



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

THURSDAY, 19 JANUARY 2006  
10.05 A. M.  
TRIAL

TRIAL CHAMBER I

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|-----------------------------------|--|
| Before the Judges:                | Pierre Boutet, Presiding<br>Bankole Thompson<br>Benjamin Mutanga Itoe  |
| For Chambers:                     | Ms Roza Salibekova<br>Ms Anna Matas  |
| For the Registry:                 | Mr Geoff Walker  |
| For the Prosecution:              | Mr Desmond de Silva<br>Mr Joseph Kamara<br>Mr Mohamed Bangura<br>Mr Kevin Tavener<br>Ms Bianca Suci u (Case Manager) |
| For the Principal Defender:       | Mr Vincent Nmeielle<br>Mr Ibrahim Mansaray (Legal assistant)   |
| For the accused Sam Hinga Norman: | Dr Bu-Buakei Jabbi<br>Mr John Wesley Hall<br>Mr Alusine Sesay  |
| For the accused Moinina Fofana:   | Mr Arrow Bockarie<br>Mr Michel Pestman<br>Mr Andrew Ianuzzi  |
| For the accused Allieu Kondewa:   | Mr Yada Williams   |

1 [CDF19JAN06A - CR]  
2 Thursday, 19 January 2006  
3 [Open session]  
4 [The accused present]

09:38:00 5 [Upon commencing at 10.05 a.m.]

6 PRESIDING JUDGE: Good morning. I would like first to  
7 apologise for this delay in starting the proceedings this  
8 morning. We clearly intended to start at 9.30, as we had said  
9 yesterday, to hear the oral arguments on the motion that is  
10 pending in front of this Chamber.

10:06:44

11 However, I was informed and the Chamber was informed just  
12 before coming to Court this morning that the Attorney-General had  
13 filed some documentation requesting the right to be heard on this  
14 motion. The document had been forwarded to the Registrar and not  
15 filed with the Court. So that's why we were not informed except  
16 for this morning.

10:07:09

17 The Attorney-General is requesting to be heard on behalf --  
18 that is President Kabbah is requesting to be heard through the  
19 Attorney-General and make submission on this particular motion.  
20 Before, as we briefly discussed yesterday, we felt and it is felt  
21 that it is of the utmost importance that the President or his  
22 representative in this case, the Attorney-General, be given that  
23 opportunity.

10:07:29

24 So to clarify, at least, the file on this, I would ask that  
25 the letter that was sent by the Attorney-General to the  
26 Registrar, a letter that was received by the office of the  
27 Registrar on 17th January, be filed as part of the Court record  
28 on these motions, as such. This will be filed together with the  
29 letter that was sent to the Attorney-General by the Registrar

10:07:48

1 yesterday to answer this letter, to reply to this letter.

2 Which puts us, obviously, in a different scenario this  
3 morning, because to allow the proper discussion and the proper  
4 assessment of this situation, it is only proper that we allow, in  
10:08:35 5 those circumstances, the Attorney-General and the President of  
6 the republic to make appropriate arguments. They have not, after  
7 verification this morning, provided any written response to the  
8 motion. They have been served upon the instruction of my brother  
9 Justice Thompson with the motions. They have not responded in  
10:09:01 10 writing to this.

11 What we will do now, in addition to ask that these  
12 documents be filed with the Court to be part of the documentation  
13 on this motion, we'll instruct the Attorney-General to file their  
14 positions and their arguments in writing within seven days of  
10:09:19 15 today. At that time, we will fix a date to hear the oral  
16 arguments again, and it is usual to do this at this particular  
17 moment unless we see if and what the response is. From that  
18 response, obviously the parties will have the right to reply, and  
19 from there on we will fix a date.

10:09:37 20 So that changes a bit the plan we had in mind yesterday and  
21 we were intending to proceed with this morning. So, this is the  
22 position that we are taking this morning. Therefore, we will not  
23 proceed to hear any oral arguments on that particular motion this  
24 morning.

10:10:05 25 Given that this is a motion that has been filed first by  
26 the counsel for the second accused, I will ask Mr Pestman if you  
27 have any comments on that. I know you, yesterday, were  
28 suggesting that the Attorney-General should be informed at least.  
29 Now you know he has been informed, that he intends to intervene.

1 Any comment?

2 MR PESTMAN: We can only encourage his intervention, so I  
3 request the Court to allow him to intervene. As soon as  
4 possible. We would like to clarify this matter. It is a shame  
10:10:33 5 we cannot discuss the issue today, but the sooner we can discuss  
6 it, the better.

7 PRESIDING JUDGE: We agree with you entirely. That is why  
8 we were intending to proceed with that today.

9 MR PESTMAN: Is it possible to take a decision today on his  
10:10:46 10 request to join this particular procedure or to intervene in this  
11 procedure, or is it necessary to await his written response  
12 first?

13 PRESIDING JUDGE: We should await his written response to  
14 see what it is that he's raising, otherwise we are going to be  
10:10:59 15 speculating at this particular moment. You will have copies of  
16 the documents, obviously, once it is filed with the Registry.

17 MR PESTMAN: Yes.

18 PRESIDING JUDGE: I can read to you the very last paragraph  
19 of the letter to the Registrar which says, "I hereby give notice  
10:11:15 20 that it is the Attorney-General's intention to apply for such a  
21 subpoena if and when issued to be set aside on constitutional and  
22 other legal bases".

23 MR PESTMAN: Is it possible to get a copy of it?

24 PRESIDING JUDGE: Yes.

10:11:32 25 MR PESTMAN: Is it possible to have it now so we can have a  
26 look at it?

27 JUDGE ITOE: Please wait. Don't be in a hurry.

28 PRESIDING JUDGE: I just said it will be filed with the  
29 court Registry and copies will be made and distributed to all the

1 parties.

2 MR PESTMAN: I'm too curious.

3 PRESIDING JUDGE: This is the only paragraph. It has three  
4 paragraphs. The other paragraphs are just descriptive.

10:11:54 5 MR PESTMAN: I can only encourage the Attorney-General --  
6 the President to intervene.

7 PRESIDING JUDGE: Thank you. Dr Jabbi?

8 MR JABBI: My Lord, certainly it is very necessary that the  
9 Court grants the request for the intervention by the  
10:12:10 10 Attorney-General. The last paragraph that was read is also very  
11 indicative, indeed. We give our entire support to it. That is  
12 to say, the acceptance of the request for the intervention.

13 However, My Lord, it seems that this issue is going to  
14 affect the question of the giving of testimony by the Defence on  
10:12:42 15 behalf of the first accused. My Lord, I don't know whether --  
16 what the plan for the rest of today's session is going to be, but  
17 depending on --

18 PRESIDING JUDGE: The plan was to deal with this issue  
19 first and then we will see.

10:13:00 20 MR JABBI: There will be some implications of our dealing  
21 with it which we would want to raise later on today.

22 PRESIDING JUDGE: Fine.

23 MR JABBI: Thank you very much, Your Honour.

24 PRESIDING JUDGE: Thank you. Mr Williams, you wish to say  
10:13:15 25 anything?

26 MR WILLIAMS: Nothing, My Lord.

27 PRESIDING JUDGE: Mr Prosecutor, welcome. Pleased to see  
28 you in this Court.

29 MR De SILVA: Well, I am pleased to be seen, My Lord. Of

1 course, in the light of what your Lordship has told us this  
2 morning, we clearly cannot proceed on the basis we had originally  
3 intended to this morning, so we will await developments in that  
4 regard. There is little I can add to what I have already said.

