
2 make a submission as to how best to proceed with this.

3 MR KAMARA: Thank you, My Lord. Then we are at the same
4 level, My Lord, we want a final written brief.

15:53:45 5 PRESIDING JUDGE: Do you wish to make a submission, that's
6 my submission on this.

7 MR KAMARA: Yes, My Lord.

8 PRESIDING JUDGE: As to how best the Prosecution sees this
9 to be done.

15:53:55 10 MR KAMARA: I agree with you entirely, My Lord.

11 PRESIDING JUDGE: All right. On this final brief, the last
12 comment on this, I would like to invite the parties to consider
13 the following, and this is part of the direction on the
14 preparation of final briefs. The length of the final trial

15:54:24 15 submissions "shall not exceed" -- and this is from the directives
16 that are in existence -- "200 pages or 60,000 words, whichever is
17 greater," but I would say that we are likely to insist that we do
18 not exceed 60,000 words, which is less than 200 pages, in most
19 cases.

15:54:43 20 I would like to give you guidance, as such, at least
21 comments from Judge Hunt in the *Krnjelac* case, where he gave the
22 following instructions to the parties on the content of their
23 closing briefs. I will quote from what he said, because I think
24 they are very cogent and very helpful.

15:55:06 25 "What the Trial Chamber does not expect is the mammoth
26 final briefs that seem to have become obligatory in these trials.
27 That was the whole purpose of the practice direction reducing
28 their size. The ICY practice direction puts a limit of 60,000
29 words for the final briefs. [...] What we want in the final

1 brief are your arguments, with references to the transcript. We
2 don't want great passages from the transcript set out, unless
3 there is some extraordinary importance in a particular part of
4 the transcript. All of our legal officers and we have been
15:55:44 5 throughout the trial. We've heard the trial. We don't want some
6 general description of how the trial went. We do not want
7 anything that is in your pre-trial briefs as to the law repeated.
8 If you want to add to it, by all means. But what we need are a
9 set of propositions as to what your arguments are as to why a
15:56:03 10 particular count should be upheld, and why it should be rejected
11 and then, preferably, in footnotes or in brackets, references to
12 the name of the witness and a transcript page and line, so that
13 we can go and look at it in the transcript. Your final briefs
14 should be relatively short, unless you have an extraordinary
15:56:25 15 number of arguments. What we want, of course, is more attention
16 paid to your better arguments than to those which you put in for
17 the purposes of making an appeal point or something else."

18 I think these are very interesting arguments. As I say,
19 these are the comments of Judge Hunt that were found in the
15:56:49 20 transcript of 2 July 2001, at page 8211, if anyone wants to refer
21 to that transcript.

22 Subsequently to that, further instructions were given by
23 the Trial Chamber as to the content of the oral submissions,
24 following the filing of the final trial brief, as prescribed by
15:57:08 25 Rule 86.

26 "When we come back for the oral arguments, we will, of
27 course, allow you to make some final pre-oration on behalf of the
28 Prosecution and the Defence, but we would not expect that to be
29 of any substantial length. What we expect you to do, mainly, in

1 those oral submissions, is provide an answer, where you wish to,
2 to any of the submissions put in the written final briefs [...]
3 So there is no a lot of repetition. [...] We don't want to
4 restrict you unfairly, but if you keep very much in mind that the
15:57:41 5 oral submissions are mainly concerned with the responses to the
6 written submissions of the other party, plus whatever pre-oration
7 you feel is necessary at the end in relation to the case
8 generally, they should not be very long. A couple of hours or so
9 would seem to be more than necessary, but if they take a little
15:58:04 10 more than that, we will certainly not stop you."

11 Again, these are just comments of Judge Hunt. I think they
12 are very, very relevant and pertinent to what you are going to be
13 dealing with. I will invite ask you to give consideration to
14 these comments.

15:58:15 15 So that concludes my comments on these matters. Again, we
16 welcome submissions. Mr Pestman, I understand your position to
17 be that that I have expressed. But if you wish, again, to speak
18 with your colleagues, if they have a different point of view,
19 that's okay. We'll just see what is being submitted, and I will
15:58:35 20 appreciate comments from you, Mr Prosecutor, as well.

