



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

FRIDAY, 15 SEPTMEBER 2006
10.00 A. M.
TRIAL

TRIAL CHAMBER I

Before the Judges:

Bankole Thompson, Presiding
Pierre Boutet
Benjamin Mutanga Itoe

For Chambers:

Ms Roza Salibekova
Ms Anna Matas
Ms Lisa Schneiderman

For the Registry:

Mr Thomas George

For the Prosecution:

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

For the accused Sam Hinga
Norman:

Mr Alusine Sesay

For the accused Moini na Fofana:

Mr Michel Pestman
Mr Steven Powl es
Mr Andrew Ianuzzi

For the accused Allieu Kondewa:

Mr Yada Williams
Mr Ansu Lansana
Mr Martin Michael (Legal
assistant)

1 [CDF15SEP06A- CR]

2 Friday, 15 September 2006

3 [The accused Norman and Kondewa present]

4 [The accused Fofana not present]

10:08:51 5 [Open session]

6 [Upon commencing at 10.10 a.m.]

7 PRESIDING JUDGE: Good morning, counsel. May we have
8 appearances? Prosecution.

9 MR KAMARA: My Lord, Joseph F Kamara, Mohamed Bangura,
10:09:06 10 Miatta Samba, and Lynn Hintz.

11 PRESIDING JUDGE: Thank you. Counsel for the first
12 accused.

13 MR SESAY: Alusine Sesay for the first accused.

14 PRESIDING JUDGE: Counsel for the second.

10:09:20 15 MR POWLES: Good morning, Your Honours. Steven Powles, on
16 behalf of the second accused, appearing with my learned friends
17 Mr Michael Pestman and Mr Andrew Ianuzzi.

18 PRESIDING JUDGE: Thank you. Counsel for the third
19 accused.

10:09:35 20 MR WILLIAMS: May it please Your Lordships, Yada Williams,
21 Ansu Lansana, and Martin Michael for the third.

22 PRESIDING JUDGE: Thank you. I observe, counsel for the
23 second accused, that your client is not in Court? Do you have
24 any statement to make?

10:09:53 25 MR POWLES: Your Honours, yes. Mr Fofana is not present in
26 Court this morning. As Your Honours know, he is currently ill
27 and unable to attend Court. That is still the present position.
28 However, Mr Ianuzzi spoke to Mr Fofana yesterday and he has given
29 his consent for these proceedings to proceed in his absence.

1 PRESIDING JUDGE: We have, in our possession, a document
2 signed by him. Are you aware of that?

3 MR POWLES: Your Honour, I was shown it this morning. I
4 wasn't aware of it until this morning.

10:10:40 5 PRESIDING JUDGE: We have a copy of it here. It is signed
6 and it is witnessed, and it is dated 15th September 2006, but the
7 section which is of material importance to this Court does not
8 seem to provide any direction, that is the section which talks
9 about whether he waives his right to be present or does not waive
10:11:07 10 his right to be present. There are two boxes there and neither
11 of them is filled. What I have here is a kind of document which
12 is ambivalent in its purport. If we are going to accept it as
13 part of the record, then we must reconcile it with what you've
14 said.

10:11:29 15 MR POWLES: Your Honour, yes. For the record, may I make
16 clear that that was not a document that was procured by any of
17 the Defence team for Mr Fofana. Had it been done so, of course
18 it would have been slightly more explicit in the terms contained
19 within it.

10:11:45 20 PRESIDING JUDGE: Yes.

21 MR POWLES: May I make it clear for the record that --

22 PRESIDING JUDGE: The difficulty I have is that if we are
23 to discard one, take your word from the Bar in respect of a
24 waiver of his right to be present, and that the
10:12:07 25 proceeding proceed in his absence, or have some regularisation of
26 the position.

27 MR POWLES: Your Honour, in the first instance, I would
28 invite Your Honours, if you would, to take the word from the Bar,
29 in the sense that a member of the Fofana team has spoken to

1 Mr Fofana, and Mr Fofana has given his consent not to appear at
2 this morning's hearing, to the extent that Your Honours would
3 like something in writing, of course, it can be undertaken on
4 behalf of the Defence team for Mr Fofana to obtain such a waiver
10:12:43 5 from him, in due course.