10:14:04 5 PRESIDING JUDGE: Thank you very much. So the oral hearing  
6 is postponed until further notice. In the meantime, as I say, I  
7 will repeat the instruction for the Attorney-General to file the  
8 written response to the application. The motions have been filed  
9 within seven days of today's date and from there on, we will see  
10:14:25 10 what happens and we will obviously advise the parties  
11 accordingly. The documents in question, Mr Officer of the Court,  
12 are given to you for proper filing with the Registry. As soon as  
13 they are filed, that copy should be made available to all the  
14 parties. Yes, Mr Pestman.

10:14:46 15 MR PESTMAN: Just one question, please, Your Honour. Will  
16 we be allowed to answer in writing to the response?

17 PRESIDING JUDGE: That's what I have said. I said will  
18 respond in writing and then the parties will be allowed normally  
19 to file a reply.

10:15:04 20 MR PESTMAN: Okay, I am sorry. Thank you.

21 PRESIDING JUDGE: So that concludes the proceedings about  
22 this particular motion this morning. We are coming back to the  
23 next step and what we had said we would be doing today, which was  
24 to proceed with the opening statements. But before we were to go  
10:15:17 25 there, I would just like to ask you, Mr Pestman, you had  
26 indicated yesterday that you would be ready on behalf of the  
27 second accused and that your opening statement would be of about  
28 20, 25 minutes, am I right?

29 MR PESTMAN: Yes, I think 25 minutes would be the time we

1 require.

2 PRESIDING JUDGE: Are you ready to proceed with that this  
3 morning?

10:15:42

4 MR PESTMAN: I have to ask my colleague on the left,  
5 because he will give the opening statement.

6 MR BOCKARIE: Yes, Your Honour.

7 PRESIDING JUDGE: Mr Bockarie, you are ready?

8 MR BOCKARIE: Yes, Your Honour.

10:15:50

9 PRESIDING JUDGE: Fine. The third accused. Mr Williams,  
10 on behalf of the third accused, are you ready to proceed with  
11 your opening statement this morning?

12 MR WILLIAMS: Yes, My Lord.

13 PRESIDING JUDGE: How long can we expect your statement to  
14 be?

10:16:00

15 MR WILLIAMS: 20 to 25 minutes, Your Honour.

16 PRESIDING JUDGE: You will be ready to deliver that as soon  
17 as possible this morning?

18 MR WILLIAMS: Certainly, My Lord.

10:16:13

19 PRESIDING JUDGE: Thank you. Mr Jabbi, you were raising  
20 some issues about this particular procedure, was it?

21 MR JABBI: Yes, My Lord.

22 PRESIDING JUDGE: Can we hear what you have to say?

10:16:31

23 MR JABBI: My Lord, first of all, with respect to the topic  
24 we are just dealing with, the opening statements by the accused  
25 persons, I am aware that yesterday your Lordships indicated your  
26 firm conclusions on this, and I would just want it to be noted as  
27 a preliminary point in the giving of opening statements by the  
28 accused persons that it is as a result of what transpired in  
29 Court on 14th and 15th June 2004, that the first accused is not

1 being allowed to exercise his right under Rule 84. I just want  
2 that to go into the record as a preliminary point in the giving  
3 of opening statements.

10:17:46 4 PRESIDING JUDGE: I should correct you on this issue to say  
5 that the accused has already exercised his right and he did that  
6 at that time. So that is why he is not allowed now to repeat and  
7 exercise his right once more. So he has been afforded that  
8 opportunity at the time. He decided to exercise his right at  
9 that time. He had been warned at that time that if he were to do  
10:18:04 10 it now, he would not be able to do it at a time of opening his  
11 defence and therefore, that is why he is not allowed to proceed  
12 with an opening statement this morning. I want the record to be  
13 very clear in this respect as well, Dr Jabbi. Obviously your  
14 comments are noted and they are on the record.

10:18:26 15 MR JABBI: My Lord, I am conceding to the version your  
16 Lordship --

17 PRESIDING JUDGE: Dr Jabbi, I don't want to get into  
18 arguments about that. We have disposed of it yesterday. I told  
19 you yesterday twice and I have repeated it again and we are not  
10:18:39 20 intending to pursue discussion on this particular issue. Your  
21 comments are properly noted.

22 MR JABBI: Thank you very much, My Lord.

23 My Lord, the second issue I would want to raise this  
24 morning relates to the time when the first accused may have to  
10:18:59 25 give evidence. My Lord, I believe there are two issues which now  
26 affect that situation.

27 The first, My Lord, is the procedural point that when the  
28 first accused is giving evidence, he's now handed over to the  
29 Court, as it were, and interaction with him on his evidence would



1 not be advisable or permitted without further reference to the  
2 Prosecution. This matter was raised yesterday by your Lordship.  
3 Now, My Lord, in our particular circumstance, the first accused  
4 has not hitherto given a clear indication that he is going to  
10:20:01 5 give evidence. It is only recently, that is from about a day or  
6 two ago, that some definite idea has appeared emerging. As a  
7 result of that delay in specifying whether he's going to give  
8 evidence, the team has not been able to go through the evidence  
9 he intends to give. It is extremely necessary, more particularly  
10:20:40 10 because he has also been away from the Court during the time most  
11 of the evidence has been given, it is very necessary that time be  
12 allowed so that the preparation of the evidence he intends to  
13 give can be effectively done in co-operation with court appointed  
14 counsel on his behalf.

10:21:11 15 My Lord, it therefore would now seem that if, as we  
16 proposed yesterday, the Court proposed yesterday, that the first  
17 accused commence his evidence on Friday, tomorrow --

18 PRESIDING JUDGE: Tomorrow.

19 MR JABBI: Yes, My Lord. It would then, in effect, deprive  
10:21:35 20 him of co-operation, interaction, collaboration with his defence  
21 team in order to chart out the evidence that he proposes to give.  
22 My Lord, this is a very practical situation of having to lead a  
23 certain witness. If time is not allowed for that interaction, it  
24 may well be that the witness and the counsel leading him may be  
10:22:09 25 at variance as to the sequence of the evidence to be given. It  
26 is, I submit, necessary --

27 PRESIDING JUDGE: I'm listening.

28 MR JABBI: So I submit, Your Honours, that it is necessary  
29 that ample time be allowed for that collaboration between the

1 first accused and his defence team in the preparation of his  
2 evidence. My Lord, the other thing that I believe affects this  
3 situation is what we have already dealt with in relation to the  
4 subpoena to the President to give evidence. It is clear, in all  
10:23:18 5 the circumstances, as your Lordship has already just expressed,  
6 that adequate time has to be allowed for the interactions and  
7 interventions necessary from that end.

8 My Lord, I believe this is tied in with the question of the  
9 first accused giving evidence. It may therefore endorse and  
10:23:52 10 enhance the suggestion that ample time be granted within which  
11 the first accused can also collaborate with his defence team for  
12 the preparation of the evidence he will give. I would like to  
13 stop there and see how your Lordships' minds are working on that  
14 suggestion and I will make more specific suggestions or  
10:24:16 15 applications thereafter.

16 PRESIDING JUDGE: Before I ask the Prosecution to speak  
17 about this issue, I do have a few questions. As to how our mind  
18 is working on this, we'll let you know later, but obviously we  
19 have to consult on this matter. But I do have some questions for  
10:24:35 20 you, if only to allow us to be able to understand your position  
21 more clearly. You're asking for additional time; what do you  
22 mean by this?

23 MR JABBI: I mean time beyond Friday, tomorrow.

24 PRESIDING JUDGE: So what does that mean?

10:24:51 25 MR JABBI: May I specify how much time?

26 PRESIDING JUDGE: Yes. I mean, you're asking for more  
27 time.

28 MR JABBI: Okay. I thought I could have led that later,  
29 but I don't mind proposing it. My Lord, in all practical

1 reality, it would be necessary to grant at least seven days for  
2 that collaborative exercise to be done.