21 An issue that has arisen is the composition of the Defence
22 team of the second accused. I know we have the Principal
23 Defender present in Court today. There has been an exchange of
24 correspondence between --

15:58:53 25 MR KAMARA: Sorry, My Lord. Just before we move to that,
26 there is an issue I wanted to raise with the Court, and that is
27 as regards the final brief.

28 PRESIDING JUDGE: Yes.

29 MR KAMARA: My Lord, what is the expectation from the

1 Prosecution in terms of are we to address the individual accused
2 persons by their cases, or are we looking at doing a statement of
3 the law as regards to the three, and then separate the facts for
4 the first, second and the third? Or is it that we do independent
15:59:20 5 briefs for each and every accused person?

6 PRESIDING JUDGE: I don't see how you can, without being
7 repetitive, do a separate brief for the law with respect to every
8 accused person, as such. I would imagine the law, given that
9 this is a joint indictment, and they are jointly accused, that
15:59:46 10 the law is the same with respect to the three accused, if you're
11 talking of the law.

12 MR KAMARA: Yes, My Lord. If you recall, that is what we
13 were asked to do in the Rule 98, when we did our Rule 98
14 submissions. That is why I'm asking now if we will do a joint
15:00:01 15 statement of the law, as applies to the three accused persons,
16 and then we separate them as we to, like, we say section A is the
17 law; and B, Chief Norman; and then C, Moinina Fofana; and D,
18 Allieu Kondewa. These would be factual matters that we'll be
19 addressing independent of what the law is stated in section A.

16:00:23 20 PRESIDING JUDGE: Yes. That's the way I see it, yes.

21 MR KAMARA: Thank you, My Lord.

22 PRESIDING JUDGE: To come back to the composition of the
23 Defence team for the second accused, I have seen some
24 correspondence between the second accused and the Defence office,
16:00:45 25 asking whether Professor Zegveld and Nollkaemper are part of the
26 Fofana defence team, whether active or not. I hope that was your
27 question, Mr Pestman, that you asked. At least, it's the
28 Principal Defender that was asking the question as to whether
29 they are and whether they are a part of the team.

1 MR NMEHIELLE: Yes, Your Honour. My main concern is for
2 the fact that every member of the team is Court-appointed.
3 Though the team, as presently constituted, was Court-appointed,
4 in my view, but the addition of the other names, I felt, they had
16:01:31 5 not been active. They have not been here, and I really was
6 surprised as to whether or not they could be termed members of
7 the team from the point of view of Court appointment.

8 There seems to be some wavering from the lead counsel as to
9 whether or not they remained, and then back and forth, oh, I
16:01:53 10 wouldn't think they are relevant and then he comes back and says
11 they are relevant, with the legal assistant clarifying. The
12 appointment was made, without naming names, when they were made.
13 But, for me, that will mean having a legal team of about six
14 people -- six to seven people, which I don't have a problem with,
16:02:15 15 if they think that is what they want to do and if the Court
16 thinks that it is appropriate.

17 PRESIDING JUDGE: Well, I don't have the copy of the
18 decision with me here. But, if I'm not mistaken, the decision
19 was quite -- the Court-appointed counsel for the second accused
16:02:34 20 and the third accused, at that time, were not as you have
21 mentioned, listed. They were just -- we just said that those
22 counsel acting on behalf of the second accused and the third
23 accused are now to become Court-appointed counsel. And it
24 included, in our view, all the counsel that were a part of those
16:02:54 25 teams. We never intended to take only a portion or a certain
26 segment of that team.

27 And, as you know, since that time, whenever a person were
28 to be added or deleted from that team, they came to the Court,
29 and we said we would agree or disagree, whatever it was.

1 So, in my view, the team for the second accused, and
2 the third accused, is composed of those who were there at the
3 time where we appointed them so if these names were there at the
4 time, to my recollection, we never deleted them from that team,
16:03:29 5 and we were never asked to modify that team and, therefore, they
6 should form part of that team, unless we do otherwise. But if
7 they are not active, and they have no role to play, I think we
8 should very well welcome an application to change the composition
9 of that team. We are not to have members there that have
16:03:49 10 absolutely no role to play.

11 MR NMEHIELLE: My Lord, I will leave it entirely to the
12 team to determine what they want to do and advise me, and I'll
13 advise the Court.