6 Our understanding at present is that Mr Fofana is in
7 quarantine, with the consequence that none of us are actually
8 able to visit him in person, as it were. We have taken it as far
9 as we can, by obtaining his consent --

10:13:00 10 PRESIDING JUDGE: Right. In other words, your advice is we
11 abandon this document, which doesn't say anything.

12 MR POWLES: Your Honours, that's what I'd urge the Court to
13 do, yes.

14 PRESIDING JUDGE: Right. Then we'll leave it.

10:13:20 15 MR POWLES: I'm grateful, Your Honour.

16 PRESIDING JUDGE: The records will reflect what you have
17 represented to the Court.

18 MR POWLES: Thank you, very much.

19 PRESIDING JUDGE: Do sit down. Is there anything else?
10:13:31 20 Would any other counsel like to interject at this point before we
21 come to Mr Sesay?

22 Mr Sesay, we're in your hands. I understand that a motion
23 was filed in respect of admitting certain documents following the
24 status conference.

10:13:51 25 MR SESAY: Yes, Your Honour.

26 PRESIDING JUDGE: Would you like to advise us what the
27 position is now, because a decision on your client's request to
28 admit certain documents in lieu of the testimony of General Abdu
29 One Mohamed, pursuant to Rules 89(C) and 92*bis* has been rendered,

1 and, I understand, in the process of being filed and distributed,
2 or circulated -- it's filed already; I'm so advised, it's
3 filed -- and virtually granting the orders sought. So, on the
4 strength of that, how do you proceed now?

10:14:41 5 MR SESAY: Your Honour, we would like to close our case, in
6 the light of the decision.

7 PRESIDING JUDGE: Before you do that, we'd have to go
8 through the usual procedural process of having these documents
9 properly received for the purposes of being exhibits in this
10:14:59 10 trial.

11 MR SESAY: Yes, Your Honour.

12 PRESIDING JUDGE: Let me read this out to you so that we
13 are in harmony as to what you requested and what we granted. And
14 if any clarifications are necessary, if we're able to provide,
10:15:25 15 we'll do that. At page 5 of the decision, we ordered as follows:

16 1. Counsel for Norman shall file with the Court the original
17 documents, namely, "Periodic reports Civil Defence Force
18 'Kamajors' dated 1st August 1997," letter from President Ahmed
19 Tejan Kabbah to CO Mustapha with an action plan captioned
10:15:57 20 Operation Offence, dated 13th August 1997." And the two pages
21 document entitled, "The Sierra Leonean Crisis, ECOMOG and the
22 Civil Defence Forces (Kamajors)," with the signature of
23 Major General Abdu One Mohamed, and dated 2 March 2006, as soon
24 as possible, but no later than Monday, 18th September 2006 by
10:16:32 25 10.00 a.m.; 2. The Registry shall assign exhibit numbers to the
26 aforesaid admitted documents.

27 Then, of course, at the bottom, we also directed that
28 counsel for Norman shall now exercise their option to close the
29 Defence case for the first accused on Friday, 15th September

1 2006.

2 And it is further ordered that should witness Major General
3 One Mohamed be called to testify on behalf of the second accused,
4 the Prosecution, in accordance with the prescribed procedure,
10:17:09 5 could then cross-examine this witness in relation to the
6 aforesaid admitted documents, should it become necessary during
7 the course of his evidence. Are we on the same radar screen?

8 MR SESAY: We are, Your Honours.

9 PRESIDING JUDGE: In that regard then, we'll receive the
10:17:40 10 documents in evidence and designate them -- will we be guided by
11 Court Management?

12 MR THOMAS: Exhibit 157, Your Honour.

13 PRESIDING JUDGE: The first document is a periodic report,
14 what will that be designated? 157?

10:18:01 15 MR THOMAS: Yes, Your Honour.

16 [Exhibit No. 157 was admitted]

17 PRESIDING JUDGE: And the letter from President Ahmed Tejan
18 Kabbah.

19 MR THOMAS: 158, Your Honour.

10:18:09 20 [Exhibit No. 158 was admitted]

21 PRESIDING JUDGE: And there is a third document, two pages
22 document entitled "The Sierra Leonean Crisis," et cetera,
23 et cetera.