3 PRESIDING JUDGE: In other words, you're saying with seven  
4 additional days for preparation, the accused will be able to  
10:25:31 5 testify next Friday; not tomorrow, but Friday next?

6 MR JABBI: Yes, My Lord.

7 PRESIDING JUDGE: Is that what you're saying?

8 MR JABBI: The time is not as ample as we would want, but  
9 we will endeavour, because the program of the session has already  
10:25:44 10 been set, we will endeavour to ensure that we can work within  
11 that time.

12 PRESIDING JUDGE: I will refrain from making comments. I  
13 am just asking questions. You will obviously get my comments and  
14 the comments from the Bench shortly. I need to discuss and  
10:26:04 15 consult with my brother judges on this matter. I'm highly  
16 concerned, suffice to say, at this particular moment you are  
17 making such a representation this morning, the very day before  
18 the accused is to give evidence, when you knew and the accused  
19 knew that this is the way we intended to proceed all along.

10:26:22 20 Having said that, I will not say any more. We'll see what the  
21 Prosecution has to say in this respect and we will take this  
22 matter under advisement and we will come back on it.

23 MR JABBI: Certainly.

24 PRESIDING JUDGE: Thank you. Mr Prosecutor.

10:26:38 25 MR De SILVA: This is an astonishing application.  
26 Astonishing for three reasons. It is astonishing that the  
27 defence team does not seem to be properly acquainted with the  
28 defendant's case, if he's got one. Secondly, it is astonishing  
29 that the defendant has failed in all this time to acquaint his

1 defence team adequately with his defence. So the fault is his  
2 own. He is the author of his own misfortune, if this is the  
3 case. Thirdly, if responsible counsel acting for the first  
4 accused have failed adequately in all this time to take proper  
10:28:02 5 instructions from their client, it is difficult to see how they  
6 could appropriately advance an application for this Court to  
7 indulge them with more time.

8 Looking at it as an outsider, regardless of whether I'm a  
9 prosecutor, it is our submission that it is conduct and delays of  
10:28:48 10 this kind that can bring the administration of international  
11 justice into disrepute. I must say, of all the surprises I  
12 expected this morning - perhaps I ought to have expected it --  
13 well, there it is, I won't say any more.

14 PRESIDING JUDGE: Thank you. You wish to reply, Mr Jabbi?

10:29:20 15 MR JABBI: Very briefly, My Lord. My Lord, surprise, if  
16 there is in this matter, may well be the seeming unawareness of  
17 the Prosecutor of the constraints that this team has constantly  
18 expressed in this Chamber in handling the situation of the first  
19 accused who had raised various submissions to this Court and put  
10:30:15 20 his own general attitude in line with those submissions. It is  
21 the accused person who has to cooperate with the demands of the  
22 Court before responsible counsel, to use the phrase of my learned  
23 colleague, can adequately and effectively do the work of  
24 representation within the parameters of the Court appointed  
10:31:06 25 counsel scheme that have been adopted here.

26 My Lord, the accused has his own reasons why he adopted  
27 certain attitudes which affected this relationship. One of those  
28 reasons has been, for instance, from his perspective, that having  
29 not been served with an indictment or arraigned --

1           PRESIDING JUDGE: Mr Jabbi, please, we don't want to go  
2 into this again.

3           JUDGE ITOE: Please.

4           PRESIDING JUDGE: We have heard enough of this.

10:31:47 5           MR JABBI: I'm just saying that there are these factors  
6 that have affected the interaction between the accused and his  
7 defence team. The effectiveness with which that defence team  
8 could have operated has been affected by that situation and it is  
9 because of that that this application has been made, My Lord. So  
10:32:19 10 I believe that the very demands of justice, whether in the  
11 international field or not, require that more emphasis be given  
12 to the rights of the accused and to the need for justice to be  
13 seen to be done, not just cosmetically dramatised. Those are the  
14 requirements that make it necessary that if in these  
10:33:04 15 circumstances it has not been possible for the defence team for  
16 the first accused to effectively interact with him for the  
17 purposes of preparing his defence, then the Court may be  
18 requested to allow what is, I believe, a minimal amplitude of  
19 time for that which could have been done for so long to be, in  
10:33:31 20 fact, done now. It is all in the interest of ensuring that the  
21 administration of international criminal justice is seen, indeed,  
22 to be truly fair in all the circumstances. Thank you very much,  
23 My Lord.

24           PRESIDING JUDGE: Thank you, Mr Jabbi.

10:34:02 25           JUDGE THOMPSON: Mr Prosecutor, you allege that the instant  
26 application is an example of conduct that may amount to bringing  
27 the administration of international criminal justice into  
28 disrepute.

29           MR De SILVA: It could do.

1 JUDGE THOMPSON: Do you want to elaborate on that? Because  
2 I would have thought that the concept of bringing international  
3 criminal justice -- the administration of international criminal  
4 justice into disrepute is a very grave concept. The threshold is  
10:34:41 5 a very high threshold. In other words, to what extent would an  
6 application by an accused person for some more time be seen to be  
7 come within that very, very delicate and carefully crafted  
8 concept of bringing the administration of criminal justice into  
9 disrepute?

10:35:11 10 MR De SILVA: It is not a very -- [Overlapping speakers]

11 JUDGE ITOE: Let me put it the other way around,  
12 Mr Prosecutor.

13 MR De SILVA: Of course.

14 JUDGE ITOE: Have you addressed the other side of the coin,  
10:35:23 15 where refusing such an application would indeed bring the conduct  
16 of international justice into disrepute?

17 MR De SILVA: My Lord, I have. I invite your Lordships to  
18 consider a proper analysis of the present application, which  
19 amounts to this --

10:35:45 20 JUDGE THOMPSON: Perhaps I would be enlightened if you were  
21 to articulate the concept of bringing the administration of  
22 justice into disrepute. In other words, on the decided  
23 jurisprudence, what kinds of conduct have been held to be conduct  
24 of such a nature that would bring the administration of justice  
10:36:05 25 into disrepute?

26 MR De SILVA: My Lord, the administration of justice,  
27 whether international or domestic, can be brought into disrepute  
28 in the sense that people lose confidence in it if justice isn't  
29 seen to be expeditiously attended to. I'm not going to go --

1 JUDGE THOMPSON: Would it be brought into disrepute if  
2 people see that the doctrine of equality of arms, which should,  
3 in fact, invade the entire process of international criminal  
4 justice, is not seen to be maintained?

10:37:00 5 MR De SILVA: Quite so. I entirely agree with Your  
6 Lordship, and to pick up on a phrase used by my friend Mr Jabbi a  
7 few minutes ago, he said there should be more emphasis for the  
8 rights of the accused - more emphasis. The rights of the accused  
9 must at all times be protected by a Court and nobody for one  
10:37:15 10 single solitary moment should suggest otherwise. The rights of  
11 the Prosecution have also got to be protected. Because the  
12 Prosecution represents not just the public, not just the  
13 international community in an international criminal court, but  
14 all those people who suffered and were done to death in  
10:37:41 15 circumstances in which they could cry out for justice and speedy  
16 justice. There are balancing forces.

17 I cannot understand, and this is a personal view, how, in  
18 the next seven days, there is going to be some remarkable  
19 transformation in the relationship that has existed between the  
10:38:07 20 first defendant and his counsel that hasn't existed in the past  
21 seven days.

22 JUDGE THOMPSON: Resist the temptation to speculate on that  
23 matter.

24 MR De SILVA: Well, I'm simply trying to be logical. I  
10:38:23 25 cannot help it. I'm simply trying to be logical. If we are  
26 assured -- if your Lordships are satisfied in your own minds that  
27 in the next seven days there are going to be revelations to the  
28 Defence team that, for some reason, haven't been made in the past  
29 seven days, well, of course, it's entirely a matter for your

1 Lordships.

2 JUDGE THOMPSON: And their Lordships will refuse to  
3 entertain this kind of invitation into a speculative kind of  
4 arena.