14 PRESIDING JUDGE: Thank you, Mr Principal Defender. So
16:04:03 15 does that clarify the issue with you, Mr Pestman? Or I don't
16 know who raised the issue, whether it was the Principal Defender
17 or you, or both of you?

18 MR PESTMAN: Well, just for your information, they have
19 been on the list since 2003.

16:04:19 20 PRESIDING JUDGE: Yes, they were on the list prior to
21 converting.

22 MR PESTMAN: A long time before, yes, before the decision
23 you were referring to was taken. And Professor NolIkraemper,
24 professor in international public law at the University of
16:04:34 25 Amsterdam and Professor Zegveld is a professor in international
26 humanitarian law at the University of Leiden and we were hoping,
27 and they have promised that they would contribute to both of the
28 final brief and closing arguments, as they have done, indeed done
29 in the preliminary phase. They were also involved in the

1 drafting of the preliminary motions.

2 As far as we are concerned, there is no reason to file an
3 application to add, so we will just leave it as it is.

4 PRESIDING JUDGE: That's what I say. I mean, they are
16:05:09 5 there now. They were there at the time of the appointment and
6 then they have been appointed. They were part of the appointed
7 counsel for that team.

8 MR PESTMAN: So as far as we are concerned, the matter is
9 closed.

16:05:20 10 PRESIDING JUDGE: That's fine.

11 MR PESTMAN: Thank you, Your Honour.

12 PRESIDING JUDGE: Thank you very much. So this is
13 essentially all I wish to raise at this particular moment. There
14 are a few pending motions that have been recently filed. There
16:05:45 15 is a motion by the Kondewa team to call additional witnesses, and
16 the first accused's request to admit certain documents in lieu of
17 the oral testimony of Major General Mohammed. That's it for now,
18 unless there are some other issues, and I will ask you, Dr Jabbi,
19 if you wish to raise any other matter that has not been dealt
16:06:08 20 with that you feel that we should address at this particular
21 moment. Dr Jabbi?

22 MR JABBI: The agenda, My Lord, has item 9, matters raised
23 by counsel for Norman re detention issues.

24 PRESIDING JUDGE: Yes.

16:06:33 25 MR JABBI: Although it has not been specifically adverted
26 to by Your Lordship. My Lord, it may not necessarily be strictly
27 a matter for the Court processes, but we would want to bring to
28 the notice of the Court certain issues arising from the
29 circumstances of the first accused, although they do not

1 exclusively pertain to him.

2 My Lord, it's a question of the availability of suitable
3 conditions in the case of a detainee who may well be so sick that
4 he may suffer some excruciating pain in order to access certain
16:07:35 5 resources. For example, for some time when the hip and the leg
6 of the first accused were troubling him, My Lord, he found it
7 difficult to be in his cell whilst he was in that condition and
8 be able to access things like the telephone, or even the toilet.

9 And that gave -- that suggested the need for, perhaps, an
16:08:19 10 extension to the medical section there, to ensure that an
11 extremely sick detainee is able to be kept apart from the others,
12 so as to be able to access those facilities, or resources, that
13 he may need urgently, without having to walk long distances or,
14 indeed, be unable at all to reach a certain facility.

16:08:59 15 PRESIDING JUDGE: May I ask you, Dr Jabbi, if this has been
16 raised with the detention authorities at all or --

17 MR JABBI: Yes, My Lord. I have, in discussion, mentioned
18 it with a few of them, but no formal application has been made.
19 But I believe that already, in fact, further events are taking
16:09:28 20 place which necessitate a close examination of that issue. I
21 don't want to be too specific.

22 PRESIDING JUDGE: That's okay. Any other matter you wish
23 to raise? I will come to you, Mr Pestman.

24 MR JABBI: For the moment, My Lord, that is the only one
16:09:54 25 that we think we need to raise concerning detention.

26 PRESIDING JUDGE: Thank you. Mr Principal Defender.

27 MR NMEHIELLE: Yes, Your Honour. I just wanted to clarify
28 in relation to what counsel has said. The accused person had
29 sent some message to me as well, in terms of engaging with the

1 administration, on the administrative procedures that may be
2 necessary in dealing with issues that pertain to his detention
3 conditions.