24 MR THOMAS: 159, Your Honour.

10:18:21 25 [Exhibit No. 159 was admitted]

26 PRESIDING JUDGE: Right, are we clear on that? Is the
27 Prosecution happy with the procedure so far?

28 MR KAMARA: Yes, My Lord, we are. Except, I haven't read
29 the decision, but I heard you say the originals. I'm not sure.

1 PRESIDING JUDGE: That's what it says, the original
2 documents. In other words, we're seeking the best evidence rule.

3 MR KAMARA: Yes, Your Honour, but I haven't seen the
4 originals.

10:18:56 5 PRESIDING JUDGE: We take it that Mr Sesay will be able to
6 provide us with the originals, whatever --

7 MR SESAY: Your Honour, at some later --

8 PRESIDING JUDGE: Some later stage?

9 MR SESAY: Yes, Your Honour.

10:19:11 10 JUDGE ITOE: But it has to be not later than -- it should
11 not be that late. It has to be immediate.

12 PRESIDING JUDGE: Yes, Monday, the 18th.

13 JUDGE ITOE: We don't have to wait, because they are
14 already late, and they must be in the custody of Court

10:19:23 15 Management.

16 MR SESAY: Yes, Your Honour, not later than Monday the
17 18th, at 10.00 a.m.

18 PRESIDING JUDGE: So the designation will be tentatively in
19 respect of what we have now in Court, subject to the production
10:19:41 20 of the original documents.

21 MR SESAY: Yes, Your Honour.

22 PRESIDING JUDGE: Does any other counsel have any interest
23 in this exercise? If not, then I take it that we are done with
24 that part of it?

10:19:56 25 Now, we shall move on to the very important part. You now
26 state, what?

27 MR SESAY: Your Honours, that is the case for the first
28 accused.

29 PRESIDING JUDGE: You now formally close the case for the

1 first accused?

2 MR SESAY: Yes, Your Honour.

3 PRESIDING JUDGE: And the records will reflect that the
4 Defence counsel for the first accused indicates that he now
10:20:22 5 formally closes the case on behalf of the first accused.

6 MR SESAY: Very well, Your Honour.

7 PRESIDING JUDGE: Right. Then we'll move on to the case
8 for the second accused.

9 MR SESAY: Your Honours, I may have to come in before we
10:20:39 10 move to the case for the second accused.

11 PRESIDING JUDGE: Right. Let's hear you then.

12 MR SESAY: Your Honour, the first accused has -- I don't
13 know whether that can be considered at this juncture, but he has
14 just informed me that he has two short requests that he would
10:20:57 15 want to make before this Court.

16 PRESIDING JUDGE: What is your advice? Is it appropriate
17 we can hear it at this stage before we move on to the -- for the
18 sake of tidiness, what is your advice? Have you consulted with
19 him.

10:21:17 20 MR SESAY: I would rather we wait after -- at the end of
21 the session.

22 PRESIDING JUDGE: The proceedings?

23 MR SESAY: The proceedings.

24 PRESIDING JUDGE: Today?

10:21:27 25 MR SESAY: Today.

26 PRESIDING JUDGE: All right. Yes. It may well be
27 something of a miscellaneous character?

28 MR SESAY: Yes, Your Honour.

29 PRESIDING JUDGE: All right. Second accused.

1 MR POWLES: Your Honour, on behalf of Mr Fofana, of course
2 the Trial Chamber is aware at the moment of Mr Fofana's
3 current --

10:21:55 4 JUDGE ITOE: May I have your name again, please? Your
5 names again, please.

6 JUDGE BOUTET: Maybe I should have mentioned at the status
7 conference Mr Powles was introduced, and introduced himself to
8 the Court. I should have informed you he is counsel now
9 appearing, together with Mr Pestman and others for the second
10:22:17 10 accused. Mr Powles, if you can identify yourself.

11 JUDGE ITOE: Mr Powles, P-O-W-L-E-S; is that so?

12 MR POWLES: Your Honour, yes. It's P-O-W-L-E-S. May I
13 take --

14 PRESIDING JUDGE: And it's pronounced?

10:22:28 15 JUDGE ITOE: And your other name?

16 MR POWLES: The first name is Steven.

17 JUDGE ITOE: Steven. Steven Powles.

18 MR POWLES: With a V, Your Honour.

19 JUDGE ITOE: With a V.

10:22:35 20 MR POWLES: The more fashionable way.