10:38:56 5 MR De SILVA: There it is, My Lord. I've made my comments  
6 in relation to what Your Lordship has asked of me.

7 PRESIDING JUDGE: Thank you, Mr Prosecutor. We will take  
8 this matter under advisement now and we will come back as soon as  
9 we have reached a decision about this particular application.

10:39:26 10 The opening statements, as such, will follow our decision.

11 [Break taken at 10.40 a.m.]

12 [CDF19JAN06B - EKD]

13 [Upon resuming at 11.45 a.m.]

14 PRESIDING JUDGE: Before proceeding with the opening  
11:45:47 15 statements, we will issue the oral ruling on matters that have  
16 been raised this morning.

17 [Ruling]

18 Trial Chamber I of the Special Court for Sierra Leone,  
19 composed of Honourable Justice Pierre Boutet, Presiding Judge,  
11:45:59 20 and Honourable Justice Bankole Thompson and Honourable Justice  
21 Benjamin Mutanga Itoe, grants leave for the Attorney-General and  
22 Minister of Justice for the Republic of Sierra Leone to intervene  
23 in the following proceedings: The Fofana motion for issuance of  
24 a subpoena ad testificandum to President Ahmad Tejan Kabbah filed  
11:46:27 25 by court appointed counsel for the second accused,

26 Moinina Fofana, on 15th December 2005 and called Fofana motion,  
27 and Norman motion for issuance of a subpoena ad testificandum to  
28 His Excellency Ahmad Tejan Kabbah, President of the Republic of  
29 Sierra Leone, filed by court appointed counsel for first accused,



1 Sam Hinga Norman, on 15th December 2005, and hereby issues the  
2 following orders:

3 The Attorney-General and Minister of Justice of the  
4 Republic of Sierra Leone shall file with the Court a written  
11:47:03 5 response to the Norman motion and Fofana motion within seven days  
6 of the receipt of this order but no later than Thursday,  
7 26th January 2006 at 4 p.m.;

8 Counsel for Fofana and counsel for Norman shall file a  
9 reply to the said response of the Attorney-General, if any,  
11:47:24 10 within five days of the receipt of such response, but no later  
11 than Tuesday 31st January 2006 at 4 p.m.;

12 The Attorney-General and Minister of Justice for the  
13 Republic of Sierra Leone may present arguments, if he so wishes,  
14 at the oral hearing before the Chamber on a date to be  
11:47:42 15 communicated to him;

16 Four, the Court Management is to serve the Attorney-General  
17 and Minister of Justice for the Republic of Sierra Leone with the  
18 certified copies of the Norman motion, Fofana motion, Prosecution  
19 response to Norman motion, Prosecution response to Fofana motion,  
11:48:00 20 Norman reply and Fofana reply.

21 Done at Freetown, Sierra Leone, this 19th day of January  
22 2006.

23 This oral ruling will be transcribed into a written ruling  
24 later on today.

11:48:25 25 The other issue that we had deal with has to do with the  
26 application made by counsel for the first accused for a  
27 postponement of the testimony of the first accused.

28 [Ruling]

29 After careful consideration and deliberation of this

1 application for a postponement of the commencement of the  
2 testimony of the first accused, the Chamber orders as follows:  
3 The first accused is to commence his testimony on Tuesday next  
4 week at 9.30 a.m. This is the extension that we are prepared to  
11:49:09 5 grant at this particular moment. We are satisfied that in those  
6 circumstances that should allow counsel to properly organise the  
7 preparation of the evidence of the first accused. So that  
8 concludes this aspect of the proceedings.

9 Going back to what we had said will be this morning the  
11:49:37 10 opening statements, before I ask Mr Bockarie to make the opening  
11 statement on behalf of the second accused, I would like first to  
12 acknowledge the presence in court this morning as well of the  
13 Principal Defender, and I would like to ask Mr Principal Defender  
14 to identify himself and introduce himself to the Court.

11:49:58 15 MR NMEHIELLE: Thank you, Your Honour. Vincent Nmehielle.

16 PRESIDING JUDGE: Thank you, Mr Principal Defender.

17 Mr Bockarie, are you now ready --

18 MR JABBI: [Microphone not activated].

19 PRESIDING JUDGE: Open your mic, please.

11:50:17 20 THE INTERPRETER: Microphone.

21 MR JABBI: As a result of the ruling just given in respect  
22 of the postponement of the Norman testimony, I wish to refer to  
23 an order given in the consequential order filed yesterday. That  
24 is Order 5. "Counsel for Norman to disclose to the Prosecution  
11:50:47 25 and file with the Court any statement that may reflect counsel's  
26 general understanding of the prospective testimony of the first  
27 accused as soon as possible, but no later than Thursday, 19th  
28 January" --

29 PRESIDING JUDGE: Mr Jabbi, you're going too fast.

1 MR JABBI: Sorry.

2 PRESIDING JUDGE: Could you go back in time and just take  
3 what you were just quoting, and slowly please, because the  
4 interpreters are unable to follow what you say.

11:51:17 5 MR JABBI: Sorry, My Lord. I just want to refer to the  
6 fifth order in the consequential order that was filed yesterday  
7 as a result of the ruling on the postponement of the Norman  
8 testimony. If I may just read that fifth order of yesterday's  
9 consequential orders. It is Order 5, which reads as follows:

11:52:00 10 "Counsel for Norman to disclose to the Prosecution and file  
11 with the Court any statement that may reflect counsel's general  
12 understanding of the prospective testimony of the first accused  
13 as soon as possible, but no later than Thursday, 19th January  
14 2006, 12.00 p.m. "

11:52:45 15 PRESIDING JUDGE: Mr Jabbi, to facilitate your concerns at  
16 this particular moment, we are quite prepared to grant an  
17 extension of this order so that it be compatible with our  
18 decision this morning. So it shall be ready and delivered by  
19 next Tuesday, which is 24 January, rather than the specified date  
11:53:02 20 of 19 January.

21 MR JABBI: Thank you very much, My Lord.

22 PRESIDING JUDGE: Does that satisfy your requirement?

23 MR JABBI: That's right, My Lord.

24 JUDGE ITOE: Otherwise you're just about five minutes away  
11:53:12 25 from the date limit that was set.

26 MR TAVENER: Perhaps that order could be changed to the  
27 Monday. I understand Mr Norman will be testifying on the  
28 Tuesday, so perhaps if we can have the day before. My  
29 understanding is your order was --

1           PRESIDING JUDGE: Yes, it is Tuesday, 24 January that the  
2 first accused is to commence his testimony, at 9.30. You are  
3 quite right. This is the order.

4           MR TAVENER: That's correct. Therefore, could we have the  
11:53:39 5 summary prior to that time? I understand the order was set to  
6 Tuesday. We need it on the Monday.

7           PRESIDING JUDGE: Dr Jabbi, it might facilitate the trial  
8 if it was possible for you to have that delivered. I said we  
9 were prepared to grant an extension to Tuesday, but to make sense  
11:54:01 10 it might be better if it was delivered some time the previous day  
11 rather than the date that the witness is to start giving  
12 evidence.

13           MR JABBI: My Lord, may we ask for 3 o'clock, then, the  
14 previous day.

11:54:13 15           PRESIDING JUDGE: Three o'clock is granted.

16           MR JABBI: Thank you very much.

17           PRESIDING JUDGE: So 3 o'clock on Monday 23rd January.

18           MR JABBI: Yes, My Lord.

19           PRESIDING JUDGE: That's fine.

11:54:19 20           MR JABBI: Thank you very much.