4 I have interacted with the medical doctor as well, and I
16:10:31 5 can very well say, also, that in a meeting held today, I raised
6 the issue, and mechanisms are being looked into in addressing
7 some of those situations, and I will continue to follow up from
8 an administrative side to ensure that it happens.

9 PRESIDING JUDGE: And you're talking of the very same issue
16:10:50 10 that Dr Jabbi just talked about?

11 MR NMEHIELLE: Yes, yes.

12 PRESIDING JUDGE: Okay. Thank you. Mr Pestman, you wish
13 to raise any other matter that I have not raised or discussed?
14 Yes, Mr Powles.

16:11:08 15 MR POWLES: If I may, this is --

16 PRESIDING JUDGE: Welcome to this Court. I was waiting to
17 have all the Court together to welcome you but, in the meantime,
18 I will do so on behalf of them.

19 MR POWLES: I'm very grateful. I want to say this is, of
16:11:21 20 course, the first time that I have appeared on behalf of
21 Mr Fofana, and I want to perhaps take the opportunity to say
22 briefly, and out of courtesy, that it is of course a pleasure to
23 be appearing again before Your Honour in this very impressive
24 structure, and to say that I look forward to working, both with
16:11:39 25 my learned colleagues Mr -- Dr Jabbi and his team for Chief
26 Norman, my learned friend Mr Nmehielle for the Defence office, my
27 learned friend Mr Margai and his team for Mr Kondewa, and of
28 course, my learned friend Mr Kamara and his team for the
29 Prosecution. And, of course, the Court and all of its staff, in

1 the weeks to come, in presenting the case for Mr Fofana as
2 efficiently and as timely as possible.

3 PRESIDING JUDGE: Thank you very much. You're welcome.

4 MR POWLES: Thank you, Your Honour.

16:12:14 5 PRESIDING JUDGE: Mr Margai, do you wish to raise any
6 particular matter at this moment?

7 MR MARGAI: My Lord, just to welcome Mr Powles and
8 reciprocally to say that I am looking forward to working with him
9 diligently.

16:12:28 10 PRESIDING JUDGE: Thank you. Mr Prosecutor, any comments
11 you wish to make, or any other matter you wish to raise?

12 MR KAMARA: My Lord, we also do welcome Mr Powles, and we
13 know each other before, within the vicinity of this Court. And
14 my only comment is regards to Dr Jabbi, his language in
16:12:45 15 describing the state of the accused, saying that an extremely
16 sick person, an extremely sick accused -- I mean, these I
17 consider a bit alarmist. And if at all that is the case, we want
18 medical representation of such statements. If it is the case, we
19 empathise with the accused person, we know it is, and let the
16:13:11 20 Court know. It is a court of records, and I keep on insisting on
21 this. It is not for the lawyer to make medical pronouncements on
22 the condition of an accused person. He can be informed and, like
23 the Defence for the second accused did, they sent us an email
24 from the medical doctor telling us what is the state of affairs
16:13:25 25 of the second accused. But for a lawyer to speak from the Bar,
26 continuously describing and analysing the condition, or the
27 medical health of an accused, is a bit, and especially along
28 those terms, is alarmist for me. That is the way I see it. And
29 I recall, Dr Jabbi himself had mentioned quite so many times

1 before the Court about the use of the press, how the press uses
2 such language, and I think we have to restrain ourselves in the
3 application of such language for this Court. If it is the case,
4 then let the medical records prove so. Thank you, My Lord.

16:13:58 5 MR JABBI: My Lord --

6 PRESIDING JUDGE: Yes, Dr Jabbi. Go ahead.

7 MR JABBI: -- I am quite sure my learned friend probably
8 did not listen so carefully to the portion -- yes, indeed -- to
9 the portion where I mentioned a very sick detainee. That was a
10 generic reference. It was not in description of any particular
11 detainee, but I was just saying those circumstances arose where a
12 detainee was so sick that he required those facilities, it will
13 be necessary to have a look at it so as to establish it. I was
14 not, in the process, describing any particular person as a
15 detainee, My Lord.