21 PRESIDING JUDGE: Could you educate us again on the
22 pronunciation of the surname?

23 MR POWLES: I'm told it's Powles.

24 PRESIDING JUDGE: So what do you prefer then?

10:22:49 25 MR POWLES: I prefer Powles, Your Honour. May I take this
26 opportunity -- it's, of course, the first time I have appeared
27 before the whole Bench on behalf of Mr Fofana. I perhaps should
28 have done it earlier when I first took the floor on behalf of
29 Mr Fofana. May I say, of course, this is the first time that I

1 appear before the full Trial Chamber and, may I say, it's a real
2 pleasure to be back before this full court again, having first
3 appeared some years ago. I look forward, of course, to working
4 with the Court in presenting the case for Mr Fofana, as
10:23:33 5 efficiently as possible, over the weeks to come and appearing
6 before Your Honours.

7 PRESIDING JUDGE: We acknowledge the statement that you've
8 made, if it's intended as we believe, to be a compliment.

9 MR POWLES: Your Honour, certainly.

10:24:02 10 PRESIDING JUDGE: Let's proceed.

11 MR POWLES: Your Honours, yes. As Your Honours know, the
12 current predicament of Mr Fofana is such that he is presently
13 unable to attend these trial proceedings on account of his ill
14 health. The latest news that we have is that a further
10:24:20 15 assessment will be made today, with the likelihood, or certainly
16 a possibility, that we will be able to commence in earnest on
17 Monday morning. However, of course, no firm guarantee can be
18 given, as it's something which is without or beyond our control.
19 It's in the hands of the medical professionals and it is only
10:24:46 20 when we receive the all clear from them we will be able to first
21 meet with Mr Fofana and, thereafter, be in a position to commence
22 the case on his behalf.

23 PRESIDING JUDGE: In effect, what are you asking the Court
24 to do at this stage? Are you making an application?

10:25:08 25 MR POWLES: Your Honour, yes. In short, of course, the
26 application is that the commencement of the case for Mr Fofana be
27 postponed until after he is in such a state where he will be able
28 to attend the very important part of his case, namely, the
29 presentation of the case on his behalf.

1 PRESIDING JUDGE: Isn't that too open-ended? It leaves us
2 in a kind of limbo situation, if I could use some American
3 terminology.

4 MR POWLES: It does, Your Honour, yes, in that we don't
10:25:39 5 know for sure when Mr Fofana will make a full recovery to the
6 extent that he will be able to attend these proceedings. We're
7 at a situation where --

8 PRESIDING JUDGE: This Court has never favoured the kind of
9 uncertainty that you want to lead us into. I would have thought
10:25:59 10 that, in a situation of this nature, one would want to proceed on
11 a day-by-day basis. If your application is of a shorter compass,
12 then it may well pass judicial muster. But if it's not of a
13 shorter compass, then it may well in fact not find favour with
14 the Bench. Because if you say "until" and "when," you take us
10:26:35 15 into a kind of no-man's land. That's my assessment of it.

16 JUDGE ITOE: Yes, Mr Powles, I'm taking the cue from my
17 learned colleague. Our understanding of what your stand was
18 during the status conference, there will certainly be an
19 assessment, and it could well be possible that he might be able
10:26:57 20 to attend on Monday. So, I think we would require not an
21 open-ended adjournment of the case, but an adjournment like the
22 learned Presiding Judge has enunciated today. So why don't you
23 seek an adjournment for Monday, so that we assess the situation,
24 and we see how we manage it from day to day.

10:27:24 25 MR POWLES: Your Honour, yes.

26 PRESIDING JUDGE: Before you answer that, exposition from
27 my learned brother, what is the exact status as to his medical
28 condition? In other words, is he getting better, or is he
29 getting worse? You must have some general position of that. We

1 are apprised of what he is suffering from. Some of us can take
2 judicial notice of that. We know, clearly, it is contagious, and
3 we don't want you to become a victim of any such situation
4 yourself, but, clearly, you must have some general indication as
10:28:04 5 to whether the condition is improving or deteriorating, and that
6 would satisfy me, and, I reckon, my distinguished brothers.