21           PRESIDING JUDGE: Mr Tavener, it is better than 9.30 on the  
22 24th, so it is a good compromise.

23           MR TAVENER: It is an improvement; thank you, Your Honour.

24           PRESIDING JUDGE: So that disposes of these matters. Now  
11:54:34 25 we are to you, Mr Bockarie. Are you prepared now to deliver the  
26 opening statement on behalf of the second accused?

27           MR BOCKARIE: Yes, Your Honour.

28           PRESIDING JUDGE: We are listening to you.

29           MR BOCKARIE: Good morning again, Your Honours. Your

1 Honours, over the course of the next few months, through the  
2 production of both testimony and documentary evidence, we shall  
3 endeavour to emphasise that which we submit has been clear from  
4 the outset of this case. Namely, that Moinina Fofana --

11:55:07 5 JUDGE THOMPSON: Before the intervention of the  
6 interpreters, would you moderate your pace, please.

7 MR BOCKARIE: I will, Your Honour.

8 PRESIDING JUDGE: Go ahead.

9 MR BOCKARIE: Namely, that Moinina Fofana, the so-called  
11:55:24 10 Director of War of the CDF, is not an individual who bears the  
11 greatest responsibility for serious violations of international  
12 humanitarian law committed in the territory of Sierra Leone, as  
13 charged in the Prosecution's indictment.

14 It is an interesting document, this indictment. For many  
11:55:51 15 reasons, not that least of which because it may be the very  
16 first charging instrument --

17 JUDGE ITOE: Mr Bockarie, are you sure you are moving at a  
18 pace that is acceptable to the translators?

19 MR BOCKARIE: I will slow down, Your Honour.

11:56:11 20 PRESIDING JUDGE: We can follow but you are about to be  
21 interrupted by the translators again. So please slow down. Try  
22 it again.

23 MR BOCKARIE: I will, Your Honour.

24 It is an interesting document, this indictment. And for  
11:56:35 25 many reasons, not least of which because it may be the very first  
26 charging instrument in the albeit short history of modern  
27 international criminal law in which the prosecuting authority has  
28 sought to provide certain individuals of their liberty, not only  
29 because they have allegedly committed acts which offend the law,

1 but because they have purportedly done so in such an aggravated  
2 way as to mark them as somehow exceptionally culpable. Mr Fofana  
3 and his co-accused, we are told by the Prosecution, are the very  
4 cause of Sierra Leone's present misery. Their exceptional  
11:57:24 5 culpability somehow commensurates in magnitude with the equally  
6 exceptional features of this Special Court.

7 Indeed, much has been written and spoken about the novel  
8 aspect of this Tribunal; its hybrid nature; the fact it sits  
9 proudly, safely in the country where the alleged crimes were  
11:57:55 10 committed; the creation of a so-called fourth pillar to protect  
11 the rights of the accused. But far less trumpeting has signaled  
12 the arrival of a further innovation, if that is the right word.

13 One whose import and reach is perhaps belied by its rather subtle  
14 entry into the stage of international criminal law. We refer, of  
11:58:31 15 course, to the concept of comparative liability embedded in the  
16 Statute of this Special Court. Greatest responsibility; an  
17 intriguing phrase, no doubt. But what exactly does it mean? We  
18 have heard from the Prosecution that the concept exists merely as  
19 a check on its discretion, whereas we, the Defence, having  
11:59:04 20 insisted that it amounts to a strict jurisdictional requirement.

21 Not surprisingly, this Chamber has hewn to a rather judicious  
22 middle ground, holding that the notion is best understood as an  
23 evidentiary one, whose contours and true meaning will be revealed  
24 at this trial stage. Your Honours, as we are about to begin part  
11:59:43 25 two, so to speak, of this trial stage, we submit that it is  
26 useful - in fact, imperative - to direct our attention and energy  
27 to the significance of that phrase.

28 Your Honours, the fundamental premise of this Special Court  
29 is a qualified one. That premise, articulated in the very first

1 article of this Court's Statute implicitly holds that while many  
2 atrocities have been committed in this country by a variety of  
3 actors, there must exist an identifiable subgroup of perpetrators  
4 who, by virtue of certain as-yet-undetermined criteria, bear a  
12:00:31 5 heightened level of culpability. The guiltiest amongst the  
6 guilty. International justice in Sierra Leone, it seems, is not  
7 absolute, but rather a comparative concept. Greatest  
8 responsibility, Your Honours, as a theory of liability, a truly  
9 novel one indeed. One that, as applied by the Prosecution to  
12:01:06 10 Mr Fofana's case, we have urged and continue to urge this Chamber  
11 to reject.

12 Your Honours, in his seminal work, A Theory of Justice,  
13 John Rawls wrote, "A theory, however elegant and economical, must  
14 be rejected and revised if it is untrue." Of course, it is  
12:01:39 15 Your Honours, compelled as you are to ensure that a just, that is  
16 to say a fair --

17 THE INTERPRETER: Your Honours, can learned counsel go a  
18 little slowly for the interpreters to follow.

19 PRESIDING JUDGE: You heard that, Mr Bockarie? The  
12:01:51 20 interpreter is asking that you slow down, please.

21 MR BOCKARIE: I will.

22 PRESIDING JUDGE: Please proceed.

23 MR BOCKARIE: In his seminal work, A Theory of Justice,  
24 John Rawls wrote, "A theory, however elegant and economical, must  
12:02:21 25 be rejected and revised if it is untrue." Of course, it is  
26 Your Honours, compelled as you are to ensure that a just, and  
27 that is to say, a fair outcome results from this Special Court  
28 proceedings, who will assess the Prosecution theory of liability,  
29 you will shoulder the difficult, some might say the enviable

1 [sic] task of looking back over a decade of senseless misery and  
2 bloodshed involving countless individuals, a variety of  
3 governments, as well as domestic, regional and international  
4 organisations; and ultimately you will determine whether

12:03:45 5 Mr Fofana should be called to account or whether Mr Fofana should  
6 forfeit his liberty. We submit, as we have from the onset of  
7 this case, as we reiterated at the close of the Prosecution's  
8 case, and as our own evidence before that illustrates, that the  
9 Prosecution's theory, however elegant and economical, is  
12:04:36 10 rhetorical packaging, is simply untrue. As a matter of fairness,  
11 you must reject it.

12 PRESIDING JUDGE: Mr Bockarie, I don't want to interrupt  
13 you, but I would like to direct your attention to the content of  
14 Rule 84, which spells out what an opening statement is to be  
15 about as such. Unless you tell me that what you are talking  
16 about now is sort of an introduction to what you are about to  
17 launch into, as such, it's fine. But I just want to make sure  
18 that you are complying with Rule 84, which provides that at the  
19 opening of its case a party may make an opening statement

12:05:00 20 confined to the evidence he intends to present in support of his  
21 case. So presumably this is -- I say presumably, because from  
22 what you are saying at this particular moment I am not sure that  
23 is where you are leading to. I want to make sure we are indeed  
24 moving in that direction. The opening statements is not the  
12:05:44 25 arguments at the end of the trial, as such. It is essentially to  
26 assist the Court in appreciating the position of your client and  
27 the position that you will be taking with reference to the  
28 evidence you intend to lead. Again, I don't want to cut you off  
29 on this.



1 JUDGE THOMPSON: I would like to echo what the learned  
2 Presiding Judge has said. Clearly myself looked at Rule 84 and  
3 thought perhaps we should keep within the statutory requirements  
4 of 84, and perhaps keep John Rawls and his theory of justice for  
12:06:16 5 some later stage.