16 PRESIDING JUDGE: I thank you very much for these comments.
17 He was -- it is well recognised by this Court that the first
18 accused was, indeed, and is still, suffering from some
19 difficulties and, to the extent that we've even allowed the
20 accused to remain seated in Court, rather than standing up,
21 because it would cause him pain. So, I mean, this is not in
22 dispute that the accused, the first accused is suffering from a
23 hip problem that is causing him a lot of pain, so, we have
24 accepted that, and we were wishing him good luck and hoping that
25 his condition would improve. I hope it is still going this way.
26 So, Mr Norman, as you know, we -- I have a lot of sympathy for
27 your problems in this respect, and I hope, as a minimum, that
28 they don't get worse, that your condition does improve.

29 One last comment is: We have the representative, or the

1 Chief of Court Management, Ms Thompson, who would like to make
2 some comments, and suggestion to all of you, and all of us,
3 indeed, as to -- about the record keeping and some of the
4 difficulties that they have experienced in Court Management,
16:15:56 5 trying to put some order in the transcript, more specifically, so
6 can you address us, Ms Thompson.

7 MS THOMPSON: Yes, thank you, Your Honour. Just a few
8 matters to raise to assist with the smooth functioning of the
9 Court proceedings. I feel it is important for me to come to you
16:16:19 10 all and raise these matters.

11 The first issue relates to the speed in which parties
12 speak. There has been some concern about this, and the direct
13 relationship that it has with producing an accurate and precise
14 record. I ask, I kindly ask, that you all speak slowly, speak
16:16:48 15 clearly, so that the interpreters and the stenographers can
16 produce an accurate record for you all and, if it's possible, in
17 certain situations where there is some difficult spellings, it
18 would be nice if you can also assist us and get the spelling.

19 The second issue is also the overlapping of speakers. As
16:17:12 20 you know, when several speakers talk at the same time, you cannot
21 ascertain what is actually being said, and it has been my
22 experience, dealing with these matters, that my staff are
23 spending a great amount of time listening to the audio and trying
24 to figure out what is being said, and to the end that they can't
16:17:38 25 even get a proper interpretation because so many people are
26 talking. So I just kindly ask that you think about these things
27 and, when you're speaking, to defer to each other, and let one
28 finish before the other one begins.

29 There is another issue. Some of the lawyers who understand

1 the indigenous languages have a tendency to listen to the witness
2 instead of the interpreter. Therefore, they ask the next
3 question even before the interpreter completes the answer. This
4 prevents the interpreter, obviously, from hearing the tail end of
16:18:40 5 the witness's testimony. I just ask you to take caution with
6 that as well. Let's try to work together on these issues.

7 Redactions of confidential witness information. I also ask
8 that you also be very diligent in maintaining the confidentiality
9 of witnesses. I know that it happens inadvertently, that a name
16:19:01 10 or a location is mentioned, but I really ask that you take
11 precaution with this. On this end, we try our best to catch the
12 errors. Most of the time, the judge will order us to redact the
13 identifying information, but sometimes it's not caught. So I
14 just ask that if a particular party has called a witness, that
16:19:31 15 maybe another member of that team just have an area out to make
16 sure that the confidential information doesn't get out.

17 This leads me to my next and final point. There are, from
18 time to time, either investigators or Court monitors that sit in
19 the public gallery during closed session testimony. From a Court
16:20:01 20 Management perspective, we have to keep a log of who is in and
21 who is out, particularly during this time. A log book will be
22 placed in the gallery shortly, and we just request that
23 investigators and Court monitors sign in: Their name, the time,
24 the date, their role, so we can keep a record of that.

16:20:31 25 I also would like to welcome Mr Powles. I have worked with
26 him, also. That is all I that have to say. Thank you,
27 Your Honour.

28 PRESIDING JUDGE: Thank you very much. You are all invited
29 to try to comply with these requests. This is not to please

1 Court Management, it is to make sure yourself and your client are
2 properly served by Court Management. The clearer the record can
3 be, the better all of us can be. So, again, I ask you to try to
4 comply with these, and do our best to do that.

16:21:09 5 I thank you very much for attending this afternoon. We
6 will notify you -- I can certainly say we'll not sit tomorrow
7 morning. So for certainty for all concerned, we shall issue an
8 order tomorrow during the day as to how we are going to deal with
9 that. As I say, it is likely that we'll not come to Court before
16:21:29 10 early next week. Thank you very much.

11 [Whereupon the status conference adjourned at
12 4.25 p.m.]

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