7 MR POWLES: Your Honour, I don't have any information to
8 suggest that Mr Fofana is getting better or worse. The
9 information I have is that he suffers from what he suffers.

10:28:28 10 PRESIDING JUDGE: Yes.

11 MR POWLES: There is a time period --

12 PRESIDING JUDGE: An incubation period.

13 MR POWLES: An incubation period, through which one has to
14 go through when one is suffering from such a condition.

10:28:39 15 PRESIDING JUDGE: So, in other words, you're not in a
16 position to give us any firm information. But do you also
17 understand it to be your responsibility, perhaps, just to find
18 out, if we are gracious enough to grant you this adjournment, to
19 find out what you can find out. I mean, not precise medical
10:28:59 20 details. We don't want that. We just want to know something of
21 a general nature, okay?

22 MR POWLES: Your Honour, yes. May I assure the Bench that
23 every effort was made yesterday to try to ascertain the full and
24 up-to-date position of Mr Fofana's current condition.

10:29:17 25 Unfortunately, it appears that the doctor with conduct of his
26 case at the moment is not contactable and he's not in Freetown.
27 There is someone caring for Mr Fofana in his absence, however,
28 that person was not able to give us the definitive position with
29 regards to Mr Fofana's health and when he's likely to be in a

1 position where he's able to attend Court.

2 JUDGE BOUTET: To take it from where Justice Thompson was
3 questioning you on the evolution of his condition, if I can put
4 it this way, I remember at the status conference on Tuesday,
10:29:58 5 either you or Mr Pestman, I'm not sure which one, but one of you,
6 anyhow, stated you were not even able to communicate with him at
7 that time because of his condition. My question then was: Is it
8 because you are not allowed to speak to him over the phone? The
9 answer was: No, he is not in a mental capacity to even speak. I
10:30:17 10 take it, at least, that one of you has spoken to him and got some
11 information or direction. So, if I take it from that
12 perspective, there is improvement, if I can put it this way, and
13 I'm not a doctor, I'm just saying, on these mere facts there
14 seems to be some improvement. Am I putting the facts right to
10:30:35 15 you?

16 MR POWLES: Your Honour, you're absolutely right, of
17 course.

18 JUDGE BOUTET: You have been able to communicate with him
19 since Tuesday?

10:30:43 20 MR POWLES: There has been a telephone conversation between
21 Mr Ianuzzi, on behalf of the Defence team, and Mr Fofana since
22 Tuesday, and that conversation occurred yesterday evening.

23 Your Honours, my application would be for a short
24 adjournment until Monday morning when a more complete picture
10:31:05 25 will, perhaps, be known as to the remainder of the incubation
26 period required for Mr Fofana. Of course, in the interim, if any
27 further information is discovered, it will be communicated to the
28 Trial Chamber and all parties as soon as possible, but, in the
29 short term, my application would be for an adjournment until

1 Monday, so that the Court can be fully apprised of Mr Fofana's
2 position, and when we will be -- and the Court provided with
3 information as to when we will thereby be in a position to
4 proceed with presenting Mr Fofana's case.

10:31:55 5 PRESIDING JUDGE: Thank you. Does any other member of the
6 Defence team have any contributions to make in this? What is the
7 Prosecution's disposition on this point?

8 MR KAMARA: My Lord, the Prosecution is not adverse to the
9 application for an adjournment to Monday. The only comment we
10:32:12 10 have is as regards to the notice of reduction of witnesses we
11 received this morning.

12 PRESIDING JUDGE: Are you tying that to the adjournment
13 issue?

14 MR KAMARA: Yes, My Lord.

10:32:24 15 PRESIDING JUDGE: Let's hear you expand on that briefly.

16 MR KAMARA: Yes, My Lord. In the event that we have to
17 proceed on Monday, that is why I want to raise it.

18 PRESIDING JUDGE: Yes.

19 MR KAMARA: My Lord, from a perusal, it seems there has
10:32:38 20 been a substantive and radical change to that list. We see now
21 number 18, as we were preparing ourselves for cross-examination
22 to be number one. My Lord, if such a change has occurred, and we
23 are likely to proceed on Monday, or soon thereafter, My Lord, it
24 is the position of the Prosecution that if the Defence wants to
10:33:03 25 make any changes to their list, to be cognisant of the fact we
26 have to prepare as well. And if such changes are to be made,
27 they should be looked at in light of those that are in front,
28 rather than bringing those right down the list and bringing them
29 up front. If we were to move, come Monday, then we should be

1 ready for Ibrahim Tucker, who we were preparing for some time
2 maybe right down as number 18. We will take that for now, in the
3 interest of progress, but, further, if things like that have to
4 happen, please take note that we have to prepare as well.