6 MR BOCKARIE: Yes, Your Honour. I am trying to keep within  
7 the confines of the Rules.

8 JUDGE ITOE: We only hope that these comments are  
9 preliminary to the main thrust of the exercise you are  
12:06:31 10 undertaking.

11 MR BOCKARIE: Yes, Your Honour. I'm just taking the cue  
12 from the Prosecutor's opening statement. He was given very wide  
13 latitude and he really went to town. Yes, Your Honour.

14 JUDGE ITOE: Not this one. Not this one.

12:06:46 15 MR BOCKARIE: Your Honour, in his opening statement the  
16 Prosecutor urged the Court to bar politics from these  
17 proceedings. At first blush, such admonition has the deceptive  
18 appeal of its simplicity. But as we enter this Chamber, we  
19 cannot close our eyes to the reality that exists beyond his  
12:07:20 20 words. For better or for worse, politics is never far from any  
21 trial and these proceedings are no exception.

22 JUDGE THOMPSON: Could you repeat that, please?

23 MR BOCKARIE: In his opening statement the Prosecutor urged  
24 the Court to bar politics from these proceedings. At first  
12:07:50 25 blush, such admonition has the deceptive appeal of its  
26 simplicity. But as we enter this Chamber, we cannot close our  
27 eyes to the reality that exists beyond these words. For better  
28 or for worse, politics is never far from any trial, and these  
29 proceedings are no exceptions. It was politics that created the

1 Special Court, through negotiations between the government of  
2 President Ahmad Tejan Kabbah and the United Nations, and it is  
3 politics that sustains it through continued negotiations with a  
4 small group of donor nations who fund this Tribunal. Rather than  
12:08:44 5 asking, Your Honours, our client, or indeed the people of  
6 Sierra Leone, to ignore these realities, we take comfort in the  
7 knowledge that you shall not allow this undeniable, perhaps  
8 unavoidable, political aspect to stand in the way of your  
9 responsibility to act fairly. For in the final analysis, it is  
12:09:11 10 some measure of fairness, and not the avoidance of plain truths,  
11 that justice should hope to achieve.

12 While it will not be helpful at this point to canvass  
13 various political factors and practical considerations that gave  
14 rise to the inclusion in the Court's Statute the phrase "greatest  
12:09:37 15 responsibility", we would be negligent in our duty if we did not  
16 emphasise that in this case, indeed in all cases before this  
17 Tribunal, are bound to that phrase, a phrase which undeniably  
18 represents a political compromise reached by the drafters of the  
19 Special Court's Statute. Either these words have a paramount  
12:10:03 20 overreaching significance or they have no significance at all.  
21 As we proceed with our defence, we urge the Chamber, as well as  
22 those members of the public following the proceedings, to bear  
23 that close in mind.

24 We will not tarry long with a lengthy resume of what we  
12:10:23 25 consider to be the weakness of the Prosecution's case, for we are  
26 confident that those deficiencies will present themselves as we  
27 proceed with our case. Our present task is to set about  
28 clarifying our position, namely, that Moinina Fofana bears no,  
29 let alone the greatest responsibility for the charges alleged in

1 the Prosecution's indictment.

2 Most importantly, our defence case will highlight the  
3 significant divergence between the allegations contained in the  
4 indictment and the actual state of evidence against Mr Fofana.  
5 Our evidence will reveal that Mr Fofana, despite his admittedly  
6 impressive sounding title, was in reality a figure of relatively  
7 minor importance within the CDF. And the actual and effective  
8 superior authority was vested in figures of much greater  
9 responsibility --

12:11:33 10 THE INTERPRETER: Your Honours, can I learned counsel take it  
11 slowly again, please.

12 PRESIDING JUDGE: Mr Bockarie, can you go back a bit to  
13 this last part, because you are going too fast again. The  
14 interpreters are unable to follow with you. Take it back to the  
12:11:50 15 evidence will show that Fofana --

16 MR BOCKARIE: Okay, sorry.

17 Most importantly our defence case will highlight the  
18 significant divergence between the allegations contained in the  
19 indictment and the actual state of evidence against Mr Fofana.  
12:12:36 20 Our evidence will reveal that Mr Fofana, despite his admittedly  
21 impressive sounding title, was in reality a figure of relatively  
22 minor importance within the CDF; and that actual and effective  
23 superior authority was vested in figures of much greater  
24 responsibility, including members of the SLPP leadership in exile  
12:13:31 25 and other CDF officials and commanders in Sierra Leone, some of  
26 whom, we might add, are not facing trial before this Court.

27 Mr Fofana will not attempt to deny his membership in the  
28 CDF. How could he? Indeed, why should he? He is proud of the  
29 legitimate role he played in defending his country, restoring its

1 democratically elected government and working towards the  
2 attainment of its peace and stability.

3           Additionally, our defence case will reveal that the  
4 Prosecution's theory of command responsibility, pursuant to  
12:14:57 5 Article 6.3 of the Statute, is not only premised upon assertion  
6 far too vague to satisfy the strict elements of the relevant  
7 legal test, but is also propped up by equally vague and  
8 irrelevant evidence, evidence which fails to demonstrate that  
9 Mr Fofana ever achieved the level of effective control over the  
12:16:25 10 alleged perpetrators of the underlying offences charged in this  
11 indictment.

12           We will further show that Mr Fofana does not bear  
13 individual criminal responsibility under Article 6.1 of the  
14 Statute, through evidence which reveals that he never planned,  
12:17:04 15 instigated, ordered, or committed any of the alleged crimes, nor  
16 did he otherwise aid or abet their perpetration. In part, the  
17 Defence will accomplish this by exposing the Prosecutor's key  
18 witness, Mr Albert Nallo, for who he is: A calculating,  
19 self-interested, opportunist whose testimony --

12:18:08 20           PRESIDING JUDGE: But again, Mr Bockarie, you are arguing.  
21 This is an argument that you can put forward at the time of your  
22 closing arguments. Not in the opening statement. I mean,  
23 opening statements --

24           MR BOCKARIE: Sorry, Your Honours, I'm on the channel with  
12:18:22 25 the interpreters. Sorry.

26           PRESIDING JUDGE: To argue about the validity and  
27 trustworthiness or otherwise of a witness for the Prosecution is  
28 not part of what is normally contained in an opening statement,  
29 as such. It is to be confined to the evidence you intend to

1 lead. If you intend to lead evidence to show this witness should  
2 not to be trusted, fine. But now you are arguing this witness is  
3 not to be believed and so on, which I suggest to you is quite  
4 proper for you to do and fully in your closing arguments, not in  
12:18:52 5 opening arguments. So I would like you to confine your comments  
6 to what are expected to be opening statements, as such.

7 MR BOCKARIE: Yes, I will take the cue, Your Honour.

8 Finally, Your Honour, we'll show that Mr Fofana did not  
9 share an illegal common plan --

12:19:13 10 PRESIDING JUDGE: Did not share what?

11 MR BOCKARIE: An illegal common plan, purpose or design  
12 with either of the other accused persons or any other members of  
13 the CDF. That is to say, that he did not participate in any  
14 joint criminal enterprise. On the contrary, our evidence will  
12:20:28 15 describe Mr Fofana's participation in the execution of legitimate  
16 military goals. Our evidence will reveal that the violations  
17 alleged in the indictment, to the extent they occurred, were the  
18 fault of renegade commanders and individual Kamajors who did not  
19 adhere to the stated rules, which mandated the protection of  
12:21:40 20 civilians and forbade such acts as looting and harassing the  
21 population. Our evidence will show that such isolated  
22 transgressions were not the fault of a general criminal policy,  
23 but rather the fault of certain offenders acting outside the  
24 authority.

12:22:36 25 Your Honour, by way of concluding this opening statement  
26 the Prosecution chose to quote a passage attributed to the late  
27 Steve Biko of South Africa:

28 "There exists among men, because they are men, a solidarity  
29 through which each shares responsibility for every injustice and

1 every wrong committed in the world."