10:33:37 5 PRESIDING JUDGE: That seems to be a reasonable submission
6 to make. What's your response, Mr Powles?

7 MR POWLES: Your Honour, I hear my learned friend for the
8 Prosecution. He's absolutely right. It is unusual to make such
9 a change. I'm grateful to him for his gracious indication that,
10:33:51 10 on this occasion, he will not object to moving Mr Tucker from
11 witness 18 to witness number 1. I hope, of course, that meets
12 with the Trial Chamber's approval.

13 It's, of course, related to the application for an
14 adjournment. Your Honours will also note that the witness list
10:34:12 15 has been substantially reduced, in terms of the number of
16 witnesses being called. That will, of course, impact on the
17 length of Mr Fofana's case, as and when it starts.

18 Your Honours will be aware, the final witness, Professor
19 Hoffman, the expert witness, is unable to attend Court to give
10:34:40 20 his evidence until 9th October. We would anticipate that, as a
21 result of the changes made, and the reduction in the number of
22 witnesses, that Mr Fofana's case will now take very much less
23 than the time it would have taken. The original list -- it was
24 perhaps conceived at one point, there would have been witnesses
10:35:04 25 called on behalf of Mr Fofana between the commencement of his
26 case until Mr Hoffman's appearance. It now seems that the other
27 witnesses that will be called on behalf of Mr Fofana are very
28 unlikely to take much more than a week to present to the Trial
29 Chamber.

1 PRESIDING JUDGE: And that will be a compensation to the
2 Prosecution?

3 MR POWLES: It will be a compensation to the Prosecution
4 and, if I may put it this way, also a compensation to the Court.

10:35:34 5 PRESIDING JUDGE: In other words, advance the philosophy of
6 the Court, being one of expedition.

7 MR POWLES: Your Honour, yes. Certainly, we'll be able to
8 make rapid progress, once we get started. It's on that basis,
9 and I put it forward as some form of consolation, to the extent
10:35:53 10 that it is any, to the Trial Chamber, if there are any further
11 delays on account of Mr Fofana's health, if there are any further
12 delays to the commencement of the presentation of his case, the
13 overall timetable of the trial will not be affected at all, it
14 seems to us, in that we'll be in a position, or certainly be in a
10:36:12 15 position to proceed with Mr Kondewa's Defence immediately after
16 Mr Hoffman.

17 Of course, in the event that we are able to start on
18 Monday, or very early next week, it seems we'll be able to
19 complete the vast majority of the witnesses on behalf of
10:36:29 20 Mr Fofana well in advance of 9th October, when Professor Hoffman
21 will be appearing. Of course, we're in the Court's hands as to
22 the best use of that time. It could be as long as two weeks in
23 between the end of the final witness before Mr Hoffman and
24 Mr Hoffman's testimony.

10:36:54 25 There are, it seems to me, may I humbly suggest, two
26 potential ways forward. Either we can adjourn matters and
27 everyone could begin preparations in earnest for their final
28 briefs, it seems that may take up some time and those two weeks
29 could better be used in terms of such preparations, or, and I

1 very tentatively suggest this, after having spoken to my learned
2 friends for Mr Kondewa, Mr Kondewa's defence could be started and
3 then Mr Hoffman interposed during the course of their evidence,
4 as and when he's in Freetown on 9th October. I am, of course, in
10:37:37 5 the Court's hands, and the parties' hands, as to whether
6 that's --

7 PRESIDING JUDGE: We have all kinds of options available to
8 us. Of course, we don't want to jump the gun. We'll certainly
9 deal with these problems on a pragmatic, judicial basis when they
10:37:52 10 come up from time to time. It's good for you to think allowed in
11 terms of projections.