2 Stirring lines, to be sure, especially considering the  
3 context in which they were originally delivered and the great  
4 evil to which they referred. However, spoken as they were in  
12:23:48 5 this Chamber, as a paean to the rule of law and in support of the  
6 putative aspirations of this Court, they are contrary to one of  
7 the guiding and most basic principles of contemporary criminal  
8 justice. For the modern criminal law does not recognise, indeed  
9 it does not tolerate, notions of collective or representative  
12:24:46 10 culpability. Such notions, Your Honour, are manifestly at odds  
11 with the fundamental principle of individual culpability, because  
12 they raise the spectre of guilt by association.

13 Your Honour, perhaps more apt to the CDF proceedings are  
14 again the words of this famous scholar, John Rawls: "Each person  
12:25:50 15 possesses an inviolability founded on justice that even the  
16 welfare of society as a whole cannot override. For this reason,  
17 justice denies that the loss of freedom for some is made  
18 right --"

19 THE INTERPRETER: Can learned counsel take the quotation  
12:26:16 20 slowly for the interpreter to follow, please?

21 PRESIDING JUDGE: Mr Bockarie, can you take the quotation  
22 back again, please, slowly?

23 MR BOCKARIE: Perhaps more apt to these proceedings are  
24 again the words of a famous scholar, John Rawls: "Each person  
12:26:36 25 possesses an inviolability founded on justice that even the  
26 welfare of society as a whole cannot override. For this reason,  
27 justice denies that the loss of freedom for some is made right by  
28 a greater good shared by others. It does not allow that the  
29 sacrifice imposed on a few are outweighed by the larger sum of

1 advantages enjoyed by many."

2 Your Honour, the Prosecution has suggested that this Court  
3 represents the conscience of mankind. However, at the very  
4 moment that justice is employed as a means of assuaging mankind's  
12:28:09 5 guilty conscience at the expense of individual liberty, it ceases  
6 to be a worthy pursuit, Your Honour.

7 PRESIDING JUDGE: I am not sure I understand what you are  
8 trying to convey to the Court, honestly. I would like to  
9 understand what the message you are trying to convey is. What is  
12:28:43 10 this argument about?

11 JUDGE THOMPSON: Learned counsel, isn't it better that you  
12 keep to the strict requirements of Rule 84? Those kinds of  
13 assertions would seem to be very much appropriate in the context  
14 of an academic treatise or probably in a closing speech, because  
12:29:10 15 they are all about theories of justice and John Rawls' A Theory  
16 of Justice was really confined to philosophising about the  
17 concept of justice. It would seem to me that you do this Court  
18 no service if, at a point in time, you are called upon to present  
19 the evidence that you will be leading in refutation and rebuttal  
12:29:39 20 of the Prosecution's evidence that has been led, you embark upon  
21 a jurisprudential exploration about the concept and the ideals of  
22 justice. This is a very mature bench. We all did jurisprudence.  
23 We are all familiar with, in fact, what the values that inspire  
24 the entire justice process are. And clearly it would not serve  
12:30:09 25 any useful purpose for us to listen to a lecture on the theories  
26 of justice. I have a copy of John Rawls' Theory and when I do  
27 find the time I find it a very useful armchair reading. It would  
28 seem to me most appropriate that you should go to the evidence  
29 that you will be leading in rebuttal of what the Prosecution has

1 led. It would be unfair if this Court does not tell you that  
2 that is the way to proceed in the interests of your client.  
3 Rule 84.

12:30:55 4 MR BOCKARIE: Yes, Your Honour. Your Honour, it is just to  
5 give an insight as to the line we contemplate in our defence,  
6 Your Honour.

7 JUDGE THOMPSON: But to try to instruct the justices on the  
8 concept of what justice is all about is very presumptuous.

9 MR BOCKARIE: I think I will rest my case there,  
12:31:16 10 Your Honour.

11 JUDGE THOMPSON: Quite right.

12 MR BOCKARIE: Thank you, Your Honour.

13 PRESIDING JUDGE: Thank you, Mr Bockarie. Mr Williams, are  
14 you ready to address the Court and make your opening statement?

12:31:28 15 MR WILLIAMS: Yes, My Lord.

16 PRESIDING JUDGE: You have just heard our comments to your  
17 colleague for the second accused and, before you proceed, I would  
18 like to remind you again of the nature and content of Rule 84 and  
19 what an opening statement prior to the opening of a defence case  
12:31:48 20 is all about. It has to be confined to the evidence that you  
21 lead and bring in introductory remarks is obviously part of the  
22 opening statement. But I would like to hear your comments  
23 confined to the evidence you intend to lead in respect of your  
24 client.

12:32:04 25 MR WILLIAMS: I will assure the Bench that I would not have  
26 to be reminded about the gist of Rule 84.

27 PRESIDING JUDGE: And just a caution, Mr Williams, as you  
28 know, the interpreters have to follow what you do say and try to  
29 keep a tempo that is compatible with their ability to interpret



1 what you are saying.

2 MR WILLIAMS: Thank you very much, My Lord.

3 PRESIDING JUDGE: Thank you.

12:32:40

4 MR WILLIAMS: My Lord, I wish to say that I might come out  
5 a little bit inaudible because I am just recovering from a flu,  
6 so I crave the indulgence of the Bench and the interpreters.

7 PRESIDING JUDGE: I do understand that.

12:33:02

8 MR WILLIAMS: Yes. May it please Your Lordships, the third  
9 accused, Allieu Kondewa, stands charged on an eight count  
10 indictment for various crimes against humanity, violations of  
11 Article 3 common to the Geneva Conventions and of Additional  
12 Protocol II and other serious violations of international  
13 humanitarian law. All these offences were alleged to have been  
14 committed by the third accused within the territory of  
15 Sierra Leone after 30th November 1996.

12:33:39

16 It is alleged by the Prosecutor that the third accused was  
17 a high-ranking member of the Civil Defence Forces; the CDF. It  
18 is further alleged that the third accused was in charge of all  
19 initiations performed on new members of the Kamajor; a  
20 traditional hunting society. As a result of these initiations,  
21 it is alleged that the third accused bears command responsibility  
22 for atrocities and/or war crimes committed by CDF members.

12:34:26

23 It is the Prosecutor's view that the third accused, acting  
24 in consonance with others, "Either planned, instigated, ordered,  
25 committed, or otherwise aided and abetted in the planning,  
26 preparation or execution of the crimes laid out in the  
27 indictment."

12:35:41

28 The Prosecutor furthermore alleges that the third accused,  
29 Allieu Kondewa, as high priest, had had supervision and control

1 over initiators within the CDF and was responsible for all  
2 initiations within the CDF, including the initiation of children  
3 under the age of 15 years.

4 Furthermore, he frequently led or directed operations and  
12:36:56 5 had direct command authority over units within the CDF  
6 responsible for carrying out special missions. We shall, during  
7 the presentation of our defence, controvert these allegations.

8 Evidence will be adduced on behalf of the third accused  
9 that will make clear to this panel the history of the Kamajors  
12:37:34 10 going back several decades. We shall lead evidence to show that  
11 the Kamajors derive from traditional hunter societies in  
12 Sierra Leone, and that its members come from the Mende tribe.

13 The Defence for the third accused shall not gainsay that  
14 the third accused was an initiator. The Prosecutor has  
12:38:35 15 represented to this panel that membership of the Kamajor society  
16 is one and the same with the membership of the CDF paramilitary  
17 forces. We shall present evidence to this Court to show that the  
18 membership of the Kamajor society is by no means synonymous with  
19 membership of the CDF.

12:39:15 20 JUDGE THOMPSON: Without meaning to disturb your rhythm,  
21 would you use the term "Chamber" for us, or "the Bench", instead  
22 of panel.

23 MR WILLIAMS: As My Lord pleases.

24 We will show that initiation ceremonies performed by the  
12:39:50 25 third accused was not in any way equivalent to conscription or  
26 enlistment into a military unit.

27 JUDGE ITOE: Let's get that again. Was not necessarily or  
28 was not?

29 MR WILLIAMS: Was not in any way equivalent to conscription

1 or enlistment into a military unit.

2 JUDGE THOMPSON: That is initiation.

3 PRESIDING JUDGE: Yes.

4 JUDGE THOMPSON: You said initiation.

12:40:27 5 MR WILLIAMS: Yes, My Lord.

6 JUDGE THOMPSON: Good, thanks.

7 PRESIDING JUDGE: Initiation by the third accused, that's  
8 what he said.

9 MR WILLIAMS: Yes. We shall show that the initiation  
12:40:40 10 ceremonies performed by the third accused were defensive or  
11 protective in nature. Their purpose was not to teach violence or  
12 advocate criminal conduct. Quite the contrary. The process of  
13 initiation cancelled and admonished against the killing of  
14 innocent civilians and non-combatants, rape and looting of  
12:41:36 15 civilian properties. We shall establish that the initiation  
16 process was geared towards the protection of prospective members  
17 in a manner that was far closer to tribal custom than to formal  
18 or even informal military indoctrination. Evidence will be led  
19 by the third accused that will reveal that it was paramount  
12:42:44 20 chiefs of various chiefdoms that selected subjects of their  
21 villages for initiation.

22 It would appear that the Prosecutor finds difficulty in  
23 distinguishing between initiation into traditional hunter  
24 societies and recruitment to fight. This distinction is vitally  
12:43:26 25 important, since initiation is not the same as military  
26 indoctrination or training.

27 We shall present evidence to show that the ceremony of  
28 initiation involved a ritualistic cleansing and that this was  
29 done by rubbing the bodies of prospective members with a mixture

1 of herbs and water. Evidence will be led that the third accused  
2 painstakingly told initiates that they had to strictly adhere to  
3 the initiation rules. We shall adduce evidence that after the  
4 initiation, the initiates were handed back to the paramount  
12:44:52 5 chiefs and that it was the paramount chiefs that decided what  
6 became of the initiate.

7 During the initiation period, which lasted no longer than a  
8 day or two, the third accused controlled the activities of  
9 initiates in his shrine. Mr Kondewa did not have control or  
12:45:35 10 command over initiates once they had left the initiation shrine.

11 The Prosecutor has presented evidence that the third  
12 accused, acting in consonance with others, breached or violated  
13 international humanitarian law. The Defence for the third  
14 accused will call insider witnesses; Kamajors who went through  
12:46:22 15 the initiation ceremonies conducted by the third accused;  
16 witnesses who did not only believe but continue to believe in the  
17 immunising powers of the initiation process. Evidence will be  
18 called to show that as part of the ceremonies, initiates were  
19 specifically warned and repeatedly educated and informed about  
12:46:59 20 the laws of the Kamajor society which, inter alia, included the  
21 following: One, that initiates should not kill innocent  
22 civilians or combatants; two, that they should not loot or  
23 pillage property; thirdly, that they should not harass civilians  
24 or rape women. Evidence will be adduced to show that not all  
12:48:03 25 initiates acted as soldiers or combatants.

26 The Prosecutor alleges that Samuel Hinga Norman,  
27 Moinina Fofana and the third accused Allieu Kondewa individually,  
28 or in concert, exercised authority, command and control over all  
29 subordinate members of the CDF. We shall call witnesses of fact

1 to show that none of the three essential elements to establish  
2 command responsibility were applicable to the third accused.

3 Firstly, that there was no superior-subordinate  
4 relationship between the third accused Allieu Kondewa and the  
12:49:21 5 perpetrators of the alleged crimes. Secondly, that the third  
6 accused did not have actual or constructive knowledge that the  
7 alleged crimes were about to be committed, were being committed  
8 or had been committed. Finally, that even if the third accused  
9 knew, he did not have the power to prevent or stop the crimes or  
12:50:19 10 punish the perpetrators.

11 Evidence of hierarchical structure of the CDF and the level  
12 of importance that was attached to the position of High Priest  
13 will be presented to Your Lordships. The three accused persons  
14 have been described by the Prosecutor as the holy trinity of the  
12:51:10 15 CDF movement. That is, God the father; God the son; and God the  
16 Holy Ghost, alluding to the third accused as the Holy Ghost.

17 We shall lead evidence to show that it was ECOMOG, the  
18 original peacekeeping force, that, for the most part of the war,  
19 had effective control over the CDF troops. Witnesses will  
12:52:07 20 testify about an incident involving the third accused in Bo, a  
21 report of which was made to ECOMOG. God, the Holy Ghost - that  
22 is, Mr Kondewa - was arrested and locked up in a cell by ECOMOG  
23 troops. This says it all about the level of authority Mr Kondewa  
24 wielded as High Priest of the CDF.

12:52:55 25 The Prosecutor would want this Court to find the third  
26 accused culpable for not saving or helping others when he could  
27 not help or save himself. We shall present evidence to show that  
28 when it was not ECOMOG, it was the War Council of the CDF that  
29 was responsible for the running and management of the war on

1 behalf of the CDF. The third accused, Mr Kondewa, was not a  
2 member of that War Council, never sat at its meetings, and never  
3 had any business to do with that council. Evidence will be led  
4 on behalf of the third accused to show that most of the  
12:54:05 5 atrocities attributed to the CDF by the Prosecutor were largely  
6 committed by the RUF and AFRC, that is the Revolutionary United  
7 Front and members of the Armed Forces Ruling Council disguised in  
8 Kamajor outfits. Witnesses will testify that before the Kamajors  
9 entered Bo in 1998, the RUF and the AFRC, through one of their  
12:54:51 10 patrons, Dr MB Sesay, prepared ronkos, that is a traditional  
11 outfit of the Kamajor movement. These ronkos were prepared for  
12 the RUF/AFRC, which they wore to wreak havoc on innocent  
13 civilians. Evidence will be led that this pattern was followed  
14 throughout Sierra Leone by the RUF, the AFRC and members of the  
12:55:32 15 Sierra Leone Armed Forces right through the war period.

16 I am sure Your Lordships have heard about the word "sobel",  
17 which means soldiers during the day and rebels at night. This  
18 might be the opportune time to add another word to the war  
19 lexicon of this country, and I will call it "Kamabel". That will  
12:56:11 20 be rebels during the day, transformed to Kamajors at night to  
21 commit the atrocities. The rationale behind this practice was  
22 twofold: One, to surprise the CDF forces and, secondly, to give  
23 the CDF a bad name, which to many they succeeded in doing.

24 My Lords, I will conclude by saying that justice is a  
12:56:44 25 two-edged sword. Justice is demanded by the Prosecutor for the  
26 untold sufferings of the victims of the war. We demand justice  
27 for the third accused, who in the eyes of thousands was a  
28 liberator and not a villain.

29 I thank Your Lordships for your patience and indulgence.

1           PRESIDING JUDGE: Thank you, Mr Williams. This concludes  
2 this phase of the opening of the defence case. We will follow up  
3 next week with the first accused who shall give evidence on  
4 Tuesday, 24 January at 9.30 in the morning. So the Court is  
12:57:42 5 adjourned to 9.30 next Tuesday. Thank you very much.

6                                 [Whereupon the hearing adjourned at 12.58 p.m.,  
7 to be reconvened on Tuesday, the 24th day of  
8 January 2006, at 9.30 a.m.]

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