12 JUDGE BOUTET: When you say the number of witnesses you
13 will be calling will be of a shorter duration than expected, is
14 it a change from what you had suggested at the status conference
10:38:10 15 as well? I remember asking you at the time how long you expected
16 that to be. You said -- well, I don't remember the answer, but I
17 remember asking you the question. You also stated that you
18 expected the Prosecution not to be too long in their
19 cross-examination, in your own assessment of time. Is it still
10:38:28 20 the same, or are you assuming the Prosecution will not
21 cross-examine for a long period of time when you make that
22 assessment?

23 MR POWLES: Of course, nobody wants to tie the hands of the
24 Prosecution. They're at liberty to cross-examine the Defence
10:38:45 25 witnesses to the extent they feel necessary. We can estimate how
26 long they may be on the basis of how long those witnesses are
27 likely to be in their examination-in-chief, and it is unlikely
28 that the Prosecution will want, or, indeed, need to be much
29 longer than that, in their cross-examination. It's on that basis

1 that we estimate that it's -- to the extent we can estimate, it's
2 likely to last about a week, for those 13 witnesses that appear
3 on the list at the moment.

10:39:20 4 JUDGE BOUTET: On this witness list, I know the Prosecution
5 has already mentioned they have some concerns because of some of
6 the changes that have been made, but I would like to inquire as
7 well from the other parties if they have any concerns about that
8 and, if they do, what is it they wish to inform the Court about
9 the new witness list in the order that it has been presented.

10:39:44 10 Mr Sesay.

11 MR SESAY: Your Honour, we have no problems with that.
12 There has been no additional witness on the list.

13 JUDGE BOUTET: No, it is just a change to the order of
14 calling these witnesses.

10:39:54 15 MR SESAY: We are okay with that, Your Honour.

16 JUDGE BOUTET: Very well. Mr Lansana?

17 MR LANSANA: Your Honours, we have no problems with the
18 order in which the witnesses will be presented.

10:40:06 19 JUDGE BOUTET: You will be ready to proceed with
20 cross-examination, if needed?

21 MR LANSANA: Precisely, Your Honour.

22 JUDGE BOUTET: Thank you. Other than the first witness
23 that has been called that is now Tucker, who used to be witness
24 number 18, any other changes in the order of calling these
10:40:22 25 witnesses?

26 MR POWLES: There are some minor changes. I believe
27 Mr Lappia, who was number 3 is now number 4. I understand he
28 needs to attend to matters with regards to his children and it
29 may be he is not in a position to appear before Wednesday but,

1 certainly, there are no other major changes to the order of
2 witnesses.

3 JUDGE BOUTET: Thank you. And it is still the position of
4 the second accused that the second accused is not to give
10:40:48 5 evidence? He's not testifying?

6 MR POWLES: As I understand it. I, of course, have not had
7 an opportunity to meet with the accused yet since my appointment
8 as part of his team. But, as I understand it, that is still the
9 position.

10:41:01 10 JUDGE BOUTET: That was the position expressed to the Court
11 on behalf of him when the defence was started a while ago.
12 Obviously until you start the case, we won't know. As you know,
13 the Rules in this Court are, if the accused is to give evidence,
14 he has to testify first.

10:41:24 15 MR POWLES: Your Honour, yes.

16 PRESIDING JUDGE: Following that particular aspect of it,
17 do you anticipate that you might come with some definitive
18 position on that? You're quite -- I reckon you're new to the
19 case, and is it possible that you might be able to advise the
10:41:41 20 Court definitively on that before we move helter-skelter, so to
21 speak, into the case for the second accused?

22 MR POWLES: Your Honour, yes, certainly.

23 [The Trial Chamber conferred]

24 PRESIDING JUDGE: Okay. Counsel, we will grant the
10:43:14 25 adjournment to Monday at 9.30 a.m. Hopefully, we expect that you
26 would have done some exploratory work so that you can advise us a
27 little more definitively. I'm sure we're all interested in
28 advancing the progress of this trial with a greater degree of
29 expedition.

1 MR POWLES: Yes.

2 PRESIDING JUDGE: Before we adjourn formally this morning,
3 we're taking a short break to have some consultation, and we'll
4 be back in about seven, eight minutes' time.

10:44:44 5 [Break taken at 10.47 a.m.]

6 [Upon resuming at 10.55 a.m.]

7 PRESIDING JUDGE: Mr Sesay, you indicated the first accused
8 wanted to raise some issues with the Court, or did you say make
9 some request?

10:52:34 10 MR SESAY: A request.

11 PRESIDING JUDGE: I reckon this has nothing to do with the
12 procedural aspects of the -- or even the substantive aspects of
13 the case for the Defence?

14 MR SESAY: No, Your Honour.

10:52:50 15 PRESIDING JUDGE: Right, it's not. Is this request
16 something you cannot make yourself on behalf of your client, or
17 you think it's better for him to do that?

18 MR SESAY: Your Honour, he -- I'll --

19 PRESIDING JUDGE: He has made the --

10:53:08 20 MR SESAY: I'll crave the indulgence of the Court for him
21 to make that request, My Lord.

22 PRESIDING JUDGE: Okay.

23 MR SESAY: It's a very short request.

24 PRESIDING JUDGE: Thank you. The indulgence is granted.

10:53:24 25 MR SESAY: Thank you.

26 PRESIDING JUDGE: Mr Norman.

27 THE ACCUSED NORMAN: Thank you, My Lords. My Lords, it's
28 just a short request. I made a similar request some time during
29 the process of this trial for an early opening so that I can have

1 sufficient time to take care of myself.

2 Now, this is a similar situation, but unlike the previous,
3 this one is on health grounds. My mobility is very slow now, and
4 I would like to be opened earlier so that I could assist in the
10:54:12 5 expeditiousness of this trial, to be in Court as early as
6 possible, and this is also on behalf of my two other colleagues,
7 because they help me most in doing some of the sanitary works
8 that the hospital nurses are not in a position to do. That is
9 the request.

10:54:34 10 In addition to this, I want to thank Your Lordships for
11 bearing with me throughout the course of this trial. I know the
12 [i ndi scerni ble] I gave the Bench, which were not intentional, and
13 so we have come to the stage where I may not have the opportunity
14 of saying thanks to all of you, including the Prosecution and
10:55:04 15 everybody who have contributed in bringing this trial to this
16 stage. That will be all, My Lords.

17 PRESIDING JUDGE: Thank you. Mr Norman, the records will
18 reflect what you've just stated. I'm sure you are eminently
19 aware that we, the members of the Bench, have been very much
10:55:58 20 concerned about the health of accused persons. It is a human
21 right, it is an entitlement and, of course, it is also an
22 emanation of the presumption of innocence; you have a right to be
23 healthy whilst you take your trial. And we have done everything
24 we judicially can to promote that interest. As you are aware, we
10:56:29 25 have always been advising the Registrar to intensify his efforts
26 in doing anything necessary to ensure the good health of the
27 accused persons. So, we can assure you that that interest is
28 paramount.

29 Anything good from the Prosecution side on this issue, or

1 any related issue before we adjourn?

2 MR KAMARA: My Lord, the fact that the Prosecution has
3 always maintained its empathy with the case of the first accused
4 in terms of his health, and we still so do. We had discussions
10:57:13 5 this morning about that.

6 PRESIDING JUDGE: Right.

7 MR KAMARA: Thank you, My Lord.

8 PRESIDING JUDGE: I appreciate it. Mr Pestman, you were
9 going to make a contribution?

10:57:23 10 MR PESTMAN: Not really, just a short announcement.

11 PRESIDING JUDGE: Right. Okay.

12 MR PESTMAN: I will be leaving on Sunday. I'm leaving our
13 case in the trusted hands of my colleague, Steven Powles.

14 JUDGE ITOE: You're not coming back?

10:57:40 15 MR PESTMAN: I'm definitely coming back.

16 PRESIDING JUDGE: That is very refreshing. I'm unable to
17 say exactly when, but I'm back, for sure.

18 JUDGE ITOE: We are reassured that you are coming back, and
19 that you are not abandoning us midstream.

10:58:03 20 PRESIDING JUDGE: If there's nothing else, we will adjourn
21 the trial to 9.30 on Monday morning.

22 [Whereupon the hearing adjourned at 11.00 a.m.,
23 to be reconvened on Monday, the 18th day of September
24 2006, at 9.30 a.m.]

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EXHIBITS:

Exhibit No. 157	6
Exhibit No. 158	6
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